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IAFOR Journal of Ethics, Religion & Philosophy **Editor and Reviewers**

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Editors' Introduction

This is the fourth issue of the *IAFOR Journal of Ethics, Religion & Philosophy*. The subject matter of such a journal is as broad as it is varied. A journal of this nature is quite the challenge when choosing a selection of articles that in their interplay might provide a forum for its themes, and to be the fundamental pillars to justice and knowledge in how they are derived, perceived and expressed. As the new editor to this journal, this was my task.

The seven articles are drawn from seven different countries: India, Uganda, Nigeria, Caribbean, Australia, Spain and Japan, and they continue with IAFOR's focus of proving a platform for cross nationality and intersectionality in the dispersal of knowledge. They are multidisciplinary focussed with each author reflecting on the implementation and applicability of ethics, religion and philosophy, through an eclectic choice of topics. The primary theme of this issue is therefore about justice.

Piyali Mitra discusses the "Halakhalic" standing concerning of the use of the human embryonic cell for research and employs the ethical issues arising from the use of technologies and medical advances made in human reproduction, from an abstract philosophical perspective instead of just Jewish traditional thoughts. Wilfred Lajul advocates that "true justice" is more than punishments for the wrongs done; it involves healing the wounds of conflict, mending broken hearts, reviving dampened spirits and restoring relations torn apart by human violence and involves a role for religious leaders. Sule Peter Echewija refutes the justice of court rulings which profess justice but whose processes merely enable and perpetuates injustice using the example of plea-bargaining.

As new Journal Editor, I felt compelled to contribute on how we should practically implement ethics. Indeed, in the past I have been forced to provide methodology on ethics to my student social workers while teaching in the Caribbean and it seemed like the missing strand in this collection. In terms of methodology, my offering is a feminist's standpoint to doing ethics and justice. A.C Ping utilising the example of international and organised crime wants, through his empirical research, to demonstrate that unethical outcomes can, if unchecked, be perceived to be just. Burabari Sunday Deezia provides a theoretical examination of the meaning and forms of asceticism as a central position in different religious traditions; be they African Traditional religion, Christianity, Islam, Hinduism and Buddhism. He establishes that the practice of asceticism needs to be obligational for it to be influential to justice, a point with which many may disagree. We end on a rather tautological note with Israel Salas Llanas, who constructs an argument around the dual self as a brain process or cultural exaptation. According to Salas Llanas, in our development of knowledge of self, we give up self-unity for science which is objective/subjective dualism and that this dualism creates a self-awareness that then alienates us from our reality and hence we are in a perpetual journey to a fictitious end.

If I was to extrapolate in the language of justice as a value judgment to life, this exploration of justice is but a myth in an attempt to recover our lost unity, and before we can do justice we need to find it in ourselves.

Lystra Hagley-Dickinson

Editor

Philosophical Ruminations about Embryo Experimentation with Reference to Reproductive Technologies in Jewish "Halakhah"

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Abstract

The use of modern medical technologies and interventions involves ethical and legal dilemmas which are yet to be solved. For the religious Jews the answer lies in Halakhah.

The objective of this paper is to unscramble the difficult conundrum possessed by the halakhalic standing concerning the use of human embryonic cell for research. It also aims to take contemporary ethical issues arising from the use of technologies and medical advances made in human reproduction and study them from an abstract philosophical perspective. Instead of providing any Jewish practical ruling the paper have tried to incite, stimulate and encourage philosophical thoughts about the issue through the intensive understanding of traditional Jewish thoughts.

In this paper, an objective as well as a deep-rooted study has been adopted about the use of human embryos for research and the Jewish adoption of assisted reproductive technologies through the prism of the knowledge of Halakhah, Torah and Talmud.

The paper finds that the embryo research sits at the crossroads of many halakhalic issues. Judaism adopts the belief that God has created man in his own image. The Jews not being dogmatic decipher "the image" of the creator as the ability to discern and reason. It follows that Judaism does not subscribe to the notion that tampering with nature is prohibited. To the Jews the mitzvah for procreation is so great that they are open to reason and adopt newer medical advancement in procreation. The Jewish laws are not only for engagement in intellectual exercise or academic pursuit but subscribe to a higher order of moral conduct. The Jewish approach is not situational but also casuistic in resolving conflicting medical issues.

Keywords: embryo experimentation, Judaism, human assisted reproductive technologies, philosophical considerations, theology, Halakhah

Introduction

Embryo Experimentation involves a cluster of reproductive technologies. Advances in reproductive technologies have spawned a very polarised public debate concerning these technologies. Religion has a considerable influence over the public's attitudes towards reproductive technologies. The views of active and influential religious adherents have a prominent role to play in public policy decision making procedure about this research. Looking back on the early works concerning Assisted Reproductive Technologies, henceforth ARTs we would be struck by how far our reactions to these technologies have come since the decades leading to the birth of the first test tube baby in the year 1978. IVF is no longer shrouded in the "doom-laden scenarios" as was represented in the texts concerning reproductive technology of the 1920s and 1930s. Aldous Huxley had anticipated the impending "Brave New World" resulting from the development of more precise methods and techniques of Eugenetic intervention and reproductive technologies of human species.

These technologies have been the subject of extensive normative debates in Bioethics, Philosophy and Religion. This paper seeks to explain our preliminary reflections on how religious communities respond to and assess the ethics of reproductive technologies. Arguably, the advancement of science in the human reproduction especially the ARTs are to be met with resistance from religion. Religious doctrines are likely to collide with the rapidly advancing capability for science to make such interventions in human reproductions. If religious belief is supposed to be the counter factor in the path of the development of ARTs, the crucial ingredient for acceptance of such scientific technologies are prototypically supposed to be scientific literary-that is familiarity and proper understanding of the critical facts concerning these technologies. So, proper medical awareness and scientific knowledge would put to rest the opposition being met out to these medical technologies. This paper aims to make a critical review of the Jewish insight into medical development concerning reproductive technologies. The paper also takes up the issue about the status of incest or mamzerim in the Jewish philosophical discussion resulting due to the artificial insemination of a woman by a donor other than that of her husband. The matter at stake here is that the application of artificial insemination by donor (AID) leads to a whole range of problems in the areas of family and succession law due to the fact that the origination of an AID child might not be a matter of public knowledge. At the same time AID may be the only hope for an infertility problem. This paper is divided into three sections. In the first section we would explore the Jewish view on Medical Ethics. The second section would provide an insight into the moral status of "embryo" in the Jewish philosophy. In the third section we will explore the Jewish take on the modern reproductive technologies discussing whether reproductive technologies with the use of embryo finds acceptance in Jewish religion. It also tries to find the halakhic answer to the question whether or not reproductive technologies constitute adultery.

Jewish Religion and its Ideas about Medical Ethics

Judaism is divided into three main branches: "Orthodox", "Conservative" and "Reformed". The Orthodox Judaism maintains that they are more religious in comparison to the Conservative and Reformed. Orthodox Judaism claims to follow the traditional Jewish religion unlike the Conservative and Reformed. The basic tenets of Judaism are the revealed words of God which have been passed down at Mount Sinai and witnessed by large number of people. These divine revelations were referred to as "***Torah***". The "***Torah***" consists of the classical "written" and "oral" rules. The written "***Torah***" comprised of the five books of

Moses and the oral *Torah*. The oral "*Torah*" is the "*Talmud*" which amounts to the divine revelations given on Mount Sinai to the Jews as discussed by Jewish sages. The oral *Torah* is cumbersome and is subject to constant expansion made by religious scholars, rabbis in the form of legal views and counter-opinions regarding the interpretation of the *Torah*. So the *Talmud* comprises laws or rules subject to commentary, clarification and expansion of the written *Torah* comprising of the agreements and interpretations or disagreement of views and opinions of the religious scholars, rabbis down through the centuries. The Orthodox Jews call "*Halakhah*[1]" the whole legal system of Judaism encompassing all the laws, practices and observances of Judaism. So the "*Halakhah*" finds its source in the written law, comprising of both positive and negative commandments of Sinaitic origin as included in the books of the Pentateuch. The other source includes the oral law comprising of the detailed explanations and elucidation transmitted in its entirety at Sinai, and is also comprised of rabbinical decrees, customs with both positive and negative enactments, and so forth. The law that has Sinaitic origination is called *de-oryata*, which is different from laws of rabbinical source, called *de-rabbanam*.

Jewish Medical Ethics is founded upon the Sinaic revelation. Some of the fundamental principles the Jewish medical ethics are based upon are:

Firstly, Judaism is grounded upon obligations, duties and commitments. It relies on commandments, rather than on rights and pure hedonism. Beneficence and altruism are more important than mere non-maleficence.

Secondly, Judaism does not adopt any single precept. It advocates the middle path or golden means.

Thirdly, within Jewish sources, progeny is considered as precious. Judaism understands propagation not only as a blessing, but a commandment. The Jewish principles stresses in the supremacy of life. However when there is any conflicting situation Judaism in general prefers the casuistic approach to resolve halakhik questions. It believes in examining each situation according to individual circumstances and develops response according to details and characteristics of situation.

In fact, Judaism recognises absolutism with respect to eternity of *Torah*. At the same time for Judaism there is no definitive value that may be absolute so that it takes precedence in every circumstance.

Jewish laws are not only for engagement in intellectual exercise or academic analysis. They subscribe to a higher order of moral conduct, obligating the individual and society to act accordingly. They highly value the principle of autonomy as a concept of respect for others. However, autonomous decisions which are not in accordance with the required moral standards are overridden by higher moral values, as determined by Halakhah, which overrules the life of each individual, inclusive of those of patient and physician. Where conflicting values arise, individual action is to be governed by the required normative moral conduct (Steinberg, 1998, pp. 624–645).

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[1] "Halakhah" is usually translated as Jewish Law, although a literal and appropriate translation means "the path that one walks". The word is derived from the Hebrew root Hei-Lamed-Kaf, meaning to go or to walk. (Cohn-Sherbok, 2005) and (Jastrow, 1903)

Jewish Standing on Embryo's "Sanctity of Life"

Reviewing the Jewish standpoint about experimentation with embryo for procreative or therapeutic ends, the question that might gain significance is whether embryos are susceptible to the sanctity of life as preordained to any sentient human being. This discussion will be restricted to the Halakhah issues related to the use of embryo for research. The discussion concerns the status of pre-implantation embryos or pre-embryo and their use for research.

Some rabbis may question whether pre-embryo be upgraded to be foetus in-utero. If that be so, then the discussion of the status of pre-embryo would be within the parameter of the abortion debate. Accordingly, the use of embryo research would be tantamount to killing, if abortion is held as akin to homicide. Judaism has always glorified and exalted the value of "life" and placed it at the highest echelon. In fact Torah is not only a Jewish philosophical system but is called a "tree of life" (Unterman, 1971, p. 125) (Proverbs 3:17–18). Judaism celebrates "life" and the loss of a single life tantamount to the loss of whole world; equally, saving one life would lead to saving the world. If abortion is debarred on the charge of it being life-annihilating, perhaps by extension human embryo research would be disallowed. Those against advocating abortion would justify the prohibition of abortion or embryo research on the grounds of it being destruction of future life. Thus, performing abortion amounts to homicide. To this charge of murder raised against abortion some Jewish scholars quote the Exodus 21:22-23 (King James Version) which reads: "If men strive, and hurt a woman with child, so that her fruit depart from her, and yet no mischief follow: he shall be surely punished, according as the woman's husband will lay upon him; and he shall pay as the judge determine. And if any mischief follows, then thou shalt give life for life." (Norton, 2006) As Shalon Paul (Paul, 1970, p. 71) asserts, the loss of embryo is entailed by pecuniary settlement. One thing is clear both from the critical and historical dogmatic aspects: abortion is not homicide; the embryos death does not carry the death penalty, rather the mother's death entails the giving "life for life". So the Jewish faith agrees on the foetus having no independent life; it is under the parent custody, otherwise its loss or damage would not have led to a claim for monetary compensation.

There are again pro-life forces that are against the ethical permissibility of the taking of the embryo at its earliest stage for it involves killing a future human life. Charles Krauthammer (Krauthammer, 2001, p. 201) reacts by stating that the pro-life argument fails. The research using human embryos is either produced from in-vitro fertilisation or from aborted foetuses. Also, if we are to delve we may find the fallacy of ambiguity of language for the verb "killing" is not synonymous to "to taking". The embryonic cells are taken or find their source either in IVF or foetal tissue, which is spare or aborted. There is the incorrect semantic use of the verb "take" with respect to "kill". As Krauthammer (Krauthamer, 2001, p. 202) summarises, what is of importance is not the origin but the destiny of embryo research.

Drawing upon the wealth of divergent philosophical and theological reflections and situating ourselves relative to it, the divergent views highlight the ambiguity inherent in the moral status of "embryo". According to Judaism, saving life pushes aside all other values and commandments, yet it holds there is no reason to save one life for the sake of another. According to Jewish law, the life of the foetus becomes inconsequential, as aborting them becomes necessary to save the mothers' lives (Maimonides, 1992). The Halakhah does not assign relative values to different lives. Now, while evaluating whether pre-embryos are subjected to the same prohibition as abortion one takes into consideration the laws assigned

for abortion. To quote Genesis 9:6 – "Whoever sheds the blood of man, by man shall his blood be shed". The Jubilee Bible 2000 translates the Genesis as "Whoever sheds man's blood in man, his blood shall be shed". In the Sanhedrin, Rabbi Yishmael states that to say "man by man" literally is "in man" and this can refer to a foetus in its mother's womb. Therefore, the loss of a foetus within the mother's womb would amount to killing.

Based on this, the prohibition of abortion is not covered by the laws about pre-embryos. A pre-embryo is not potential life until it is implanted in an environment conducive for maturation. Rabbinic authorities do not consider the pre-embryo akin to a foetus in-utero as it is placed outside the womb and requires implantation (Rosner & Reichman, 2002, p. 57). Pre-embryos may be considered by some Jewish law as emitted reproductive seeds. Considerably, if embryos be relegated to the status of reproductive seed, then they would be subjected to the laws of hash'chatat zera (destruction of the "seeds" of life). The alternative hypothesis is; if the sperm has been deposited in the woman, the primary forbiddance of hash'chatat zera becomes ineffective.[2] Also the laws of hash'chatat zera apply to wasteful emission of seeds and not destruction of seeds. Then the problem at stake is about the destruction of seeds. Strikingly, the embryo prior to birth is not a "nefesh" or "human being" according to the Halakhic interpretation.

The major rabbinic authorities consider the embryo prior to 40 days of conception as merely water (Bleich, 1977, pp. 339–347) and lacks moral and legal consideration. We quote from the Babylonian Talmud, Mas Yevamoth 69b: "For if she is not found pregnant she never was pregnant, and if she is found pregnant the semen, until the fortieth day, is only a mere fluid." (Yevamoth, pp. 2931–3529; Jakobovits, 1959, p. 275) The embryo within the first days being mere water, its removal would not amount to destruction of life.

Questions may arise on whether the prohibition against infanticide at the early stage stands ineffectual. The forty days marker becomes a debatable issue at times. Rabbi Wosner argues the violation for pre-forty day foetus would not be applicable to a pre-embryo (Rosner & Reichman, Embryonic Stem Cell Researh in Jewish Law, 2002, p. 58). As Rabbi Elyashiv rules, pre-embryo is not a foetus and is not covered by prohibition so is discarded. Rabbi Halperin (Halperin, pp. 55–62) adds that to save a mother's life, if one dismembers a foetus in-utero, and then there may be no harm to consent to the usage of pre-embryo which is less than the foetus for life-saving purposes. Instead of discarding embryos, they could be used for meaningful purposes. From the testimony of Rabbi Elliot N. Dorff mentioned in the NBAC (Dorff, 2000, pp. C–4) we may conclude that an embryo bereft of the status of full-fledged human be allowed for research. Since organ transplant is allowed for others to live, we may also allow a part of a human body, in this case the embryo, for benefitting others. Jewish tradition views health care as a communal responsibility. Thus research with embryo for purposeful reasons would be permitted keeping at bay the enhancement issue concerning embryonic research.

Judaism and Reproductive Technologies

According to Judaism, procreation is viewed as a positive duty (mitzvah) and a sign of prosperity. The Biblical commandment to "be fruitful and multiply" finds expression in Jewish thought. However the reformed Jewish law exempts women in general from the obligation to "be fruitful and multiply". Despite the reformed outlook of Jewish tradition,

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[2] Nida 13b and Responsa Chavot Yair, no. 31. Responsa Sheilot Yaavetz, no. 43

"barrenness" has been viewed as a curse. So the uses of new reproductive technologies are permitted in Jewish tradition. Medical technologies designed to treat infertility are acceptable by the Jewish law or Halakhah. The Rabbis, the religious leaders of the Jewish tradition, rule that artificial insemination using husband sperm is permissible, provided that natural way of reproduction between couples have failed in every other way (Sinclair, 2002, pp. 71–106). Judaism maintains that God created nature for man's advantage and benefit, and this action is viewed as a positive partnership between man and God to improve nature for man's benefit. There is no definite law in the Jewish tradition to prohibit performing such reproductive technologies so we argue that man is free to use scientific knowledge to overcome and face the difficulties of nature. Thus, performing IVF or other related assisted reproductive technologies would not be considered as an interference with and intrusion into God's will and acts. Rather, these technologies would help and enable a human being to overcome the problem of infertility. Furthermore, reproductive technologies do not create a basic change or solve the mystery of life; an action which Judaism believes is made possible by the Creator. Thus IVF would not be tampering with the mysteries of life. Based on the medico-psychological reasons of couples requesting IVF, it may be considered as a legitimate medical intervention.

An objection is raised against artificial insemination for the performance of IVF within the Jewish tradition. The Halakhic problem arises with regard to the means of the procurement of semen for the purpose of IVF. There would be no Jewish legal objection against IVF, if the husband's sperm is used for inseminating women. The Halakhic law prohibits ejaculation of semen's of men other than that of husband into women's reproductive tract. There is a minority opposition that artificial insemination done without using husband's sperm would be tantamount to seed destruction and hence must be avoided. A minor group Jewish scholarship may argue against the collection of semen for the purpose of artificial insemination on the charge of seed destruction. This has evolved from the mystical belief of the kabbalist, R. Ovadyah Hadaya who believed that any seminal fluid not passing to the female vagina gives rise to demon of the night that may plague the semen-emitter and his children until the moment of death.

Another objection raised against the artificial insemination is that instead of inseminating with the husband's sperm, the wife may be inseminated with that of a stranger's sperm accidentally or purposefully resulting into the birth of a child whose legal status may be compromised.

Regarding, the first objection of seed destruction raised against the artificial insemination, it may be argued that the main purpose of artificial insemination is bringing a child into the world and it would be insignificant according to the Jewish law while fulfilling this goal of child birth, whether there is a break in the ejaculation of the semen and its insemination in the female reproductive organ. In fact, many a semen gets wasted in the natural sexual intercourse.

Also the second objection of deliberate or mistakenly sperm replacement does not hold good, because the mere fear of such a scenario is not a sufficient reason to prohibit an otherwise well accepted procedure according to the Halakhic laws where the main purpose of procreation has been fulfilled. The Biblical commandment of procreation and establishment of family is fulfilled through IVF with the aid of artificial insemination. So these reproductive technologies are halakhically permitted procedure. Also it is to be noted that measures could have been endorsed to prevent the insemination by stranger's semen.

One of the most important facts with regard to artificial insemination is that AIH (artificial insemination with the aid of husband) is permitted provided it is the only remaining halakhically acceptable method of procreation. That is to say the artificial insemination is permissible provided that there is no other alternative available for the couples to have their own child. Jewish law may also require that insemination is permissible during the menstrual period of the woman, when the women is considered ritually unclean (niddah) and she is forbidden to cohabit with her husband. Some authorities question whether AIH at all fulfils the biblical commandment to "be fruitful and multiply". This is because some of the authorities maintain that cohabitation between couples is essential in the fulfilment of this commandment, but procreation through artificial insemination is bereft of such copulation and hence does not fulfil the commandment. However, the opposite view is that the essence of the commandment is to produce live progeny which the process of artificial insemination enables. The process adopted for procreation becomes irrelevant. Rabbi Auerbach opines that though AIH may not completely fulfil the biblical commandment to fruitful and multiply, yet it fulfils the rabbinic or Jewish obligations to procreate and populate the Earth without leaving the earth desolate. AIH may lack the full normative force of a biblical precept; still it is endowed with religious significance. It fulfils the mitzvah.[3]

The acceptance of AIH in the Jewish society reflects the significance of infertility problem in the Jewish tradition. Children occupy an important place in this religious practise as well in this social scenario. Having children is important according to the Jewish tradition and artificial insemination contributes to the resolving of fertility problems and that holds significance to the Halakhic authorities. So there is no significant prohibition against the use of assisted reproduction on the basis that it is not a natural process. Whatever objections are raised it concern specific legal prohibitions and reservations concerning the fulfilment of the positive commandment to reproduce. It may be unanimously agreed that reproduction according to the Jewish laws may not take place in a purely natural manner.

Rabbi Jakobovits notes that though there is nothing intrinsically illegal about artificial insemination, these artificial reproductive methods have made child birth a mechanical act lacking the mystical and intimately human qualities that enable man to rank with God in the creative propagation of the life. There may be Halakhic reservation about assisted reproductive technologies on the grounds of them not being a natural method of reproduction. That is to say, moral reservation may arise if the rabbi scholars resort to a naturalist discourse. The minor objections or reservation may introduce in this sense a note of caution. But these reservations regarding reproductive technologies and embryo experimentation do not close off the technological option to couples who seek reproductive assistance. Artificial insemination by husband provides a solution to the fertility problem, and with the production of a child the couples would fulfil a Mitzvah. However, it must be ensured that a technology of hope does not turn into a tool of abuse in the hands of unscrupulous partners.

From the Jewish legal point of view, artificial insemination using the husband's sperm is not so much a problem as insemination done using donor's sperm. The main objection raised against the use of donor sperm in artificial insemination (AID) is that it leads to birth of a bastard or commit adultery or mamzerut. A mamzer according to the Jewish religious law is a person born from forbidden relationships (Taylor & Robinson, 1837, p. 151). There is a possibility that a child born due to the insemination of the sperm from a donor other than that of a husband may be called a product of an incestuous union. Simultaneously artificial

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[3] mitzvah is a precept or commandment. It is a good deed done from religious duty

insemination using donor's sperm is an answer to many a fertility problems like male infertility, low sperm counts, or lack of sperm, problems with ejaculation, inflammation of the testicles, abnormally developed testicles, swollen veins of the scrotum. Artificial insemination with the aid of donor's sperm (AID) may be the only hope for couple's yearning for a child who is genetically connected to the mother and who is the gestating mother and the one to give birth to the child.

The question whether AID leads to the birth of a child from an incestuous union is an important issue in the Jewish legal system. For this we need to turn our attention to a Talmudic passage concerning the feasibility of a marriage between a high priest and a "pregnant virgin". A woman can get pregnant even if there had been no penetrative intercourse, as a consequence of her entering a bath into which a man had immediately discharged his semen. The sperm may get on the vagina and swim up there, impregnating the women. Our discussion is concentrated not on the physiology of virgin conception but on the legal definition and status of the sexual offenses pertaining to the Jewish law. The question that is of importance here to the Talmud is when does a woman after having got married to a high priest ceases to be a virgin – is it when a woman enters into a conjugal relation with a man or is it when a woman becomes pregnant though she may not have had any intercourse. The doubt that the Talmud is trying to clear is whether, in respect of marriage to a high priest, a woman looses virginity just because of having had copulated with a man, or to become pregnant is sufficient to deprive her of her virginal status, even there have been absence of any act of intercourse? If the answer is that virginity is lost as a consequence of intercourse then the pregnant virgin would very much be allowed to marry the high priest. That what may be concluded as a general notion is: in all sexual offenses, the physical act of the crime is in intercourse and not in impregnation. So a married Jewish woman impregnated by the sperm of a man other than of her husband without having any conjugal relationship with the man is not incestuous or adulteress.

It is to be noted that a Jewish single woman is forbidden to conceive by artificial insemination irrespective of whether the sperm is donated by a Jew or a non-Jew. The issue here is if a married woman is permitted to access artificial insemination by donors other than her husband for begetting and conceiving a child genetically related with the mother.

As Talmud Bavli Shabbat Rashi and Talmud Bavli Ketubot Tosafot deciphered, it is not pregnancy but intercourse which makes a virgin unsuitable to marry a high priest. Rabbi Perez or Perez ben Elijah of Corbeil, a French Tosafist (Singer, 2003, pp. 1901–1906), rules that a married woman should not lie in the sheet or enter into the bath where a man other than her husband had left his semen. The prohibition is so incurred because Perez fears that the woman if becomes pregnant and gives birth to a child, that child may one day marry the progeny of his biological father and thus would be committing incest. Any child out of this union would be bastard (mamzer). Now, what R. Perez mentioned and worried about is the impregnation of woman who had lied in the semen-covered sheet of man other than her husband. His worries are based only upon the fear of possible incest. In the absence of sexual intercourse between the woman and the man other than her husband, mere lying on the semen covered sheet does not lead to mamzerut. This viewpoint is further certified from the principle implicit in the discussion cited from the Talmud concerning the feasibility of marriage between the high priest and pregnant virgin, where sexual intercourse and not impregnation is the decisive factor of the physical element of sexual crime under Jewish law. It is fear of committing possible incest that R.Perez takes as the restrictive factor on a married woman lying down on a semen covered sheet of a man other than her husband.

This goes on to show that intercourse and not impregnation constitutes the physical element of sexual offenses in the Jewish law or Halakhah. And this conclusion provides the primary supporting source for the ruling that artificial insemination of a married woman by a donor other than her husband does not lead to committing of incest or adultery.

It is to be noted that prior to the advent of the technology of artificial insemination; pregnancy brought about means other than sexual intercourse was prohibited according to the Halakhic laws. With the onset or prevalence of artificial insemination things began in the Jewish tradition. The issue of conception without sexual intercourse became highly relevant and debatable in the Halakhic law. Following the position in the Talmud, Rabbi Moses Feinstein's practical decision was that infertile couples to have their children may undergo artificial insemination using donor's sperm and that action would not amount to committing adultery.

R.Perez's prohibition concerning the married woman lying on the semen covered sheet of another man other than her husband is due to his fear of possible incest. Such probable incest may be said to arise if there is artificial insemination from a donor's sperm other than the husband. According to the Jewish law, artificial insemination using the husband's sperm is permissible but it is forbidden to inseminate a woman with sperm from a Jewish donor. Jewish children whose biological father is a non-Jew shares no significant legal relationship and thus the progeny of such a father can marry the Jewish child without the fear of committing possible incest. R. Feinstein states that there is no question of incest or mamzerut in respect of AID, even if the donation is made by Jewish donor. It is the mere apprehension of committing probable incest between the AID child and other progeny of the same sperm donor that his permissive ruling remains confined to non-Jewish donor.

R. Feinstein rules that insemination using the sperm of a Jewish donor would also not lead to adultery. So to him artificial insemination does not invoke any prohibition. AID is thus acceptable to him   (Rosner & Bleich, 1979, p. 116, notes–4–7). Rabbi Moshe Feinstein also bases his permission to use donor insemination on this source, noting that it specifically classifies the child as legitimate. [see *Iggrot Moshe,* (Feinstein, 1959) 4 Even Ha'ezer 1:10, 2:11, 3:11]

The ruling of Rabbi Moshe Feinstein was met with severe backlash from staunch traditionalist exponents of Jewish laws, and Rabbi Yoel Teitelbaum is one such important protagonist in this context. Teitelbaum states that adultery is prohibited. Adultery is wrong because it results in lineage confusion, that is, there would be confusion about who is the father and also it involves forbidden mating. This concept is deduced from Nahmanides' observation made to the effect, derived from Biblical views on adultery. There is prohibition in the Bible about a person carnally lying with a neighbour's wife *for seed*. Rabbi Moses ben Nahman, also known by the Hebrew acronym "Ramban" and the Latin designation "Naḥmanides" was a prolific author, producing significant Talmudic commentaries. Naḥmanides in his "*Commentary on the Torah*" (Ramban, 1974) mentions that the word "to seed" in the Biblical prohibition on adultery implies that the offense concerns the children of the adulterous relationship in the sense when the child's true ancestry remains in the dark (Sinclair, 2003).

Based on Biblical law, R. Teitelbaum mentions that donor insemination bereft of sexual coupling would be committing adultery as it raises doubt about the father of the child. It is not possible to remove the doubt in an empirical way, that is, by keeping a track of

insemination by donors, because the issue involves principality and not of practice. According to Jewish law any method of reproduction that happens to blur the identity of the father would be an adulterous method. In the artificial insemination the identity of the sperm donor (AID) includes adultery and the child born out of it would be a mamzer.

In response to R. Teitelbaum's criticism with regard to AID in the context of Jewish law, R. Feinstein opines that a sharp and clear demarcation be drawn between sexual cohabitation, that is the physical element involved in the felony of adultery and the confusion associated with lineage. R. Feinstein while clarifying the definition of the concept of adultery observed that to take lineage confusion as the main legal issue in the lapse of adultery may result into perceptibly false argument where adultery with an infertile woman is not illegal, as there is no fear of lineage confusion where a woman is infertile. So, sexual union is the sole factor that constitutes the core element in the crime of infidelity or adultery. On the other hand, lineage confusion is a peripheral offense of the adultery issue. Beside this R. Teitelbaum has based his argument on the Naḥmanides's "*Commentary on the Torah*" which is strictly speaking not an authoritative work on Halakhical matters. R. Feinstein claims R. Teitelbaum's main legal argument consisting of lineage confusion in the Biblical misdemeanour of adultery has no genuine normative basis. R. Feinstein's opinion is that there is no Halakhic hindrance to artificial insemination by donor only that non- Jewish sperm be used. If the progeny of AID be female, even she has no bar in marrying a Jewish priest. Though by Halakhic laws artificial insemination is not a compulsory method as this method per se may not be a valid procedure for fulfilling the Biblical commandment to procreate – to be fruitful and multiply. R. Feinstein thus reiterates his original response that a couple in "dire need" may proceed with the procedure of artificial insemination using sperm from non-Jewish donors. The donor being not Jewish, there is no chance that a Jewish child conceived from his sperm will marry a Jewish progeny sired by the same AID donor though with a different Jewish mother. This is the case since two children procreated by different Jewish mothers but sired by the same non-Jewish father, naturally or by AID, are not halakhically brother and sister (Lasker, 1988, p. 6). R. Auerbach seconds the fact that there are no visible Jewish legal impediments in the use of the method of artificial insemination with the aid of non- Jewish donor for procreation. Even they claim the child is eligible to marry a kohen (priest). So, a couple who's other method of procreation have not succeeded and in dire need then they may avail of the sperm from sperm bank, where there is every chance that the majority of donors would be non-Jews. The Torah does not explicitly mention of conferring Jewish status through matrilineality. But in Mishnah, which serves as the Jewish law we find a basic shift in Rabbinic Judaism from patrilineal to matrilineal descent. The central Rabbinic text concerning the matrilineal principle finds mention in the Mishnah (Kiddushin 3:12) (Susan, 2002; Danby, 1933, p. 327). The final clause of the Mishnah tates that the Jewishness of the child follows the mother and not the father. Any [woman] who cannot contract kiddushin with this man or with other particular man, the child follows her status. A lot of controversy continued concerning the status of children born of a Jewish mother and non-Jewish father, some regarded the offspring of such unions as Jewish but blemished. At the same time others supported R. Simeon and declared the offspring to be *kasher* (fit) and legitimate (Cohen, 1999, p. 280).

Thus most of the Halakhic or Jewish authorities unanimously agree that the technique of AID does not result into adultery under Jewish law. The main opposition against AID is based on morality. As Rabbi Jakobovits states that the prime objection to AID is that it is a mechanical act which lacks the human sentiment that is found to be profoundly connected with conjugal love and emotion. This is one of the moral discomfort aspects raised against the use of AID.

There are others like Rabbi Yehiel Weinberg who point out that the act of insemination of a stranger's sperm like that of a non-Jew's into the womb of a married woman is considered as an ugly act which is an act of abomination. It is to be noted that Rabbis like Yaakov Breisch, Weinberg opines that AID is opposed to religious sensibility.

Maternal identity is an issue with regard to IVF where the genetic mother and the birth mother is not same, thus engaging a surrogate mother in this regard. Rabbi Auerbach dismisses the technique of surrogacy a priori. In the Jewish tradition in case of surrogacy, the birth mother and the egg donor who is the genetic mother is regarded as mother of the impending child. Surrogacy is considered as morally offensive in the contemporary Jewish thought especially when one resort to this technique for convenience so as to avoid the encumbrance of pregnancy. Using another person as "incubator" or "substratum" for carrying a baby and delivering the baby for monetary benefit is a revolting degradation of maternity and an insult to human dignity. In the context of using donor's womb and donor's egg questions arise about the determination of the maternity of the birth child in the Jewish tradition. As far as Jewish law is concerned, based on Talmudic analogies some rabbis consider it is the nurturing and the birth giving mother and not the biological mother who is the legal mother of the child. A handful of rabbis hold the genetic mother to be the legal mother. There are still others who opine that both the biological or genetic mother and the gestating mother hold the maternity of the child.

Those who consider the birth giving mother the Halakhic mother of the child have based their opinion on the following arguments.

Those mothers who converted to Judaism during pregnancy are not subjected to law of levirate marriage and halitzah yet the sons of such mothers would be restricted from marrying each other's wives. The law of levirate union is not applicable because the brothers are not connected from their father's side and, as when non-Jewish sperm is used for insemination, the non-Jewish paternity remains unrecognisable according to the Jewish law. Levirate law is applicable to brothers begotten from the same father. Though any biological relationship of a child with non-Jewish father is bereft of legal significance yet the sons would be prohibited to marry their brother's widow. The prohibition is so applicable because they are considered brothers from the maternal side.

A question may arise that a mother who has got converted to Judaism and adopted Jewish culture during her gestation period are supposed to put an end to every pre-existing legal ties with family members of the same genetic constituent, then how come the above stated two males are considered brothers from the mother's side? It may be stated that it is true a convert has to terminate every link with members of the same biological family and that a convert is legally permitted to be in a marriage union with any converted relative, this is so as all converted are believed to be born anew. But rabbinic law forbids marriage between biological relatives. It is not biological or genetic connection with mothers that make the two males as brothers, but the fact that they are brothers as they are born out of the same womb of a Jewish mother. So these brothers of the same mother are legally bounded and prohibited by law to be in conjugal union with each other's wives. It shows that maternity is established through birth giving and not through genetic makeup.

There are other Jewish authorities who consider both the genetic and birth giving mother as the legal mother of the child. As Rabbi Avraham Steinberg concurred with Rabbi J. David Bleich concludes that a child born out of surrogacy has two mothers – from the ovum donor

and the surrogate mother (Bleich, 1983, pp. 91–93). Rabbi Yekutiel Kamelhar, while discussing about maternity in the case of ovary implantation in a woman's body, has drawn parallel with plant transplantation (Skolnik, 1972, pp. 1467–1468). According to the Halakhic laws encompassing the agricultural area, one is strictly prohibited to consume the fruit of an orlah branch during the first three years after planting. The Hebrew word "orlah" means foreskin or uncircumcised. After three years plantation of trees the fruits of such a tree is not forbidden to be consumed. In the fourth year the fruits are valued as holy and are to be offered in praise of the Lord. It is from fifth year onwards the fruits of such a tree can be consumed. It takes time for the grafted branch to get one with the main tree. So by fifth year the transplant becomes an integral part of the tree on to which it was grafted and its fruit would be ready for consumption. Similarly, in the case of ovary implantation or donor insemination, the transplant for the sake of safety needs to be handled as if they were the outcome of both the donor and the done. Thus a child of surrogate mother, according to the Halakhic command is forbidden to be in conjugal union both into the families of egg donor and into the families of birth giving mother. Though the concept of the double mother looks promising from a scientific standpoint yet modern genetics strongly favour the biological mother, who is the donor, from the birth-giving mother. However most of the Rabbis opine that a woman may be termed "mother" only upon parturition. As Rabbi Mackler states that an embryo is part of the mother rather than an independent entity. So to them the surrogate mother is the mother (Mackler, 2000, pp. 179–181).

It is natural to presume that traditional Jewish law lacks clarity about the concept of the role of female eggs in human reproduction and so it would be unlikely that Jewish law developed with prominence of maternity based on conception alone. There is a clear lack of a genetically friendly approach to maternity in the Jewish law.

Thus, it may be deduced that there are no exact precedents that may help in defining motherhood in the case of surrogacy. Beside this, if a Jewish woman decides to donate her surplus ova or egg to a gentile woman, in that scenario one may wonder whether her Jewish religion is a constituent part of her genetics. Or, do we infer that ova donated to a gentile by a Jewish woman carry the religion. Are we to assume it to be true that with the ova donation one would be guilty of turning a Jewish child over to a non-Jew? This situation is viewed as an uncommon scenario in association with the potential problem connected with ova donation. There are those who feel maternity does not inherit in ova. Those women would have undergone successful IVF treatment with surplus ova which she decides to donate to other infertile women or to a clinic for experiments. Civil law of Israel requires the consent of parents before the disposal of the ova. Halakhic law is not in favour of seed wastage. Instead of active destruction of ova Halakhic law is in favor of passive treatment of ova which allows it to die by itself. If ova become non-viable, Halakhic law is liberal enough to allow the use of embryo for experimentation. Thus by Halakhic law Judaism is determined by parturiency or gravidity and not by considering women as donors of Jewish genetic materials or rather as carrier of female seed.

Conclusion

Jewish law which has a long history in the medical arena, constitutes a vast store house of primary and secondary principles with a solution based approach to problems in this area. It is worth mentioning that rational decisions are always difficult and involve hard ethical choices. In spite of reservations, reproductive technologies and experimentation with embryos are being permitted by Jewish law. The Mitzvah of having one's own children is so

great that couples readily avail this opportunity to procreate their offspring. Critics may opine that these processes involve some thorny questions and situations. There is no harm in admitting that every technology has its advantages and disadvantages. But with explicit rationing of the reproductive technologies, ARTs would find its proper usage.

It is to be noted that the most fundamentalist branch of the orthodox Jewry maintains that the Jewish law or Halakhic law also called the Torah is not in conflict with Science. Rabbis opine that the human mind with its creative intelligence can resolve conflict and should be never blinded by dogma. One should be guided by the principles of the Torah and based on these principles and individuals should figure out what is right and required. Thus the most orthodox of rabbinic minds maintain that "Torah should be a window to view the universe with an open mind and should not be a wooden shutter" (Silber, 2010, pp. 471–480).

Thus, it may be concluded that the strictest and most orthodox of Jewish theological scholarship finds that the Torah and Halakhic rule is not in conflict with reproductive technologies. In fact it is a religious obligation for Jews to preserve the possibility of future parenthood, safeguard fertility and to "be fruitful and multiply".

Acknowledgement

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Justice and Post LRA War in Northern Uganda: ICC Versus Acholi Traditional Justice System

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Abstract

Guns have gone silent in Northern Uganda after the LRA war, but clouds of injustice are still thick in the air. Perpetrators of injustice have disappeared in thin air. Victims of atrocities languish in their villages with psychological and physical scars difficult to forget; lips cut, legs maimed, girls raped, children abducted and some left parentless. The International Criminal Court (ICC), an institution of justice in the world, has taken over the process of justice by demanding for the arrests of the leaders of the LRA. However, the Acholi Elders and Religious Leaders have demanded an alternative justice system.

An investigation on how justice can be realized for these victims of war is needed. The question is; can justice be delivered to the people of Northern Uganda by the ICC, or by the alternative justice system, proposed by the Acholi Elders and Religious Leaders? Southwick (2005) calls this situation a dilemma for the ICC, while Ruaudel & Timpson (2005) describe it as "a forgotten and an unforgivable crisis".

This paper discusses what justice in a post-conflict situation is and how it can be realized in Northern Uganda. The hypothesis is that true justice is more than punishments for wrongs done; it involves healing the wounds of conflict, mending broken hearts, reviving dampened spirits and restoring relations torn apart by human violence. This understanding is very close to the view of the Acholi Elders and Religious Leaders, which need to be critically examined for relevance in contemporary Africa.

Keywords: lord's resistance army, LRA, international criminal court, ICC, Acholi traditional justice system, ATJS

Introduction

This paper discusses justice in the context of post-armed conflict. The question is whether justice should be understood as appropriate punishments for bad conduct and rewards for good (Quaglioni, 2014), or as fairness (Rawls, 1971). If the first is the case, then one doubts whether those responsible for the bad conduct during the LRA conflicts in Northern Uganda have been justly punished. On the other hand, if justice is fairness, then one questions if fairness has been realized for the victims of this war. In the view of this paper, justice is more than punishments for wrongs committed, rewards for good done or even mere fairness for those wronged. Justice in a post-armed conflict situation is constitutive of all these mentioned, but more importantly, it is a process of healing and peaceful restoration of harmonious co-existence among individuals and within communities. It is this type of justice that can provide a true healing to a community that has suffered for more than two decades of war.

The International Criminal Court (ICC), in the context of Northern Uganda, thinks justice is the appropriate punishments for bad conduct during the war between the LRA and the GoU in Northern Uganda. While the Acholi Elders and Religious Leaders (AERL) think justice goes beyond appropriate punishments for the atrocities committed in Northern Uganda during this war. Justice in the view of the AERL encompasses; apology, compensation, forgiveness and reconciliation (Acirokop, 2010, p. 268). It is the concept of justice as forgiveness that divides the two camps; where the ICC interprets forgiveness as impunity for the perpetrators of injustice; the AERL see it as a basis of peaceful restoration of harmony within the community.

The views of various authors on this subject can be generally categorized into two: those in support of ICC justice system (Bassiouni, 2002; Tim, 2008) and those in support of alternative justice mechanisms (Keller, 2008; Wasonga, 2009; Acirokop, 2010; and Mwesigye, 2014). This paper takes the midway between these two extremes, as supported by McAuliffe (2013), though his approach is more a legal integration other than integration of the different methods for realizing justice, as this paper proposes.

The problem these views pose is in emphasizing the either or dichotomy; as if modern criminal justice mechanisms can never be combined with traditional justice systems. Here, the hypothesis is that there is need to look at the supplementary role of both the ICC and the traditional justice mechanisms in delivering justice for the people of Northern Uganda.

The methodology used in this paper is analytical, where strengths and weaknesses of these two positions are critically analyzed so as to derive the desired conclusions proper to this paper. In this analysis care has been taken in first presenting these opposing views as they are before digging deeper into the underpinning theories beneath them. Secondly, it is in these underlying theories where a better understanding of justice can be unveiled. Consequently, a better approach to administering justice in Northern Uganda will be proposed. This type of justice harmonizes other than polarizing the communities that have suffered for more than two decades. This theory is centered and guided by the view that crime that breeds injustice is more than a personal affair; it is as well a social affair. To understand the personal and social dimensions of crime, the paper will identify the African social philosophy behind this understanding that should be contextualized in the discussion on justice in Northern Uganda.

The Context of the LRA War

The Northern Uganda war, which began in 1986, had different phases. It began with the Uganda People's Defence Army (UPDA) led by Brigadier Odong Latek, followed by the Holy Spirit Movement (HSM) of Alice Auma – nicknamed Lakwena, and later the Lord's Army (LA) of Severino Lukoya – Alice's father (RLP, 2004). This was followed by the deadly Joseph Kony's Uganda Christian Democratic Army (UCDA) in 1987, that changed its name to Lord's Resistance Army (LRA) in 1991 (Ojera, 2008).

When the war intensified, thousands of people were forced to relocate to IDP camps. These camps were established rhetorically as a way of protecting the civilians from the LRA, but actually they were means of denying the LRA resources, which included: civilians and especially children that were abducted at will; food supply, which were forcefully looted by the LRA; and more importantly, it was a denial of information, which the LRA cogently extracted from their civilian victims about the whereabouts of the government soldiers.

The effects of the displacements on the people of Northern Uganda were: denial of healthy living conditions, lack of food, and collapse of educational and health systems, among others. The people's vulnerabilities increased due to poor sanitation and health services in the camps, leading to frequent outbreaks of communicable diseases like Cholera, Hepatitis B, Nodding disease and Ebola. Indeed the IDP camps were like a death trap for the people of Northern Uganda.

On top of these, civilians continued to be killed, raped, maimed, adducted and attacked in broad daylight; huts were frequently torched and destroyed by rebels or gutted by fire. Lanz quoting Human Rights Watch (2005) adds the list to include: abductions of over 2,000 children, sex slavery of young girls, indoctrination and transformation of children into child soldiers, human rights abuse by the UPDF, forced displacements and failure to protect over 500,000 mostly Acholi people (Lanz 2007, p. 5).

The root causes of the war are many. The divide and rule policy of the British (Ojera, 2008) that allocated different roles to the different regions of Uganda is one of them: the Central – administration; the North and East – a reservoir for military recruitment; and the West – manual labor (Mugaju 1999). This was an attempt to apply the Platonic concept of justice as division of labor according to natural fitness, based on the dominant element in the human soul: wisdom (which favors administration), courage (favors guardians), and temperance (favors manual labor) (Sabine 1973). This policy gave birth to ethnic specializations that created what Lomo and Havil (2004) called the deep-rooted social, political and economic divide between the North and South of the country, heightened by various leaders since independence.

Another root cause is the excessive political power given to Ugandan Presidents by the Obote's 1967 and subsequent Constitutions, where presidents can "promote, transfer, dismiss and deploy army officers or commanders at will" (Ojera, 2008, p. 87). As history shows, Ugandan presidents are difficult to remove constitutionally.

History of militarism in Uganda, which made Ugandans think the best way to come to power is through the barrel of the gun. Beside the five military takeovers in Uganda since independence, twenty-two rebellions and insurgencies have been waged against the NRM

government alone by various actors since 1987 (Ojera, 2008). The LRA war is one of these rebellions.

African social philosophy of communal responsibility; where crimes committed by members of a given tribe are attributed to the entire tribe (Lajul 2011), is another root cause. This is manifested in collective condemnation of tribes belonging to ousted political leaders; the persecutions of people from Northern Uganda (1971–1979) when estimated 500,000 Acholi were killed by Idi Amin (Ojera, 2008) and people from West Nile region of Uganda (1979–1980), remain unforgettable legacies in the history of Uganda.

What triggered the war in Northern Uganda was however; the revengeful attitude of the NRA and FEDEMU fighting forces when they reached the North in 1986, which saw a number of former UNLF soldiers and politicians from the Acholi sub-region arrested (RLP, 2004). Other triggers were the violation of the Nairobi peace agreement by the NRA in 1985 and the Acholi's fear of repression by the NRA; given the history where subsequent regimes killed members of opposing tribes with impunity.

The main factors that perpetuated the conflict were: the perceived depletion of economic wealth of the Acholi people under the pretext of Karamojong cattle rustlers that raided cattle from Acholi land during the war; the support which the Khartoum regime gave the LRA in retaliation to the alleged support Uganda gave SPLA/M, which boosted the LRA military strength (Acker, 2004); and the metaphysical belief that war can be fought with spiritual powers (Ojera, 2008). In fact, all the rebel groups that came after the UPDA, claimed to use some spiritual powers to wage the war as the names HSM, LA, and the LRA reveal. The dismissal of the conflict in the North by Uganda president as a minor problem of insecurity caused by criminals and terrorists perpetuated the war (Ojera, 2008). Lastly, the LRA motivations transmuted from instrumental to existential ones; that is fighting as a means to capture political power to waging war as a vocation. Surely, the LRA fought for survival and security of its leaders and members (Vinci, 2007), which made them resilient.

With greater pressure from the International community on the GoU and the LRA to talk peace, there was gradual decrease in the intensity of the LRA war in Northern Uganda. At that moment, the ICC came with its verdict on how to administer justice to the victims of this war, which we are going to survey next.

Literature and Theory

This section analyses different literatures and theories of justice which have been proposed for Northern Uganda. Apparently these theories are divided into two; those that look at justice as punishment for the wrongs done or rewards for the goods done, and those that look at alternative justice systems.

Justice as Retribution

The ICC Institution bases its administration of justice on the theory that justice is punishment, prosecution and seclusion of perpetrators of injustice from society. This can be realized when crimes against humanity, genocide and war crimes are prosecuted at an international level, since grave crimes committed during wars and rebellions are often difficult to prosecute within national court systems (Human Rights Watch, 2004). Behind this

understanding is the theory that justice is retribution. Apparently, the ICC is this platform for retributative justice in the world.

Bassiouni (2002) thinks that the ICC combines humanistic values and policy considerations essential for the attainment of the goals of justice, redress and prevention as well as the need for the restoration of world order and world peace. Lanz (2007) noticed that besides Bassiouni's observation, five years after its creation, the ICC has been accused of being an impediment to what it was created to promote: peace. Bassiouni (2006) continued to note that with regard to Northern Uganda, the ICC indictments against top five senior members of the LRA was received negatively by some individuals involved in the Ugandan peace process, who have argued that it has undercut their efforts to advance peace initiatives. Father Carlos Rodriguez seems to confirm this when he said; "nobody can convince a rebel leader to come to the negotiating table and at the same time tell him that when the war ends he will be brought to trial" (Lanz, 2007).

Lanz thinks the ICC does not obstruct peace in Northern Uganda. In his view, it would be simplistic to look at the framework of peace versus justice, suggesting the pursuit of peace demands abandoning aspirations for justice, thus requiring the immediate withdrawal of the indictments against the LRA leaders. He equally challenges the contrary view, that peace settlement must imperatively include strong mechanisms of accountability, therefore suggesting the continuation of indictments by the ICC at all costs. In fact, Lanz (2007) seeks to provide a differentiated analysis, looking at costs and benefits of the ICC's intervention in terms of bringing about peace in Northern Uganda.

Lanz however, argues that, if it is in the interest of peace, the indictment of the ICC can be withdrawn, but this should be done legally, otherwise it would irreparably damage the credibility of the ICC.

Alternative Justice Systems

The alternative justice system theorizes that justice is more than punishments or rewards for the wrong or good done. A number of authors have given their views on the alternative justice systems for Northern Uganda after the war between the LRA and GoU. Though the names given by each author may vary, five different concepts of alternative justice seem to emerge and they are the following: *Amnesty* (Nkandha, 2012); *Truth Commission* (Robinson 2003); *Transitional Justice* (Kirstine, 2009); *Restorative Justice* (Zehr & Gothar, 2003); and *Traditional Justice* (Tom, 2006; Ogora, 2009).

While it is beyond the scope of this paper to discuss in details all these justice systems, the focus of this paper is on the proposal made by the Acholi Elders and Religious Leaders. The closest to their view is the traditional justice system, which has great similarities with restorative or transitional justice.

Transitional Justice

This theory perceives justice as a response to deal with and address crimes committed at major periods of political transformations. For Teitel (2003), transitional justice is a concept associated with periods of political changes, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes. At its core, Kirstine (2009) clarifies that transitional justice constitutes the link between the concept of transition, referring to a period

of major political transformation, and the concept of justice, denoting a wide range of complementary criminal and non-criminal justice mechanisms. Literally, it means justice administered at major political transitions in a given area. In our case, it is an attempt to administer justice to Northern Uganda after the 20 years war waged between the LRA and the GoU.

Kirstine (2009) contends that this process, which was initiated by the GoU in its effort to restore peace and administer justice to the victims of the LRA war, runs the risk of failing because of the following reasons:

(1) The failure of the ICC and the national judicial system to prosecute the alleged perpetrators from both parties to the conflict; (2) the failure of the GoU to support and legitimize the traditional justice mechanisms; (3) the failure of the GoU to recognize the suffering of the victims through truth telling mechanisms and reparations; and (4) the failure to address the socio-economic marginalization and political disempowerment of Northern Uganda, which constitute the main root causes of the conflict (Kirstine, 2009).

Hence, transitional justice has not been realized in Northern Uganda after the LRA war with the GoU.

Restorative Justice

This is a theory that true justice repairs and re-establishes peace and harmony within societies torn apart by war and human cruelty. For Zehr and Gohar, restorative justice is "a process to involve, to the extent possible, those who have a stake in a specific offense to collectively identify and address harms, needs and obligations in order to heal and put things as right as possible" (2003, p. 40). The main goals of restorative justice is to put key decisions into the hands of those most affected by crime, make justice more healing and transformative, and reduce the likelihood of future offenses.

Zehr and Gothar (2003) observe that to achieve these goals: victims are to be involved in the process and come out of it satisfied; offenders should understand how their actions have affected other people and take responsibility for these actions; outcomes should help to repair the harms done and address the reasons for the offense; and both victim and offender should get reintegrated into the community.

Traditional justice

In a post-conflict situation, the theory behind traditional justice is that harmony, peace and fairness can only be realized when the offenders and the offended confront the crimes committed in truth, contrition, reparation, forgiveness and reconciliation. The essence of traditional justice system is centered on four core elements according to Ogora (2009): (i) truth telling and the opportunity for perpetrators to confess; (ii) reparations (or the payment of symbolic compensation); (iii) reconciliation; and (iv) the restoration of relations.

Ogora proposes to transform the traditional justice mechanisms by taking into account contemporary realities so as to complement the limitations of more standard forms of transitional justice. The reasons he gives are facts that; "traditional rituals and ceremonies are often presented in their "ancient" and "archaic" formats as they used to be practiced in the past. Yet times have changed: new conflicts including mass atrocities have sprung up and

new generations have been born who are not familiar with traditional practices" (Ogora, 2009).

Among the traditional justice mechanisms Ogora identified are: *Mato Oput* of the Acholi, *Kayo Cuk* of the Langi, *Ailuc* of the Iteso, *Ajupe* of the Kakwa, *Ajufe* of the Lugbara, *Aja* of the Alur, and the *Tolu Koka* of the Madi among others (Ogora, 2009). Other traditional justice mechanisms he mentioned across the African continent were; "*Inkundla* in South Africa, *Gacaca* in Rwanda, *Magambo* in Mozambique, and *Bashingantahe* in Burundi" (Ogora, 2009). For him all these traditional justice mechanisms have all been associated with the concept of Ubuntu, since most of them focus on the restoration of broken relations (Ogora, 2009).

To modernize traditional justice systems, Ogora (2009) identifies three key areas, which are: cultural revitalization and consultation with estranged groups like the youth and the Born again Christians; alteration of methods and procedures by which cultural rituals and ceremonies are to be conducted; and lastly, coordination of all existing rituals into one procedure.

Discussions

In these discussions, I shall try to analyze the justice systems proposed above, the Acholi traditional justice system and the social philosophy behind it.

Retributive Justice System

The ICC, which seems to endorse the retributive justice system, emphasizes punishment of the offenders and pays little attention to the plight of the offended. This makes justice lopsided. The indictment levied against the top five commanders of the LRA does not help to improve the situation of the offended. In as much as it did not help to stop the war, it still does not help the victims of the war.

But this paper argues that the real problem is not about the ICC indictment, but the imbalance between punishments, which is negative, and improving the conditions of the victims, which is positive. Even in administering punishment, there is lack of impartiality; prosecuting the LRA commanders and leaving the UPDF commander that are implicated in the atrocities scot-free.

Associating the LRA with other terrorists' organizations in the world without proper investigations is a demonstration of this impartiality (Lanz, 2007, p. 5; Dunn 2007, p. 148). Understandably, the voluntary referral of LRA case for prosecution to the ICC is an expression of confidence in the nascent ICC institution's mandate and a welcome opportunity to demonstrate its viability (Akhavan 2005, p. 404). From this background, the ICC suspects for the atrocities in Northern Uganda became this terrorist organization called the LRA. The accusing fingers pointed at the UPDF by the Human Rights Watch (2005, pp. 24–36), were then neatly ignored.

The view of this paper is that retributive justice by itself without the corresponding restorative justice leaves a lot to be desired in Northern Uganda. But this paper understands restorative justice in the sense of healing wounds of conflict, mending and reconciling societies and their members. Northern Uganda needs justices that punishes the offenders and

heals the wound inflicted on the offended. This missing link is provided by the alternative justice system proposed by AERL.

Transitional and Restorative Justice Systems

From the literature surveyed we can read that transitional justice requires: (i) prosecution of all perpetrators of atrocities, in our case, both the LRA and the UPDF implicated in committing crimes in Northern Uganda; (ii) identification of a comprehensive justice mechanism; (iii) establishment of truth commission; (iv) and in addressing the root causes of conflict, which in our case is socio-economic marginalization of Northern Uganda. As per now, no significant effort has been made to address any of these issues outlined. The transitional justice system is ignored by both the GoU and the ICC.

On the other hand, restorative justice, which requires that key decisions should be put into the hands of the people of Northern Uganda who are most affected by the crimes committed against them is ignored. The prosecution of the top five LRA commanders by itself does not reduce the likelihood of future offenses, since the UPDF officers who were equally implicated feel exonerated. If this allegation is true, then the UPDF will think they can commit atrocities another time and nothing will happen to them. This will make impunity a real threat to lasting peace.

Similarly, the victims of the Northern Uganda war cannot come out satisfied that justice has been done to them simply by prosecution. Besides, the offenders do not acknowledge the damage they caused and they are not willing to accept responsibility for these offenses. Likewise, the plight of over 20,000 children abducted during the war, will not be addressed, which threatens lasting peace.

What transitional and restorative justice systems do not recognize is the social nature of crime. That any crime committed has social implications, so it requires a social context to comprehensively address it. The two systems take for granted that crime is a personal responsibility. The Acholi traditional justice system, which I am going to explain shortly, addresses this missing link.

Acholi Traditional Justice System and the Social Philosophy Behind It

Justice is the fair distribution of benefits and burdens in the community, according to Acholi traditional system. This is derived from their social philosophy, which theorizes that crime is both a personal and social affair. Lajul identifies this as an African social philosophy, which states that, whatever affects an individual, affects the community, and whatever affects the community, affects the individual (2011, p. 128). In this line Mbiti says; *I am, because we are; and since we are, therefore I am* (1969, p. 106). An individual exists because of society, and society persists in the individual members. From this social philosophy, springs two principles: ***communal responsibility*** and ***individual responsibility***.

The communal responsibility principle holds that social welfare or deprivation affects all the members of a community; and equally, individual welfare or deprivation influences the entire community. In the same way, crimes committed by individual members of society, affects all the members of that society, and crimes committed by members of a particular society, equally impinges on all the members of that society. In fact, the collective condemnation of tribes belonging to ousted political leaders because of crimes committed individually by

those leaders, which has been common in Uganda, is a result of this philosophy. The people of Northern Uganda still think they are being collectively victimized as they were from 1971 to 1979 during the reign of Idi Amin. They have a collective responsibility therefore, to preserve the innocent children abducted by Joseph Kony during the war.

However, the Acholi also uphold individual responsibility principle, which states that if any crime is committed by an individual against the members of one's own society, it is the individual or his/her immediate family to bear responsibility. The Acholi for this reason would not mind if Joseph Kony was prosecuted for the crimes he and his commanders committed against their own people, because they have individual responsibility to answer for such crimes. Forgiveness and reconciliation, on the other hand, should be extended to the family members of the perpetrators because they are not directly responsible for the crimes committed by their sons and daughters.

Findings, Conclusions and Recommendations

In this section, the paper will identify the main findings of this paper, draw main conclusions and give some recommendations for the various stakeholders of justice, if peace and reconciliation are to prevail in Northern Uganda.

Findings

This paper found out that justice should target both the offenders and the offended. Unfortunately, the study found out that the ICC's emphasis is placed on the offenders and not on the offended. Alternative justice systems like transitional and restorative justice, place emphasis on the offended. However, the Acholi traditional justice system targets both the offenders and the offended. Besides, the Acholi traditional justice system takes into consideration the social philosophy and context within which crimes are committed. This goes beyond the offenders and the offended; it also involves the members of the community from which both the offenders and the offended come.

The Acholi traditional justice system begins with the acknowledgement that continuous revenge, which is encouraged by the Acholi social system, may lead to the extermination of society. Bloodshed, especially in the context of inter-tribal or inter-community violence, must be stopped. The mechanism to stop it was through negotiations between antagonistic communities, interceded by neutral parties. The key elements of the Acholi justice system, constitutes the following: the offenders acknowledgement and acceptance that they have wronged the offended; the offenders payment of reparation to the offended for the wrongs they have caused; the offended forgiveness of the offenders; and reconciliation between the two parties in burying their bitterness by symbolically drinking (*mato*) the bitter herb (*oput*) so that peace and harmony is restored. *Mato oput* then, is not synonymous with the Acholi justice system, since it is only the climax of that system of justice.

Thirdly, the study found out that the people of Northern Uganda need justice more than at any other time in their history, since this is the only way their region can stabilize and be put on track of peace and development. For this to happen, they do not need only retributive justice, but also traditional justice. In traditional justice, what matters are not the ceremonies, rituals and procedures, not even the agreement of all stakeholders, but adoption of the constitutive elements of this justice system as outlined above. For that matter, the frank acceptance of guilt by the offenders is a pre-requisite for this justice system to prevail.

Fourthly, for reparation to take place the evidences gathered through truth telling are needed. On the basis of these pieces of evidence, reparations or prosecutions can and be done. Legal processes could be used to verify such evidence. Where false claims are made, such compensation should be denied. Sufficient funds may be required to make this possible, which the international community could help to mobilize.

Fifthly, reconciliation requires honesty in accepting guilt and responsibility for crimes committed on the basis of which forgiveness can be realized. This honest process can lift dampened spirits, heal broken hearts and mend broken relations both at personal and community levels. For individual perpetrators that can be identified, depending on the gravity of the crimes, they should be allowed to undergo modern legal redress. This would be an area the ICC would be most competent to handle, but the majority of other cases, should be relegated to lower courts within national boundaries, or boundaries where such perpetrators have migrated. In this way, there will be no blanket amnesty for all grave crimes committed.

Lastly, restoration of relationships between identifiable members of the victims and perpetrators' families should be organized and effected under the auspices of the traditional justice system. In this way justice as a process of healing and restoring individuals and communities to a state of peaceful and harmonious co-existence will be achieved.

Conclusions and Recommendations

In a post conflict situation, true justice should target both the offenders and the offended, and where the entire communities are affected, they too should be part and parcel of such justice procedures. The ICC in addressing injustice at international level using its preferred methodology, prosecution, should then try to understand these two components of justice. They should learn the unique situations within which it operates, particularly in executing its mandate in African countries. Local justice mechanisms should objectively and positively be studied and adopted to strengthen the mandate of the ICC.

Secondly, the legitimacy of the ICC depends on being recognized and accepted by the different peoples in the world. When people acknowledge the positive role played by the ICC in addressing conflicts and restoring peace, justice and harmony in the different parts of the world, then they will be popularly accepted. This paper recommends that they make an effort to understand world systems and the philosophies behind them, before universalizing prosecution as the key method of executing their mandates.

Thirdly, true justice in the context of armed conflicts should help to heal the wounds created by wars, mend broken hearts, revive dampened spirits and restore social relations torn apart by conflicts. To realize this, the world needs a much broader methodology, including prosecution when and where it is necessary, but above all bringing about peace through reparation, reconciliation and restoration of normality among and within the affected communities. This will help them address the needs of the offended and not only concentrate in punishing the offenders.

Fourthly, violence and crimes in the world will still continue to have social implications and sometimes these social implications are ignored. Crimes affect people beyond the confines of the offended parties. This paper recommends that for a long lasting solution to the social impacts of violence, better methodologies of addressing crime and violence should be

adopted. The International community could learn from the unique justice systems of the world and sometimes, from the so-called primitive or indigenous communities.

The paper also concludes that, the way things are, the root causes of injustice in Northern Uganda has not yet been addressed. The paper recommends that the socio-economic marginalization, not only of people in Northern Uganda, but also of any other parts of Uganda, should be taken seriously. This can be addressed through government socioeconomic policies and programs supported by civil society organizations, the international community and implemented progressively. These will likely close doors to future grievances among the different regions of Uganda.

Lastly, the paper concludes that African social philosophy of communal and individual responsibilities and the contexts in which they are applied have not yet been understood and appreciated by many scholars at international level. The paper recommends that the African social philosophy that limits and identifies communities with tribes, clans and villages should be extended to include all humankind, since we all belong to one big human community. Equally, communal responsibility should now be replaced by individual responsibility, even though crime by nature has social connotations.

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Plea Bargaining and the Administration of Criminal Justice in Nigeria:

A Moral Critique

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Abstract

The idea of "justice" normatively reflects "justitia" in the Roman worldview: "*fiat justitia, ruat caelum*" (may there be justice though the heavens fall). That is, justice must prevail no matter whose ox is gored. In its corrective schema, justice is connected to the ideas of just desert. Justice in this sense is possible through a just law couched within the principle of retributivism (where punishment is proportionate to the severity of crime). This idea must remain intact if criminal justice, as a form of social control, is to attain the moral and political legitimacy to which it aspires. Unfortunately, these ideals are constantly at risk in Nigeria's criminal justice system, especially in the prosecution of corrupt crimes where convictions have largely been plea bargained. Plea bargaining exploits the insubstantiality of Nigeria's criminal codes and its proponents argue from a cost-benefit analysis stance that pits cost against justice. This prima facie approach inexorably leads to the following questions: what are the requirements of justice? Is criminal justice concerned with justice to the offender or victims of crime? Is a court ruling necessarily just? The paper attempts to answer these questions in showing that justice transcends mere court rulings and is underpinned by certain moral ideals: a moral operating principle of the judicial process and the degree to which a people or victims of crime perceive their penal system as just. The current application of plea bargaining in Nigeria fails to satisfy these moral requirements of justice.

Key Words: justice, plea bargain, weak laws, crime severity, proportionate punishment

Introduction

The President Buhari administration has taken up the gauntlet to fight corruption, which is a paradigm shift of some sort from the past administration of President Goodluck Jonathan. According to Vice President Yemi Osinbanjo, the administration is currently investigating $15 billion lost in security-related contracts alone; a sum that is over half of the country's entire reserve at $27 billion (see Abimboye, 2016). In one such case, the former Chief of Air Staff, Adesola Amosu (retd.) and 10 others were arraigned on June 26, 2016 on a 26-count charge of multiple fraud amounting to N22.8 billion. They pleaded not guilty, but by July 8, the defence counsel informed the court of their clients' intention to enter into a plea bargain with the Economic and Financial Crime Commission – EFCC (Sahara Reporter, 2016). At a resumed hearing before the Federal High Court in Lagos on October 4, 2016, the defence counsel, contrary to the prayers of the prosecutor, argued that trial cannot commence because the accused were still in plea-bargain talks with the EFCC. Consequently, Justice Idris granted the prayer of the defence counsel and adjourned till October 20, 2016, for commencement of trial.

Besides, the Presidential Advisory Committee Against Corruption (PACAC) has adopted "plea bargaining" in the prosecution of on-going corruption cases. Why has this judicial instrument become so important in Nigeria? What is justice and what sort of justice derives from a negotiated judgment? Is a court ruling necessarily just? What is the concern of criminal justice – is it justice to the offender, victims of crime, or both? The paper attempts to answer these questions in its argument that the current circumstances under which plea bargaining is applied in Nigeria's criminal justice does not translate to justice, particularly for victims of corruption crimes. In doing this, the paper maintains that justice transcends mere court rulings and is underpinned by certain moral ideals: the degree to which a people or victims of crime perceive their penal system as just and sound moral operating principles of law.

The paper is structured in four parts. In the first, an attempt is made at conceptualising justice while adopting a working definition of justice as "someone's due". The second examines the cost of justice and how it is increasingly shifting the principle of punishment from retributivism to *cost-benefit* considerations. In the third part, the paper analyses the current application of plea bargaining in the prosecution of corruption as a semblance of cost considerations and argues that such practice yields legality and not justice. The fourth part attempts an analysis of the morality of justice, arguing that justice entails an inherent moral ideal found in the absence of a *displacement gap*.

What is Justice?

The question of justice has been a perennial one for philosophers from time immemorial. Justice is speculatively fluid; an inconclusive ethical, legal and ontological term with transcendental properties. Consequently, the enterprise of its explication is not amenable to easy comprehension given a cluster of disparaging opinions. This, however, does not vitiate the fact of our intuitive insight or a priori knowledge about what justice is and ought to be. These complexities notwithstanding, the talk about justice mirrors integrity, rightness, equality, fairness, and in its corrective schema is retribution.

Justice is a moral ideal and a principal virtue of individuals (in their interactions with others) and social institutions. For most scholars, justice is closely associated to the ideas of just

desert or the Latin *Suum cuique tribuere* (to allocate to each his own). "Rewards and punishment are justly distributed if they go to those who deserve them" (Barry & Matravers, 1998, p. 4229) and in the right proportion. Thus, justice means giving people their due. Aquinas, Kant and Spinoza among other great philosophers so conceived justice. For Aquinas, it is the "perpetual and constant will of giving everyone his due". Kant conceives it as living honourably, injuring no one and "to give every person his due". For Spinoza, "Justice is the habitual rendering of everyman his lawful due" (cited in Obioha, 2011, p.186). Justice as *one's due* has been criticised by many thinkers, but as I shall argue shortly, it is this idea of justice that comes closest to offering a comprehensive idea of justice in both its distributive and corrective senses.

The foremost critic of justice as *one's due* is Plato. In Book I of his *The Republic,* Cephalus upheld that justice involves giving a man his due. For him, justice is truth telling and paying of one's debts (2000, p. 5). Socrates dismissed this on the ground that one cannot return arms (debt) to a mentally deranged friend notwithstanding if that friend had deposited them when in his right senses. Thrasymachus, Socrates most avowed interlocutor, defined justice as "the interest of the stronger", "the interest of the government or the ruling class" (p. 13). The ruling class makes laws and justice requires subjects to obey such laws (p. 14). Therefore, this conception holds that justice is obedience to the laws. For Thrasymachus, to be just is to be disadvantaged and weak since obedience to the interest of the stronger automatically coerces one to serving their interests; only the unjust is happy and strong:

> Observe also what happens when they hold an office; there is the just man neglecting his affairs and perhaps suffering other loses, and getting nothing out of the public because he is just; moreover, he is hated by his friends and acquaintances for refusing to serve them in unlawful ways. But all this is reversed in the case of the unjust man. I am speaking . . . of injustice on a large scale in which the advantage of the unjust is most apparent; . . . in which the criminal is the happiest of men, and sufferers or those who refuse to do injustice are the most miserable (Plato, 2000, p.18).

Thrasymachus was speaking about justice in practice and he is not far wrong. Justice in Nigeria (in relation to high profile corruption cases) is Thrasymachean in this sense, particularly as it pertains to the treatment of looters of the common wealth. However, justice as practiced does not directly translate to justice in the true sense. To this end, Socrates' opposition is quite understandable because he was poised to construe justice in its *oughtness*. Consequently, he defined justice as keeping what is properly one's own and doing one's own job. That is, there are two senses of justice. First it requires that "a man may neither take what is another's, nor be deprived of what is his own" (justice in this sense clearly mirrors 'justice as one's due'). In the second, justice entails minding your own business, "and not being a busy body" (2000, pp. 102–3).

For Aristotle, "just means lawful and fair, and unjust means both unlawful and unfair" (cited in Dukor, 1997, p. 501). The defect in this argument is easy to fathom. A court ruling may be lawful and fair, yet unjust as with cases arising from unjust laws. Legalities arising from unjust laws cannot bring about justice in the true and moral sense of the term. Aristotle also distinguished between distributive and rectificatory justice. Whereas the latter occurs in the distribution of resources based on a geometric principle of treating equals equally and unequals unequally, the former corrects anomalies in inequitable transactions. Thus, justice in the rectificatory sense is the mean between loss and gain; whether a party to a transaction has committed and the other suffered an injustice (Dukor, 1997).

For Rawls, justice regulates the interactions of free and equal persons, and fairness arises when the favoured in society acquiesces to a distributive rule they would prefer had they been unfavoured (see Obioha, 2011). He argues that all socio-primary goods like political liberty, choice of occupation, opportunity, wealth, etc. are to be distributed equally unless an unequal distribution would help the least favoured. Therefore, justice as fairness focuses on equitable distribution of social goods and permits unequal distribution only if the weakest members of society benefit from such inequality.

If it is just for the weak to profit from an inequitable distribution of social goods, it therefore means, in a sense, that distributive fairness eschews equality. It also means that justice entails "to each according to his needs" not "due". Critics of Rawls' theory argue that nature itself is unfair in distributing her gifts – some people are more talented, favoured, smarter or better looking. So why should those "favoured by nature" be made to pay for what is not a moral problem or an injustice? (Obioha, 2011). According to Nozick, individuals have rights (e.g., to justly acquired holdings) and any action that interferes with such rights (as in redistribution) is unjust. A just distribution is that resulting from voluntary transfers or by an appropriation that makes no one else worse off (see Barry and Matravers, 1998, p. 4232).

Despite this problem in Rawls' theory, analysts like Obioha (2011) claim that justice as fairness is better than every other conception of justice without good argument save its *prima facie* appeal. How does justice as fairness handle situations where someone contravenes the law? Broadly speaking, there are two senses of justice: distributive and corrective. Justice as fairness or social justice, be it of equal or unequal distribution, clearly involves the distribution of resources. On the other hand, justice involves punishing justly. Now justice as fairness satisfies only one sense of justice in terms of a comprehensive theory. However, a conception of justice as "one's due" captures both senses (distribution and punishment): "corrective justice covers that which is due to a person as punishment, distributive that which is due by way of benefits and burdens other than punishment" (Barry and Matravers, 1998, p. 4229). While there is no widespread agreement regarding the content of just distribution, which is the difference between, for instance, Rawls and Nozick's theories, there is quite a bit of agreement as to the criteria for just punishment. That criteria basically tends towards retributivism.

Feinberg (1965) buttresses this point in his argument that punishment is functionalist in nature and expresses a society's disapproval of a given act with the more serious crime (e.g., robbery, corruption, terrorism, etc.) receiving the most disapproval:

> What justice requires is that the condemnatory aspect of the punishment suit the crime. . . . Further, the degree of disapproval expressed by the punishment should "fit" the crime only in the unproblematic sense that the more serious crimes should receive stronger disapproval than the less serious ones, the seriousness of the crime being determined by the amount of harm it generally causes and the degree to which people are disposed to commit it (p. 423).

A society expresses the degree of her disapproval by punishing retributively. That is, such punishment must be seen as appropriate for the crime, especially by victims of the crime. Our treatment of plea bargaining in the administration of criminal justice in Nigeria follows this understanding of justice.

The Cost of Justice

Justice is arguably the most salient measure of the socio-contractual existence of the state. With the judiciary occupying a distinct arm of government in almost (if not) all systems of governance in the world, it is an invaluable system of staggering behemoth both in size and cost. Such cost, spanning the entire spectrum of the criminal justice process (the police, the prosecutors, the trial courts, and correctional facilities, etc.) has been described as a *Prima facie* evil (Lacey, 2007) which many governments are desperate to prune. Of particular concern has been the cost of incarceration. The cost of feeding inmates in Nigerian prisons is estimated at over N5.5 billion annually (Osasona, 2016). Similarly, the running of prison facilities in the United States of America costs about $80 billion yearly (*The Economist,* 2016). This shows that punishment by incarceration (a fragment of criminal justice) can be expensive, hence the introduction of theories and judicial tools such as "cost-benefit analysis" and "plea bargaining" to, among other things, cut the cost of justice.

Consequently, an economic perspective is now being read into the cost of justice, particularly the cost-effectiveness of sentences in relation to alternative, less expensive approaches to punishment. This is approached from two sides: (1) Cost-Effectiveness Analysis (CEA), and (2) Cost-Benefit Analysis (CBA). According to Johnsøn (2014), whereas CEA compares the costs of alternative ways of producing the same or similar outputs, CBA quantifies in monetary terms as many of the costs and benefits of any proposal or policy program. They both examine the value for money of projects and policies. Johnsøn (2014) argues that these approaches are currently underutilised in evaluating governance and anti-corruption reforms in developing countries. As I shall argue in the following section, Nigeria's application of plea bargaining profoundly mirrors CBA.

An example of the application of CEA and CBA in the United States of America is the 2010 recommendation of the Missouri Sentencing Commission, which required the inclusion of the costs of various possible sentences and the price tag on each sentence in the "pre-sentencing reports" prepared for judges (Flanders, 2012a, p. 392). The Commission's goal is to encourage judges to select cheaper forms of punishment in lieu of imprisonment. Consequently, cost now determines the appropriateness of punishment, not the degree of the harm caused or seriousness of an offence.

This policy has attracted both support and criticism. While advocates believe the approach is laudable in its capacity to free up money in funding other social programs, philosophical critics believe, and justifiably too, that making cost a determining feature of sentencing detracts from the relation which punishment ought to have with the severity of crime. According to Flanders (2012b), judges who sentence based on cost might face greater popular opposition for being too lenient on criminals, particularly in cases eliciting profound public interest like corruption. For him, therefore, cost should be a highly disfavoured factor in sentencing because it is counter-intuitive to justificatory theories of punishment:

> If we believe in retribution, it will be hard to see how cost should figure in determining what punishment the offender deserves (at least at the time of sentencing)… But even if we are not strict retributivists about sentencing, it is hard to fit cost assessment into any of the traditional justifications for punishment, including deterrence and rehabilitation (p. 164).

For core retributivists like Kant, an offender must necessarily get his/her due punishment even if other important social programs would suffer inadequate funding. Criminal desert, for

Kant, is a moral and categorical imperative. Thus, states must be weary of this obligation in order not to give the impression of abetting crime. This idea is clearest in Kant's famous example of a disbanding Island. If such a society were to break up, the execution of the last murderer is a moral necessity "so that everyone will receive what his actions are worth and so that the bloodguilt thereof will not be fixed on the people because they failed to insist on carrying out the punishment" (as cited in Norrie, 1991, p. 40).

Scholars like Scott (2012) have argued that it would be probably impossible to completely ignore the price tags associated with different forms of punishment given global economic downturn and pressure on limited resources. Even if we could consent to cost consideration in sentencing, argues Flanders (2012a), such consideration must be essentially marginal; not something judges are urged to consider as a primary sentencing factor. In other words, cost consideration must not result in minimal sentences that vitiate the principle of desert. Five years imprisonment for a parking offence is unjust in the same way as one-year imprisonment for aggravated murder or offences of considerable social harm (like corruption). That is, sentences should neither be too much nor less notwithstanding the "cost-consideration" of punishment.

Plea Bargained Justice and the Fight Against Corruption in Nigeria

Public interests have been continually frustrated when it comes to prosecuting high-profile cases of corruption in Nigeria as most (if not all) have been plea bargained.[1] This frustration derives from disparate punishment between classes of citizens. As Garba (2016, p. 1) put it, "Nigeria is a country of paradoxes, one in which the VIP steals an elephant and runs away with it but the poor man stealing a goat goes to jail for up to 30 years." VIPs run away with stolen elephants through plea bargaining; a judicial tool which eviscerates proportionality in punishment. This has led victims of such crimes to run a gauntlet of the criminal justice system, which for them has become a will-o-the-wisp in punishing looters of public funds.

Plea bargaining is a legal practice in common law judicial systems whereby an accused pleads guilty in return for reduced charges or a lighter sentence (Gorr, 2000, p.129). By this practice, both the accused and prosecutor concede certain incentives by making compromises for a mutually agreeable bargain. Adherents of plea bargaining often argue that it saves costs and leads to a general expediency in dispatching criminal cases. Howe (2005) argues the practice is wholly beneficial because it has punishment maximizing value:

> Bargaining maximizes deserved punishment at a reasonable cost by allowing prosecutors and judges to pursue many discounted sentences with the same resources that they would otherwise use to pursue a single sentence after trial. . . . We prefer to trade some punishment to avoid the high costs associated with a bargainless system . . . (pp. 635–6).

Although plea bargaining may save states the time, effort, and risk involved in the trial of all accusations, however, Uviller (1977) found that there is something less gratifying about it because ". . . when the high principles and great social purposes of criminal justice are set in the balance, the process sometimes seems downright unsavory" (p. 102). The practice has existed in the United States for at least a century and, given the enormity of caseloads in

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[1] Tafa Balogun, November 2005; Lucky Igbinedion, December 2008; Bode George, October 2009; Cecilia Ibru, October 2010; John Yusuf, January 2013, to mention a few.

relation to available legal personnel, has been used to resolve approximately 90 percent of all criminal cases in America (Howe, 2005). On this score, its application is a matter of expeditious convenience. But recent experiment on the partial or complete abolition of plea bargaining in states like Alaska, New Orleans, California (particularly "proposition 8"), Michigan, etc. has shown that the "caseload" argument is a hard sell as "court processes did not bug down; [rather] they accelerated" (Rubistein and White as cited in Gorr, 2000, p. 129).

Caseload and *Cost* appears to be the strongest attractions of plea bargaining in the United States. Is the same true of its application in Nigeria? To answer this question, let us briefly look at how this principle entered Nigeria's administration of criminal justice. According to Dahiru Musdapher, former Chief Justice of Nigeria, plea bargaining "is not only dubious but was never part of our judicial system – at least until it was sumptuously smuggled into our statutory laws by the Economic and Financial Crimes commission" (as cited in Eze & Amaka p. 42). This smuggling refers to section 14(2) of the EFCC Act, which states that:

> Subject to the provision of section 174 of the Constitution of the Federal Republic of Nigeria, 1999 (relating to the power of the Attorney-General of the Federation to institute, continue or discontinue criminal proceedings against any persons in any court of law), the Commission may compound any offence punishable under this Act *by accepting such sums of money as it thinks fit, not exceeding the amount of the maximum fine to which that person would have been liable if he had been convicted of that offence* (emphasis mine).

Most analysts, Dahiru Musdapher inclusive, take this to be the entrance of plea bargaining into Nigerian jurisprudence, but the literal interpretation of this section does not reflect plea bargaining. This is because the section focuses on accepting "the equivalence of the fine a defendant would have paid if convicted" to truncate trial, which is different from what plea bargaining advocates. Moreover, accused persons usually forfeit huge sums of money, sometimes in billions; fines are never that high (Adegbite). Notwithstanding, these concerns of proper legal provisions have now been laid to rest with the passage of the Administration of Criminal Justice Act, 2015. Section 270, subsection 1 of which provides that a Prosecutor may:

> (a) receive and consider a plea bargain from a defendant charged with an offence either directly from that defendant or on his behalf; or
> (b) offer a plea bargain to a defendant charged with an offence.

The problem with plea bargaining in Nigeria is not merely about legal provisions, rather it is about *too lenient* punishment. Nothing in the above provision restricts plea bargaining to financial crimes only. But its application so far has displayed such restriction. To this end, one may argue that the *caseload* argument is untenable in Nigeria's application of plea bargaining. This is because, unlike the United States' application which cuts across all ranges of criminal breaches, Nigeria has restricted its application to only cases of corruption. The total holding-capacity of Nigerian prisons is 47,284. However, prisons currently hold around 56,718 inmates, with 68% (about 39,032) of which are awaiting trial (Osasona 2016, pp. 1–2). If its application is as a result of "caseload", then it would have been used to dispose of these cases of awaiting trial, which is more than half of the total prison population in Nigeria. That plea bargaining in Nigeria has been used to prosecute only a few cases bordering on corruption, contra to the United States which has used it to try over 90% of all criminal cases, is morally questionable. I agree with Onyeka's (2013, p. 191) argument that its application in

Nigeria is a recreation of George Orwell's *Animal Farm* where "[all] animals are equal but some animals are more equal than the others"[2].

Contra *caseload* and *cost* arguments, the attraction of plea bargaining to the Nigerian judicial system is the insubstantiality in Nigeria's penal laws: "three out of the five major legislative pieces that collectively regulate criminal justice in Nigeria – the penal code (enacted in 1960), the criminal code (enacted in 1902), and the Prison Act – are all substantially relics of colonial culture" (Osasona, 2016, p.1). In the words of Femi Babafemi, an EFCC Spokesperson:

> . . . Plea bargaining saves a lot of cost as most of Nigerian criminal Acts don't stipulate capital punishment for their offenders…for instance, [the Money Laundary Act] provides for a fine of not more than N250,000 and two to three years jail term for anybody convicted of violating the law . . . if an individual is convicted of embezzling N10 billion, he is allowed to pay N250, 000 and serve a jail term of not more than three years. That is after a long trial where the government may have spent #10 million to get justice . . . [Therefore], we sometimes agree to plea bargaining which is a global and universal approach to getting justice. So in order for Nigerian government and the Nigerian people not to lose out completely, we allow these people to forfeit a substantial part of the loot (as cited in Adeleke, 2012, pp. 61–2).

Several issues can be garnered from this submission. The first is that the most fundamental start point in the fight against corruption is a review of Nigeria's obsolete penal laws.[3] These laws are naturally weak and cannot guarantee justice in the retributive sense much less to deter. And when plea bargaining is applied, the punishment becomes counter-intuitively disproportionate with the severity of crime. Nigeria is tough on crimes ranging from terrorism, kidnapping, robbery, to offences such as gay marriages, but not on corruption. For instance, robbery and conspiracy for armed robbery attracts life imprisonment or the death penalty in the Robbery and Firearm Special Provision Act, 2004; while same sex marriage attracts 14 years imprisonment and above under the Same Sex Marriage (Prohibition) Act, 2014. Corruption is not punished as severely. The maximum sentence in the Penal Code for misappropriation or embezzlement is two (2) years imprisonment or a fine or both.[4] In the EFCC Act 2004, the maximum is five years, while it is seven years under the Corrupt Practices and Other Related Offences Act 2000 (of course this drops to about two years when plea bargained). When compared to other African countries like South Africa, we find that these punishments are far too lenient. In South Africa, the minimum sentence under the Criminal Law Amendment Act 105 of 1997 is fifteen (15) years imprisonment. Punishment goes as high as life imprisonment in the Prevention and Combating of Corrupt Activities Act of 2004. The argument here is that unless punishments for corruption are reviewed from these abysmally low provisions, the application of plea bargaining will yield nothing close to justice.

Above all, allowing *substantial* forfeiture of loot may be legal, but is it just? The position of this paper is that a court ruling is not necessarily just contra Aristotle's definition of justice as

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[2] Also see Kayode (2013) for similar argument.

[3] I have argued this point in "Extractive Versus Weak Institutions in the Development Crisis in Africa" *Developing Country Studies* (http://iiste.org/Journals/index.php/DCS/article/view/31622/32495); and in "Crimes Against Post-Colonial African States: A Feinbergian Critique Of Crime Punishment in Nigeria's Criminal Justice System" (Forthcoming)

[4] See Section 309. Since plea bargaining involves pleading guilty to reduced punishment, prosecutors look for such lenient punishments with which to charge or dispose of cases. This section was used in the case of John Yusuf convicted of diverting a N27.2 billion police pension fund.

"lawful and fair. Substantiality only confers legality but never justice if the philosophical justifications of punishment are anything to go by. Besides, this paper holds that justice must satisfy an inherent moral ideal to be plausibly deemed just. This I shall examine in the next section.

The Morality of Justice

What is the operating principle of law? Who is the ultimate recipient of justice? These are questions whose plausible answers underscore a deep sense of moralism that will help us match off the arguments in this section. Thinkers like Lacey (2007) have argued that despite the inhumanities perpetrated within the criminal processes of most societies, criminal justice aspires towards a moral and political legitimacy. Such legitimacy derives implicitly and explicitly from how a judicial system treats issues of punishment. According to Dimock (1997), the purpose of the law is to secure the conditions of basic trust in the society, which is achievable only where violators of the law are punished retributively: "Any legal system which is understood as performing this function (of securing the conditions of basic trust) must adopt a retributivist approach to punishment" (p. 37). While I agree with Dimock's functionalist theory of law and retributive punishment, I however disagree with her version of retributivism which states that non-violent crimes or crimes without direct, physical harm do not require incarceration. My disagreement is not just about the fact that the alternative punishment she proposes (ban from holding office, community service, etc.) seems too lenient (which this paper is generally against), but because on that score the proportionality between crime and severity of punishment is hard to determine. What length of community service is proportionate as punishment for an offender like John Yusuf who misappropriated N27.2 billion?

During my mandatory National Youth Service year in Abuja, I once visited a community and asked for water to drink. The murky water brought made me inquire about the source. On hearing that it was a nearby stream, I made for it only to find cattle muddying and drinking from the same source, a hardly flowing stream. There were visible cases of river blindness, cholera and other diseases associated with bad water in the community. Now, imagine if a contract had been awarded to sink a borehole for this community but which was not carried out as is, sometimes, the usual practice. When charged to court, the contractor forfeits a part of the contract sum having plea bargained, and is released on payment of a paltry fine; both the forfeiture and fine did not add up to the contract sum. In a situation like this, can it be said that justice was served? What is justice as far as the victim of this crime – the community – is concerned? Justice for them would be a properly sunk borehole; that is their due. And what this implies is that the government would have to re-award the contract at a loss or an extra cost of the crime.

Justice as one's due in the above context carries with it a principle of morality. Dworkin (as cited in Campbell, 2007, p. 234) highlights this moralism in his argument that law contains other norms such as principles which have different functions from laws. For him, the principle that "no one shall be permitted to profit from his own fraud, or take advantage of his own wrong" may be used to set aside an otherwise valid rule like plea bargaining. In this sense, principles are different from rules as they perform a legitimating role. Laws operate within a principle without which they can only be said to be legal. But where they operate on good, moral principles like Dworkin's, they lead to justice. In essence, principles have "justice conferring" *weight* as they represent, according to Campbell (2007), the underlying justificatory values within a legal system. It is this underlying principle of law that confers

morality on justice. What is the principle of plea bargaining? That in making trial expeditiously convenient for prosecutors one can benefit from crime? As Dworkin further argues, the principle of the judiciary is that "the courts will not permit themselves to be used as instrument of inequity and injustice" (as cited in Campbell, 2007, p. 234). A judicial system which allows very abysmal punishment by way of plea bargaining is unjust and immoral in this sense.

Another "justice-conferring" ideal is the degree to which victims of crimes perceive a sentence as just. Discussions in criminal justice have often focused on the behaviour, punishment and rehabilitation of the criminal with very little consideration for the recipients of justice – victims of crimes. According to Marsh (2004), this one-sided obsession, both academic and judicial, has led to situations whereby a good deal of public policies in criminal justice are not informed by the needs, wants and status of the victims of crime. The United Kingdom circumvented this neglect through the 1990 Victim's Charter, which recognised victims as ultimate consumers of justice. That is, justice pertains to them. Victims are either primary (those who suffer directly from a crime) or secondary (those who suffer the effects, but are not directly involved e.g., the public).

How does the public become victim in a crime? For Feinberg (1990), crimes such as tax fraud, inefficient public institutions, contempt of court, and, to some extent, corruption, are non-normative harms in that they do not directly violate the rights of individuals, but setback collective interests. There is a sense in which corruption directly violates an individual's rights, and in which case corruption constitutes both normative and non-normative harms. Individuals share in public harms by virtue of being members of the society. As he put it: "[w]hen public harms are committed, *we* are wronged, and the public grievance is *our* grievance. I have a grievance as an individual because *we* have a grievance as a group . . ." (p. 33). It therefore follows that justice pertains to victims of crime either in the primary/normative sense or in the secondary/non-normative sense. Just as an individual demands justice from a law court for wrongful dismissal or robbery at gunpoint, so too do victims of crimes of collective harms. A good example is the street protests that greeted the plea bargained ruling in the case involving John Yusuf in 2013. The protest represents a dissociation from the ruling by which the non-normative victims of the crime are saying the ruling was unjust. How, in this sense, is justice measured? Sentence satisfaction. According to the 1991 Criminal Justice Act in England, justice involves sentence satisfaction:

> If the punishment is just, and in proportion to the seriousness of the offence, then the victim, the victim's family and friends, and the public will be satisfied that the law has been upheld and there will be no desire for further retaliation or private revenge (as cited in Ashworth, 2005, p. 102).

Where such satisfaction is lacking, there is, in its place, a moral vacuum or a displacement gap – a void between what victims of crime expect as sanction and what the state's judicial institution actually provides. All the plea bargained rulings on corruption cases in Nigeria open up such moral vacuum and to that extent remain unjust. A criminal justice system is moral and just only to the extent it successfully bridges the displacement gap.

Conclusion

A genuine fight against corruption requires the creation of a wide range of disincentives and, certainly, plea bargaining as currently practiced in Nigeria is not one of them. If anything, it only succeeds in giving judicial imprimatur to acts of corruption and demeans the country's image as a cesspool. The problem with Nigeria's criminal justice in relation to corruption is not plea bargaining itself, but the fact that it is applied amidst weak and obsolete laws that eviscerate our intuitive ideas about justice. Since weaknesses in the penal laws are the major factors that have rendered plea bargaining attractive in Nigeria, this paper submits that such laws be reviewed to reflect the opprobrium with which most countries view acts of corruption today. As I have argued in the paper, justice requires at least two *justice-conferring* ideals: a moral operating principle of the judicial process and a bridged *displacement gap*. These ideals cannot be realised without such review of the penal laws. It is only when this is done and a looter of the treasury still gets a minimum sentence of at least five years imprisonment, despite plea bargaining, that the moral conditions of justice set out in this paper can be met.

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An Offer of Standpoint to Social Work, Ethics and Law

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Abstract

As I prepared to design and write a third Year University course for social workers, an open campus course for sociologists entitled *Social Work Law and Ethics* for the University of the West Indies, and materials for other social scientists on the issue of law and ethics in social work, I realised that the primary issue was one of a dilemma or contradicting forces that needed to be reconciled. How was I going to answer their main questions: What do I do? And whose side should I be on? (Becker 1967; Leibling 2001). And What if there is no compelling answer be able to refute their default position of "anything goes"? (Feyerbend, 1975). I had an idea that in the same way that I taught my research students to anchor the production of knowledge in a feminist standpoint methodology, this might just work for other social science practitioners, such as educators, criminal justice workers and philosophical inquirers. This paper outlines a re-conjuration of the concept of standpoint and how it can be used to assist and ground applying ethics and the engagement with law in the theorising of ethics in professional practice.

Keywords: ethics, feminist, law, justice

Utilisation of the Feminist Concept of Standpoint

The paper argues that the standpoint concept is important to social practitioners because it provides three important similarities and clarifications of issues relationships with clients, with the law and lawyers and within professional ethical considerations, because:

1.   It exposes hierarchic relationships;
2.   It refutes the belief that rapport is possible as only to gain richer data and having no emotional attachment; and
3.   It problemises the issue of equality in relationships.

The methodology of the paper is to broaden the utilisation of the feminist concept of standpoint and so it is laid out under four main topics, where standpoint is used to *read*, *write*, allow *choice* and enable the *application* of ethical direction for social practitioners be they social workers, educators, psychologists, health or criminal justice and other wider ranging professionals, social practitioners and philosophers.

Reading Ethics

For my purposes here, ethics is grounded in the acknowledgement that specialised skills and knowledge must be governed by rules particularly when these skills, knowledge are used in the service of the public. My goal here is not to provide readings on ethics though I am hoping that there is an awareness of the literature and tenets of Kant on moral law and universalism of absolutes; Bentham on utilitarianism and consequence or Aristotle (384–322 BCE) on virtue ethics, a moral law where actions are right if you ask the right questions and you answer to a *higher calling* of being a virtuoso person. Social Justice is the preoccupation here and I rely on Miller (1946) who distinguished between conservative and ideal justice. He identifies three types of need: Instrumental – authorised to do something; Functional – task performance; Intrinsic – shower and clothing.

However Raphael (2001, p. 185) points out the challenge of the conflict between each of the three needs argues that ". . . to desert is incompatible . . . to need". Herein is my dilemma or obligation hierarchy and part of my process of decision making. Do I expound to the students that approaches to ethics i.e. *principle-based ethic* (deontological utilitarian and person-based ethics) or my own stance of *virtue ethics* where I am in the company of Elizabeth Anscombe, referred in McBeath and Webb (2002, pp. 1020–1022)*;* or the ethics of care where according to Gilligan (1982) women seek compromise and resist blaming but prefer an approach to competitiveness that seeks a result where everyone gets something. We can read ethics, for example Johns (2016) provides some excellent guidance to social workers reading ethics. However, I want to advocate more than just reading about ethics but employing ethics in order to read. Applying ethics to what we read to give each competing discourse, and here I am referring to the Foucauldian nature of discourse (Foucault, 1975, pp. 76) defined as . . . where each stands is given the chance to make their argument. Is this not what all scientists yearn to achieve? Our readings then and the way we read must be broad and guided by ethics that is "hallowed" in the sense of Luther the theologian, not that I want to argue for ethics to be likened to God or be a god, only to make the point that it be valued above its own end. Therefore, I urge my students, as I urge you, to read ethically for this is in itself a response to being ethical and that law is one other discourse that is to be opened to influence and be critiqued in all its variations.

The law

Law as applied to in social work and many other social sciences and professional service types of vocations: education, health care, voluntary and criminal justice, to use some in which I have worked in, rely on the law to be told what to do. For example, the contract; job description; work based policies; and codes of conduct are all laws and *mores* that are amongst the plethora available. Like my students these professional classes wish for me to be didactic and provide assent to them to go forth and obey. However, the law simply sets ontological and epistemological boundaries within which we/they as practitioners must decide the best course of action. (And here I underline it involves *choice* which I return to later when I unpack my notion and use of standpoint.)

Reflecting on ethical theory and theories of social justice as well as complexities of culture and diversity of jurisprudence, the law is totally contextual. In the British context there are a host of directives that a budding professional can be referred to: Professional Capability Frameworks; National Occupational Standards (social work and others); National College of Social Workers; The Quality Assurance Agency Subject benchmarking Standards for, in this case, Social Works (QAA, 2008), are just few examples. These provide the moral concepts of rights, responsibilities, freedom, authority and power inherent in the practices of social worker as moral and statutory agents. Yet these need to be drafted, critiqued, applied or adhered to; and what direction do I offer? It is standpoint.

Standpoint

On the concept of standpoint I thought it would help if I offered a little commentary to assist you through the maze to a place of clarity on the subject. In this paper I will address the following issues:

1.   Provide the basic theoretical background of the concept,
2.   Outline the five elements of standpoint,
3.   Address the main critiques of the concept from other theoretical perspectives, and
4.   Provide an example of how you can formulate your own example of a standpoint.

Standpoint
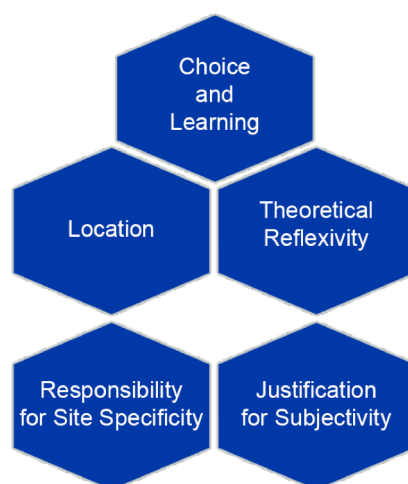
What is a Theoretical Standpoint?

As a social worker you are required to demonstrate the variety of roles and skills needed for professional leadership, these roles and skills revolve around four categories of activity: assessment and analysis, coalition building, advocacy, and empowerment. The programmes, professions and practices you deliver as well as examining laws and policies within the framework of a discipline, in this case social work, attempt to provide you with some theoretical grounding to act as an anchor; not only to examine law but useful in each of the four activities you are called to perform. It is the theoretical grounding, I am offering called standpoint which borrows from three core social science disciplines; feminist, economics and psychological theorising. I wish for us to see the concept as one continuous whole to bring home the point that we concentrate from beginning to end, on the question that is standpoint. Using the elements of standpoint to provide us with topic headings our exploration of the concept is to agree meanings and capture how together they bring us closer to understanding and answering what is a theoretical standpoint, what is the theory to me? And finally, what is my standpoint? Let us start by exploring what we know intuitively.

The concept of Standpoint is derived from a sociological theorising that knowledge is specific to the *knower* (the person who knows it) and as such knowledge can be privileged (i.e. it can depend on whose says it). Feminist standpoint theory is mostly associated with Dorothy Smith an American sociologist:

> The term "feminist standpoint theory" was actually not coined by Dorothy Smith writes Marshall 2013. Rather, feminist standpoint theory (and hence "standpoint theory") is traced to Sandra Harding (1986) who, based on her reading of the work of feminist theorists – most important, Dorothy Smith, Nancy Hartstock (1983), and Hilary Rose – used the term to describe a feminist critique beyond the strictly empirical one of claiming a special privilege for women's knowledge, and emphasizing that knowledge is always rooted in a particular position and that women are privileged epistemologically by being members of any oppressed group (Smith 2005; Harding 2004).

The debates and deliberations on Feminist standpoint theory are most influential in understanding the concept of standpoint as outlined above. However you do not have to adopt feminist theorising to employ standpoint nor, to use a Sandra Harding's (2004) phrase, it is not a "god-trick" and only women can do it. If we have learned anything from feminism it is that gender which is a social construction is both male and female and that the issues involved in inequality are not antithetical or diametric but far more complex. However, this is a departure and my purposed here is not to sidetrack on to a discussion of sex or gender but to employ critical thinking. Let us now utilise and reinforce our ability to think critically about theories and concepts. Because we are moving from the known to the unknown, we will apply an element of deductive reasoning and use a primary tool that is the ability to think critically upon a concept.

Standpoint theory was initially meant to focus gender research by emphasising:

> Choosing topics which are relevant or sympathetic to women;
> Having a preference but not exclusive focus on qualitative research; and

> Having a reflective approach, particularly to issues of power and control and according to Lorraine Gelsthorpe (1990) a proponent of standpoint, having a concern to record the subjective experiences of doing research.

Early researchers such as Ann Oakley (1981) and Janet Finch (1984) who attempted to adopt standpoint style research respectively found that when as women interviewing other women, the rapport between them improved and their data collection was enriched when they had a conversation rather than a hierarchal top-down question and answer session with no emotional interaction.

Patricia Hill-Collins (1990) also found when doing research with ethnic minorities that the question of equality arose as a result of viewing her own ethnicity and that of the people she interviewed, not as a weakness but as strength. Her standpoint allowed her to affirm her relationship with those she interviewed, rather than viewing it as biasing the data she produced. Equalisation of the researcher with the research came out of a perceived, in common relationship, that is the race and ethnic background between her and the people she interviewed. Her standpoint enriched the data to the extent that not employing the standpoint concept would have rendered the data useless in contributing to the scientific understanding, because her standpoint explained why someone else doing the interviews may not necessarily have been able to produce the same richness of data.

I can attest to a similar finding in my own research with prisoners and ex-prisoners, where it was in building a relationship with them that I was then able to gain their confidence and produce data that no amount of questioning would reveal. (The epilogue chapter in my book on Imprisonment in Trinidad and Tobago discusses this issue [Hagley-Dickinson, 2011]).

The standpoint concept is important to working in a professional capacity where there is a relationship that can be described as one that has the role of a professional/expert to client/beneficiary of a service. It includes all areas of working where such relationship exists. The example here is social work practice because it provides three important similarities and clarifications of issues within social workers' relationships with their clients.

1. It exposes hierarchic relationships;
2. It refutes the belief that rapport is possible as only to gain richer data and having no emotional attachment; and
3. It problemises the issue of equality in relationships.

The issue of acknowledging the researcher as part of the research process runs contrary to the positivist science approach to research that stipulates that the researcher must always be objective in the construction of knowledge and fuels the debate between the natural science approach of "value free" and the social science approach of "value laden knowledge". Value free knowledge or an empiricist view is the assumption that data can be produced consistently and without any bias. However, non-empiricists recognise that all relationships between human beings are inherently biased (i.e. value laden) and therefore produce value laden knowledge. The solution is to include or account for the bias as part of the research process and the research data. It is in the answer to this debate on subjectivity between the two broad camps (natural *vs. social sciences*) that standpoint offers and includes the concept of theoretical reflexivity which we come to later as a solution to applying ethics. This is not to deny bias but to incorporate it in explaining how knowledge/data is produced. Hence

location or defining proximity, an element of standpoint, later elaborated upon here, becomes so important to developing and defining standpoint.

That said, we are faced with answering the question: What is standpoint? The answer is: It is the situational production of knowledge. It critiques the empiricist claim that knowledge is objective and can be objectively produced. Instead, standpoint theorists like Harstock (1983), Maureen Cain (1979) and bell hooks (2000) argue that women's knowledge, and indeed the knowledge of the oppressed is a privileged epistemological position from which to view the world and produce knowledge. (Please note that epistemology means the way we know or the mode of how knowledge is produced.) It is from such a location that a real critique can be made of powerful groups and institutions. These theorists, amongst others not only argue that all knowledge is biased but also that the knowledge of the person who the information is derived from must be acknowledged or privileged is the term used. For example, it is in privileging women's perspective in the world of work that the whole issue of equal pay for equal work becomes visible for other working groups in society, and it is not just a woman's issue.

To develop a standpoint it needs to include five characteristics:

1. Choice and the experience/learning to make that choice;
2. Location – which comprises geography, time, space and what in sociology is referred to as The historical setting. These all combine to be labelled *situational knowledge*;
3. Responsibility for site specificity;
4. A critique of the objectivity in science or justification for subjectivity; and
5. Theoretical reflexivity; i.e., objectivity or lack thereof and; is location specific and ethically responsible.

I will examine each of these elements in turn.

The first characteristic of standpoint is Choice learning: You must choose whose side you are on and this is in of itself a conflict with others and hence an ethical question. Levin & Milgrom (2004) suggest choice theory as rational and economical. Cain (1979) states that your choice is in relation to others and is of necessity privileging one focus above others. She implies that this is the view of groups rather than of individuals. Your choice is theoretical and will therefore impact your search for and the way you gather knowledge. For us in this context, it is what we choose to read and how widely we read around the subject of the law and ethics as referred to earlier (p. 2). Your choice or the process of choosing is also political in that it requires you to identify and defend your position. Both Sandra Harding (2004) and Donna Haraway (1989) support the view that choice is a freedom that must be learnt, rather than in her words "a god trick" meaning that you cannot just be born with it or divinely given it. By choosing a standpoint you are in fact, limiting your focus, so rather than being subjective, we are situational specific in our knowledge field. The argument is that this does not narrow our focus but more so makes our knowledge more detailed and precise. Hence we are warned by Harding (2004) and Haraway (1989) that this intimacy within a specific focus carries a responsibility for what we learn and how we see. We will soon come on to discuss this sub-concept of standpoint which embodies this responsibility know as an "*epistemic responsibility*", in item four below. What we take forward is that ethical knowledge and its application depends on choice and that choice dependents on our learning both to choose and how much knowledge we avail ourselves in arriving at a decision.

The second characteristic of standpoint is Location: Location… location… location – your physical geographic, time and space location is only part of your theoretical location. When we refer to location in standpoint we are also communicating our group identity, our socio-political and historical environment. We are describing from what vantage point we see the world and we are giving precedent to that partiality. It is this political and partial location that is called "situational knowledge" and there are activities I can suggest that will allow you to work out your own in a set out step-by-step process which I then set for my students. Hence arriving at our standpoint location allows some clarity on our ethical position which can spell out either an advantage or disadvantage of an area of work by our standpoint location. The advantage is knowing and the disadvantage apportions choice and influences decision making.

The third characteristic of standpoint is that of Specificity and Responsibility: The argument put forward for the standpoint concept values the specific focused view of the world. The fact that it is partial knowledge according to Hill-Collins (1990) is not an imposed limitation or flaw rather it is a freedom to be embraced not denied for it allows the knowledge to be produced to be specific to the person producing it. Validity of the data is not in the consistency of producing the knowledge but in the specificity of the location and the who, when and how that knowledge is produced.

Furthermore, as I have already introduced you to "*epistemic responsibility*" a concept coined by Code (1987). *Epistemic responsibility* is a moral and professional responsibility to your standpoint – both in the choice of a position and the persons and or subjects of the standpoint. This knowledge and acceptance of our *specificity and responsibility* empowers our ethical positioning to amplify the value of ethical considerations and transforms ethical rules and norms into inert reasoning and action rather that just adherence to laws and regulations.

 The fourth characteristic of standpoint is that it represents a critique of the notion of objective science. One of the strongest objections to the concept of standpoint is that it is not and cannot produce objective science. In response to this critique Harding (2004) has cast rebuttal that includes the element of "location now called situational knowledge" of standpoint and offers up the counter argument that the engagement with knowledge is an active process of learning and responding to that learning and it is not simply passive. It cannot, as the natural scientists argue, be objective because "science" in quotations is in and of itself extra-terrestrial and so objective. In other words objectivity cannot be assumed in the scientific method – the method must outline how objectivity is derived. Standpoint does this by outlining it as situational knowledge. Standpoint then is the method for deriving the application of ethics professionally, prescribed and ascribed.

The fifth and final characteristic of standpoint is theoretical reflexivity: As alluded to earlier, it is the glue that fixes all the other characteristics of standpoint (choice, location, responsibility, objectivity) and is another excellent rebuttal to criticisms against standpoint. Theoretical reflexivity is being able to verify or triangulate the knowledge you produce with any group that resembles the group or identity of your standpoint.

Cain (1979) spells out theoretical reflexivity as a practical test, of your standpoint. She further suggests that testing should not be a one off occurrence but a process of maintaining an "organic alliance". The organic alliance requires continuous interaction within the grouping of the standpoint you have chosen.

To use an aspect of my standpoint which I share with students as an example, is that ("doing well" is equal to getting an education, a good job, being a good person, doing a good job). This resonates with many of them whom I would imagine may be amongst the first or second in their generation to have a university degree, a profession, in their family. These reverberations with groups of students in my class speak to my standpoint that mainly first and some second generation members of families who are the first to go to university are often drawn to professions that involve the professional/client relationships and there might be constant testing of privileging professional discourse over client privileging. There is also the conflict of ethics and struggle to choose ethics that is self-directed or ethics that is best for the client to be helped. If my standpoint of a first in my family to get to university does not resonate with others with this similarity, then my standpoint has failed the test of *theoretical reflexivity* – the group on whose behalf I claim to produce and analyse knowledge – and is not reflective of the Caribbean woman from a Marxian sense working class family whose ambitions are located in being a professional and doing good and having and possessing sound ethical values. This intimacy of knowing needs to be maintained in an ongoing relationship with persons and groups of people who share those characteristics and hence many of my organic relationships are made within these specificities regardless to their site-specificity be it students, professional or clients.

Another example, maybe a European identity, is part of your situational knowledge but your organic alliance maybe with Syrian refugees, because this is the group you have chosen to produce knowledge on their behalf. Therefore, Cain (1979) suggests that you must be involved with the Syrian community through a club or community group of Syrians to allow you to be connected to what being Syrian and a refugee in Britain is all about. Your interaction or organic alliance is then of itself your theoretical reflexivity because it provides markers to test the objectivity of the knowledge you produce and in this case allows your ethics to be boarded by organic understanding of what that needs to be.

A word of caution: If you are not already aware, knowledge is power. Your professional knowing must be tempered, hence the need for ethics.

Application of Standpoint Ethics

As a social worker, a social justice practitioner of any kind, your knowledge of how to help a client assumes that you know what is best for them. Knowing what is best generally may not allow for a person's human rights, for example to choose to be homeless. Generally our professional ethics allows us to have clear guidance on how far we can go in privileging our profession's opinion in relation to an individual's right. The detail of which has been our major focus throughout this paper, and the standpoint concept should allow you to be able to differentiate between your knowledge and that of your clients.

Armed with these characteristics of standpoint and the language to articulate ethics from a position of standpoint, we now have a formula for assessing and attaining the "good" of any Ethical Code. There is also a way of rationalising the intersectionality of law that is prescriptive and ethics that is choice to argue for ethical Codes enshrined by law but also ethics that is active and organic. Because we have made ethical choices to what and how we read and our writing then reflects a hosts of arguments, alongside our standpoint that allows us the method to arrive at an ethical stance. Our actions in practice are also affected. As Experts/Practitioners, our knowledge of how to help a client assumes that you know what is best for them. However, knowing what is best generally may not allow for a person's human

rights, for example to choose to be homeless as was our example above. Generally our professional ethics allows us to have clear guidance on how far we can go in privileging our profession's opinion in relation to an individual's right. The standpoint concept outlined here should enable us to be able to differentiate between our knowledge and that of our clients. We can both satisfy and require any obligation to a hierarchy if one does or should exist. I advocate for and will always argue for law and ethics, not for the law to attest blame or to judge ethics but ensure we act ethically, it should be in the very nature of us – an Aristotle virtue – where those of us in the business of training practitioners and future professionals to apply ethics that is on the actions of ourselves and others and not ethics of people justice which should be left to the law to police. Our standpoints recognised and developed become both the tool to measure and the ethical position on which we understand and apply ethics.

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Levelling the Score: The Role of Individual Perceptions of Justice in the Creation of Unethical Outcomes in Business

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Abstract

Rationalist models of ethical decision making assume that higher order conscious reasoning dominates the ethical decision making process. However research shows that psychopaths have a similar capacity for ethical decision making to the rest of the population. In contrast, research from the fields of social psychology, criminology and neurocognitive science shows that personal and contextual factors play a much larger role in the creation of unethical outcomes and that subconscious pattern matching processes are more prevalent than higher order conscious reasoning.

This paper presents a Causal Factor Model synthesized from inter-disciplinary research that illustrates the dynamic interplay between personal and contextual factors, perceptual blindness and moral neutralisations. The model has been tested using a multiple case study method involving interviews with people who have either been convicted of corporate crimes at a senior executive or board member level, or who have been involved as whistle-blowers. Initial findings indicate that individual perceptions of justice regarding the subjective assessment of unfolding reality have a cumulative effect on the behaviour of individuals involved in creating unethical outcomes in business. When subjects perceived reality to be unfair or unjust they were more inclined to use moral neutralisations to justify acts that would objectively be considered to be in violation of their aspirational moral values. This perception and the invoked justifications then blinded them to the moral aspect of the issue at hand and allowed them to create unethical outcomes that they perceived to be just.

Keywords: ethics, moral intention, perceptual bias, rationalisations, existentialism

Introduction

One of the paradoxes of our times is why well educated people in high paying responsible positions with reputations as good family and community members come to create bad outcomes involving fraud, bribery, insider trading and market manipulation. These affect the wider community in extremely negative ways. Since the late 1980s business schools have made concerted efforts to improve education in business ethics and corporate social responsibility. However there is little evidence to show these efforts have yielded the expected results (Desplaces, Melchar, Beauvais, & Bosco, 2007; Jazani & Ayoobzadeh, 2012; Jewe, 2008).

Numerous researchers have criticised the narrow band of existing theory and have called for the development of new theory to address this (Casali, 2010; Craft, 2013; Ghoshal, 2005; O'Fallon & Butterfield, 2005). This paper presents a causal factor model developed from synthesizing the existing research in the fields of business ethics, social psychology, criminology and neuro-cognitive science. This paper presents the results of testing the model using a multiple case study methodology and then presents the evolved model and the implications for ethics education and training.

Perceptions, Bias and Rationalisations

In 1970 Milton Freidman responded to calls for business to be more socially responsible by writing in *The New York Times* (1970) that the social responsibility of business is to increase its profits. Freidman went so far as to say that businessmen promoting the social responsibilities of business were undermining the basis of a free society. However, soon after this in 1971, the US government was forced to bail out Lockheed to the tune of US$195 million. Subsequent investigations uncovered the Lockheed bribery scandal (*Time*, 1975) which involved Lockheed executives bribing foreign officials to win aircraft sales from the 1950s to the 1970s. A further SEC investigation in the mid-1970s discovered over 400 companies admitting bribery and illegal payments to foreign governments, political parties and others. The result was the Foreign Corrupt Practices Act of 1977 which banned US businesses from making illegal payments to foreign officials.

The revelation of these corporate scandals prompted increased debate on values, ethics and the role of business schools. Some scholars (Miller & Miller, 1976) proposed that by the time a person reached university it was too late to teach them business ethics. However, in 1976, the President of Harvard University, Derek Bok (1976), cited statistics showing how Americans had lost faith in their leaders and proposed that as the sources of moral standards, such as churches, families and communities, had declined in importance, educators had a responsibility to contribute to the moral development of their students.

Underpinning this increased focus on ethics was an understanding of how moral development occurs, which was based on Piaget's (1932) work with children. Kohlberg (1969) applied Piaget's work to the field of business and proposed cognitive moral development theory (CMD). This theory proposes that moral judgement and knowledge is gained through a process of rational reflection and reasoning (Kohlberg, 1969; Piaget, 1932). Scholars then used this theory of moral development to propose several models that explained ethical decision making (Dubinsky, 1989; Ferrell, 1989; Hunt & Vitell, 1986; Jones, 1991; Rest, 1979; Trevino, 1986).

The two key models that dominate the business ethics research into ethical decision making in the past 30 years are – Rest's (1986) four stage framework and Jones' (1991) moral intensity model. Rest's model is closely aligned to Kohlberg's CMD, however, one of the limitations of Kohlberg's CMD is that tests of moral judgements are limited to how a person thinks about an issue not what they would actually do in a situation. These theoretical models were therefore developed to explain the overall process of ethical decision making. In 1986, Rest proposed a four component model linking individual ethical decision making and behaviour. According to the model a person: (1) recognises the moral issue, (2) makes a moral judgement, (3) resolves to place moral concerns ahead of other concerns (establish moral intent), and (4) acts on the moral concerns. Component (2) is related to CMD. Rest considered these stages to be conceptually distinct such that a person may for instance successfully recognise the moral issue but be unable to make a moral judgement. From the perspective of this model a good person may create an unethical outcome due to failure to recognise the issue, making a poor moral judgement (this is the stage related to CMD), lacking the resolve to put this moral concern above other concerns, or lacking the will or courage to take action. Rest's model is shown below.
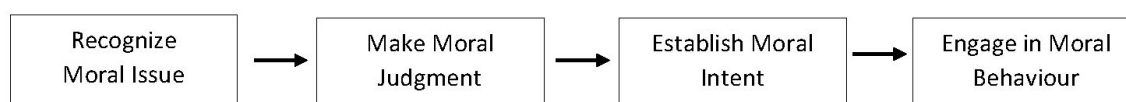

Figure 1: Rest's ethical decision making model (Rest, 1986).

In 1991 Jones considered existing models and proposed that they failed to place enough emphasis on the characteristics of the ethical issue itself and cited research from social psychology that suggested that individuals react differently in different situations due to differences in the moral issue. As an example, he proposed that fewer people would approve of embezzling company funds as would approve of padding an expense account. Jones combined the existing models (Dubinsky & Loken, 1989; Ferrell & Gresham, 1985; Hunt & Vitell, 1986; Rest, 1986; Trevino, 1986) into the synthesized model shown below.

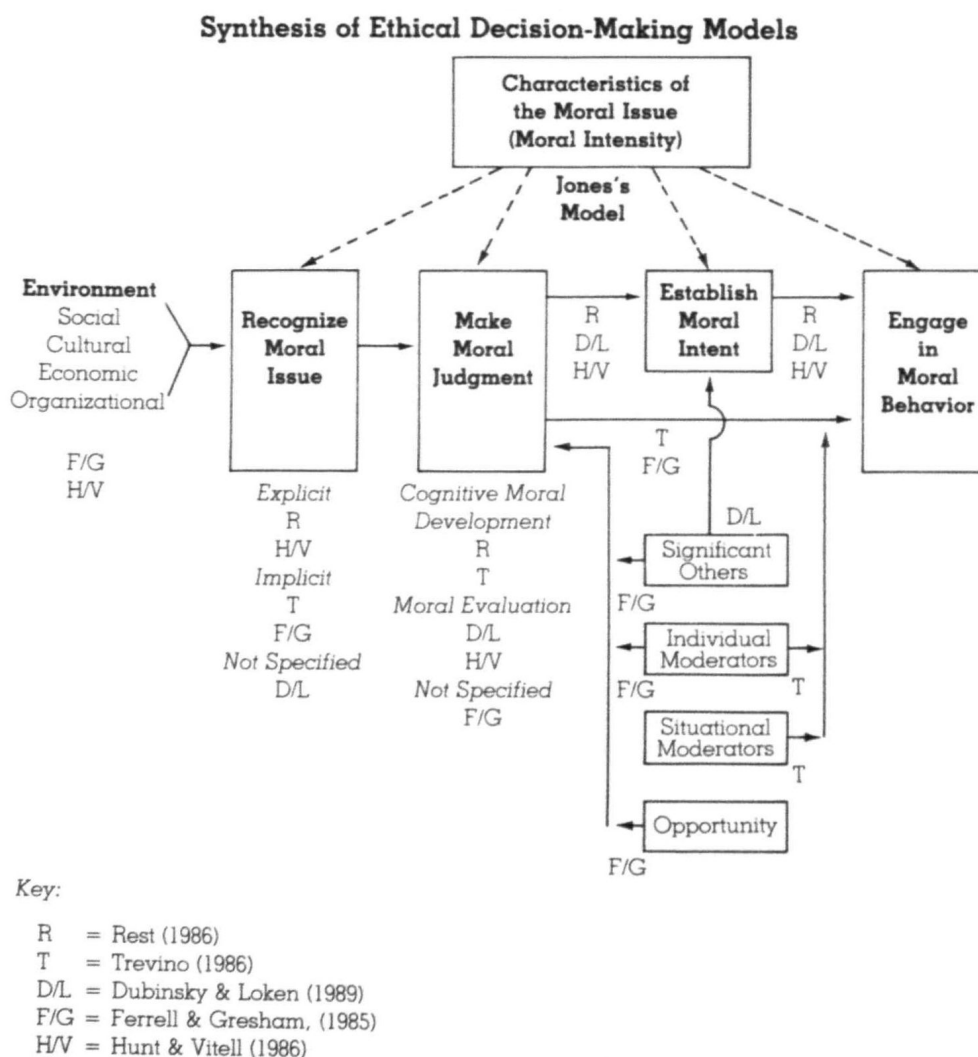**Synthesis of Ethical Decision-Making Models**

Figure 2: Jones' synthesis of ethical decision making models (Jones, 1991, p. 370).

Jones proposed that the characteristics of the ethical issue would affect all four of the stages (recognition, judgement, intent and behaviour) of this synthesized model. His proposition was that the differences in the way people made ethical decisions were due to differences in what he termed moral intensity.

At the heart of both of these models is Kohlberg's CMD and underpinning this approach to ethics is the assumption that the ethical decision making process is one dominated by higher order conscious reasoning. From this perspective, the rational and logical answer to why good people do bad things is that they are lacking in moral development – this may be a lack of character, bad values or greed (Heath, 2008). The solution to "fix" good people that have done bad things is to re-educate them to think better (Burton, Johnston, & Wilson, 1991; Mintz, 1996; Rozuel, 2012).

Reviews of the ethical decision making literature (Craft, 2013; Ford & Richardson, 1994; Loe, Ferrell, & Mansfield, 2000; O'Fallon & Butterfield, 2005) show that Kohlberg's CMD and the two ethical decision making models proposed by Rest (1986) and Jones (1991) dominate the empirical ethical decision making research. However, as has been already noted, the results of the research are mixed and ambiguous with none of the 357 findings detailed by

Craft (2013), claiming to have found the "holy grail" of ethical decision making that if addressed would reduce unethical outcomes. This raises the question of whether there is a problem with the theory or with the research.

This paper proposes that the problem lies with the theory and that the existing models for ethical decision making are based on flawed assumptions. Research from the fields of neuro-cognitive science, social psychology and criminology questions the assumptions that the ethical decision making process is a higher order reasoning process and that dispositional factors such as character, values and greed are key. This inter-disciplinary research can be synthesized to produce a causal factor model (CFM) that explains the creation of unethical outcomes.

Synthesizing a Causal Factor Model

In proposing his model in 1991, Jones noted the effect of perceptual bias and blindness and cautioned that if a person didn't recognise the moral issue in the first place there was no access to the decision making model. The part of Jones' (1991) model which is supported by the inter-disciplinary literature is the link between moral intention and moral behaviour. This causal linkage is well accepted in the business ethics literature, and research based on the theory of planned behaviour also supports the link between behavioural intentions and actual behaviour (Ajzen, 1985). However, the predictive power of behavioural intention depends on the strength of those intentions (Ajzen, 2011).
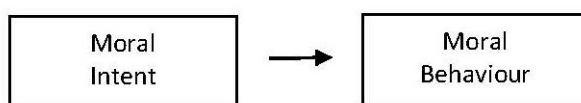

Figure 3: Moral intent to moral behaviour.

However, moral intent does not stand alone and is instead a subset of a person's behavioural intention. It is the ability to prioritise moral values, such as fairness, justice and equal consideration of others, over other instrumental values, such as profitability, achievement and efficiency (Craft, 2013). Social psychology research (Werhane et al., 2011) indicates that a person's behavioural intention will consider moral issues when an ethical decision making schema is applied.
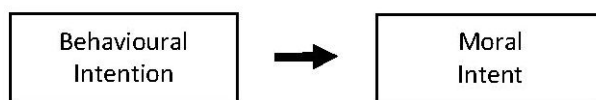

Figure 4: Behavioural intention to moral intent.

Behavioural intention is influenced by a dynamic interplay of personal, situational and contextual factors (Mencl & May, 2009; Rallapilli, Vitell, & Barnes, 1998; Reynolds & Ceranic, 2007; Ruedy & Schweitzer, 2010; Zimbardo, 2007).
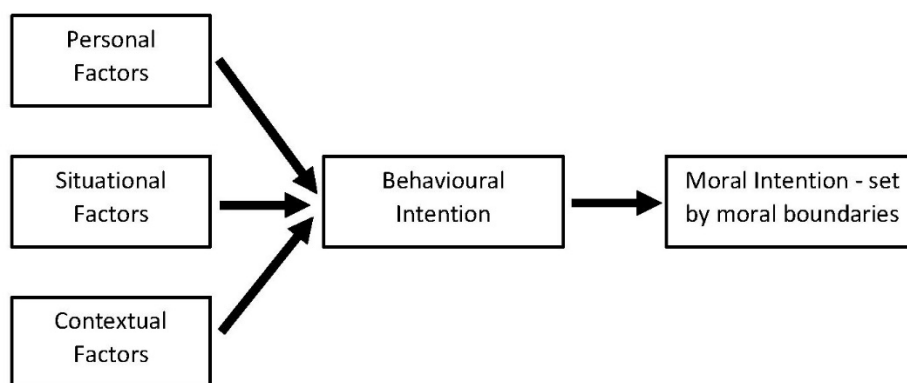
Figure 5: Personal, situational and contextual factors influencing intention.

However, recognition of the moral issue is influenced by perceptual biases and "bounded awareness". Bounded awareness can lead to "ethical blindness", which prevents a person from "seeing" the ethical issue (Palazzo, Krings, & Hoffrage, 2012). For example, ethical blindness may result from a dynamic interplay of specific personal, situational and contextual factors. Factors that have a negative impact on moral awareness include personal stress and sleep deprivation, a competitive, profit orientated environment and a time pressured context. In this situation, it is proposed that a person's moral intent and moral boundaries are not activated and when a trigger event occurs the moral issue is not recognised. A trigger event should be considered as an event that requires a decision to be made and action taken. For example, a business executive who is tired and stressed and working in an environment that rewards sales above all else may be confronted with a situation where a potential customer indicates that if the executive matches a competitor's offer to provide them with a "sign on bonus" they will win the business. In this scenario, the person may see the issue as a business issue rather than an ethical issue and as such engages a business decision making schema such as profit maximisation, rather than an ethical decision making schema considering moral values.
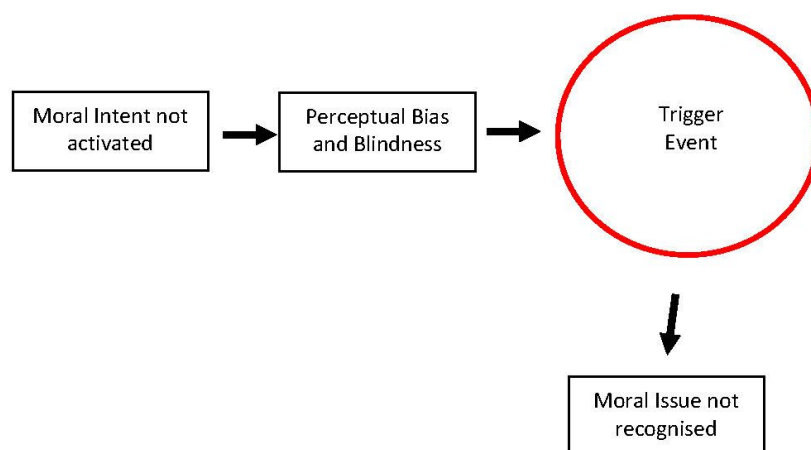

Figure 6: Moral intent not activated.

The opposite of this situation is one where perceptual awareness has been activated. Perceptual boundaries can be influenced by "priming", and ethical "priming" can be done by drawing attention to "ideals" such as the Ten Commandments and honour codes (Mazar,

Amir, & Ariely, 2008). Ethical priming activates moral intent by influencing perceptual awareness and drawing a person's attention to ethical issues.
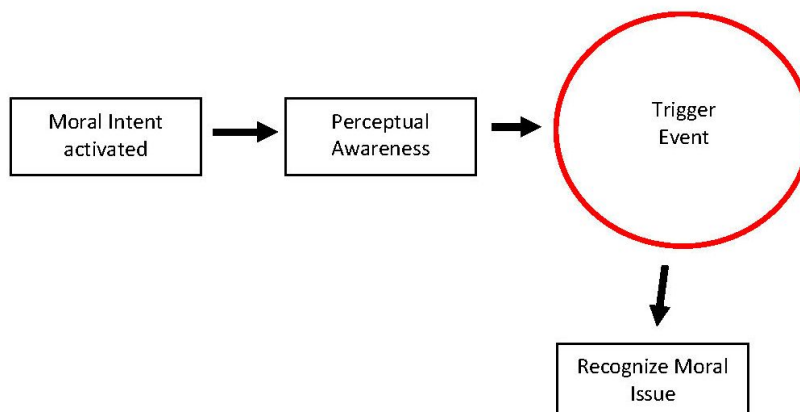

Figure 7: Moral intent activated.

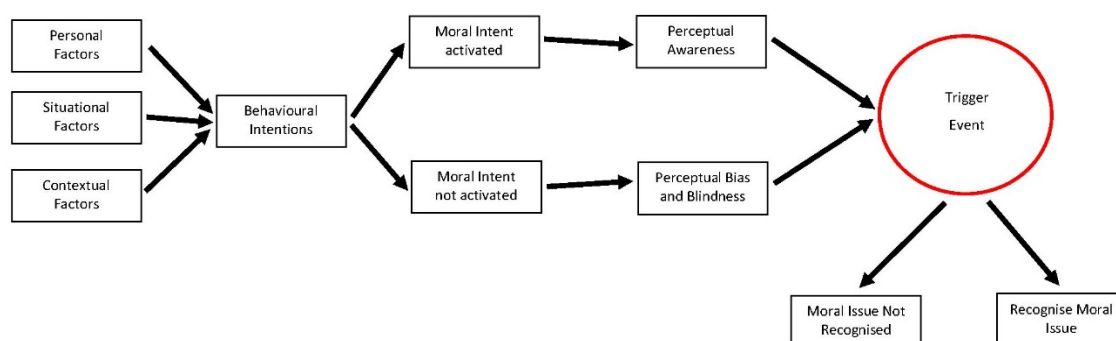To summarise the progress so far, the model looks as follows.

Figure 8: Intention and the recognition of the moral issue.

If the moral issue is not recognised the ethical aspect of a decision will not be considered however, a decision will still be made using other criteria. If, however, the moral aspect to the issue has been recognised, a moral judgement can be made.

Once a moral issue has been recognised a moral judgement can be made.

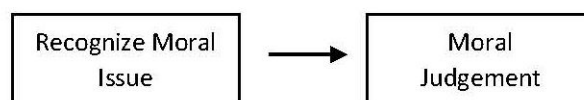Figure 9: Recognition of the moral issue and moral judgement.

Based on Kohlberg's cognitive moral development theory, this process of moral judgement is a conscious cognitive process, however, once a "trigger event" has occurred, scholars in the field of neuro-cognitive science have proposed a dual process model for how we actually make ethical decisions (Borg, Hynes, Van Horn, Grafton, & Sinnott-Armstrong, 2006;

Cushman, Sheketoff, Wharton, & Carey, 2013; Reynolds, 2006). Reynolds' (2006) neuro-cognitive model proposes that most ethical decisions are made by reflexive judgements – pattern matching to existing prototypes, whereas higher order reasoning is engaged for more complex dilemmas and those where an existing match is not available. Reynolds also proposed that the higher order reasoning function is able to play a "supervisory" role to the reflexive pattern matching. Haidt's (2001) dual process model is similar, with the two processes dominated by intuition and reasoning. The challenge of enacting moral intent is that often the "moral" outcome will involve a diminished benefit to the self and hence desire must be thwarted. Haidt (2001) suggests that self-regulation is more important than moral reasoning abilities in determining moral behaviour, hence the challenge that Kant identified of the will versus desire.

The dual process models proposed by Haidt (2001) and Reynolds (2006) support the view that there is a reflexive pattern matching process, which is sub-conscious and a higher order conscious reasoning process. A trigger event causes the process shown below.
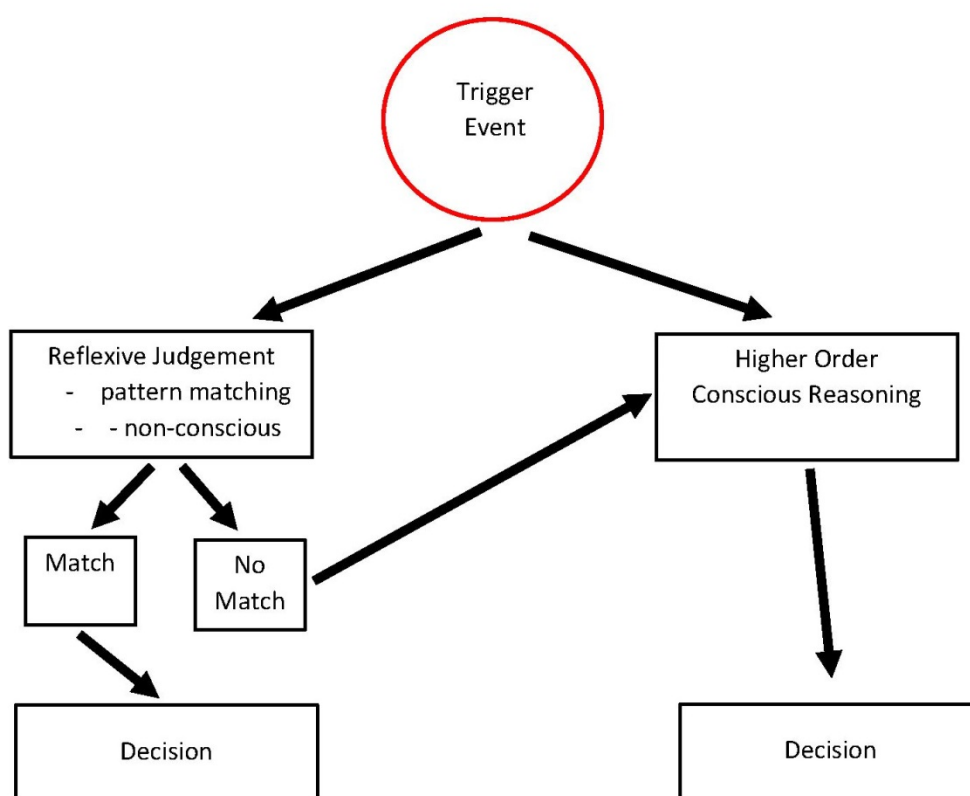
Figure 10: A trigger event and pattern matching or reasoning.

Once a decision has been made, Haidt (2001) proposes that justification for the decision to one's self or others will arise from a trigger event occurring after the initial ethical trigger event. Examples of a trigger event include any event that requires the action taken to be justified. This could include an internal process such as a report to senior management or the Board, or an external process such as shareholders or the general public requiring an explanation.

Figure 11: Justification trigger event and effect.

Justifications for decisions made can be done using values and principles – for example, the refusal to give preferential treatment to customers in the form of incentives on the basis that it is unfair to other customers and violates the organisation's principles of transparency. However, when self-regulation fails, and a person has violated the org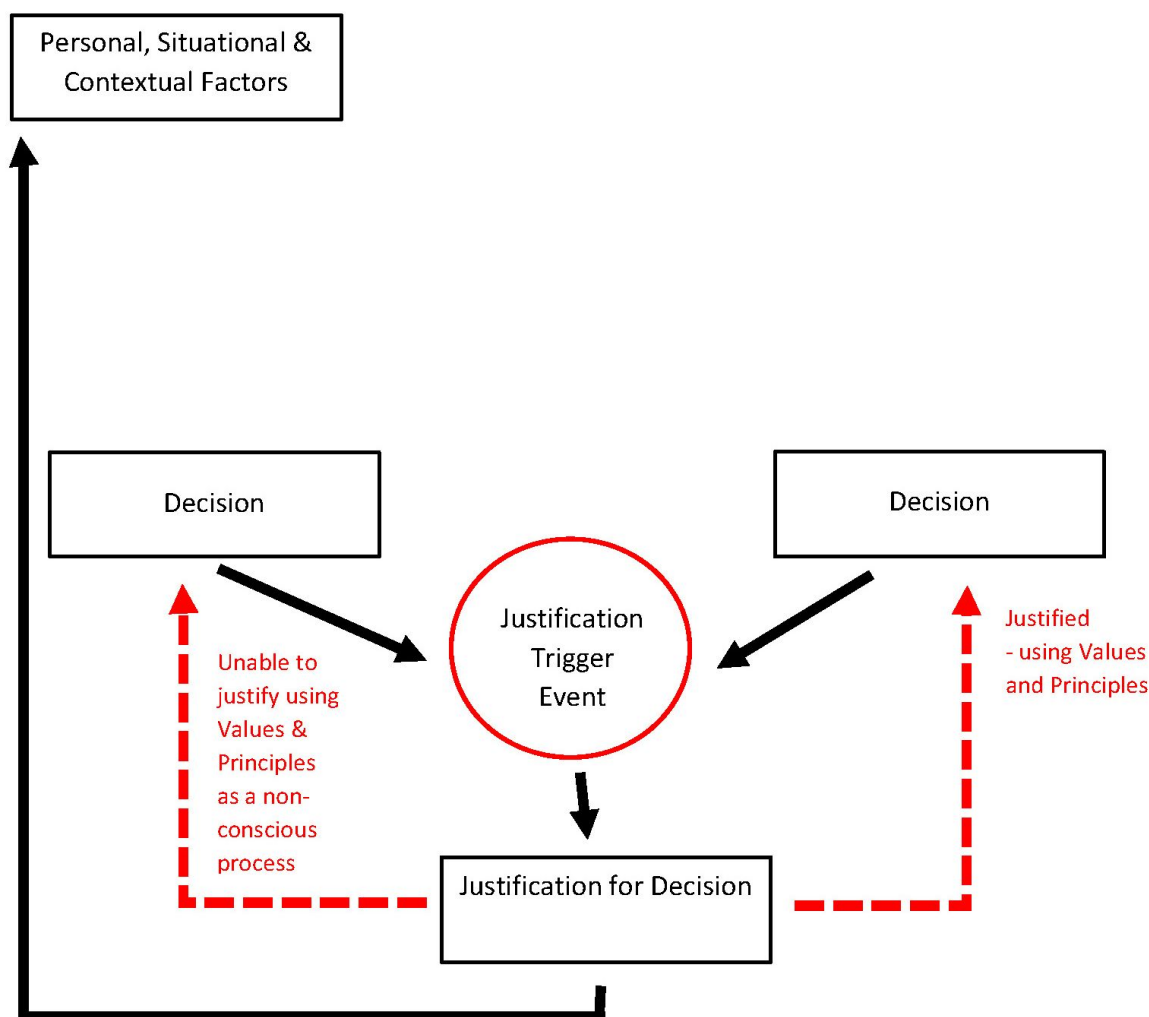anisation's principles the potential result can be guilt and a bad conscience. In this scenario, social psychology research proposes that, in order to protect the self, the rational mind engages in justifications that neutralise the moral values and hence compromise moral intent (Heath, 2008). By absolving the self of guilt and justifying the action taken, one's moral self-identify does not have to be re-assessed (Aquino & Reed, 2002). Hence a "good" person who has done a "bad" thing can avoid having to reassess their self-identify as "bad".

Criminology research supports the concept of using justifications to neutralise values. As far back as 1957, researchers (Sykes & Matza) questioned the focus on dispositional factors and the assumption that delinquent youth had anti-social values. Sykes and Matza (1957) proposed that rather than having anti-social values, the delinquents instead held the same values as mainstream society but used a range of justifications for deviance that were valued by the delinquent but not by wider society. Sykes and Matza (1957) propose that there are five "techniques of neutralisation":

1. The denial of responsibility
The key here is that the individual sees his or her action as "unintentional" and that they are therefore not responsible due to forces beyond their control. For example, poor upbringing, unloving parents or "just following orders". "It's not my fault" is the catchcry.

2. The denial of injury
The distinction here is that the act is seen as wrong but not immoral. "It's not hurting anyone" is the common justification. An example could be the act of creating graffiti.

3. The denial of the victim
Denial neutralises the rights of the victim so that in some way the circumstances justified the act and hence the perpetrator may even be cast as the "avenger". The story of Robin Hood robbing the rich to give to the poor is the classic example where the justification is "they deserved it".

4. The condemnation of the condemners
Claims of unfairness and hypocrisy are key here with motives being questioned. Police are corrupt, teachers unfair, parents take out their issues on their kids. The wrongfulness of the act is repressed. "You think I'm bad but you should see them" would be a typical claim.

5. The appeal to higher loyalties
Societal norms are rejected owing to higher loyalties, for example to family, gang members, etc. The extreme example of this would be bikie gangs or street gangs and their "codes". "Live by the code of brotherhood" would be an example.

To these five neutralisations, Heath (2008) adds two more:

6. Everyone else is doing it
The key here is that the perpetrator claims they have no choice. This is particularly prevalent in competitive situations, such as doping in elite sport, where the justification would be "everyone else was doing it so I had no choice other than to follow suit".

7. Claim to entitlement
Entitlement is a justification based on rights or karma: "I did this so therefore I deserve that". An example might be "I have worked back for the last five days straight so I deserve to use the company credit card to buy myself and my family dinner".

Neutralisation Theory (Sykes & Matza, 1957) supports the notion that "good people" use rationalisations to absolve themselves of internal moral conflict. The critical aspect of neutralisation theory, according to Sykes and Matza, is the element of self-deception it introduces and the opportunity to do "bad" things without damaging one's self-image. Heath (2008) in discussing neutralisation theory states:

> . . . this theory puts considerable emphasis upon the way individuals think about their actions . . . Rather than sustaining an independent system of values and moral principles, different from those of the mainstream, the function of the subculture is to create a social context in which certain types of excuses are given a sympathetic hearing, or perhaps even encouraged (p. 604).

Heath's view supports the notion that the key elements in unethical behaviour are social context, self-deception and one's interpretation of reality. When the context becomes competitive and outcome orientated, it follows that neutralisations would become more prevalent due to this overwhelming focus on outcomes. Heath (2007, 2008) proposes that business might constitute a peculiarly criminogenic environment on account of: the large impersonal nature of big business; the detachment from consequences; hostility to government and regulation; and, the isolating nature of the business sub-culture.

The inter-disciplinary research from the fields of social psychology, neurocognitive science and criminology can be synthesized into a deduced causal factor model shown below in Figure 12. Research from social psychology informs the model by showing how personal, situational and contextual factors can influence behavioural intentions (Ajzen, 1985; Tenbrunsel, 1998; Zimbardo, 2007). Perceptual bias and blindness then determines whether or not the person actually "sees" the ethical dilemma (Chugh & Bazerman, 2007). Neurocognitive research then shows how we make decisions in this "blind" state using either higher order reasoning or sub-conscious pattern matching (Reynolds, 2006). A post decision trigger event then causes the engagement of justifications which can either be based on moral values or may be moral neutralisations (Heath, 2008; Sykes & Matza, 1957). The decision made then feeds back into contextual factors.

DEDUCED CAUSAL FACTOR MODEL OF UNETHICAL OUTCOMES
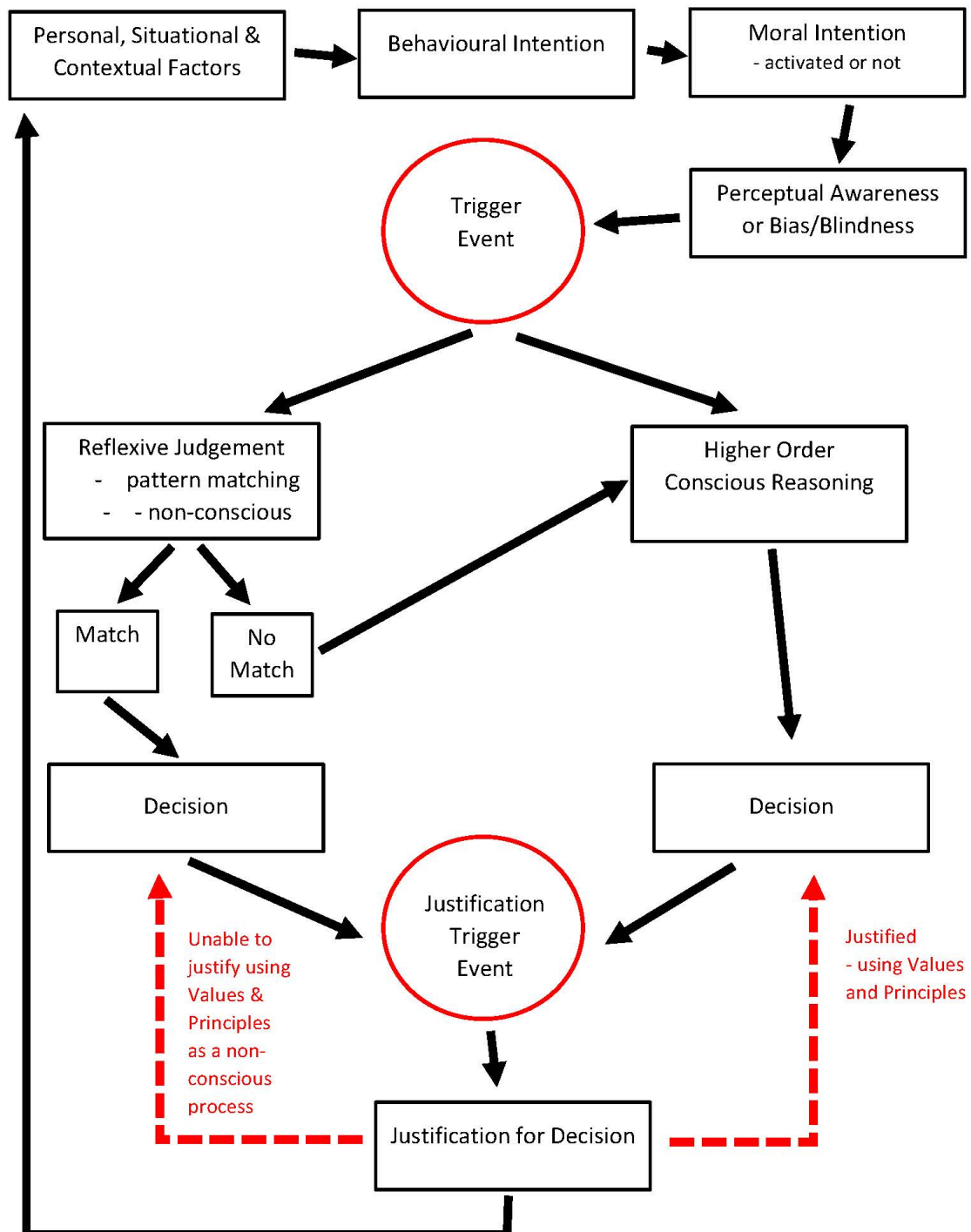**A.C.Ping 2014**

Figure 12: Deduced Causal Factor Model of Unethical Outcomes

Testing the Model

The inter-disciplinary model shown in figure 12 above is subjective and falls within the social constructivism paradigm. The philosophical base for this paradigm is hermeneutics and phenomenology, which proposes that reality is socially constructed and the world does not present itself objectively to the observer but is rather known through human experience, which is mediated by language (Eriksson & Kovalainen, 2008). Given this research paradigm, testing the model was done by using reflective phenomenology.

There is significant industry and academic research which suggests that the leverage point for reducing unethical outcomes in business is at the Board and senior executive levels. The epistemology of this research also indicates that the most useful and valid way of actually testing the theoretical construct is by interviewing people who have actually been convicted of corporate crimes or who have had first-hand experience with such an event.

Potential participants were identified using media reports and the annual reports of the Australian Securities and Investment Commission (ASIC). The ASIC reports detail key convictions of corporate criminals and this information was distilled to identify people who had been acting at the Board and senior executive levels when convicted. The aim in selecting potential cases was to try and find cases that dealt with the key issues identified in Industry reports (Ernst & Young, 2013; KPMG, 2005, 2013), for example; bribery and facilitation payments, insider trading, fraud and managing conflicts of interest. Cases were chosen using replication logic – in this case where the participants fit the subjective criteria of "good people doing bad things". Sampling was then done for sameness and for difference – the sameness being the nature of the crime, for example fraud. The difference being the circumstances – for example mortgage fraud versus corporate insider fraud. To gain a different perspective on events, one of the participants selected was a whistle blower and another an internal investigator who became a whistle blower.

The six cases chosen to test the model were:

1. A non-executive director of an Australian company jailed for two-and-a-half years after pleading guilty to four criminal charges including: disseminating information knowing it was false and that it was likely to induce the purchase of shares by others; one count of being intentionally dishonest and failing to discharge his duties as a director in good faith and in the best interests of that company; one count of obtaining money by false or misleading statements.
2. A Managing Director of a US mortgage broking company jailed for two years after pleading guilty to bank fraud, in excess of US$100 million and tax evasion through falsifying tax records.
3. A whistle blower in an Australian case involving foreign bribery and the falsifying of documents.
4. A director of an Australian financial services company which collapsed resulting in ASIC alleging that the directors were intentionally dishonest and failed to exercise their powers and discharge their duties in good faith in the best interests of the company.
5. A director of an Australian manufacturing company who pleaded guilty to charges of insider trading.
6. An internal investigator and whistle blower of a 12-year internal fraud at an Australian construction company totalling over $20m. The protagonist pleaded guilty to all charges and was sentenced to 15 years in jail with a non-parole period of six years.

Semi structured interviews were conducted exploring the variables identified in the theoretical construct: personal, situational and contextual factors, moral intention, perceptual bias and moral neutralisations. The aim, as per Eisenhardt's (1989) advice, was not to be fixed on how these variables were related and allow the participants to reflect on the phenomena they had experienced. Triangulation was then applied using data collected from media reports, corporate communications and court reports. The interviews were transcribed and coded using the initial categories of meaning as determined by the causal factor model deduced from existing inter-disciplinary theory.

Levelling the Score – the Ultimate Justification

After the initial coding of data and development of units of meaning, these unit categories were then refined and the patterns and relationships between the categories explored (Maykut & Morehouse, 1994). Once the categories of meaning had been refined, the data was analysed for patterns of sameness and difference. The analysis showed support for the model regarding the effect of personal, situational and contextual factors and the use of flawed justifications. However an addition category of meaning revealed itself as "A sense of moral obligation" or "A sense of entitlement".

The existence of this factor influenced the subsequent actions of the protagonists. In each case study, the key protagonist had a sense of moral obligation to a significant other or group of people. The sense of moral obligation created a moral intent to uphold that obligation. A trigger event then occurred which either violated or threatened to violate the moral obligation. This event then triggered a justification to take action in order to balance the scales of justice. Emboldened with a sense of "self-righteousness" the protagonist typically persisted down a path which often became a "slippery slope".

What becomes evident in examining the raw data is that the sense of moral obligation is personal and the trigger event is also seen from a personal perspective and this in turn clouds the objective judgement of the protagonist such that they seem justified to take action to balance the scales of justice – to level the score.

For example, in case 1 the protagonist had an existing moral obligation to "his" people who had been absorbed into the company that had taken them over. As part of the take-over deal he had been promised by the Managing Director that his people would be looked after.

"I had a number of promises from DL (the Managing Director) in an ongoing sense." "I had my people in the company . . . ."

The initial trigger event was the breaking of these promises.
" . . . he had lost me because he broke his word to me . . . I found the conversations at Board level insulting. . . . He lost all respect. I lost all respect for him."

This trigger event causes the intention to be outcome orientated.

"You solve problems, you don't walk away from problems. I thought I could solve it with DL and I thought he would work with me but it didn't happen. He actually fought me. That annoyed me . . .. Then I was annoyed so then I punished him."

The justification is then flawed. In this case it is an appeal to higher loyalties.

"But I wouldn't have done it if he had kept his word to me. Once he broke his word to me it was over . . . I had my people in the company . . . . "

The common theme that emerges at this point is the belief that the protagonists can "fix it".

"I had a similar problem at GTB [the family company that had been taken over] and I saved it . . . I have all this knowledge . . . I'm uniquely placed . . . . "

What became evident from the case study data is that there is a significant ongoing dynamic relationship between the decisions that are made initially and the subsequent decisions made. Justifications may be made for the initial decision that empowers the protagonist to act in order to balance the scales of justice. However, the violation of other values, principles or laws causes a decay in the protagonist's personal circumstances which in turn affects their ability to make higher order decisions. There is also a significant decay in the personal relationship(s) that triggered the initial threat to the perceived sense of moral obligation.

Analysis of the data enabled the creation of a new causal factor model (CFM) – shown below in Figure 13. This causal factor model was then overlaid across the case studies to determine if it did actually explain how the unethical outcomes were created.

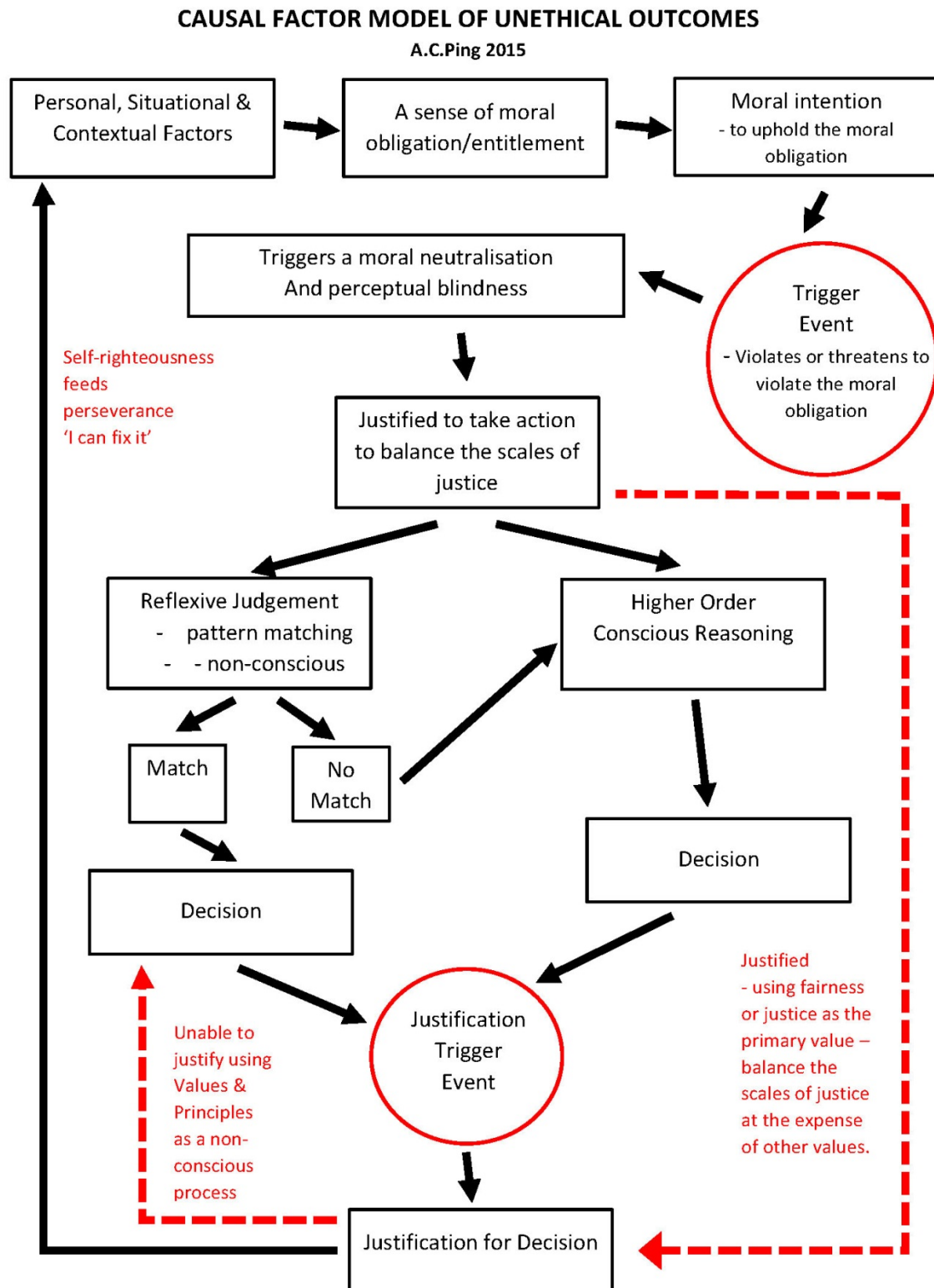**CAUSAL FACTOR MODEL OF UNETHICAL OUTCOMES**
A.C.Ping 2015

Figure 13: Causal Factor Model of Unethical Outcomes

An examination of the cases in view of the CFM reveals the fit to be very good.

In case 2 the protagonist had an older brother who had been convicted of fraud. At the time his brother had been convicted, his father had broken down and had made the protagonist promise this would never happen to him. The result was an existing moral obligation.

"I think that there was no doubt a fear that I was going to let my dad down."

The trigger event was the revelation that the documents the company were using were out of date which caused a major cash flow crisis.

"I was well-known for this (looking after people) because people, they wanted to come and work for our company . . . then, when this pops up, we're basically like, hell no. No way. We're not going down by something like this after everything that we've done, which was a little . . .. That's bad thinking. That's a little arrogant. You're thinking like, oh, we're so honourable that we can't make an error. You're going to end up getting your ass kicked if you think that way."

The reaction is again outcome orientated.

"What was I going to do? That didn't even occur to me. All it was, was I need to fix what the problem is today."

The justification is again flawed. In this case "I have no choice".

"Pay that loan off and just go on with life like that never happened. That was a lot more attractive, not to lose everything over having this fraud in our company. I thought I'll pay that off. I'm talking to myself . . . The right thing to do because what's going to happen if I don't? The buck stops with me. I need to pay that off and take responsibility and then we'll just go on."

Similar to case 1 the protagonist then believes they can fix it and the slide down the slippery slope begins.

"I saw that as if I don't fix all that, if I don't fix it for other people, I'm certainly not going to be okay so I have to make sure . . . I need to take the most direct route . . . I'm now going down the path. Now it's going to be very difficult to turn around."

Case Study: Nick Leeson – Barings Bank

The further question to ask with regard to the CFM is whether or not it has external validity. Does it explain the causes of unethical outcomes?

On February 26th 1995, Barings Bank, Britain's oldest merchant bank, which had been trading continuously since 1762, was wiped out by the actions of a solitary "rogue trader", Nick Leeson who caused losses of £832 million. Leeson was barely 28 years old at the time and his case and the collapse of Barings Bank is worth considering from the perspective of the causal factor model and how it could be used as a teaching case study.

Firstly, was Leeson a good or a bad person and did he have ill intent? Colleagues (Wallop, 2015) at the time remember him as "an ordinary fellow, from an ordinary background, doing an ordinary job" and the lawyer who represented him for many years recalls, "I was due to meet him for the first time, and I remember thinking am I going to meet an arch-villain or some sort of spiv? And I just met a very quiet, calm and straightforward boy from Watford." Leeson himself claimed he failed to realise the cataclysmic effect his actions would have. "Not once did I consider the bank would collapse. I don't think I knew what the bank was worth."

It is fair to assume from these comments that Leeson was not a bad person doing a bad thing with ill intent but rather a good person with reckless intent.

The second point to note with regard to this case is that the massive fraud did not occur overnight, but rather evolved over a six year period (Brennan, 2015). Leeson joined the settlements department of Barings Bank in 1989 and was sent to Singapore in April 1992 when he was appointed to run the back office of the derivatives operation at the Singapore International Monetary Exchange (SIMEX). The first significant event occurred in July of that year when an accounts technician created the infamous "Account 88888" for Leeson at SIMEX, as an "error account", initially intended for inexperienced traders to report their losses. Significantly, the account is excluded from general reporting lines.

In September 1992, Leeson passed the SIMEX trading exam which entitled him to trade on the exchange floor – of note is the fact that his application for a City of London trading license had earlier failed due to an outstanding county court case against him – a fact that Barings withheld from the Singapore authorities.

Almost immediately, Leeson began making large unauthorised trades on the Japanese Nikkei Futures Index and by the end of September had accumulated losses of approximately £6 million in account 88888. By the end of the year, Leeson reported profits of almost £10 million and was rewarded with a bonus of £150,000 to supplement his £50,000 salary. In truth, account 88888 now held losses of £2 million.

Leeson's recollection (Rodrigues, 2015) of that period is clear, "We were all driven to make profits, profits, and more profits . . . I was the rising star." There was also a significant incentive for the Bank to turn a "blind eye", financial markets consultant Dominic Findley says (Wallop, 2015), "Barings should have worked out something was out of the ordinary, because he was requesting vast funding to be transferred to Singapore. But they wanted to believe they had found a magic money making machine."

From the perspective of the causal factor model, there are personal, situational and contextual influences in place. Importantly, what happened next is that the initial unethical actions were not corrected but rather the slippery slope began. By December 1994, Leeson had accumulated losses of £280 million in account 88888 whilst claiming to have made massive profits. In January 1995, an audit official noticed a discrepancy in Leeson's accounting but rather than confessing, Leeson concocted a story about a paper trade between two clients and created a false payment to back up his story. This action prompted Leeson to take even more risks, with larger trades, in an attempt to reverse his losses. However, on the morning of January 17, 1995, a massive earthquake hit Kobe, sending the index into a spin and causing Leeson more losses. Again, Leeson tried to trade his way out of it but instead created more losses that eventually totalled over £800 million.

Reflecting on the lessons learned 20 years later (Leeson, 2015), Leeson says, "I was surrounded by people that could have helped and steered me in a different direction but I thought I was able to deal with the situation and, as we now know, I wasn't. Asking for help and advice early in my time in Singapore would have seen a very different outcome."

Leeson's recollections show how his self-righteous belief that he could "deal with the situation" contributed to the eventual collapse of the bank – they also fit the causal factor model developed in this thesis and show how self-delusion contributes to good people creating bad outcomes. Leeson was eventually sentenced to six and a half years in prison and served four years in a Singapore jail. He now earns a living as a dinner speaker talking about how he brought down Barings.

Conclusion and Implications

Although this case study analysis is limited in scope the initial testing of the causal factor model shows that it significantly explains the process of creating unethical outcomes. As Reynolds (2006) proposed, once an initial decision has been made using higher order reasoning the subsequent decisions follow a sub conscious reflexive pattern matching process. Furthermore this model supports the idea that a justification for a certain type of action is in the mind of the protagonist before the action is taken which was first proposed by Sykes and Matza (1957) in their theory of delinquency.

Of interest is the common concept of "A sense of moral obligation". In the case studies this related to a moral obligation made to "my people", "my father", "the board" or "my community". However, it is possible to propose that a distinction between good people doing bad things without ill intent and bad people doing bad things with ill intent, could be captured by the difference between "a sense of moral obligation" and "a sense of entitlement". Both of these subjective perceptions precede intention and action. A sense of moral obligation can trigger a flawed justification for action that neutralises an intrinsic value such as honesty. For example, the sense that one should not let down one's father could trigger the justification of "I'm doing it for him" hence providing the basis for violating the principle of honesty.

Recent research into the socially averse personality traits of Machiavellianism, narcissism and psychopathy (Jones & Paulhus, 2014) attempted to identify subscales for each trait. With regard to narcissism, Jones and Palhaus identified narcissism as a clash between grandiose identity and underlying insecurity. Narcissistic grandiosity promotes a sense of entitlement (Bushman, Bonacci, van Dijk, & Baumeister, 2003) if that grandiosity is threatened. Jones and Palhaus (2011) concluded that ego identity goals drive narcissistic behaviour. Further research is needed to consider the relationship between a sense of entitlement and unethical outcomes in a corporate setting where highly narcissistic egos are commonplace.

In conclusion, this is significant research with wide ranging implications both for training and education in ethics and also for the prevention of unethical outcomes in business. This research indicates that the creation of unethical outcomes is not isolated to the decision making process but rather is the results of a dynamic interplay between personal, situational and contextual factors. Further, the creation of unethical contexts does not occur quickly but rather results from an ongoing decay in the moral environment.

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Asceticism: A Match Towards the Absolute

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Abstract

Asceticism is a means of realising the absolute, owing to the fact that man does not live in harmony with the ultimate reality, which is observed as a common notion in the world religious traditions of mankind, as they all strive to bridge the visible world with that which is unseen and unknown. Thus, human re-absorption into the divine essence became an ultimate concern. In achieving this spiritual ideal demanded the practice of self-denial of all conventional (physical and psychological) desires. However, to some people, such ascetic practices do more damage than good. The paper adopted the philosophical, historical and comparative method, using theoretical approach, the paper focuses on the meaning and forms of asceticism as well as its central position in different religious traditions – African Traditional religion, Christianity, Islam, Hinduism and Buddhism – Through this research effort, it was established that the practice of asceticism is obligational in some religious traditions, while in others, it is optional and moderate. More significantly is the fact that some adherents of different religious traditions embark on ascetic practices without understanding the meaning and implication of what they are doing, thus, the need to take asceticism in the context of rituals and not a mere religious exercise.

Keywords: absolute, asceticism, religion

Introduction

All religions of the world have a way of propagating their principles and doctrines. Thus, asceticism has come to function cross-culturally to refer to a whole host of activities in the various religious tradition of mankind. "Ascetic practices are engaged in for a variety of ends. Many religious traditions encourage or demands asceticism at periodic or designated times of the religious calendar, usually for purification or preparation for a significant ritual event" (Smith, 2005, p. 345). Most religions have at least some practices that can be deemed ascetic; fasting, celibacy, seclusion, voluntary or complete abstinence from intoxicants, renunciation of worldly goods and possessions, and, in some cases religious suicide.

This principle of asceticism is often demonstrated as a rite of passage in Africa. Most rites of passage or life-cycle rites require some form of self-denial and self-discipline on the part of the person undergoing the rituals (Deezia, 2016, p. 59). In some cases, ascetic practices are employed as a sort of rituals to the deity or powers one is trying to influence to obtained fulfilment of a request, in other instances, asceticism is seen as meritorious in general, leading to or ensuring a good result in this world or the next. Asceticism can also include the cultivation of moral qualities requiring self-restraint and discipline, such as patience and forbearance. One sometimes reads an "inner asceticism", which involves various practices where one learns to be "in the world, but not of it" (Smith 2005, p. 355). Max Weber expanded the meaning of asceticism and included "inner-worldly asceticism". He made a distinction between "other-worldly" asceticism (the practice of monastics and renunciants) and "this-worldly" asceticism (the practice rooted in the vocational ethic of Protestantism). Here the ascetical achievement consists not in renouncing possessions, but in having no attachment to them. Such asceticism consists essentially of spiritual rather than physical discipline. This distinction has clearly provided the ground for an even more fundamental understanding of asceticism (Weber, 2005). Emile Durkheim in his book entitled The Elementary Forms of Religious Life added that:

> We cannot detach ourselves from (the profane) without doing violence to our nature and without painfully wounding our instincts. In other words, the negative cult cannot develop without causing suffering. Pain is one of its necessary conditions (Durkheim, 1961, p. 351).

Sequel to this, the new concept of askēsis, involving training the will against a life of sensual pleasure, was exemplified by the Stoics who advocated the idea of bringing the passion of the body under the kingly command of reason to achieve apatheia – a state of mind where one is not disturbed by the passions (Klosko, 2011). Robert Thurman points out that warriors practiced asceticism in many ways, in order to develop greater strength and prowess to assure survival and victory. He says:

> It seems evident that an important source of asceticism is warrior training, as the life-and-death context of battle is what makes the heroic self-overcoming involved in asceticism realistic. Spiritual asceticism definitionally or essentially must be understood in parallel and contrast with military asceticism, tracing this polarity all the way back into the archaic to the complementary and yet rival figures of shaman and war chief (Thurman, 2012).

However, Wise Sloth (2013, p. 44) observed that asceticism is the standard people set for maturity; but asceticism does more damage than good. For as long as human have been demonising pleasure human have been needless suffering. He added thus:

> Asceticism has failed humanity every time it has been tried. It's going to fail everyone who tries it in the future. Denying our self-pleasure is inherently painful. Demonising pleasure effectively glorifies pains. Even if that's not our intention that's the obvious inevitable result (Wise 2013, p. 45).

To this end, one is tempted to ask the following fundamental questions; what is asceticism? What is the place of asceticism in the world religious traditions? What are the forms as well as the significance of asceticism to the practitioner? In an attempt to answer the above questions, this paper explores asceticism in African Traditional Religions, Christianity, Islam, Hinduism, and Buddhism using the philosophical and historical approach.

Conceptual Clarification

Absolute: This simply refers to an in infinite and perfect being that transcends and comprehends all other beings; it is often referred to as the Ultimate Reality.

Asceticism

Etymologically, the English term asceticism is derives from the Greek askēsis, originally mean "to train" or "to exercise" specifically in the sense of the training and self-denial that an athlete undergoes to attain physical skill and mastery over the body (Smith 2005, p. 153). However, in the context of this study, asceticism may be defined as the practice of self-denial, self-abnegation, self-inflicting pains and renunciation etc., for the purpose of achieving a transcendental goal; it is a conscious refinement of the physical, in order to be more accessible to the influence of a higher forces. In other words, it is the shaping of life in accordance with a particular textual and interpretive religious tradition.

Asceticism is classified into two types, "Natural asceticism" consisting of a lifestyle where material aspects of life are reduced to utmost simplicity and a minimum but without maiming the body or harsher austerities that make the body suffer, while "Unnatural asceticism" is defined as a practice that involves body mortification and self-infliction of pain such as by sleeping on bed of nails. (Wimbush 2002, pp. 9–10). Thus, the assertion:

> Any supra-normal experience . . . reached after long spiritual preparation through the practice of virtues, asceticism and earnest mental prayer. . . . It is agreed to be the highest spiritual state possible in this life (New universal Library Volume NINE, as cited by Nabofa 1997, p. 55).

Religion: In the context of this study, religion could be described as a personal response, or an attempt to seek meaning in life and ones universe. It is an organised and integrated system of beliefs and practices, morals and symbols express out of experience in relation to sacred and profane, feelings and mysteries, resulting to self abasement and absolute dependency upon super being.

Theoretical Framework

This work is based on the thoughts of some of the early Greek Philosophers, such as Antisthenes who founded Cynicism (445–360BC). He holds that the purpose of life is to live a life of virtue in agreement with nature (Mastin, 2008, p. 95). This means rejecting all conventional desires for health, wealth, power, fame and living a life free from all possessions and property, and the Philosophy of Pythagoras, as enunciated in his Neo-Pythagoreanism (6th century BC). He emphasised on the fundamental distinction between the soul and the body. To them, the soul must be free from its material surrounding, the "Muddy Vesture of Decay" by an ascetic habit of life. Bodily pleasures, and all sensuous impulse must be abandoned as detrimental to the spiritual purity of the soul. Thus, God is the principle of good, matter the groundwork of evil (Charles, 2001, p. 85).

From the above philosophical view points, it is suggestive that man is innately evil, thus, the gap between man and the ultimate reality, and for man to commune or be in Union with the object of worship, which this paper terms "the producer and the product relationship" such re-union could only be possible through ascetic practices as a way of self-denial in the midst of abundance and burning off the evil nature.

Forms of Religious Asceticism

Asceticism is seen as an essential component for spiritual growth: It encompasses a broad range of practices intended to illuminate vices and inculcate virtue. The forms of asceticism found in the history of religions are manifold. The most common, however, are: renunciation or restriction of nourishment (fasting), sexual abstinence (celibacy), seclusion from society, renunciation of possessions (or at least restriction to the bare necessities), renunciation of everything that might be conducive to joy and in extreme forms self-inflicted suffering (such as flagellation and self-mutilation) (Fuchs, 2006). In today's usage, the term describes the exercise of renunciation in one's everyday life, and subordination of all daily living to the dictates of that renunciation. However, the methods of ascetics are quite naturally based upon the necessities of habitual life driven by natural instincts. Human beings variously need or want air, food, water, sleep, sex, clothing and shelter, companionship and status, communication, sense-pleasure, and a sense of identity. Therefore, in order to control these needs, asceticism involves the practices of breath retention, fasting, vigil, continence, poverty including nakedness and homelessness, isolation, silence, endurance of pain, and self-transcendence (Thurman, 2012). For the purpose of clarity, this study emphasises the following forms of ascetic practices:

1. **Fasting:** Fasting is refraining from bodily nourishment. It is restraining from food, on limiting its amount. Fast varies according to degree, duration and purpose, a complete fast is one in which all food and liquids are refused, and it is usually tied to private or public religious observances. For example; the Christians fast during lent (40 days). The Muslim fasts during the Ramadan's Lunar month. The African Traditional Religious Priest fast as a form of purification etc.

2. **Celibacy**: This simply refers to total abstention from sexual activities for religious or spiritual reasons. The practice of celibacy is a complex religious

phenomenon. It can be used to extricate oneself from what is perceived as impure, or to distance oneself from the transient world. For the aspiring Buddhist monk or Catholic priest, celibacy appears to be the choice to enter into a new social order and construct a new identity and status. Within the religious sphere, celibacy is one of the most essential features of asceticism/monasticism. This regimen assumes a variety of practices, in particular renunciation of the world and vows of celibacy (Hemthep, 2014). More specifically, renunciation and celibacy is taken as a condition and an ideal for the ascetic/monastic life as one of integrity and incorruption in body and mind. In Christianity Jesus spoke of those who are "Eunuchs' for the sake of the kingdom of heaven (Matthew 9:12), and Paul recommended celibacy as the best way of living, for it enabled a person to be free from distracting "worldly" concerns, especially the household children and sex. In Buddhism, celibacy is a permanent vocation for monks and nuns. In Hinduism celibacy is part of the fourth and final stage-Samsaya-for the Hindu, who is following the Vedic way (Brown, 1988). Islam is generally hostile to celibacy. In African Traditional Religion, some deities demanded their priest to stay off sexual intercourse as it is believed to defile the body, thus sex was a taboo. In fact, there are deities that accept only virgins as it priest.

3. **Solitude/Communal Asceticism**: Solitude refers to the complete withdrawal or renouncing the community for a religions purpose. Such isolation could be to the desert, forest, water front and mountains etc. in other words, the total physical and mental withdrawal from the society, meant that the chances of community sin were significantly reduced, considering that the temptation that lead to sin were removed. For instance, in African Traditional Religion, most shrines were built either at the water front or in the forest where the priest of such deity is expected to live. In Christianity, you have monks and hermits in the near East or modern day Egypt, Syria and Judia in the fertile Nile valley etc. While communal asceticism was in an organised form, in which the entire activities – eating, sleeping and daily worship etc., were regulated.

4. **Yogic Asceticism**: This refers to a form of self-discipline and contemplation to enable practitioners yoked with the ultimate reality. It involves restraints, observance, postures, breaths control, withdrawal of the senses, concentration and contemplation etc. this form of asceticism is very common in Hinduism.

5. **Nocturnal Vigils:** This refers to a conscious, self-denial of sleep; either to a certain time in the night or although the night. During such activity, the practitioner stay awake especially at night for meditation, pray and offer sacrifices for the purpose of achieving a transcendental goal. This form of ascetic practice is not only found in Christianity, as certain rites and rituals are done at night in the African Traditional Religion.

6. **Pain Producing Asceticism**: Pain producing asceticism has appeared in many forms, including exhausting or painful exercises, self-laceration, particularly castration and flagellation. It is believed that they enable the subject to voluntarily become disembodied, and hence experience ecstasy, self-transcendence, self-surrender and so on. For example; "In Christian Monasticism, most monks involved themselves in self-torture. That is, the monks chastised themselves by beating themselves with whips or scourge"

(Gbule & Ugorji, 2005, p. 154). In African Traditional Religion, the Amanikpo Secrete Society among the Ogoni indigenous people, and their painful initiation rites etc.

Asceticism in Some World Religious Traditions

1. African Traditional Religion: This refers to the faith that reveals the religious beliefs and practices of the people of sub-Saharan Africa (Quarcoopme 1987:12). It is the Religion founded and practice by Africans (Mbiti 1991:10), which has been handed down from one generation to the other through oral means. In African Traditional Religion, there is no universally acceptable form of asceticism as observed in other world religious traditions. However, man is seen as the creature of the highest Deity (God), and lives in dual nature; the physical and the spiritual. Though, man lost grip of this spiritual essence because of his evil and profane nature. Thus, to have that re-union, man now see God as too big to approach directly and prefer to approach God through the deities as intermediaries, with the condition of putting off the unholy nature through cutting, beating, piercing, burning, hair pulling and bone breaking etc.

Among the Ikwerre people of Niger Delta, some of ways of receiving information include "Palm reading, mirror gazing, the interpretation of bird behaviour as messages from the spirits; the casting of bones, cowries, or lobes of kola nuts and the interpretation with which they fall as messages from the gods; and divination through spirit possession (Tassie 1992:155 as cited by Olumati 2013:111). In another view a priest who practice solitude to avoid distraction, continuously pour libation to his deity, rhythmically beats a small drum and metal gong, chants eulogies of the deity and finally becomes possessed by it and begins to prophesy (Olumati 2013:111). To maintain such union with the divine, the priest or the diviner is subjected to certain taboos, such as:

> The consumption of certain foods. Others forbid mundane activities on days set aside for communion with deities… the diviner have to avoid defilement of any sort (Tasie, 1992 as quoted by Olumati 2013, p. 112).

Among the Ogoni indigenous people of Southern Nigeria, a young girl does not lose her virginity before her puberty rites, as such rites prepares her for the "yaa" culture (Culture of nudity) which serves as a means of purification. Among the Ibibio, during "Ekong" initiation rites, all other activities including market and farming are suspended. In this case; food, water and firewood etcetera, must have been obtained in advanced (Deezia 2016:63), during this period, the people withdrew from every other activities, in order to commune with their deities.

2. Asceticism in Judeo-Christian Tradition: The usage of the term "Judeo-Christian" tradition here is understandably deliberate . . . because Christianity is probably the only religion that accepted or incorporated the scriptures of another religion (Judaism), and made it part of its own (Wotogbe-Weneka, 2005, p. 194). Thus, Christian monasticism draws the influence of the Judaic tradition. The "Essence", a Jewish mystical sect, was similar to monks. However, Christianity is said they were founded by Jesus Christ; the religion began in the life, ministry, death

and resurrection of the founder, Jesus Christ, and exhibited lots of ascetic practices hence, He commanded thus:

> If anyone would come after me
> he must deny himself and
> take up his cross daily and
> follow me (Luke 9:23 NIV).

Both testaments are rich in example of fasting. Elijah fasted to open himself to God's voice and find direction and strength for himself and the Hebrews. In the New Testament, Jesus was portrayed as one who fasted on extraordinary occasions for the same reasons. It was in this view that Tertullian is quoted to have said:

> Slanderers flesh will go more easily through the narrow gate of heaven; that "lighter" flesh will rise more quickly; and that drier flesh will experience less putrefaction in the tomb (Bynum, 1995, p 41).

In similar view, the Bible book of Luke is quoted to have asserted thus:

> . . . John the Baptist came neither eating nor drinking wine, and you say "He has a demon". The Son of man came eating and drinking, and you say, "Here is a glutton and a drunkard" (Luke 7:33-34 NIV).

It is therefore not an aberration to say that all Christians are ascetics, as up until date, Christians continue to practice asceticism through which they claimed to have gotten divine revelation and so on.

3. Asceticism in Islamic Religious Tradition: The Islamic Religion is known as the religion of "allegiance to God". This simply means that man must submit himself unconditionally to the will of God. History has it that it was when Muhammad was journeying as a trader in the desert that he was inspired to found this religion. This religion according Keith is:

> Far from being a religion built upon reflection on the nature of the world and its causes. It is built upon the prophetic warning of a coming day of judgment, when those who care for the joys of this life only will taste the fire of hell forever, and those who practice compassion mercy and faith in God will be raised to the joys of paradise (Keith 1987, p. 117).

In Islam the word asceticism is called "*Zuhd*". The mainstream Islam has not had a tradition of asceticism, but its Sufi-sects-a minority within Islam-have cherished an ascetic life for many centuries (Pew Research 2012, p. 140). Among the Muslim Sufist, the asceticism that they practice focused upon forms of spiritual excess (staying the night in prayer; doing supererogatory actions, machinations) bodily deprivation (fasting, extensive denial of sleep), and embracing holy poverty. That is to say that the Muslim ascetic was the one who embraced contempt of early Muslim elites, dressing in rags, associating with the poor, and performing base occupation (like herding animals, bloodletting and professional mendicancy).

Contrary to the assertion that asceticism is limited to the Sufist, this study discovered that, in Islam, a fasting person empties his stomach of all the material things; to fill his soul with peace and blessings, to fill his spirit with piety and faith, to fill his mind with wisdom and resolution (Abdulati, 2004). In Ahadith Qudisi; Allah said:

> Every action of the son of Adam is given manifold reward for it, he leaves off his desires and for me and I will reward for it, he leaves off his desire for food for me. For the fasting person there are two times of joy; a time when he breaks his fast and a time of joy when he meets his Lord . . . . (Al-Bukhari).

Allah further said:

> Whoever fast during Ramadan out of sincere faith and hopping to attain Allah's reward, then all his past sins will be forgiven (Al-Bukhari).

In Islam, fasting, prayers and other ascetic practices are considered obligatory, hence Allah is quoted thus:

> Woe unto those performances of Sulat (prayers) who delay their salat prayer from their slated fixed times and those who do good deeds to be seen of man) (Quran 107:4–6)

4. Asceticism in Hinduism: Hinduism is one of the dominant religions of the Asians. It is acclaimed as the oldest religion. The word "Hinduism" is a derivative of "Hindu" which means "India" (William, 2003, p. 268). Based on this fact, it can be said to be the religion, culture and philosophy of the India people. Their oldest writings are the Vedas, a collection of prayers and hymns as the Rig-Veda, the Sama-Vedas, the Yajur-Veda, and the Atharva-Veda. (Omeregbe, 2002, p. 75). Brahman is the concept for the ultimate reality or Supreme Being for the Hindu.

Asceticism in the form of Yoga and meditation possibly goes back to the earliest period of Indian history, the seals depicting a figure sitting in what looks like a yogic pose have been found at site of the Hindus Valley. References are made to long-haired silent sages (Munis) Clarol in soiled yellow garments or naked; who are depicted as a result of their ascetic practices (Smith, 2005, p. 108). The Vedas in some places say that the deities gained their status, or even created the entire universe through the power of their inner, ascetic heat (Tapas), acquired through the rigorous practice physical and spiritual self-discipline and modification of the body (Bhagat 1976).

It is important to note that one may gain this ascetic heat of get united, or get yoked to the Brahman (the universal soul) through a variety of ascetic techniques, including fasting, chastity, and various yogic techniques such as breath control (Panayama), through it the adept can procure tremendous supernatural powers and even the status of a god (Eliade, 1969, p. 100). Some ascetics, for example, stay totally stationary for years at a time or remain standing or in water for weeks on end. Some ascetics subsist solely on fruits, wild plants, and roots, or they live only on grain left in the field. "Among the most famous are ascetics who practice the "five fires" rituals (building four fifth) and "spike-lying" ascetics who sleep on beds of nails" (Haripada, 1973, p. 140). Summarily, Hindus practice asceticism in order for the Atman (Single Soul) to

get yoked to the Brahman (Universal Soul), and when that is achieved they become Brahmatman.

5. Asceticism in Buddhism: According to Buddhism texts, Siddhartha Gautama (C.563–C.483BCE) the founder of Buddhism, was born into the royal family and raised in the lap of luxury. Upon learning of the true nature of the world outside insulated life – a world full of suffering, sickness, old age and death – Gautama left his family and joined a group of ascetics in the Jungle (Smith, 2005, p. 105). The time of the Buddha seems to have been one in the inhabited regions of North India, he experimented with various techniques – ascetic, yogic, philosophical, and meditational – to attain release from suffering and rebirth. Early Buddhist text are replete with references to ascetics of various types, one such text depicts the typical ascetic (tapasvin) of the time as one who:

> Goes naked, is of certain loose habit, licks his hands, respects no approach nor stop; accept nothing expressly brought, not expressly prepared, nor any invitation. . . . He takes food once a day, or once every two days, or the powder of rice husks, on rice scum, on flour of oil, seeds, on grasses, on cowdung, or on fruits and roots from the woods. . . . He wears coarse hempen cloths, discarded corpse cloths discarded rags or antelope hide, or back garments, (Digha Nikaya, as quoted by Smith, 2005, p. 108).

Gautama hooked up with such a group and practiced and mastered the radical ascetic regimen they advocated, to such an extent that he virtually shrivelled to nothing more than skin and bones.

> Then, Sāriputta, when I tried to touch the skin of my belly, I took hold of my backbone, and when I tried to touch my backbone, I took hold of the skin of my belly. Because I ate so little, the skin of my belly stuck to my backbone. And because I ate so little, when I thought, "I will evacuate my bowels" or "I will urinate, I would fall down on my face then and there. Sāriputta, when I stroked my limbs with the palm of my hand to soothe my body, the hairs, rotted at the roots, came away from my body as I stroked my limbs with the palm of my hand, because I ate so little (Nakamura, 2011).

After realising that the path of severe self-denial was too extreme and not helpful in attaining enlightenment, the bodhisattva then rejected the ideals of austere asceticism as well as self-torture. He devised a path balancing extreme asceticism (self-mortification) and hedonism (self-indulgence), which can lead to the achievement of bodhi (awakening). The Buddha called his path the Middle Way or madhyamā-pratipat (P. majjhimā paṭipadā). All the Buddha's essential teachings were given in his First Sermon, "the Setting in Motion of the Wheel of the Law" (Skt.dharmacakrapravartana, P. dhammacakkappavattana), in which he clarified the doctrine of the "Four Noble Truths" (Skt. catvāri āryasatyāni, P. cattāri ariyasaccāni) and the "Eightfold Path" (Skt. aṣṭāngika mārga, P. aṭṭhaṅgika magga):

> There are two extremes, O monks, which he who has given up the world ought to avoid. What are these two extremes? A life given to pleasure, devoted to pleasures and lust; this is degrading, sensual, vulgar, ignoble and profitless. And a life given to mortifications; this is painful, ignoble and profitless. Both these

extremes the Perfect One has avoided, and found the middle path, which makes one both to see and to know, which lead to peace, to discernment, to enlightenment, to Nibbāna.

Gautama rejected the ascetic path and pursued what he called the "Middle Path" between the poles of sensuality and asceticism. Thus, Buddhism denies that such physical asceticism alone can procure for the practitioner the highest spiritual goals. However, Buddhism requires its more serious practitioners not only to renounce worldly life but also to train diligently in self-discipline and self-control through the "eight-fold path" these paths include:

1.   Right to knowledge
2.   Right to intention
3.   Right to speech
4.   Right to conduct
5.   Right to means of livelihood
6.   Right to effort
7.   Right to mindfulness
8.   Right to concentration.

Hence, it is only through the practice of the eight fold path that one can attain the permanent peace and happiness known as Nirwana, which also require the elimination of desire and aversion through self-discipline and abnegations, though moderation.

The Significance of Asceticism

According to Robert Thurman, the ultimate goal of asceticism can be divided into two levels, mundane and spiritual. The former would be asceticism aspiring to states of extreme and permanent pleasure and calm, or some form of permanent oblivion. However, the latter works methodically to achieve the highest goal of the spiritual system, which might be self-absorption in an all-powerful God, as in Christianity, Islam, and Hinduism, or self-extinction in a form of liberation, as in Buddhism (Thurman, 2012). Ascetic techniques in many traditions are also said to bring magical or supernatural powers. So the ascetics naturally become the special mediators between the human, superhuman, and subhuman realms. Consequently, asceticism is essentially elitist and always regarded as superior (Fuchs, 2006).

In other words, the first priority in ascetic practices in that of spiritual formation, which is the cultivation and acquisition of the values and perception of reality that is consistent with the will of the ultimate reality. It is easy to notice from the history of asceticism that it involves the performance of certain acts; fasting, withdrawal from society, silence, physical prayer, and taking certain posture to name just a few. These acts function as signifiers in a semiotic system. Hence, James Clerk (2008) asserted that, asceticism enables the integration of an individual into a culture. Through asceticism, integration into a culture occurs at every level of human existence; consciously and unconsciously; voluntarily or involuntarily; somatic and mental; emotional and intellectual; religious and secular. This means that asceticism functions as a system of cultural formation; it orients the person or group of people to the immediate cultural environment and the unexpressed, but present, system that underlies it. In other words, asceticism significantly creates a new identity.

Sequel to this, the re-envision of the world and of human life in it requires intensive perceptual transformation. In order to achieve a different state, as visualised or pictorialised by a religion (Clerk, 2008), there must be at the most basic perceptual level of the senses, and perceptions and experienced, a form of retraining geared toward the re-envisioned world. Asceticism therefore provides the means for this retraining. It is at the level of ascetical performance that the ascetic experiences and perceives the world differently. The novice who enter a monastery must learn at the outset the differences between, for instance, "eating in the world" and "entry in the monastery; both relate to food, but the significant of the food and its eating will differ, in referent and in content, from cultural domain to cultural domain. At this most basic level, asceticism retains the senses and perception of the ascetic, a retaining based upon the theological culture and its articulated goals. To be specific however, asceticism enhances the following:

1. Healings, purifications, and spiritual rejuvenation;
2. To maintain virtuous life and preparation for divine encounter;
3. To attain enlightenment and self-realisation;
4. To improve both the moral and spiritual content of a person as well as to define the essence of existence and life; and
5. To give strong aspiration for the hereafter, for divine blessings/gifts and protection etc.

Asceticism and Modernity

Modernity has affected lots of ascetic practices, especially in the contemporary society where religious virtue is at its declined. Asceticism is something that the modern world has left behind, together with the Christianity that formerly underpinned it. Asceticism is therefore not disappearing, but transforming into intellectual practices and no longer corporeal sufferings. This reveals a change in emphasis concerning the body in the religious system. Although, the the early Christian religion for instance, rehabilitated the body in comparison with the Ancient philosophies, the condemnation of the body increased gradually until the Middle Ages when, according to Jacques Le Goff and Nicolas Truong, the "body was despised, condemned, humiliated" (Le Goff & Truong 2003).

Thus, the way to practice it and to define it has been changing, and this is contingent on other evolutions of the religious system and of society. The new kind of asceticism which monks are living nowadays is mainly intellectual asceticism. The monastic body is the sublimated body of the resuscitated Christ-it does not suffer any longer but can express emotions, such as love of God. This body communicates with God through prayer, and blooms. At this point, whereas the ascetic body was only a tool to perfect contemplation, this expressive body can become an aim. And finally, asceticism in modern monastic life remains a way to conduct monastic life, but it is no longer directly correlated with salvation.

Monks today do not speak anymore about asceticism. They prefer to speak of spirituality because the term of asceticism gained a negative connotation: "mortification" for instance, is not easily understood in modern society. Monks agree that asceticism is still present in modern monastic life, even if there is a quantitative decline in the main pillars of ascetic practices like diminishing sleep and fasting. But

this quantitative decline does not cause a qualitative decline (Jonveaux, 2012). Ascetic practices are shifting to new habits in term with modernity; for instance, some of the Christian fathers who practice celibacy are "more married than married men" (with traces of unfaithfulness and immorality etc.). Again, monks in some modern and secularised societies need to earn their living. Nowadays monasteries receive fewer and fewer donations and may have to pay taxes and security contributions.

However, the great pillars of the traditional ascetical system are still playing an important role in monastic life, some of which include; fasting, sleeping and chastity etc. Asceticism is still a discipline to reach a more religious life, a renunciation of that which is profane.

Conclusion

It is discovered that in every religious tradition, the goal of all adherents/humans is the re-absorption into the divine essence. This re-absorption has been accomplish through various processes including meditation and contemplation, celibacy, fasting, yoga, self-inflicted pains, as well as complete withdrawal and other ascetic disciplines. Thus, asceticism serves as the gateway through which man experiences and communicates with the ultimate reality. Sequel to this, many founders of different religious traditions have been spiritually enlightened people who had their illumination through such direct experience. But unfortunately, when such illumined individuals were translated into the great beyond, their successors and followers tended to distort the original teachings (practices), and ideas under the influence of political, or economic factors or racial pride or power seeking, self-aggrandisement, inordinate ambition, imperialism or an acculturation drive (Nabofa, 1997, p. 59). Thus, there is a need to maintain asceticism in its ritual context and not just a mere exercise. Thus, the relevance of this study as it explored the meaning of asceticism, its forms and significance as well as the continuity and discontinuity as a result of modern influence.

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The Problem of Dualism: The Self as a Cultural Exaptation

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Abstract:

Human mind has undergone a complex evolution throughout the history of our *genus*, *Homo*. The brain structures and processes that make this mental activity possible have been the result of a series of evolutionary patterns not only biological but also cultural, so it is possible to assume that consciousness did not emerge with the same characteristics in our predecessors. One of the most distinctive features that reflects the conscious image of the archaic man is the absence of a dualistic interpretation of reality. This apparition stem from our analytical mind as an exaptation, commonly assigned to the activity of the left hemisphere which is attributed to play a greater role in linguistic activity.

This paper introduces the idea that, along with other abilities such as linguistic predisposition, spatial perception and pattern recognition, human beings are also born with an innate tendency to interpret and represent the surrounding world in antithetical terms, that is, in antinomies. The idea of Self as an exaptation arises from the cultural development of our species closely influenced by the ripening of our cognitive structures and the evolution of human natural language. This illusory perception of a Self also conditions scientific activity, giving birth to a new form of knowledge that attributes a new value judgment to man and life.

Keywords: antinomies, consciousness, dualism, exaptation, self

The Tao and the Ten Thousand Things

In *Tao Te Ching*, Lau Tzu wrote:

> The way that can be told is not the eternal Way. The word that can be spoken is not the eternal Tao.
> Unnamed, It is the source of heaven and earth. Named, It is the Mother of all things.
> He who is ever without desires sees Its spiritual essence. He who is ever under desire sees only Its limits.
> These two, differing in name, are the same in origin. They are the mystery of mysteries. This is the door of spiritual life (Lao Tzu, 2016, p. 17).

In Tao, the "Mother of all things" is the beginning:

> The Way produced the One; the One produced the Two; the Two produced the Three; the Three produced all beings (Lao Tzu, 2016, p. 47).

As for the Pythagoreans the inception was the *monad* (from the Greek μονάς, "unity"), Lao Tzu conceives Tao as the supreme unity and from it the dualistic division of "heaven and earth" is reached. Thus, unity prevails as the principle of its philosophy, as a sign of tranquility and stability, while duality is difference, ambiguity and uncertainty. That is why each of the "all beings" are composed of contradictory principles that are an essential part for themselves. The "all beings" are born from that division and reach their stillness on return to their root in the extreme void, the Tao. The regress to the origin supposes to overcome this division. In Taoist myth, this division depicts the evolution of human consciousness, endowing man with an analytical, sequential, and logical mind that substitutes myths for reason as the true engine of knowledge.

The Self as a Cultural Exaptation

The idea of Self seems to be conditioned by socio-cultural factors. For some authors, this is not an innate idea, but a notion that has had an anthropological development:

> The idea of "self" *(moi)*. Each one of us finds it natural, clearly determined in the depths of his consciousness, completely furnished with the fundaments of the morality which flows from it. . . . My subject is entirely different, and independent of this. It is one relating to social history (Mauss, 1985, pp. 1–3).

To cite a few examples, in Canada, the *Ojibwa*, an indigenous tribe of nomadic hunters that live in the South of Lake Winnipeg, do not discriminate between human and animals, as well as between myths and reality, or the natural and the supernatural. In Africa, among the *Bantu*, there is no idea of Self as an independent reality but the human is intimately linked to the family and ancestral spirits forming part of a chain of vital forces. In Oceania, the *Gahuku-gama*, a tribe that lives in the Easter Highlands of Papua New Guinea, perceive no difference between the soul and the body, as well as between the individual and the group. The same happens with the *Bimin-kuskusmin*, a community that inhabits in the mountainous region of the West Sepik, which do not distinguish between spirit and matter. In Micronesia, the *Ifaluk* also do not possess such distinction, just as they do not distinguish between the conscious and unconscious mind. As in different societies, different religions promote different interpretations of Self. In West, the distinction between an egocentric Self and the rest of the

world is very accentuated and the individual is seen as a separate entity from the rest of the physical world. On the other hand, in East, in philosophies like Buddhism, the perception of Self is understood as an illusion since nothing is permanent. In Hinduism, the soul, or Self, is not something separate but together with Brahman, the universal consciousness, both constitute the unity of the world. And in Taoism, Yin and Yang are not antinomic principles as they are understood in West but they are complementary.

From an anthropological view it is known that in primitive human communities there was a conception of the subject, or Self, essentially sociocentric, tied to the clan or tribe and, of course, much less egocentric than in modern societies. In accordance with Jung, for the archaic man everything is animated in the sense that everything that is observed possesses a soul (Jung, 1970). This primitive mentality would be nothing more than another way of apprehending the world. It would not be so much to know the world in logical-analytical terms, but to apprehend it emotionally, to unite mystically with it. It is for this reason that in primitive communities it is difficult to trace the contours of Self as well as to define the boundaries between human and nature, which can be so strong as to almost completely annul the differences that sensible perception finds in the various forms of existence.

For Cantoni, both two worlds, the emotional and the logical-analytical one, coexist in the modern man:

> Not only does participationalist and mythical thinking continually penetrate in scientific and rational thought, and rational thought confers theoretical form to myth, but in the end both visions give us, on the one hand, the dry and scaly universe of mathematical and, on the other, the irresponsible universe of emotion and fantasy. Primitive thinking is the historical reality in which the participatory thinking is best concretized and manifested, but our spiritual experience, individual and collective, is still very much moving today in participation[1] (Cantoni, 1968, p. 18).

Although for Cantoni primitive communities were pre-logical, what seems evident if the primitive man was not inclined to face reality in an analytical way but living within the totality of its mysterious forces. Unlike logical reasoning that avoids contradiction, the pre-logical and mystical mind is indifferent to the logical criteria. So, in this mystic world, the boundaries between the subjective and the objective, between dreams and reality, between the material sphere and the spiritual sphere vanish.

The cultural permeability of our species largely reflects our rational and dualistic mind, a capacity that is subsequently circumscribed in our logical-analytical reasoning. In the same way, it is plausible to suppose that this dualistic approach is an innate predisposition that has been accentuated by the development of human natural language, since it is not limited to being a mere tool of communication but also a powerful means of representation of our body and the world that extraordinarily maximize our self-conscious abilities.

Neurognostic Structures in Dualistic Brain

In the second half of the twentieth century, the American psychiatrist Eugene G. D'Aquili found the biogenetic structuralism and postulated the existence of a neurognostic structure that allowed the division of reality by opposition of contraries. D'Aquili baptized it as the

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[1] Translation mine.

"binary operator" (D'Aquili, 1978, 1983) and located it in the lower parietal lobe of the left hemisphere, a region where important aspects of language are regulated (e.g., motor control of the speech apparatus, logical-mathematical information management, verbal memory, grammar, organization of syntax, phonetic discrimination, etc.). According to D'Aquili, this operator tends to ripen in the early stages of the toddler development until cancel the sense of wholeness and perceive the information of the environment in logical-analytical terms. If so, the emerging dualistic reasoning in our phylogenetic trajectory would largely explain our ability to project a mental construct of the world into antinomies which are nothing more than artificial categories constructed by a part of our brain architecture. This leads us to presuppose that language as well as logical reasoning and the symbolic sequencing of mathematics involve dualistic filters through which we interpret and represent our knowledge, and, later, we project outwards our inner representation of the world previously structured in artificial antagonisms. However, before D'Aquili, other contemporary researchers had already suggested that an injury in the lower region of the parietal lobe, specifically where D'Aquili located this binary operator, prevented the subject from forming antonyms due to being the area that regulates associative operations. As Geschwind asserts: "In man . . . this new 'association area of association areas' now frees man from the dominant pattern of sensory-limbic associations and allows cross-modal associations involving non-limbic modalities" (Geschwind, 1965, pp. 106–107).

Another interesting feature of primitive man would be a tendency to perceive specific images along with a certain aversion towards abstract reasoning. For D'Aquili, this type of abstract reasoning would also be located in the left hemisphere, also called the "dominant hemisphere". In primitive man, optical memory would have greatly developed and everything would be expressed in spatial relationships. This spatial relationship may have been rooted in a corporeal experience with the perceptible reality (e.g., counting with fingers, measuring with arms, hands, or feet), and later this scheme of measurement evolved until reached a verbal structure and, finally, a writing form. It is plausible to assume that in primitive man the non-dominant hemisphere was more important than in modern one. The same can be said about language. This would be very poor in logical and conceptual elements, so it would be structured on an asymptotic scheme where the word would not be separated from the object that it designates and making it understandable only through the ostensive gesture that accompanied it. Similarly, it is not unreasonable to presuppose that the travel of long distances by our nomadic ancestors might influence in some way in our sequencing of time within a pre-linguistic stage.

From an ontogenetic perspective, the toddler is not born with the notion of Self. In early years of life, the infant is in an undifferentiated state of fusion with the world, in other words, without self-consciousness. The progress of the sensory-motor intelligence leads to the construction of an objective universe where the toddler appears as an element among the others to which is opposed. As Piaget showed, it is from the age of two or three that subjective impression emerges and differentiates itself from the rest of reality and confronts it (Piaget, 1950). Similarly, there are parallels between the mentality of primitive man and the mentality of the toddler. At least so do authors, such as Simmel who suggests that the distinction between the subjective mind and the world of objects must belong to a relatively late stage in the history of mankind (Simmel, 1950). Piaget reported this in his study of cognitive development in infants and held that the idea of Self is subject to an ontogenetic development and the egoic representation of the environment and the division of reality into antinomies do not develop until reaching a certain age.

At a perceptual and sensorimotor level, the construction of the practical object, so slow and laborious, presupposes a preliminary stage in the course of which there is no delimitation between the subject and the objects. Therefore, no object is permanent and, as a consequence, no subject is aware of itself as a subject: the universe, then, is adualistic, everything that is felt and perceived is put into an alone and the same plane, without distinction between an external world and an inner world (Piaget, 1950, p. 275).

So, this ontogenetic development of Self is not innate but gradually developed. In its first stage, the infant acts driven by subcortical basic reflexes of the stimulus-response type and begins to acquire the capacity of representation of objects as independent units due to an increase in the development of cognitive structures. In this first stage, the infant is not able to attribute mental states to other people and unable to understand thoughts that are different from his own. This capacity develops in the second stage, and it is precisely here when the infant acquires an image of himself, that is, a supposed consciousness of Self.

Thus, for Piaget the ability of the infant to represent himself in space occurs before any form of language use. So, if we assume that logical reasoning and mathematical sequencing are linguistic structures, one might presuppose that logical-symbolic reality derives from language. Since logic and mathematics are linguistic structures that underlie the pillars of modern science it would be inferred that science is based primarily on an egoic consciousness where the distinction of the world in antinomies is present. Facing with a fractal vision of reality, this prevailing dualistic thinking that operates through this epistemic Self could explain why there is a hopeless intuitive desire in human beings to achieve unity in the world. Bringing up the words of H. S. Sullivan, quoted by Hadley: "The emphasized individuality of each of us, our self, is the true mother of all illusions, the fruitful source of preconceived ideas that invalidate almost all our efforts to understand the world" (Hadley, 1942, p. 133).

The idea of Self as a separate entity from the physical world is not present innately in our brain, so this division is something that is acquired gradually due to the capacity for accommodation and assimilation of certain biological structures. In the early stages of development, the sense of Self is not fully developed, being accentuated by the maturation of the ego in the phase of formal operations. The infant acquires the capacity to transcend reality when symbolic reasoning is included in the processes of reasoning and thoughts are not limited exclusively to the present time, since we are capable to develop abstract reasoning and constructing and verifying hypothesis exhaustively and systematically. In the last stage of this phase the idea of Self is born and with it the awakening of an egoic consciousness that imposes a new filter on our perception of the world based on antithetical terms. Moreover, syntax and recursive reasoning also play a crucial role.

Language as the Stage of Dualistic Reasoning

The *Enûma Elish*, a Babylonian poem from the 13th century BC that tells the origin of the world, narrates:

> When the sky above was not named,
> And the earth beneath did not yet bear a name,
> And the primeval Apsû, who begat them,
> And chaos, Tiamat, the mother of them both,
> Their waters were mingled together,
> And no field was formed, no marsh was to be seen;

> When of the gods none had been called into being,
> And none bore a name, and no destinies were ordained;
> Then were created the gods in the midst of heaven,
> Lahmu and Lahamu were called into being (Sanders, 2016, p. 6).

In the Babylonian myth the act of creation is profoundly connected to language. This personification of the word as a creator is also found in other ancestral cultures. In Memphis theology in ancient Egypt, Ptah creates the world with his mind and with the power of the word. In the Psalms (Ps. 33: 6) of the Christian Old Testament: "By the word [*logos*] of the Lord the heavens were made, and by the breath of his mouth all their host", as well as at the beginning of the Gospel of St. John: "In the beginning was the Word, and the Word was with God, and the Word was God". The word appears as a way of creation, as the self-expression of God's own being. Also, in the ancient Vedic scriptures of India, language is considered one of the vital cosmic forces in creation. Prajapati, the Vedic deity presiding over procreation and the protection of life, pronounces the first words: "Om Bhūr Bhuvaḥ Svaḥ", creating the Earth, the Sun and Heavens. But not only in the myths of ancient civilizations the word is found as a cosmogonic and theogonic element. In Micronesia, in the mythology of the Marshall Islands, the islands were created by the word of Lowakalle. In Samoan mythology, in the beginning there was nothing but Tangaroa ordered a stone to split into two, and then the Earth was created. And, for San, a tribe of indigenous hunter-gatherer bushmen of Southern Africa, the supreme God is Cagn that created all things by verbal orders: Sun, Moon, stars, wind, mountains and animals.

In all these myths, language appears as one of the fundamental cosmic forces. The word suggests an approach between man and God as well as a link between the physical and the represented world. This emergence of language is accompanied at the same time by a necessary dualistic view of reality where the act of creation provides meaning to linguistic expressions. But human natural language is not only an instrument for communication, but also a powerful means of interpretation and representation of the world and ourselves. It seems as if these dualistic filters were somehow bound to language, for there is a certain sequentiality in time, just as it exists in language and in conscious thought. This also leads us to presuppose that the concepts of time and space are nothing but fictions driven largely by a growing linguistic development.

As far as language is concerned, the linguistic capacity takes place, so far as we know, in two brain regions: the Broca area located in the frontal lobe, the third frontal gyrus as the motor area of language, and the Wernicke area in the temporal gyrus, at the junction between the temporal, parietal and occipital lobes as the sensory area of language. This linguistic development occupies regions that in the right hemisphere (also called non-dominant) regulate the perception of visual and audio-spatial tasks which seems to be of gestalt nature. The studies conclude that the division of labor in the brain is that the left hemisphere deals with the tasks of verbal, sequential, temporal, digital, logical-analytical, and rational processing while the right hemisphere would be non-verbal, intuitive, emotional. Freud, the father of psychoanalysis, quotes the German linguist Carl Abel in the following:

> Let thus suppose, if such an obvious piece of nonsense can be imagined, that German the word [*stark*] "strong" meant both "strong" and "weak"; that in Berlin the noun [*Licht*] "light" was used to mean both "light" and "darkness"; that one Munich citizen called beer [*Bier*] "beer", while another used the same word to speak of water. . . . In view of these and many similar cases of antithetical meaning it is beyond doubt that in

one language at least there as a large number of words that denoted at once a thing and its opposite (Freud, 1957, p. 156).

And later:

> It is clear that everything on this planet is relative and has an independent existence only in so far as it is differentiated in respect of its relations to other things. . . . Since the concept of strength could not be formed except as a contrary to weakness, the word denoting "strong" contained a simultaneous recollection of "weak", as the thing by means of which it first came into existence. . . . Man was not in fact able to acquire his oldest and simplest concepts except as contraries to their contraries, and only learnt by degrees to separate the two sides of an antithesis and think of one without conscious comparison with the other (Freud, 1957, pp. 157–158).

With these examples Abel seeks to explain the conceptual becoming as well as the division into antinomies of some words present in the most primitive stages of language, suggesting that this antithesis indicates the emergence of a dualistic reasoning in archaic communities. Following Abel, it seems obvious that much of our concepts are born by way of comparison. This can be observed in the early stages of writing where the conceptual attribution of meaning used the so-called determinative images which served as conceptual reinforcement to the characters. In the case of the Old Egyptian, if the Egyptian word *ken* had to mean "strong", the image of an erect and armed little man was placed after its written sound alphabetically; but when the same word had to mean "weak", after the character that contained the sound the image of a small man crouched in attitude of abandonment appeared. Similarly, most of the other ambiguous words were accompanied by explanatory images.

Freud also quotes the philosopher Alexander Bain in the following:

> The essential relativity of all knowledge, thought or consciousness cannot but show itself in language. If everything that we can know is viewed as a transition from something else, every experience must have two sides; and either every name must have a double meaning, or else for every meaning there must be two names (Freud, 1957, p. 159).

In addition, there are few more cases as in Latin, where *altus* means "high" and "deep" or *sacer*, "sacred" and "cursed". Words such as *clamare*, "shout", and *clam*, "silent"; s*iccus*, "dry", and *succus,* "juice". In German, *boden* means both "attic" and "floor", *bós*, "bad", is close connected with *bass*, "good". In Old Saxon we find *bat*, "good", in contrast to the English word *bad*. In contemporary English, *to lock* is in contrast to the German word *loch*, "hole"; and the German *kleben*, "to cling, to stick", with the English word *to cleave*. Also in German, the word *stumm*, "silent", and *stimme*, "voice", etc. Or the German term *mit*, that corresponds with the English term *with*, originally meant both "with" and "without"; or the German word *wider*, "against", and *wieder*, "together with".

Conclusion

The notion of Self is a fiction that human beings tell to themselves in a moment of their cultural development since it becomes decisive in adaptive terms. However, this fictitious Self is not such a real fiction so it implies a necessary division to adopt an egocentric consciousness, a division in which we become into an independent entity separated from the

rest of the physical world. Having a brain structure responsible for the division of the world in antinomies, that is, artificial categories that we use to describe the world we live in, affects crucially our way of reasoning in science. The analytical and logical-mathematical mentality of the left hemisphere is dualistic by nature and has nothing to do with the holistic view that characterizes the activity of the right hemisphere, much more connected with the limbic system. Consequently, this dualistic reasoning is only a small part of the brain activity, most probably as the result of the recent history from the phylogenetic point of view and that serves to analyze the world by dividing it into opposites. However, this materialization of Self that occurs especially in Western culture as an extreme form of individualism is strongly conditioned by the language. This development of Self as something separated from a presumed external reality configures the basic structure of our mental scheme which is generated through the socio-cultural environment where the individual is inscribed.

In any case, the idea of Self pays an expensive tribute to the knowledge given by the dualistic reasoning. It loses the paradise. The human being ceases being part of a whole and happens to become a part limited in time and space, abandoned, alienated from nature, lonely and orphaned. The consciousness of the existence of a primordial unity is divided into two equal and opposite forces, originating a dualistic thought that separates the world into opposite terms: good and evil, Heaven and Earth, and so on. This suggests that in the ancestral memory of mankind there is a desperate attempt to recover that lost unity, a return to the Greek *pleroma*. This yearning remains dormant in natural human language, emerging from myths that place man on his way to paradise.

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