

THE LEGAL POSITIVISTS FRAMEWORK FOR MISRULE IN AFRICA; CHALLENGES AND SOLUTIONS

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ABSTRACT

This paper, “*The Legal Positivists’ Framework For Misrule In Africa; Challenges And Solutions*” is a critique of good governance in Africa vis-a-vis the legal positivists doctrine of absolute sovereignty upon which non-performing African leaders have frequently relied their justification. The particular question which led to this research was how to overcome this legal positivists’ framework for misrule in Africa in order to ensure good governance and transparent leadership in Africa? To attempt this task the paper proceeded through several non-empirical and theoretical methods thereby reaching a conclusion that while the real challenge is that all past and present solutions have clearly failed because they have only tackle the problems of political misrule in Africa without bothering to tackle the corresponding philosophy(the legal positivists’ doctrine of sovereignty)which provides the requisite framework for misrule in Africa. The solution according to this paper lies in adopting a civil society solution. The justification for adopting a civil society solution is that it addresses both the question of misrule in Africa as well as the philosophy(the legal positivists framework) behind the act. Thus, the work shall be significant because this is going to be the first time ever in the history of mankind where Africa is going to adopt a civil society solution to its political problems moreso its problem of misrule and good governance in the continent. Africa has never applied a civil society solution to its political problems let alone the problem of misrule; it has always depended on government. The work argues that the danger here is that, an African government, in the thinking of this research, is a ‘sluggish horse’ who will do nothing on his own to promote transparency in government unless ‘mid-wived’ or ‘flogged’ by civil society pressures into seeking transparency and good governance while in a position of leadership in an Africa state.

KEY WORDS: Legal Positivism In Africa, Good Governance, Challenges.

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Introduction:

The situation which this paper alleges is one in which, since Africa's independence, the leaderships of African states have continued to underdeveloped Africa and to perpetuate forms of misrule and bad governance aided and abated by some legal positivists' doctrine or claim to the "absolute uninterferable" power or sovereignty of the state" and the "absolute sovereignty or political power of the ruler". The situation is one in which African leaders or leaders of African states, now feeling like the Nietzschean "superman", proceed to bend the laws of the state and oppress the citizenry, believing as the legal positivists do, namely, that the rule of a sovereign cannot politically be intervened upon or legitimately be challenged even in the face of misrule. In this way, African leaders now live under the belief that bad leadership is a birth-right; an absolute internal affair in which nations have no legitimacy to intervene even in the face of misrule. Several solutions have been attempted but they have all failed to proffer lasting solutions to the problem of misrule in Africa thereby warranting the solution proposed in this paper, namely, an anti-legal positivists doctrine which speaks of "limited sovereignty" and "constructive intervention" in the mischievous rule by African leaders. This has been so aware that the failure of all 'known' past and present solutions to misrule in Africa have all been facilitated by their one-sided consideration of the problem of misrule in Africa without a corresponding consideration of the philosophy (legal positivism) behind the practice; leaving it therefore a thing which this paper is fully determined to redress given the few failed examples listed here below:

1. The ICJ's Mixed Pursuit of Western Interests and War Crimes in Africa as Aspects of Leadership Misrule in Africa:

The International Court of Justice (ICJ) is one of these failed solutions to misrule and war crimes in Africa whose failure like other failed solutions have been due to the usual one-sided focus on war crimes and other forms of misrule in Africa without a corresponding focus on the philosophy (the legal positivists' philosophy and politics) behind war crimes and other forms of leadership misrule in Africa. The ICJ as an International Court in the Hague – Netherlands, preceded over by Justice Ben-Suda, a Gambian Jurist, and as a court, it is further beset with the problem that it is now being used by the non-African members of the court, namely, France and Britain and in collaboration with the UN and the US to witch-hunt some African leaders rather than in furtherance of apprehension of individuals and government officials who get involved in

war crimes in Africa. Thus, the failure of the ICJ solution to war crimes and general misrule in Africa cannot be excused for its failure to address the philosophy and politics (legal positivism) behind the practice of war crime and other forms of misrule in Africa.

2. UN's Processes of Military Intervention In Africa Without the Commitment to Develop Nations After Removing a Tyrannical Regime from Power:

This was applied in Egypt and Lybia; and following the removal of Gaddafi and Mubarak from power, the United Nations did nothing to put back the citizenry to a level of enlightenment as BBC and CNN did in Apartheid South Africa to enable them to maintain sufficient 'civil pressure' against new forms of leadership misrule by their leaders. In other words, nothing was done to underscore the legal positivists influence on the leadership structure of Egypt and Lybia; and today, despite the good intentions of the UN they have ended up making these two countries some of the most politically unstable countries in contemporary African society, thereby, in urgent need the sort of anti-legal positivists' and humanitarian solution being proposed in this paper.

3. Thomas Sankara's Claims to Military Democracy As A Final Solution to Misrule in Africa:

For Thomas Sankara of Burkina Faso, not quite until his assassination in the 1988 coup d'état which was organized by his deputy, believed and acted out military democracy as a solution to misrule in his country. Unfortunately, he took no time to understudy the deeper philosophy and politics behind the reality of leadership misrule and bad leadership in Africa. Thus, it took no time, and after all, that after his succession by his own deputy, everything he had achieved as a solution went back to its apogee. Before his assassination as a military head of state, Sankara introduced many civil reforms including the changing of his country's name from Upper Volta to Burkina Faso which means "the land of transparency" and the focus of his government was on the problems of poverty, underdevelopment unemployment, insecurity and instability in the country; 'Good Governance' was his watch-word; but he was not guided by a philosophy which fundamentally aided and abated leadership misrule in Africa; hence, he got the wrong result for the right intention.

4. Jerry Rawlings' Blood-Letting Solution to Corruption and Misrule in Africa and its Disrespect for Man's Rights to Life:

The solution attempted by Jerry Rawlings of Ghana was that at the peak of corruption in 1986 and at the peak of the military dictatorship in Ghana of which he was head of administration in the said regime, Jerry Rawlings arranged a public execution in which he assassinated corrupt politicians and members of his carbonate who put Ghana on the wrong map and on the list of African countries under leadership misrule thereby paving a sure way for the present forms of good governance which Ghana now enjoys in all of Africa. Although Rawlings theory has brought immense success as a solution to corruption and other forms of misrule, it remains terribly inimical to man's fundamental rights to life; his solution was militaristic, anti-civil and crude; therefore, it must be replaced by something closed to or better Rawlings effort; namely, a sort of anti-legal positivists power-drunk and a more humanitarian solution which this paper proposes thereby sighting an example with the apartheid situation in the Old South Africa since Rawlings' solution cannot be adopted as a panacea for bad governance in Africa for being an anti-thesis to man's fundamental right to life.

5. Brief Highlight Of The Supposed Civil Society Solution Recommended In This Paper:

Jerry Rawlings and the host of failed solutions here listed just as stated earlier, do not make the whole list; examples and instances of failed solutions to the problem of leadership misrule and bad governance in Africa are clearly inexhaustible. Their common denominator, however, is that existing (contemporary solutions to misrule in Africa), only focus on the problems of misrule in Africa without a corresponding focus on the philosophy and politics (the philosophy and politics of legal positivism) behind misrule and bad governance in Africa. It is against this background that contrary to existing solutions, this paper has recommended a movement away from what it calls the "dote" of the problem, namely, the legal positivists philosophy and politics, to an adoption of an "antidote" to the legal positivists philosophy; the paper has therefore recommended the propagation and enforcement, throughout the African sub-region, a new doctrine; an anti legal positivists' doctrine of 'limited sovereignty' and constructive intervention in the mischievous rule of African leaders as was the case with the Old South Africa where intervention by the international community focused on the future of South African rather than the usual interests of the West and the International Community in Africa be it economic or political.

Main Arguments Of The Paper: From the foregoing, the major arguments of the research have been itemized as follows:

1) This paper argues that every age comes with its own problem and that while it may be said that (remotely) legal positivism is a 21st century Africa's political problem, it is to be said as well that (directly) leadership misrule is Africa's 21st century political problems waiting for adequate solutions

11) However, existing solutions have all failed to adequately address the legal positivists factor in Africa's leadership structure and to stem the tides of misrule in Africa due to their one-sided focus on the problem of misrule without a corresponding focus on the philosophy behind the practice.

111) With this it became imperative to adopt a new solution, namely, a civil society solution since it proves theoretically capable of addressing both the problems and the philosophies behind the problems.

1V) the research argues that this new non-governmental civil society based solution must shun all forms of military elements and be completely constructive and civil. It is not expected to constitute itself into a parallel government or another political party for the purpose of opposing the government of the day.

V) It is from this that the research concludes by submitting that when this civil society solution is judiciously and democratically applied, it has the capacity to overcome both the legal positivists' influence on Africa's political consciousness as well as put an end to bad governance and political misrule in Africa.

Definition And Clarification Of Relevant Terms

a) **On the Concept of "Sovereignty" as it Relates to "Legal Positivism" and "Leadership Misrule" in Africa;** Leadership misrule in Africa is strongly rooted in the legal positivist's *cum* African leaders' confusion between "state powers" and "state sovereignty". Clarifying the point, the *Online* concept, "*Sovereignty*" The Wikipedia, Nov. 6th, (2013), has distinguished two aspects of the concepts, namely, sovereignty as "state powers" and sovereignty as "the political powers of the ruler". The concept goes on to speak of "state sovereignty" as freedom from external (colonial control) authority. But this does not imply or mean the same thing as freedom from external intervention, especially, in the face bad governance or political misrule. This is where both the legal positivists and their disciples, namely, African leaders all got it wrong, and they have adequately been faulted in this paper. It is

precisely this point that the research is positioned to address, namely, civil society intervention with the support of the global community in misrule and bad governance in Africa.

b) Leadership Misrule And Its Philosophy and Politics in Africa;

1) Under Successive Military *Cum* Rebel Rule;

Military misrule in Africa just like Civilian Misrule in the continent, has as explained in this paper, been aided and abated on all fronts by the legal positivists' arrogation of absolute powers to the sovereign ruler thereby empowering the leaders to rule discretionally as it has been the case with all military and rebel rules in Africa. It is to say for short that the legal positivists' contagious culture of misrule under Successive Military Rule in Africa has taken one or two of these processes, namely, as a rule by Former Rebel Leaders or by Power-Drunk Military Generals in the continent; And in the characteristic style of the legal positivists' philosophy, these 'absolute rulers' leaders have done no better than underdeveloped Africa and misrule their respective countries of occupation by employing the barrel of the gun to perpetuate their stay in power. Examples of Gaddafi, Mubarak, and now, the absolute and brutal rule by the self-appointed rebel leader, Michel Djotodia as President of Central Africa, are a few cases to be sited under successive military and rebel rules in the continent.

2. Under Successive Civilian *Cum* Eye-Service;

Under successive civilian rule in Africa, what has consistently determined whether a particular regime is under a leadership misrule or not, has been the nature and manner of political management of what is to be seen and called the national problem of the country under the said political regime. Thus, in Nigeria, the repression of Boko Haram Insurgence rather than seeking a genuine solution to the problem has resulted in forms of underdevelopment as well as fear and terror describable in terms of leadership misrule in the country. In Swaziland, its cultural monarchy has traditionally allowed the control all political powers of the state to the monarch as if they were his birth rights. It is to say for short that like all military and rebel rules in Africa successive civil rule in Africa have similarly been centered around the legal positivists' manipulations, its politics, philosophy and doctrine of absolute sovereignty, especially, in their scramble for the resources of Africa.

3) On The Concept Of "State Intervention In Other States": -

The philosophy and politics of intervention by one state or by a group of states in another state in Africa has always taken two forms one of which is civil and the most predominant form

being that of military intervention by the international community. According to the Online English Mini Dictionary, the word “*Intervention*” means “getting involved in someone else situation with a view to changing or improving the situation on his behalf. As the Online Article “*The Military Claim Right to Intervene and Take Over Power In Order to Stop Ethnic and Regional Insecurity*”, Exploring Africa, PPJ(2013), military intervention has always claimed its right to intervention in Africa’s problems for reasons of the ethnic, economic, and political redress of political instability in Africa. But the current situation with Lybia and Egypt, have proved to the contrary that military intervention, once it is not a civil intervention, only render worse than the situation before military intervention the fate of the affected country. It is therefore clear from the foregoing that to redress this predominant Africa’s culture of military intervention, calls for an opposite solution, namely, a civil ‘non-military’ intervention in the face of misrule or bad governance in Africa.

c) **Legal Positivism:** The philosophy, the politics and influences of legal positivism on Leadership Misrule in Africa Is One Factor Which Cannot Be Down-Played; Yet, More than this, the philosophy which has here been called legal positivism is as a whole based on four general principles.

1) Removal Of Ethics From Politics To Enable The Philosophy Justify Tyranny And Other Forms Of Misrule; The *first* is the removal of ethics and morality from politics to allow the state secure absolute powers and to delimit the limits of the powers of the sovereign ruler. As Leslie Green puts it in her article, “*Legal Validity And the Sources of Law*”, The Wikipedia, last modified, Oct 22nd, (2013), explained that ‘for the legal positivists whether a society has a legal system or not depends on the presence in the state of certain structures of governance based not on the extent of the law of the state. Leslie was here alleging that the leadership structures which make the world go round are what for the legal positivists the unlimited powers of the state and the absolute right of rulership of any sovereign that legitimately comes on the throne. Contrary to the legal positivists, experience shows that we are told from a series of adages that power corrupts and that absolute powers corrupt absolutely. So, how could African leaders seek the legal positivists’ disavowal of ethics in governance without having a problem with leadership misrule?’

2)The belief in the utilitarian principle that all human beings naturally believe that political tyranny is still better than total political chaos: The legal positivists have as reflected in Jeremy Bentham's analysis in his *Principles Of Morals and Legislations*(1988), justified the first criteria with a second criteria, this time, a utilitarian argument that 'alter all said and done' the belief among all human beings is that a political tyranny is still better than a state of political anarchy or political disorder. Legal positivism believes that the worse kind of misrule, including all their barbaric manifestations in Africa could be justified irrespective of the bad image this gives to the continent. So long as the sovereign intends to effect "order" from "chaos", and whether this be real or imaginary, is considered to be a "utilitarian" reason or a "practical" statement of excuse for justifying any kind of misrule . But this justification of bad governance is highly flawed, yet, it is condoned by the legal positivists.

3) The Legal Positivists See Both The State And The Ruler As A Virtuous Man And A Political Figure Without Moral Fault Heice Cannot Be Criticized: Aware of obvious flaws, the legal positivists have proceeded to produce a cover-up argument in the third criteria maintaining that after all said and done a ruling sovereign and indeed the political state is by every standard a virtuous men; a figures without moral fault, an infallible political authority, a man in whom no moral fault could be found, even in the face of abuse of power and other forms of leadership misrule. The legal positivists and their African counterparts believe that even in the face of gross misrule the leader and the legal positivist state are to be applauded instead when found to be promoting political misrule so long as they are able to justify their claims to bad leadership in the utilitarian pursuit of "political order" out of "societal chaos". The reason which according to Bentham's *Principles of Morals and Legislations*(1988) the legal positivists are free to pursue even the worst form of tyranny in the state is as he puts it thus that "men are psychologically orientated by their very nature to believe that even the worst kind of tyranny is still better than a state of political anarchy".

4)Legal Positivism Believes That For The Ruler Or Sovereign To Be Valid And Legitimate, He Must First Of All Be A Legitimate Sovereign: This is because building upon this foundation the first three foundations here provided, the legal positivists have duly added a fourth criteria via Bentham's *Principles of Morals and Legislation*(Ibid), namely, the position that for any ruler to be accorded his true position as a legitimate and valid sovereign;- he must be in himself valid sovereign. Should he have been a ruler who took over power through some

unconstitutional means, then, he is to be seen as a valid sovereign from the moment he has been able to establish order out of chaos whether this be done by force of arms or civil diplomacy.

Critical Consideration Of Some Legal Positivists' Thoughts

Jeremy Bentham

Jeremy Bentham's *Of law And Morality*(1995) has in Adaramola's *Jurisprudence*(1996), explained that as a legal positivist, Bentham first of all, began his account of legal positivism by giving an empirical account of the state and the law as an assemblage of signs declarative of a volition conceived or adopted by the sovereign in a political state concerning conduct to be observed in a certain case by a certain person or a class of persons who in our own African case are and are supposed to be subject under the powers of the states ruled by African leaders. Bentham is here not describing a 'constructive African society' but a colonial state ruled by a 'dictatorial leader' to which the citizens compulsorily owe habitual obedience to their governors or president or to any other institution on whom power is reposed. According to Bentham in his *An Introduction to The Principles of Morals and Legislations*(2008), 'it is the unquestionable obedience of the subjects which shall henceforth distinguish a political state from a 'natural society', be it African, Western or Chinese society; whether in its military or civilian forms. Bentham like Mill is a utilitarian and he integrates his utilitarian principle into his general conception of the state and into that of his understanding of law according to which Bentham explains that 'in life, nature has put all of mankind under the governance of two masters'; that of 'pain' and 'pleasure'. 'Pain' and 'pleasure' are seen by Bentham as imperatives which command human actions, determine what is right and wrong; and thereafter, states the parameters upon which the combine forces of cause and effect are fastened. Hence, in a typical fashion of a legal positivist or a power-drunk Ruler governing a state as a single ruler or in concert with others as a constituted assembly; 'pain' and 'pleasure', in the thinking of Bentham, do in fact govern all that we do and say in the political state; for a man may pretend to know his natural rights as well as the policies and laws of the state, but at the same time, it is the principle of the greatest happiness of the greatest number which constitutes the foundation and the fabric upon which any science of rulership of the state, or the science of the law of the state, or the science of the ethics and the conduct of reason, etc is to be found.

The 'greater pain' according to Bentham's *Introduction to...* (2008) In Njoku's *Studies In Jurisprudence* (2001), would arise whereby a legitimate sovereign; a monarch or a president, falls short of "maximum use of power or force" and allows the state to run into "anarchy"; The position taken by Bentham is that "absolute power" and the use of "force" are but necessary evils that must be accommodated for their utilitarian value of creating political order and stability in society in the far long run. Thus, having solidly approved of "dictatorship" of the state through his utilitarian excuse of seeking peace and order as the greater happiness for which men would naturally sacrifice their interests in "justice" to achieve; Bentham proceeds to make a second assertion in which he argues that law as we know it, differs. Here, Bentham seems to be justifying many things including Europe's transfer of colonial dictatorships from the West to the African continent. Bentham argues that for any state to be seen as "democratic", then, what amounts to being "democratic" is that it must have passed one or both of these utilitarian tests. First, it must ensure that the sovereign on the throne is a legitimate sovereign, and second, that it is able to produce an orderly state based on the principle of the greatest happiness of the greatest number. Bentham's conception of the state as a general rule has no place for respect for people's right. But it only has space for respect for the laws and policies of the state; yet, it does it embrace the principles of democracy and natural justice. In Bentham's utilitarian disrespect for rights the legal positivists support for misrule and bad governance is certified. This clear case of obsession for power as a foundation for politics and statehood in Bentham and his legal positivists' counterparts makes the case worse for the African leaders who are already influenced by the philosophy. Bentham argues that the best possible approach to be adopted by the state is to outline punitive processes of appropriating punishment to forms of disobedience to the laws and policies of the state. Thus, in the teaching of Jeremy Bentham "democratic rule" does not consist in vying for justice or showing of respect for the natural rights of citizens but in remitting equitable sanctions and commensurate rewards for equal actions undertaken.

Bentham on this point, *An Introduction* (1988) as held in Adaramola's *Jurisprudence* (1996) held that, 'in all cases, punishment adopted for infringement of the laws and policies of the state must be commensurate with the wrong committed or otherwise proportional to rewards meted out. This, for Bentham is what a democratic institution would do, and it is what should constitute the principle of morality in politics if at all morality be spoken of in politics; This for Bentham, properly speaking should constitute the principle of justice, the rule of law; and above

all, the political justice and the legal eminence that must be adopted by the dictatorial state towards its citizens. Accordingly, such elements perceived and called by the name of the natural rights of citizens are nothing other than “*political metaphors*”; for right, properly so called, are created by the state and this being in issue it is the state(real law) which gives rise to real rights; in this way, the state being a virtuous man is always justified in inflicting terror on the citizenry.

John Austin

Bentham whom we have just considered wrote generally about the state; he wrote generally about society; and about man-made laws. However, he left a loop-hole which the efforts of Austin and the other legal positivists who came after him improved upon. This loop-hole was that Bentham never categorically defined either what constitutes the political state or what constitutes the law of the state; In this way, John Austin’s entry into the legal positivist philosophy became that of providing the legal positivists with a definition of the state and the kind of law which Bentham before him set forth for application. Austin went on to divide all of law into four different classes: divine law, natural law, positive morality and law in the figurative sense; to enable him distinguish and clearly define a political state and to state clearly what the law of the state should consist in. The first two classifications for Austin do not constitute any law by which a political state can be guided in its political operations; they fall within a separate domain, namely, the domain of positive morality observed by Churches. In other words, positive morality, for Austin, divine law, and law in the figurative sense; are not the subject-matter of the state; they do not form part of the control mechanism of the political state unless as a means of social control. The criticism here is that having done this, Austin still falls into the same dictatorial trenches which all legal positivists before him fell into as Austin proceeds to define law as a ‘command of the sovereign backed by sanctions, rewards and punishment’. By so doing, the citizens are politically incapacitated; they are made to either have a passive say or to have no say at all but habitually obey without complain the dictates of their ruler and the laws of the state irrespective of how mistaken they may be. This for Austin, is how a political community should be defined; namely, by imposition of the ruler on the ruled. Here, the question which Austin covers under the carpet is that the state which he sees as a democratic personnel or a virtuous man is but a monarch and a dictator by all standards; a threat to peace; a terror and a mischief-maker. It is for this reason that M.I, Elegido in his *Jurisprudence*,(1985), has argued that ‘Austin’s theory of state and his idea of the law leaves us speaking more accurately of some

Western colonial and military parameters while also alleging in it the Sovereignty of the British Queen, the kind of Supremacy found in the House of Lords and the General Infallibility of the State under Colonial Rule

Hans Kelson

Unlike Bentham and Austin, Kelson in his Pure Theory of Law “objected to all previous accounts given by Bentham, Austin and other legal positivists because he(Kelson) felt that other legal positivists, especially, Austin and Bentham introduced into their accounts of legal positivism some measures of justice and other political bias which diminished the superiority of the state over the citizenry; Kelson’s position was to suggest a dictatorship which was more drastic than those of his predecessors. As Kelson sees it in Njoku’s *Studies*(2001), ‘the political state and by that fact the law of the state must consist in something which empowers the state to monopolize the use of ‘force’ for the purpose of creating political order in the state. This meant for Kelson the removal of every foreseeable encumbrance from state; and these encumbrances he sees them to be those of; morality, ethics, sociology, political sentiments, and above all, theological bias. Every state and every law of the state, if it must be considered as reliable, must for Kelson be relied upon by the state for the purpose of monopolizing the use of ‘force’ not dialogue on the; such a law must consist of a hierarchy of norms the hardest of them from which every other norm or law would subsequently be drawn from Kelson calls it the “ground norm”; Here, the nation’s constitution becomes for Kelson that oppressive tool for dictatorship in the hands of government; Kelson does not leave room for the constitution or the “ground norm” to be used positively to guarantee the rights of citizens but negatively to protect the state and its rulers politically.

This amounted to intensification of issues as Kelson even goes on to argue against Bentham’s attitude of equating law with justice since in his(Kelson’s) thinking such attitude made Bentham to justify a certain state of affairs, namely, the greatest, furthest or long-run happiness of the greatest number as the basis of law and politics; Kelson argues against Bentham’s position that even bad laws are to be certified as good and necessary for purposes of giving rise to political stability and order in the state; Kelson sees the opposite as justice and justice for Kelson is not necessary since for him all there need to be is a “pure theory of law” which empowers the state with a monopoly of force for effective control of its citizenry; The kind of law which for Kelson can empower the state to its political end is for Kelson a value

charge question; a 'normativists' concern; a question of what the norm or the law of the state says and not what the ethical critics of the state think it should consist in Njoku, *Studies in Jurisprudence*(2001) 41). What a political state requires for Kelson is not the ethical judgment of critics but a 'pure' and 'forceful' theory of law which creates order and overcome anarchy in the political state. It is to be said here that with Kelson's Pure Theory of Law, the hope for justice and democracy in post-independent Africa is finally crushed and made impossible, yet, the challenge to democratize contemporary African society in line with global political realities loom even larger.

Africa's Experience of Legal Positivism and Leadership Misrule in Pre-Colonial Africa:

Prior to colonial rule in Africa, Africa was a self-governing entity in which the commonest form of leadership was communal rule. This does not mean that tyranny and other forms of legal positivists' doctrines were not in existence; Wherever the legal positivists' forms of misrule were in existence, they were all of them in their less developed and less modernized forms compared with what is in vogue today. According to Sabelo.J. Ndlovu's *Who Ruled By The Spear...?*" *African Studies Quarterly*, Jan, 8th, (2012), 'a concept like dictatorship in pre-colonial Africa would be too simplistic to compare with the Eurocentric[legal positivists] expression of dictatorship as we have it in today's society'. Meanwhile, the Online Article, *Exploring Africa...*" *Public Philosophy Journal*, Feb, (2013), argues that pre-colonial African states were by every standards, pluralistic by nature, being in issue that simplicity of leadership here did not mean that Africa ran a monotonous or single-bread style of leadership or that there were no forms of misrule at the time. Clarifying this position the article goes on to expose a diversity of forms of pre-colonial African systems of governments 'summarizable' under what he termed 'three broad forms of pre-colonial governments' as here indicated.

1) According to this excerpt, the first among Africa's forms of Pre-Colonial governments was *The Cantralized Kingdom of Non Independent States* where the King or the Monarch, like the legal positivists power-drunk ruler in modern day Africa, willed absolute political authority synonymous with the legal positivists' and most contemporary African leaders' conception of the art of statehood. The article goes on to highlighting the point that these forms of pre-colonial African states were traceable to settlements such as the Nubian Kingdom in the North East Africa where the king willed unlimited powers over its non-independent communities of Axum and several other vassal states within the region. It goes on to list the

Songhai Kingdom in the West African sub-region and its political autocracy over its non-independent states of Ghana and Senegal; it gives a third example with the Zimbabwe or the old Rhodesia before the advent of Shaka Zulu in Southern Africa.

2) The second form of Pre-Colonial form of government as experienced by African before colonial rule as the article goes on to classify it was *The Centralized Kingdoms of Independent City States*, where independent city-states fielded into the central administration of the kingdom a council of advisers who ruled jointly with the king in the central kingdom; and with this; forms of tyranny and other forms of legal positivists as well as kinds of contemporary African forms of misrule were democratically disallowed through forms of ‘checks and balances’ between the king and his council of advisers; and according to this excerpt; examples of such pre-colonial democratic states were to be found among most Nigerian Kingdoms; namely, the Oyo, the Ibadan, the Ife, and the Benin Kingdoms; where power was not only divulged but decentralized from the king; Thus, when Africans boast today and strike their chests claiming that corruption was not a part of pre-colonial Africa and that corruption and misrule are infiltrations of successive forms of colonial misrule, they are myopically looking at only this second form of Africa’s pre-colonial state; forgetful the centralized kingdoms of non-independent states where dictatorship and other forms of corrupt and mischievous rule were celebrated.

3) The third form of Pre-Colonial Africa’s forms of leadership as the foregoing article classifies it is *the Decentralized or Stateless Society of Persons*; one which although was organized like a true kingdom had no real king or sovereign in the strict sense of the word but was, however, ruled by either a group of successful men, a set of elites, a group of local chiefs; men who have distinguished themselves in the ways of the world. This was the case with the pre-colonial system of warrant chief; and it was predominant among the Igbo Kingdoms of Eastern Nigeria Within this form of pre-colonial system of government or leadership, the difference between good governance and bad governance. The difference between development or underdevelopment; tyranny and democratic rule etc; depended solely on who was on the throne at the time? So was it that whenever power-drunk council of chiefs took over power, the people did not expect fair and just approach to leadership of the state. Thus, this paper is in complete agreement with the author’s exegesis. Africa truly had a diversity of expressions in its pre-colonial experience of leadership in which misrule and other elements of legal positivism would be said to have existed largely in their pre-modal and undeveloped forms.

Africa's Experience of Legal Positivism and Leadership Misrule in Africa Under Colonial Rule; As Africa moved from its pre-colonial era to colonial rule by the West, the continent came upon a new; somewhat modified kind of system of leadership which gradually introduced the legal positivists philosophy and politics into Africa's political CONSCIOUSNESS. The resultant effect was that Africa's pre-colonial systems of leaderships were replaced by a new and single system of colonial rule which, in the typical style of legal positivism, absolutized powers of the ruling colonial masters and theory home states over its African colonies and kingdoms. And to have this dream materialize, The Online Article, *Exploring Africa...*, as captured in Public Philosophy Journal, Feb,(2013) explains that 'colonial rule was wherefore centered around these four sets of authoritarian regimes, namely, company rule such as the rule of Britain's Royal Niger Company over the Upper Niger which is now the Middle Belt region of Nigeria; direct rule as introduced directly by the colonial masters on theory colonies; Others were indirect rule or the rule of Africa through its chiefs and while settlers rule as it was introduced in Zimbabwe before its independence in the 1980. The view of this excerpt is that it did not matter what form of government or leadership the colonialists applied out of the four(4) systems listed here in, all colonial systems; whether here stated or not stated were as described in this article and supported in this paper, undemocratic and repressive ; it neither respected the rights of its African citizens nor their views; decisions and policies were made without consulting its native African population; and like contemporary misrule by African leaders, even when the people were aggrieved, there were no clear mechanisms put in place for citizens to express their grievances and be democratically addressed by the government on the thrones. Rather than address the problems of the colonies and protectorates, colonial rule, like their legal positivists counterparts were only interested in acquisition, maintenance and control of power over its subjects and nothing more.

Africa's Experience of Legal Positivism and Leadership Misrule in Post-Colonial Africa;

Post-Independent Africa was initially apt to adopt a multi-party system against the legal positivist's colonial forms of absolutization of powers by African leaders. Yet, this democratic gestures or demonstrations of good governance soon fiddled out as renegade rebels and power-drunk military generals plunged Africa into the present phase of leadership misrule and bad governance. This was done through civil wars and successive military rule. Though civil wars and military rule have only contributed to misrule and cannot be said to be the cause of misrule

in Africa. It cannot correctly be said that Africa is where it is on the leadership rating scale because it inherited a weak political system from their x-colonial masters, being in issue that the legal positivists tendency is in all(most) African leaders in its contemporary settings; to maintain and system their interests in power even when this act amounts to leadership misrule. The reality of post-independent experience of legal positivism and its appreciation of misrule and bad governance is as The Nelson Mandela's Memory Centre, The Mac Maharaj has captured it in its archive, The O'Malley Archive, July,(2013), that 'all African countries who, by facts of time, gained their independence in the 1960(s) started on the right track by adopting a multiparty system as a way of promoting good leadership on the continent. But by the end of the 1960(s) only a handful of these countries still maintained this gesture. According to this account by the Mac Maharaj Centre, 'things went worse in the sense that by the 1970(s) half of these independent countries in Africa had military governments by virtue of rebel activities and military coup; Not of these, civilian rebels and military rulers did no less than remove elected civilians and former nationalists leaders at the time they were still struggling to build a democratic Africa from the rubbles of a just concluded tyranny of colonial rule. The rebels and the military did constantly argue that their reason for cutting short these early patterns of good governance in Africa was to strengthen the continent economically. Yet, they ended up re-introducing the legal positivists principles of maximum rule into post-colonial African states; a thing which the nationalists fighters wanted it dead with the death of colonial rule in Africa.

Experience of Legal Positivism and Leadership Misrule in Selected African countries;

a)Sudan Under Umar Al-Bashir and His Predecessors in Title; The current president of Sudan, Al Bashir took over power in 1989 promising to make Sudan a safe heaven. However, throughout his 24 years of military dictatorship Bashir has only been able to plunge the country into years of civil war with rebel factions over illegal possession of diamond sites. The situation according to Abdul Kudus, The *Digital Online News*, Sep. 28th (2013), 'Bashir has perfected his leadership misrule this year's September following his imposition of a controversial subsidy policy in Sept, 2013. The policy has up till now made Sudan one of the most politically unstable country in Africa. Sudan had a good rating 24 years back. This was before Bashir's rule as Head of State in Sudan. Within the last one year or so Sudan has fallen to the bottom of UN Development Index; According to Abdul Kudus Sudan is nowhere on the chart in terms of education, health and income above all, it now ranks 173 out of 176 in terms of transparency as

well as public sector corruption and good governance. Bashir is as power-drunk and discretionary as facts paint him to be. Yet, he rears no fear of a looming feeling sufficiently protected by the legal positivists doctrine of sovereignty. This is where Umar Bashir all got it wrong, and the paper has hence becomes relevant, though as a theoretical suggestion, in its call for enforcement of the doctrine of limited sovereignty and constructive intervention in Sudan and elsewhere in Africa, especially, in the mischievous rule of all African rulers. But as a civil society solution, there is need to keep government as far as possible being in issue that government as part of the beneficiary of misrule cannot be expected to fight against himself.

b)Eritrea Under 34-Years Leadership Misrule of Isaias Afewerki in Eritrea; Isais's 34-year rule over Eritrea since 1979 has done no less than underdeveloped the country, made famine a permanent feature of the country and abuse of human rights a part and parcel of his administration. In the explanation given by Nharnet, News, The Official Website and Online Archive of Eritrean opposition party, The Eritrean People's Democracy Party, EPDR(2010), 'thousands of Eritreans now cross into neighboring Ethiopia in search of food having been displaced by violence and threats. And in another excerpt, *Human Right's Watch Report, 2012;Eritrea* 'under the current regime by Isaia Afewerki, words like torture, arbitrary detention, restriction of freedom of expression, repression and rule by fiat have become daily clichés'. The interests of the government, like that of the legal positivists, is to sustain the powers of leadership, and in an event of any contrary views by the citizens the next option for Afewerki has been to behave like his legal positivists mentors and is consequently justified in continuing his repressive rule even at the expense of the bad image which his country carries and the permanent hunger-strike which his leadership misrule and abuse of human rights have incurred for the country; all that has inspired Afewerki as a leader has been his legal positivists deepest intent of maintaining political order and securing for himself more and more political powers as a ruler.

c)The Nigeria State Under Obasanjo, Yar'Adua and Goodluck Jonathen: Between President's Obasanjo, Yar'Adua and Goodluck Jonathan, the link between bad governance, insecurity and slow development has become a thing of constant celebration rather than a monster to be eliminated. This is seen against the background of Goodluck Jonathan's worldwide interview with America's Media News, CNN News, (Online), Jan 25th,(2013), denies the fact that the *Bokon Haram* insurgence in his regime and the Niger-Delta Militants under Yar'Adua

and Obasanjo's regimes as well as the slow pace of development in the country together with various forms of political instability in present-day Nigeria are not the direct consequences of poor leadership styles of the three leaders here mentioned. How, then, can Mr. President's denial be justified against the overwhelming evidence in Nigeria proving a direct link between, especially, the slow pace of development since these three leaders took over the reigns of power on May 1999; and the *Boko Haram* insurgence being wide-spread evidence of leadership misrule, especially, in the current Jonathan's administration. Most people are of this view in Nigeria and have not let their opinion on the connectivity between Boko Haram, leadership misrule and underdevelopment in the Jonathan's administration be swayed easily.

d)South Africa Under Mandela, Mbeki and Jacob Zuma in South Africa: With the current president, Jacob Zuma, South Africa is fact returning to the violent days of Apartheid rule. According to Makhudu Safari, The Star News, July 5th, (2013) 'Zuma's predecessors, Nelson Mandela and Thabo Mbeki, all had national problems; and yet, while Mbeki effectively performed under his HIV/AIDs government and Nelson Mandela before Mbeki fared well under his government of reconciliation; Zuma is faced with the problem of organized labour which he has inefficiently continued to address by means of intimidation, harassment and killing of protesting min workers. In the words of Zolek Zolekandaya, The Word Press Internet Blog, Feb, 29th, (2011) 'the worse of Zuma's government of violence has over time been seen in August 10th – Sept. 20th 2012, Marikana Massacre of protesting mine workers under his presidential order.

e)Egypt Under Mohammed Morsi and Hosni Mubarak His Predecessor In Title; Mohammed Morsi used to be Mubarak's Army Staff on whom power has been deposited through election following the deposition of Mubarak in 2010. But barely two years as imposed president of the new Egypt; the Former Defense Chief in the person of Mohammed Morsi, has turned Egypt into a Pakistan in Africa; Even under little or no infrastructural development, poverty, insecurity and political instability; everyday in Egypt is one protest or another seeking the removal of Morsi from his two years of misrule in Egypt. Shashank Toshi in "The Telegraph News, Nov. 12th, (2013) was not shy to raise the caption, "Armed Misrule is Turning Egypt into Pakistan". This should not have been the case but for the protective arms of the legal positivists version of the doctrine of sovereignty. Morsi like other underperforming African leaders could have been put right by the transparency laws but for the legal positivists doctrine of absolute

sovereignty and its politics of non-intervention in misrule which is often seen by the legal positivists as an internal affair of every sovereign state.

Cameroon Under its Only Post-Independent Leaders: Paul Biya and his Predecessor Ahmadu Ahijo; Biya took over power from Ahijo in 1983 as second ever president of Cameroon and promised to do better than his predecessor; but 30years of his misrule now projects a worse case scenario of disenfranchisement, military crackdown, underdevelopment, political intimidation and outright dictatorship while Biya's regime like that of his predecessor has been characterized by dictatorship and disenfranchisement to keep himself- eternally in power. According to *Tong House Flourishing*, A Canadian News Report of July 5th, (2013), 'disenfranchisement, political intimidation and military crack-down are some of the many signs of Biya's dictatorship patterns. Clearly, it is difficult, unless in Africa, to find a single leader who can make claims to life-presidency. Biya, up till now says nothing about a political transition in Cameroon. Rather, he has on the contrary desired for himself something of a near life president despite obvious leadership misrule. Biya by clever analysis has done no other thing to survive his 30yrs of misrule by keeping a low profile within the international community. This has helped Biya to avoid being kicked-out of power like Mubarak and Gaddafi Egypt and Lybia whose dictatorships were both loud and arrogant by the international community. Biya's pretense itself is questionable; It has not helped Cameroon; nor is his sit-tight syndrome and perpetual disenfranchisement of citizens to keep himself in power a model of misrule desired for a 21st century Africa.

Central Africa Under Post-Independent Bozize and Djotodia; The situation in Central Africa is one in which the country has only had to be ruled by Bozize and Djotodia. The current leadership by president Djotodia, who came into power barely seven months in March, 2013 as a former rebel and leader of the "*Seleka Separatists Faction*" took over power by force of arms and in March of this year 2013 proceeding to announce himself a self-imposed president of the country. Although he promised to give the best it desires; Lewis Mudge in *Dispatches; News Car President More Misrule*, a Human Right Watch headline news of August, 16th, (2013), explains to the contrary that the truth, however, is that; ' just within five months of staying in power, Djotodia has doubled the spade of human rights abuses of which he had ousted his predecessor and promised to sufficiently address. From a critical analysis of events in Central Africa, there are clearly three problems with Djotodia's regime; the dwindling economy of the state, his self-

imposition of himself as president in March, 2013, and the third, the growing humanitarian concern with the human right situation in the state. And despite all three of the legal positivists protected forms of misrule the pilot of the state, like other non-performing is making no sufficient effort to reverse the state of things. This is a major concern no longer expected of the leadership of Africa in the 21st century. Perhaps, since Djobodia cannot either transform the state or change his style of leadership, the consistent argument in this paper is that sufficient civil society pressure would change the fortunes of the state

Zimbabwe Under its Only Ruler; Robert Mugabe: In Zimbabwe, all of the 33 years of civil rule in the country have been miserable years of dictatorship and misrule by Robert Mugabe. Kenya was also left with a controversial land policy of 1909 in which successive leaders in Kenya have been struggling with. However, in Zimbabwe, Robert Mugabe has taken a logical positivists' sort of power-drunk advantage of the country's controversial land policy of its pre-independent 1979, to underdeveloped Zimbabwe and to perpetuate one of other worse civil dictatorship in Africa. Like The Washington Times, article titles, *Robert Mugabe After 33Years of Brutal Rule Sees Another Term*", July 29th, (2013), rightly explains; 'Zimbabwe which was prior to its independence [that means prior to Mugabe's leadership by implication], Zimbabwe was voted the food basket of Africa; Yet, after 33years of civil dictatorship by Mugabe, misrule and mass underdevelopment the country can hardly afford the basic food it requires for its teeming population. Consequently, it is common to find a high population of Zimbabwe immigrants in neighboring South Africa. Food shortages and general up-keep seems to have driven many Zimbabweans into neighboring South Africa. The problem, first of all is Mugabe's misrule. Yet on further consideration, his misrule has something to do with taking protection from the legal positivists doctrine of absolute sovereignty and its principle of misrule as an internal affair of the state of which intervention is seen by the legal positivists as a violation of the sovereignty of such a state. Thus, even where reforms have been suggested in Zimbabwe, the pilot of the state has, like every other true representative of the legal positivists' doctrine, adopted only those reforms which increase his political powers over the state as a ruler.

Analysis Of The State Of The Nation Of Africa Under the Legal Positivists Philosophy and Politics;

a)A More Critical Look On the Concept of Sovereignty: The starting point to understanding the state of the nation of Africa under the legal positivists philosophy and politics

is to recall that whenever leaders take over political offices as political administrators of African states, the concept of sovereignty has always been conceived from a long list of options of which African leaders duly scout around this long list of options in search of which form of political power or sovereign power to apply; On this list, is to be seen; Thomas Hobbes' legal positivists equation of sovereignty with the absolute power of the ruler; Machiavelli's equation of sovereignty or political power with tactfulness of leadership; Karl Marx's equation of sovereignty with power of the proletariat: Or with Aristotle's regard for sovereignty as a double-edge sword which both 'liberates' and 'constraints' depending on how it is wielded; Or with Plato's equation of sovereignty with a license for national service, etc; Yet, from this list of option, what has frequently been chosen has been Hobbes' legal positivists expression of political power and sovereignty as an absolute right of the ruler. The situation is one in which, although African leaders have frequently adopted the legal positivists conception of sovereignty in terms of absolute discretionary expression of power this does not mean the end since at one time or the other, the leaders of African states have also applied other options and conceptions of sovereignty where such a need arises; but predominantly Africa's question of good governance begins with its ideological digression into adopting almost unanimously the misleading conception of Hobbes's and its legal positivists application of sovereignty as an 'uninterferable' absolute political power of the ruler being in issue that Hobbes himself was a legal positivists in substance and form.

b) Misconception Of the Meaning of "Sovereignty" Being The Heart Of Africa's Question of Bad Governance and Leadership Misrule: From the foregoing it is to be argued that Wrong Conception of The True Meaning of Power and Sovereignty is in many respects the Bane of Leadership Misrule In Africa; Although "power" as seen by the *Online English Dictionary* has been defined as the right or authority over one's subjects or followers, it is to be noted that there is nothing in the concept of "power" which permits the arrogation to oneself or to the political leaders or to the state, etc; the absolute or arbitrary or discretionary expression of "power" over the subjects as African leaders and their legal positivists mentors would like us to believe. A bigger problem lies even more on the gross misunderstanding of the concept of sovereignty as applied by both African leaders and their legal positivists political mentors. Like in our earlier case of "power", the *Online English Mini Dictionary* defines "sovereignty" in two senses;- as the powers of the ruler and secondly the freedom of a nation from external authority.

But African leaders and their legal positivists counterparts have misconstrued and misapplied the sovereignty of the sovereign to mean absolute power of the ruler and the sovereignty of the state to mean no longer the freedom of the state from colonialism but freedom from all forms of external intervention even in the face of glaring misrule; and this is where both African leaders and the Legal Positivists all got it wrong.

South Africa's Example Recommended Here As A Panacea For Misrule In Africa; Its *Modus Operandi*

Ordinarily, the sluggishness of African leaders to call for reforms despite widespread evidence of misrule and underdevelopment in the continent of Africa, this would have called for usual external military intervention in Africa; but for examples of Egypt and Libya in 2010; It is to be said therefore that it must, this time be Africans themselves who would take the lead to write Africa's own story; whether in 'coal' or in 'ashes'. This means saying enough of blaming the woes of underdevelopment and leadership misrule on the mistakes of slave trade and colonial misfortunes. If Africa must prevail over its problem of underdevelopment, leadership misrule, and good governance, then, it need not maintain the idea of the waiting baby in the Apartheid solution but play the leading role through raising a formidable, transparent, fearless and externally supported civil society groups who would doggedly and jaggedly pressurize mischievous African leaders to make shift on development and leadership misrule in Africa. Eradication of misrule in Africa is one story which calls for introspection and not '*extrospection*'; and it should be taken to be just that without the barest import of style and fashion. The new policy plan here recommended as a panacea, unlike the South African solution to apartheid rule; is not interested in '*placards*' and '*public protests*' as this would result in more killings and give more room for political intimidation by our current power-drunk current and past African leaders; the new policy plan is rather expected to take full advantage of the '*media*', operating with the '*pen*' rather than the '*gun*'; ensuring that solutions are '*civil*' not '*military*' by nature.

Critical Commentary and Assessment of the Issues and The Problems Of Legal Positivism and Leadership Misrule Among Contemporary African Leaders;

The question which anyone is committed to ask is how despite civil and constructive intervention in South Africa the problem of misrule and the legal positivist's influence on the power structures of the country is yet to become a thing of the past in South Africa? The answer,

as already discussed in the content of this work. It only has to be emphasized here that the solution here adopted, namely, the enforcement of a contrary doctrine to absolute sovereignty, namely, a doctrine of limited sovereignty and its consequential emphasis on constructive intervention similar to the drama which transformed the Old South Africa into a democratic South Africa, is something which in the opinion of this research, may sometimes fail due to the lapses of civil society pressure rather than the weaknesses of the theory as a theory. It is common knowledge that Africa as we know it today does not feel free to develop the citizenry unless where this brings more money, more power and more fame to the coffers of the rulers and members of the political class, let alone developing an independently funded civil society group which would pressurize government into transparent rule. In the main, this would imply that constructive intervention be seen as a panacea for misrule in Africa. As a solution to misrule and good governance it can only take full roots at such a time when Africans have been able to develop themselves enough to constitute a formidable pressure against leadership misrule and bad governance in Africa; African leaders have, unfortunately, adopted a policy of underdevelopment as a strategy for immortalizing themselves in political offices thereby staying perpetually in control of African states; What must immediately be done pending self-development of African citizens by themselves is for civil society groups in Africa to net-work from their African foundations with stronger and better funded media and human right groups from the Asian East and the European West to enable them constitute a formidable internal pressure that would be supported, funded, and addressable by the international community as a global no longer local or continental fight; this must constitute the ideal which this paper and the new policy plan for seeking to liberate Africa from its legal positivists' grip on leadership misrule in Africa seeks to deliver.

Evaluation And Conclusion;

Limited sovereignty is perhaps the most forgetful concept in the leadership structure of the African states, therefore, most African leaders, like their legal positivists counterparts, are now power-addicts, whose continuing influences of the legal positivists addiction to power is the philosophy and the politics which has led African leaders into insatiable search for political power against the developmental interests of the continent as well as condoning the ugly image which bad governance and in addition to leadership misrule has brought upon Africa as a whole. This is set right from the current collusion among African leaders to hide rather than expose the

conduct of underperforming African leaders. Most people have continued to suspect such a sense of collusion in Jacob Zuma's aggressive support for Robert Mugabe's leadership despite his controversial land use policy. But the wind of change is fast blowing across the continent. And the bright future and image of Africa need no further be sacrificed under the same old philosophy of 'nepotism', 'brotherliness', 'collusion' and various other 'tactics' which the African states have been inspired to adopt by their mentoring philosophy of legal positivism and the doctrine of absolute sovereignty that propels it.

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