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Anti-corruption Law as a Fiction: The Illusion of Serving Morality by Controlling It through Rules and Regulations with an International Reach

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According to the Corruption Perception Index of Transparency International, corruption is still far more prevalent in "non-Western" countries. The search for more effective anti-corruption legislation has shifted from preventing and combating bribery to preventing corruption in a broader sense. Consequently, anti-corruption law has obtained a more far-reaching scope. However, this does not work sufficiently. Up till now, we do not know why.

This article focuses on why we should consider revising anti-corruption legislation. The research is a qualitative theoretical analysis based on empirical insights from preliminary anthropological fieldwork conducted in Gabon (Feikema 2015). One of the reasons for the challenge seems to be that the implicit institutional setup—namely, of a national state with a rule of law, which forms the point of departure of anti-corruption law—is not self-evident in countries where this democratic rule of law is not an experienced reality. For example, in the so-called hybrid political orders (Boege 2008), these developments of anti-corruption law may have a confusing and alienating impact, as demonstrated by a case study. Therefore, the effectiveness of these laws could be doubted. Even more importantly, respect for human dignity, the rationale of these laws, seems to be seriously at stake.

We could understand recent developments in anti-corruption law as an illusion of control. Even more vitally, anti-corruption law could be considered a symptom of derailment. What we experience as evil may occur as the disturbance of the ecological cohesion of society: derailment.

IMAGINE

Imagine a place covered with dense tropical forests. When surrounded by such a forest, filled with damp and hot air, one could hear the screeching sounds of parrots and monkeys. Deep in these forests, pygmies still live a peaceful and quiet life. There are elephants, gorillas, and crocodiles, and the local people in the villages in the neighborhood sincerely believe that people turn into elephants at night and are human again during the day. These local people, intimately connected with nature, believe their ancestors are parrots or hippos. These ancestors are considered part of the moral community. For thousands of years, the same rituals still determine significant events in life. Villages consist of houses made of wood, bamboo, and palm leaves. The jungle serves as a pharmacy: a plant is available for every health problem.

Ideally, we all would want to live in a stable society in which we feel safe, respected, and treated in a just and honest way and where there is room to flourish. Like other traditional types of societies, the pictured jungle life has been stable for thousands of years, more or less (Ragsdale 1987; Kelly 2000). This previously described pristine setting is an ideal typical picture of traditional life in a precolonial setting, since in the real world conflict is not absent.

Unfortunately, daily life differs from traditional life's stability as previously pictured. If we zoom out of this pristine picture, it quickly becomes apparent that due to increasing

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urbanization and economic activity, these scenes of so-called traditional life (Weber 1978)[1] are becoming scarce. As a result of the colonization process, the country—let us take the Democratic Republic of the Congo (DRC) as an example—formally has been organized as a nation-state with a democratic rule of law.[2] Although motorcycles, Coca-Cola, T-shirts, and mobile phones increasingly dominate the street scene, the old traditions are often still alive, albeit in a different, (neo)traditionalist, form. The government and court buildings support this image of a "modern" state. However, this image does not guarantee the proper functioning of this state—on the contrary, as is the case in many more former colonies and the DRC.

THE FIRST-PERSON PERSPECTIVE

Next to the street economy, Western companies, often multinationals, dominate the economy at large in former colonies such as the DRC. Apart from expats, Western multinationals also hire local staff, some of whom have been able to study in a Western country with a scholarship. These abroad-educated local staff members take part in two different worlds.

In this article, the DRC is the backdrop for a fictional but quite realistic scenario from a first-person perspective. This perspective provides insight into how different regulatory frameworks in non-Western countries may collide.[3] Against this backdrop, we can do an imagination exercise: position yourself as a local employee—let us call him Nzé—in South Kivu in the DRC, situated in an operating unit of UnderMined Inc., an Anglo-American multinational mining company.[4] That operating unit of UnderMined in South Kivu received its license to operate from the national DRC government. DRC law thus applies to this operating unit. Because UnderMined is registered in the United States and in the United Kingdom, among others, the UK Bribery Act 2010 applies to this company. This anti-corruption legislation applies also to its staff and contractors, even in operating units in other parts of the world such as South Kivu. This act has a transnational reach (Bribery Act 2010).[5] Companies to which the UK Bribery Act apply are expected to put in place appropriate arrangements to comply with the UK Bribery Act.

The code of conduct of UnderMined is also in line with this act.[6] Nzé's family is a powerful ethnic group in South Kivu, and many members are active in the militia called MILT, promoting South Kivu's independence from the DRC. Thanks to his family, Nzé was able to study geology in the United Kingdom, and because of the policy to hire local employees, he got an excellent position at the UnderMined operating unit in South Kivu. He needs to comply with the company rules, but his MILT "brothers" also claim his loyalty. Increasingly, he is caught up in the colliding interests and perceptions of the company and MILT.

Most likely, Nzé's reaction will be something along the lines of "I feel lost, being torn apart between two different systems that do not understand each other. It is schizo-

1 Max Weber distinguishes three different types of "legitimate domination": based on "traditional grounds," on "charismatic grounds," and on "rational grounds." Legal authority is the only rational type of domination, because it is impersonal and role occupancy is impartial: "'*Sine ira et studio*', without hatred or passion." Weber does not consider the traditional and charismatic types of authority rational, since they are personalized forms of authority that are characterized by patrimonialism. Patrimonialism implies authority that is based on personal ties such as family and friends. Weber understands these three types of domination in terms of historical development: traditional authority precedes charismatic authority, which is followed over time by legal authority.

2 "Legal authority" assumes the connection between state and nation; it involves a sovereign nation-state, bound to a territory and a nation, and a state monopoly over the legitimate use of force. The rationale for organizing society based on "legal authority" is that "[e]veryone is subject to formal equality of treatment; that is, everyone in the same empirical situation." Max Weber, *Economy and Society: An Outline of Interpretative Sociology*.

3 Shell Gabon facilitated this research. Because of a confidentiality agreement with Shell Gabon and to guarantee the independence of the research, the thesis should involve neither Shell nor Gabon. For that reason, the DRC serves as a case study in "Still Not at Ease."

4 This scenario is based on the fictive scenarios presented in chapter 2 of "Still Not at Ease."

5 The UK Bribery Act 2010 applies to companies that are established and registered in the United Kingdom, even though they are also located in other parts of the world. Section 3 of this act defines "improper performance": "The UK Bribery Act 2010 equates the appearance of conflict of interest with impaired judgement and therefore with bribery. When the term 'conflict of interest' is used explicitly in international law and law with an international scope, it refers to a situation in which professional judgement may be biased. It is a situation that should be avoided in order to protect transparency and proper performance of professional roles." In section 5 sub (1) of the Act, the "Expectation test" is mentioned that serves as a criterion for improper behavior: "For the purposes of sections 3 and 4, the test of what is expected is a test of what a reasonable person in the United Kingdom would expect in relation to the performance of the type of function or activity concerned." With respect to countries other than the United Kingdom, section 5 (2) determines: "In deciding what such a person would expect in relation to the performance of a function or activity where the performance is not subject to the law of any part of the United Kingdom, any local custom or practice is to be disregarded unless it is permitted or required by the written law applicable to the country or territory concerned." "Still Not at Ease," p. 425.

6 See n. 10, p. 36, "Still Not at Ease," in which the fictive code of conduct of the fictive UnderMined is quoted: "According to the code of conduct of UnderMined: "A potential conflict of interest exists when an interest might possibly interfere with one's professional judgement but does not do so at the moment. In the case of a potential conflict of interest the professional is obliged to take actions to prevent an actual conflict of interest, and to prevent the interest from actually interfering with the professional's judgement." And further on: "[a]n actual conflict of interest is a situation in which a significant interest of which the sole existence poses an impermissible and direct conflict with one's professional duty, because the presence of this interest suffices to influence the judgement of the official/professional. For example: being member of a board in which one's direct chief is also a member." Followed by "[a]n apparent (or perceived) conflict of interest exists when it appears or is perceived that a private interest influences one's professional judgement."

phrenic, and I feel lonely and alienated. I don't know what the right thing is to do anymore." What would you do, if you were Nzé? There are two options: complying with the regulations of the company or not complying with them. Within the frame of reference of this article, the focus will be on noncompliance. Noncompliance can be a consequence of the following possibilities: not being sufficiently informed about the regulations; having the deliberate intention not to comply because of prioritizing other interests;[7] not being able to comply because of external circumstances such as coercion; and the loss of moral compass, due to confusion. In this latter case, Nzé tries as much and as long as possible to meet the requirements of both worlds. In the end, he gets lost and succumbs to the pressure that is put on him by the militia brothers.

The option of the loss of moral compass in this case portrays a contemporary variation of the situation depicted in *No Longer at Ease* (1960), by Nigerian author Chinua Achebe (1994). This novella about Obi, a young Nigerian who studied in England and returned to Lagos to work for the British government, is situated just before Nigeria becomes independent from United Kingdom. Obi increasingly got entangled between the English outlook on society and the Nigerian traditions of his background. Consequently, he loses his moral compass and subsequently accepts a bribe.

No Longer at Ease shows that the attempt to personally bridge the fundamental differences between traditional African life, on the one hand, and the perspective of the Western rule of law, on the other, can have tragic consequences. Although the setting of *No Longer at Ease* is more than sixty years ago, this previously portrayed fictive but realistic case study shows good reason to believe that the story has retained its topicality. Inspired by *No Longer at Ease*, the PhD research on this subject is titled "Still Not at Ease."[8]

It is not very likely that Nzé and Obi will regard their environment as the stable society of their ancestors—far from it. After all, it is an environment that quickly makes one feel torn apart and seduces people into actions that anti-corruption laws would label as corrupt.

THE PROBLEM OF CORRUPTION

Apart from war and natural disasters, corruption is also a significant threat to a society in which we could otherwise thrive and flourish, whether this is the pristine traditional precolonial setting in Africa or the ideal typical rule of law: both ideal types assume trustworthy institutions. Corruption is a threat to society as we envision it, from a normative point of view.

How can we live in a world so remote from these ideal types of society? We must have a strong desire and strive to combat and prevent corruption as corruption plays a vital role in the origin of climate change, pollution, poverty, and migration problems, let alone wars and disasters. Diminishing corruption is urgent to combat this polycrisis; corruption undermines society and human development.[9]

The introduction on "Anti-corruption and SDGs" of the United Nations Development Programme (UNDP) regarding Sustainable Development Goal (SDG) number 16 reads: "Corruption undermines human development. It diverts public resources away from the provision of essential services. It increases inequality and hinders national and local economic development by distorting markets for goods and services. It corrodes the rule of law and destroys public trust in governments and leaders" (UNDP 2023). Besides these negative consequences of corruption, enormous amounts of economic and financial losses are also involved.[10]

But are the current anti-corruption laws and regulations the right avenue for combating corruption? That seems very unlikely, as will be argued in the remainder of this article.

The idea of exploring the possibility of an alternative avenue, next to the current anti-corruption laws, came to mind during interviews conducted with local people in Gabon. These interviews were part of an anthropological orientation on the earlier mentioned PhD research concerning qualitative theoretical research in moral philosophy and law.[11] The interviews provided arguments to elaborate a different explanation for the higher prevalence of corruption in non-Western parts of the world. Could we have overlooked the possibility of a non-Western perspective on corruption? And if this alternative perspective exists, what would it look like?[12]

7 In anti-corruption legislation, this is understood as "ill will." Ill will is an intrinsic feature of the corruption concept: corruption presupposes ill will.

8 See n. 1.

9 The term "polycrisis" was mentioned by former European Commission president Jean-Claude Juncker at the Annual General Meeting of the Hellenic Federation of Enterprises (SEV) on 21 June 2016. https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_16_2293 (consulted 1 March 2023).

10 "US$1 trillion are paid in bribes per year (The World Bank Institute), and there were US$1.8 trillion in illicit financial flows from Africa between 1970 and 2008 (Global Financial Integrity, 2010)." https://anti-corruption.org/themes/anti-corruption-in-sdgs-2/ (consulted 27 February 2023).

11 The research involved a conceptual analysis of corruption and conflict of interest, and of the rule of law and hybrid political orders (see below). As mentioned, this study will be discussed in this contribution.

12 Although the preliminary anthropological exploration was planned to take place for one year, it continued after the PhD research had started, during my full stay in Gabon of six years.

Let us begin by looking at the Corruption Perceptions Index (CPI), which is published annually by Transparency International (Transparency International 2023).[13] This index provides an overview of the perceptions of corruption in different parts of the world. Every country in the world is part of this index. Although there is a slight improvement, according to the CPI of recent years, the DRC is still categorized as one of the most corrupt countries.[14] In general, "Western" countries score structurally better and are perceived as less corrupt than "non-Western" countries—for example, for more than 120 countries and territories over the period from 2011 to 2020, the average prevalence rate of bribery in low-income countries is 37.6 percent, versus 7.2 percent in high-income countries (UN SDG indicators). The explanation for this difference is that "Western" countries have a more effective rule of law.

ANTI-CORRUPTION LEGISLATION[15]

During the last decades, anti-corruption law widened its reach; the scope of the Foreign Corrupt Practices Act (FCPA, US Congress 1977) extends to practices conducted outside the United States (US Congress 1977).[16] Corruption scandals such as those of Enron and WorldCom led in 2002 to the Sarbanes-Oxley Act (SOX), which involves strict governance requirements for companies regarding their audit and control mechanisms (US Congress 2002). Like the FCPA, the UK Bribery Act 2010 applies to companies that are established and registered in the United Kingdom, even though they are also located in other parts of the world.

Both the FCPA and the UK Bribery Act 2010 aim to strengthen compliance with the legal framework that fits within a well-functioning democracy with a rule of law-setting. In contrast to the FCPA, which considers corrupt intent a decisive criterion for bribery, the UK Bribery Act 2010 wields a strict liability approach. In this strict accountability approach, objectively observable behavior rather than intent is decisive in determining whether there is corruption: behavior should suit one's professional role. Due to this development, the focus of legislation is shifting from corrupt intent to formal guidelines of professional conduct that must be measurable by objectifiable standards.

Increasingly, more rules with a broader scope and more control mechanisms and procedures are created, with the intent to improve our control over obedience to the laws. The focus shifts from intent to the regulations themselves and the bureaucracy surrounding them, making the practical context of the problem very specific but leaving the presuppositions for the context out of the picture. For instance, conflict-of-interest regulation shows that even the appearance of a conflict of interest is increasingly seen as a conflict of interest.[17] The context of the rules is not specified, although it is implicitly assumed.[18] For those to whom these regulations apply but who live and operate in a different cultural context, this may lead to experiences such as Nzé has in the previously mentioned case study. So, on the one hand, the scope of anti-corruption regulations is becoming broader, and even the appearance of conflicts of interest can be regarded as a violation of integrity, while on the other hand, the context is becoming more specific (namely, that of a society with a nation-state and a rule of law: a Western democratic constitutional state and a free-market economy). In the private sector, increased rules and regulations and a focus on compliance have intensified.[19] Also, self-regulation in the private sector assumes this same institutional setup. However, the presupposed institutional setup of a nation-state with the Western rule of law and a free-market economy is implicitly also projected onto institutional contexts that differ from this assumed context. The pivotal question is whether this could be assumed to be a fruitful path since it hampers the effectiveness of anti-corruption law. As will be shown, there is reason to believe that the point of departure of anti-corruption law with an international scope may be mistaken.

HYBRID POLITICAL ORDERS

The discrepancy between the formal legal framework and the lack of compliance in daily life fits well in the concept of the so-called hybrid political order (HPO). As mentioned in note 2, this phenomenon was coined by Volker Boege et al. (Boege 2008). In daily life, these kinds of societies are, in fact, a strange amalgam in which the rule of law exists only on paper, in language, and in symbols, but not in the perception of its inhabitants and their (neo)traditionalist ways of life (Boege 2011). Due to the lack of institutional stability and predictability, legal certainty is absent. HPOs are ambiguous by nature.

Although formally, an HPO is a nation-state, this state is controversial and not a self-evidently experienced reality

13 Of the total of 180, the DRC ranks 166, which is low in comparison to, for instance, Sweden, which ranks 5.

14 See n. 18.

15 Within the scope of this contribution, anti-corruption law can be discussed only in a limited way.

16 US Foreign Corrupt Practices Act (FCPA) 1977, which was revised in 1998.

17 Which is possible within the frame of reference of the UK Bribery Act 2010; see n. 8.

18 "Still Not at Ease" argues that this shift in anti-corruption legislation implies a conceptual shift in the core of the corruption concept: it shifts from corrupt intent to conflict of interest. Conflict of interest could be seen as an institutional conflict between standards of professional conduct, which presupposes the institutional context of a nation-state with a rule of law and a free-market economy, and behavior that is considered deviant from this standard. With this shift, the implicit institutional context of a society that is a nation-state with a rule of law is even more strongly assumed.

19 Also as a consequence of SOX.

in daily life. Therefore, an HPO explicitly should be seen as an "order," not as a state; the state is being disputed. In HPOs, laws and regulations, on the one hand, and daily life, on the other hand, do not correspond. The delineation between the public and the private domains exists only on paper. This blurring line causes continuously changing and unpredictable social and economic dynamics. Moreover, a clear hierarchy between institutions is absent. The DRC is an example of an HPO. When we look more closely at the "non-Western" countries in which, according to the CPI, corruption is highly prevalent, it is striking that most of them qualify as HPOs.

Historically, HPOs resulted from colonization aimed at establishing a nation-state with a Western rule of law while traditions remained. Colonies aimed to be independent again. In the words of Koert Lindijer,[20] an Africa correspondent for the *NRC*, a leading Dutch newspaper, for forty years: "Coldly a quarter of a century after the fervent call for independence, nationalistic sentiments had faded, the new nation had remained a vague notion and civic duty a foreign concept. As in colonial times, the population did not matter. Police officers and soldiers extorted citizens. One had to stay as far away from the state and certainly from the army as possible" (Lindijer 2023).

This quote illustrates how the HPO functions opposite to the rationale of its formal setup as a national state with a rule of law, as implemented by the colonial ruler: instead of protecting citizens and respecting their dignity, citizens have good reasons to fear the state and state institutions. These HPO features also apply to the DRC.

THE RULE OF LAW

Getting a better understanding of the rule of law requires taking a closer look at its conception and history. From a conceptual point of view, a society can thrive only if citizens are autonomous and free. According to the legal philosophy of Immanuel Kant, moral agents cannot rule over each other, due to their autonomy (Kant 1997).[21] Moral agency can be guaranteed only if the law, rather than a person, is the highest authority. Based on Kantian reasoning, moral agency implies respect for intrinsic human worth, which is considered the conceptual starting point for the rule of law (Kant 2010).[22] Conceptually, the rule of law implies a division between the public and the private domains. The public domain is the domain of the law. The rationale of the public domain is to protect and safeguard the private domain, to enable the society to flourish. The public domain consists of an independent and impartial judiciary, tax liability, military defense (of the territory and the people), public prosecution, et cetera. These institutions are expected to serve the requirements of a flourishing society.[23] The conceptual separation between the public and private domains is the essence of the nation-state with the rule of law. Hence Spinoza's adage "The purpose of the state is really freedom" (Spinoza [1670] 2007). Against this backdrop, it is not surprising that bribery of public office could be considered an ultimate undermining of the rule of law, as the private interest overrules the public interest. Prevention of corruption is the rationale of the rule of law.

The individual human as bearer of inalienable rights—namely, the right to self-preservation and physical and mental integrity, and therefore respect for their dignity—formed the rationale of making the law the highest authority. Historically speaking, with population growth over time, people living in a particular territory did not necessarily connect through kinship anymore, although they had shared interests. Humanism and the ideals of the Enlightenment formed the impetus for the national rule of law as the best possible governance model. Historically, this nation-state was also democratically organized. It developed simultaneously with the free-market economy; the emergence of free-market economies coincides with the emergence of the protection of values such as equality and justice and of individual rights (Bavel 2019).[24] In the meantime, private organizations also became active bearers of the rule of law (Raat 2017). Self-regulation, the development of codes of conduct, expresses this development. Increasingly, organizations in the private sector introduce

20 Original in Dutch: "Koud een kwart eeuw na de vurige roep om onafhankelijkheid waren de nationalistische gevoelens verlept, de nieuwste natie was een vaag begrip gebleven en burgerplicht een vreemd concept. Het leek alsof de bevolking er, net als in de koloniale tijd, niet echt toe deed. Politieagenten en soldaten persten de burgers af. Van de staat, en zeker van het leger, moest je zo ver mogelijk wegblijven."

21 Kant's normative view on morality is based on the universalist claim that rational, and therefore autonomous, beings have the unconditional duty to respect the moral law, implying that they have to respect others because of their capacity for acting morally. They should be treated as ends in themselves. This reasoning is based on the categorical imperative, meaning that we should always act according to the general/universal law. Against this backdrop, human dignity can be seen as the foundational concept of the human rights framework as represented in the Universal Declaration of Human Rights (UNDHR) of 1948.

22 According to Kant's philosophy of law, moral agents are obliged to establish a rule of law, which, juridically speaking, implies that the law should reflect moral obligations, although the status of the law differs from the status of morality. One is obliged to comply with the law, whether one is motivated or not. Still, the law has a moral character itself.

23 Institutions should enable for individual members of society "some basic values, such as: transparency, the adversarial principle, practicing what one preaches, predictability, openness, clarity, continuity, justice, consistency, non-arbitrariness, non-ambiguity, recogni[z]ability, generality, impartiality, integrity, accountability." "Still Not at Ease," p. 224.

24 As Bas Bavel shows in his book *The Invisible Hand: How Market Economies Have Emerged and Declined Since 500 AD* (Oxford University Press, 2019), the emergence of market economies coincides with the emergence of the protection of values such as equality and justice and of individual rights.

codes of conduct expressing the same values that are constitutive for the rule of law.

According to both the conceptual and the historical frames of reference, the prevention and combating of corruption could be seen as the rationale of the rule of law. According to this reasoning, corruption presupposes the rule of law. This implies that the rule of law is the lens through which corruption is perceived. Originally, in anti-corruption legislation, the conceptual core of corruption is bribery of public office, which indeed presupposes the rule of law. Public office, by definition, is a distinguishing criterion of the rule of law, after all. In recent years, the scope also has extended to private office. Even then, the presupposed frame of reference is one of a free-market economy embedded in a nation-state with a rule of law (Johnston 2005).[25]

The protection against corruption could be seen as a rationale of the rule of law. A nation-state with a rule of law combined with a free-market economy constitutes the frame of reference of anti-corruption law, since corruption is an inherent threat to the rule of law.

LEGITIMACY: CONTEXT SENSITIVITY, INSTITUTIONS, AND COMPLEXITY

Anti-corruption law, such as the FCPA and the UK Bribery Act, have a transnational reach. But this does not necessarily imply that we may assume that they will be effective in different parts of the world. The stories of Nzé and Obi show reasons for doubt.

The effectiveness of a society's rules and regulations is pivotal for the well-functioning of that society. Legitimacy is a condition for efficacy, according to Montesquieu: "Law in general is human reason, in as much as it governs all the inhabitants of the earth: the political and civil laws of each nation ought to be only the particular cases which human reason is applied. They should be adapted in such a manner to the people for whom they are framed that it should be a great chance if those of one nation suit another" (Montesquieu 2001). In other words, laws must be related to the context they apply to, and recognized and acknowledged by the people who are supposed to be governed by these laws.

Life in traditional African villages before colonization looked quite different from life in Western countries. Because it did not fit in the Western mono-ideal of the nation-state with the rule of law, it was not considered acceptable, perhaps even corrupt. Colonial powers aimed to "civilize" these areas. Current anti-corruption legislation is no different in the sense that it also takes its Western frame of reference as point of departure. "If the only tool you have is a hammer, everything looks like a nail." However, this is a misconception: corruption is not only a threat to the rule of law; it is a threat to society as such. When self-interest prevails over collective interests, and thus universal values, society is undermined. This is the essence of corruption, a socially disabling force. However, a condition for corruption to take place is discretionary space.[26] In a so-called traditional society, by nature there is less room between personal life and social (professional) roles than is the case in a nation-state with the rule of law. For that reason, we end up in a paradox: the prevention of corruption is the rationale of the nation-state with a rule of law, while at the same time this setting—for this reason—makes corruption more likely to occur within this frame of reference.

Legitimacy is a requirement for African village customs, as an example of traditional ways of life, and the laws of a national state with the rule of law. The structural legitimacy deficit is a distinguishing criterion of the HPO. After all, the HPO lacks legitimacy by definition, since the daily lives of its inhabitants are governed by rules and customs that express a different view of society and have a different origin than the laws and regulations of the formal state.

From a normative point of view, people are considered moral agents. To thrive, they should be able to exercise this autonomy intrinsic to their moral agency (Nussbaum and Sen 1993).[27] Institutions should be trustworthy for that reason. From a conceptual point of view, a flourishing society cannot exist and flourish without respect for human dignity and without institutions that support and embody this.[28] In former colonies, the rule of law is implemented in situations that have a very different institutional setup. A sociological view on institutions involves, except for the so-called formal sustainable social practices, also the informal sustainable social practices. This broader concept of institutions also includes, for example, tribal bonds. If one sees through the different kind of institutions in HPOs, it becomes clear that, although they do not "look" like Western institutions, the underlying basic values and principles of these societies are quite similar.

25 This applies also to the views that shift from combating corruption to combating integrity breaches at large. According to Michael Johnston, corruption in the sense of bribery does not occur in isolation. For that reason, a broader corruption concept is required, which considers corruption as a syndrome. Corruption as a syndrome implies institutional decay and extends to a wider range of integrity breaches.

26 The space between the law, and with it the institutional and official frame of reference of a profession—be it public or private (commercial) office, on the one hand, and personal life, on the other hand—is the epitome of the watershed between the public and private domains inherent in the rule of law. It is this delineation that creates space for fiction and thus for corruption.

27 The capabilities approach of Amartya Sen and Martha Nussbaum focuses on the actual human capabilities to exercise the freedom of agency.

28 The "child benefits scandal" in the Netherlands shows the negative impact on human well-being if the trustworthiness of institutions is at stake. This scandal concerns regulations that were supposed to prevent fraud at the tax authorities, but it turned out that this remedy was worse than the disease. Despite the commitments, many victims have still not received their just compensation and have still not been compensated for the damage suffered.

These societies had their own checks and balances and were vital and stable for much longer than nation-states with the rule of law have existed. This is far from unproblematic… In the words of the historian Theodore von Laue: "The world revolution of Westernization, in short, has not created a peaceful world order guided by the ascetic and all-inclusive humane rationalism which is the best quality in Western civilization. Universalizing the tension inherent in its own dynamic evolution, it has rather produced a worldwide association of peoples compressed against their will into an inescapable but highly unstable interdependence laced with explosive tension" (Laue 1987). We pay a price for this drive to control everything everywhere, which, according to the sociologist Hartmut Rosa, is characteristic of modern—Western—society: "The drive and desire toward controllability ultimately creates monstrous, frightening forms of uncontrollability" (Rosa [2018] 2021).

From a systems science perspective, societies could be seen as ecosystems (Peter Paul Robertson 1999; Du Plessis and Brandon 2015). The colonial powers, Western societies, should be seen as complex systems that are more complicated and therefore a less robust, coherent, and stable social ecosystem than African villages that have existed for a long time (Peter P. Robertson, Forthcoming). The customs of African societies are more part of a practice they apply to than the laws of the rule of law. After all, the laws of the rule of law by nature imply a conceptual and legal "distance" from the practice they apply to, due to the watershed between the public and private domain. The size of society does not matter as such. A crucial feature of an ecosystem is that its complexity correlates well with its size, otherwise the ecosystem becomes weak; complicatedness is a sign of weakness (Peter P. Robertson, Forthcoming). Paradoxically, the weaker system overrules the robust system, being stuck in the illusion that it is the other way around. This illusion is precisely a symptom of the weakness of this system. The HPO as a concept is descriptive and morally neutral, but as a phenomenon it is the monstrous consequence of the mismatch between a weaker system that imposes itself on robust systems.

For legitimacy, context sensitivity is crucial: the ability to be sensitive to the relationship between the universal core and its translation in a specific institutional setup. Legitimacy itself is in fact a proof of coherence of a society (an ecosystem). Context sensitivity also implies being aware of and being sensitive to the degree of coherence of the ecosystem, and the willingness of weaker systems to learn from more robust systems instead of the other way around. The trustworthiness of institutions and institutional roles is a condition in this respect.[29]

CORRUPTION LEGISLATION AND THE ILLUSION OF CONTROL

Let us return to anti-corruption legislation. The impact on local employees, such as Nzé, of working for a multinational, such as UnderMined in the DRC, is outlined above, but we can also look at Obi in colonial Nigeria. The individual employee in these cases experiences a mismatch between the official legal perspective and the perspective of the experienced local morality in practice. The official legal system dictates that it is vital that people, institutions, and their employees comply with the law. However, from the perspective of the morals of local tribes and communities, there is the potential for alienation: the law and the concrete experience do not match, which may lead to feelings of being unrecognized and unacknowledged. The intrinsic friction of an HPO—namely, the customs of the local (neo)traditional(ist) life, on the one hand, and the official legal framework of formal institutions, including companies that fit in this latter frame of reference, on the other hand—is likely to be experienced as conflicting, and most likely also as mutually exclusive.[30]

Combating and preventing corruption is urgent, given the role that corruption plays in the current crises that we are facing—the individual crises of people like Nzé and Obi included. So far, the tendency to combat and prevent corruption has been a matter of intensifying rules and regulations, of broadening their legal and geographic scope, and with an increased focus on compliance with these rules, in both the public and the private sectors.

But does this avenue have any merit, and does it adequately address corruption? The crucial question is whether anti-corruption legislation is insufficiently effective because people and institutions cannot comply with the laws or whether these laws themselves are the problem. After all, people do not perceive these laws as legitimate. We can even go one step further and argue that the way anti-corruption legislation is imposed onto contexts with a different institutional setup than they presuppose may even generate corruption.

A different approach is required, one that takes legitimacy seriously and, therefore, is context sensitive. If this

29 Trustworthiness could be seen as originating from the fiduciary duty as the core of institutions and institutional roles. "Still Not at Ease," p. 259.

30 "Local employees easily fall between two stools. The contract with the multinational assumes an unconditioned sphere that enables the development of personal autonomy and the ability to have friendships that do not interfere with the professional contract. At the same time the presence of this professional contract, and the unconditioned sphere it presupposes, provides a conceptual prerequisite for corruption. In the traditional outlook on society, represented by one's family and clan, however, this unconditioned sphere does not exist and, therefore, it excludes the professional contract. In the traditional status of a bond there is only room for in- and exclusion and therefore for respectively a conditioned and a non-conditioned sphere, which is something fundamentally different from an unconditioned sphere. And because identity is a collective attribute in the traditional outlook on society, the local employee is expected to serve the family unconditionally. There is no room for the unconditioned sphere that the professional contract presupposes." "Still Not at Ease," p. 247. Unfortunately, within the frame of reference of this contribution, it is not possible to discuss this matter any further.

condition is not met, anti-corruption law involves both a wicked problem and an impossible loop, especially from the perspective of local employees of multinationals in HPOs. The wicked problem is that corruption plays "catch me if you can." Like a slippery piece of soap, corruption challenges lawgivers only to intensify the laws and regulations to combat and prevent it. The impossible loop concerns the alienating nature of anti-corruption law in the experience of local staff in non-Western countries to whom it applies. Due to a lack of context sensitivity, it may harm their dignity while it intends to protect it. This type of law undermines what it stands for. Imposing one's world and outlook on life anywhere in the world is a form of dominance that paradoxically undermines the respect for human dignity it claims to protect. As demonstrated in this contribution, anti-corruption legislation that is not context sensitive is an example of this type of legislation—it is an illusion of control.

It is not so much a matter of "noble savage" idealization of traditional societies to state that societies that are robust ecosystems deserve respect. They are more stable, coherent, and healthy social systems than societies that have become complicated, also due to over-regulation and the increasing focus on compliance and control systems. Nevertheless, both the ideal type of so-called traditional society and a rule of law-based democracy—Weber's concept of "legal authority"—should be considered complex systems that are stable. However, this does not mean that it is easy to "translate" between the two. It would be an illusion to think that the checks and balances of a society that from a Western point of view are considered "primitive" could easily translate to the checks and balances and institutional setup of a nation-state with a rule of law, especially in the practice of daily life. This is a matter of being lost in translation for those who may be disappointed that their anti-corruption legislation in non-Western regions is less effective than intended, and for people like Nzé and Obi in these non-Western regions who feel lost due to the alienating effect of these laws. Context sensitivity, the ability to be sensitive to the relationship between the universal core and its translation in a specific institutional setup and to be aware of and sensitive to the degree of coherence of the ecosystem, is vital in this respect. It urges that weaker systems be willing to learn from more robust systems instead of the other way around.

If laws and regulations are no longer in touch with the practice they apply to, they could be considered a form of derailment themselves. Complicated systems are weaker than coherent and stable systems because their complicatedness in fact qualifies as a form of derailment (Peter P. Robertson, Forthcoming). Derailment is the classical meaning of corruption: the process of rotting (Heidenheimer and Johnston 2009; Transparency International 2023).[31] The rule of law implies by nature this "distance" from the practice it applies to. After all, by definition, law and practice cannot coincide.

How to bridge the gap between the two perspectives presented in this contribution? According to the dominant perspective, HPOs are expected to move in the direction of "Western" rule-of-law democracies (Hertogh, Raat, and Witteveen 1998). More likely and more feasible, also for "Western" societies, could be to strive for a type of society with a "layered" dynamic of national, regional, and local regulatory contexts in which the hierarchy and the scope of institutions are reflected upon explicitly and continuously (Gray 2000; Fraser 2008).[32] To overcome arbitrariness and ambiguity as much as possible, a universalist and context-sensitive approach of shared values that promote moral agency should be leading.[33] The fiduciary nature of institutions and institutional roles, and their legitimacy, should be considered pivotal in this respect. What could this look like in practice? The different and conflicting institutional frameworks and the involved layers of checks and balances could be explicitly reflected on, so that a discourse arises about which institutional framework should take precedence in which situation. This means that bottom-up processes, such as dynamics involving tribal, ethnic, family, and other "informal" institutions, and top-down processes, such as dynamics of governmental, legal, and other "formal" institutions, could be combined within discourses on situational hierarchy and context-sensitive precedence.

The moral of this story is that the solution caused the problem it intended to solve. More legal control provides only the fiction of control and forms a threat to the robustness of ecosystems. "If it's not broken, don't fix it."

COMPETING INTERESTS

The author has no competing interests to declare.

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31 According to the CPI 2022: "Countries in the top-scoring region, Western Europe, and the European Union, have been at a standstill for over a decade or have declined over the past five years. Undue influence over decision-making, poor enforcement of integrity safeguards and threats to the rule of law continue to undermine governments' effectiveness." This is in line with the view as expressed in chapter 7 of "Still Not at Ease" that Western societies embrace the fiction that they are embodying the concept of a nation-state with the rule of law, while in practice they exhibit many HPO features.

32 We could think, for instance, of the "post-liberal *modus vivendi* model" of John Gray.

33 Such as, for instance, respect for human dignity, self-binding, impartiality, and responsiveness. See "Still Not at Ease," pp. 279–85.

baar Dubbelzinnig (Animal Ambiguity, 2022), a book on the human-animal relationship.

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REFERENCES

Achebe, Chinua. 1994. *No Longer at Ease*. New York: Anchor Books.

Bavel, Bas. 2019. *The Invisible Hand? How Market Economies Have Emerged and Declined Since AD 500*. Oxford University Press.

Bribery Act. 2010. https://www.legislation.gov.uk/ukpga/2010/23/pdfs/ukpga_20100023_en.pdf.

Du Plessis, Chrisna, and Peter Brandon. 2015. "An Ecological Worldview as Basis for a Regenerative Sustainability Paradigm for the Built Environment." *Journal of Cleaner Production* 109 (December): 53–61. https://doi.org/10.1016/j.jclepro.2014.09.098.

Fraser, Nancy. 2008. *Scales of Justice: Reimagining Political Space in a Globalizing World*. New York: Columbia University Press.

Gray, John. 2000. *Two Faces of Liberalism*. Cambridge: Polity Press.

Heidenheimer, Arnold, and Michael Johnston, eds. 2009. *Political Corruption: Concepts & Contexts*. 3rd ed. New Brunswick: Transaction Publishers.

Hertogh, M.C., Caroline Raat, and Willem J. Witteveen. 1998. "Tussen Rechtmatigheid En Doelmatigheid. Proeve van Een Idealenperspectief." In *Over Idealen; Het Belang van Idealen in Recht, Moraal En Politiek*, edited by W van der Burg and E W A Brom, 103–29. W.E.J. Tjeenk Willink, Deventer.

Johnston, Michael. 2005. *Syndromes of Corruption: Wealth, Power, and Democracy*. Cambridge: Cambridge University Press. https://doi.org/10.1017/cbo9780511490965.

Kant, Immanuel. 1997. *Fundering Voor de Metafysica van de Zeden*. Translated by T. Mertens. 3rd ed. Amsterdam: Boom.

———. 2010. *The Philosophy of Law: An Exposition of the Fundamental Principles of Jurisprudence and the Science of Right*. Translated by W. Hastie. New Jersey: The Lawbook Exchange Ltd. Clark.

Kelly, Raymond. 2000. *Warless Societies and the Origin of War*. University of Michigan Press. https://doi.org/10.3998/mpub.11589.

Lindijer, Koert. 2023. "Een Wolkenkrabber Op de Savanne; Veertig Jaar Correspondentschap in Afrika." Translated by Liesbeth Feikema. Amsterdam/Antwerpen: Atlas Contact.

Montesquieu, Charles de. 2001. "The Spirit of Laws." Translated by T. Nugent. Ontario: Batoche Books. 2001. http://home.lu.lv/~rbalodis/Publikacijas/Constitutional_Law/Salidzinosas%20KT/Monteskje%20spiritoflaws.pdf.

Nussbaum, Martha, and Amartya Sen. 1993. *The Quality of Life*. Oxford, New York: Clarendon Press Oxford University Press.

Raat, Caroline. 2017. *Mensen Met Macht; Rechtsstatelijkheid Als Organisatiedeugd Voor Maatschappelijke Organisaties*. Den Haag: Boom Juridische Uitgevers.

Ragsdale, John W., Jr. 1987. "The Institutions, Laws and Values of the Hopi Indians: A Stable State Society, 55 UMKC L. Rev. 335."

Robertson, Peter P. Forthcoming. *A Goldilocks' Dilemma: On the Emergent Dynamics of Elementary Interactions*.

Robertson, Peter Paul. 1999. "The AEM-Cube®: A Management Tool, Based on Ecological Concepts, in Order to Profit From Diversity." In *The 43rd Meeting of the International Society for the Systems Sciences*. Asilomar Conference Center, Pacific Grove, California USA. https://doi.org/10.2139/ssrn.3220244.

Rosa, Hartmut. (2018) 2021. *The Uncontrollability of the World. Cambridge, Polity Press*. Translated by James C Wagner. Wien: Residenz Verlag.

Spinoza, Benedictus. (1670) 2007. *Theological-Political Treatise, Cambridge Texts in History of Philosophy*. Original.

Transparency International. 2023. "2022 Corruption Perceptions Index: Explore the Results." *Transparency.Org*, July. https://www.transparency.org/en/cpi/2022.

UNDP. 2023. "Anti-Corruption in SDGs." 2023. https://anti-corruption.org/themes/anti-corruption-in-sdgs-2/.

Weber, Max. 1978. *Economy and Society: An Outline of Interpretative Sociology*. Edited by G. Roth and C. Wittich. Berkeley: University of California Press.