

Preface

Punches of an invisible fist, Part Two: Between despair and purgatorial dystopia

Humphrey Sipalla

In his scathing¹ 1986 critique of the then burgeoning African 'ivory tower', Okot p'Bitek decries the arrogance of African scholars, their attachment to a false exceptionalism and their inevitable lack of utility to African society in the following tongue lashing:

[a] Kenyan historian, has, for example uttered what appears to me as arrogant words: 'For some reason best known to themselves, many members of the public think that anybody can study and write history'.

We can only say with Dewey²: For historians to believe that they are endowed with unique powers giving them access to special truths or historical knowledge is a gross piece of self-delusion. Historians are gifted with no special powers of insight into the past denied to other mortals but unless historians recognise this, until they accept their common humanity with good grace *and without any mental reservations*, they cannot hope to perform any intelligent function and make history a living thing, a progressive force in our common human life.³

¹ Lubwa p'Chong describes Okot thus: 'Okot was alive, sincere and sensitive: he continually provoked as he advised, lamented, pitied, challenged, questioned and criticised with his *scorpion-tail tongue and razor sharp pen* throughout his fifty-one years of life'. Lubwa p'Chong 'Foreword' in Okot p'Bitek *Artist the ruler: Essays on art, culture and values*, East African Educational Publishers, 1996, viii.

² Here, p'Bitek recalls the cautionary words of John Dewey to philosophers in similar tone and paraphrased wording.

³ Okot p'Bitek 'The African historian' in *Artist the ruler*, 47. [Emphasis added]

One would easily replace ‘historian’ for ‘legal scholar/lawyer’ – or any other elite professional in Kenya for that matter - quite easily.

What is the nature and import of Adam Smith’s proverbial invisible hand on the African – Kenyan – academy?⁴ What happens when the cold valueless and unprincipled computations of seventeenth and eighteenth century great power avarice is imbedded into the operational logic of a public good like higher education? What happens to human relations - to comity and solidarity, courtesy and community - when cold individualistic calculations and an artificial intellect is mainstreamed as operating principle in something so delicate as the intellectual vocation?

In 2005, Kéba Mbaye lamented that human society was headed towards ‘a world without ethics: a world where the human conduct is guided by money, power and force ...’.⁵ Mbaye contends that ‘ethics ought [to] be adopted ... as the standard of all things, for along with human work, it is the condition *sine qua non* for social peace, national harmony, solidarity and development.’⁶ The incorrigible idealist, Mbaye, insists that ethics should govern everything:

... not only science and technology⁷ but, *equally*, governmental power: the executive, legislature and judiciary, education and the behaviour of students, the role of the teacher, the functions of the administrator, economic activities of the primary, secondary and tertiary sectors, politics in general, political contests, governance, relations between the various members of the political scene, the relations between the governors and the governed, the behaviour of the governed, communication, the family, the neighbourhood, sports, culture, international relations, relations between rich and poor countries,... indeed, the totality of human endeavour taken individually and collectively, but also of states, and their representatives.⁸

⁴ Humphrey Sipalla ‘Foreword: Punches of the invisible fist: Intra- and inter-personal relations in the neo-liberalised African university’ 4 *Strathmore Law Journal* (2020) vii-xvi.

⁵ ‘L’éthique, aujourd’hui’ in Cheikh Yérim Seck, *Kéba Mbaye: Parcours et combats d’un grand juge* Karthala, 2007, 202. [Author’s translation]

⁶ ‘L’éthique, aujourd’hui’ in Seck, *Mbaye*, 200.

⁷ Mbaye makes this reference with respect to the Universal Declaration on the Human Genome, which he had served in its drafting committee.

⁸ ‘L’éthique, aujourd’hui’ in Seck, *Mbaye*, 201-2.

But I digress. p'Bitek.

p'Bitek – this bull in a china shop thinker – is perturbed that the African intelligentsia is beginning to internalise certain superiority complexes which one would infer to have been begotten from the colonial example. Scholars are special because they can think better than our compatriots, such scholars think of themselves. p'Bitek is convinced that nothing intellectually potent or socially good can come from such arrogance.

One wonders now whether we are living the world Mbaye feared was to come, and what this means in the p'Bitekian considerations of academic humility and service to society.

I must say.

It is utterly impossible to run a rigorous double-blind peer reviewed journal in an irredeemably corrupt society.

What is corruption?

Corruption is the desecration of discretionary power.

Discretionary power is sacred. It is veritably *imago Dei*, the part of us, human beings, that is divine.

In the Six-Day War that is creation, as allegorised in Genesis – this is the first of Genesis' two creation stories – all one sees is rules. Immutable rules. All nature is bound to immutable rules. All nature follows rules. In fact – Islamic theology defines this even more clearly than Christian – even the angels are bound to rules. They have immateriality – oh, if only! –, have some free choice, and they certainly are intelligent. But they lack free will. It is in this regard that Allah commands the angels to bow down to Adam. It is free will, that is, discretionary power, that puts Man above all creation, and worthy of angelic deference.

Discretion is *imago Dei*.

So, what does all this nonsensical theology mean for our definition of corruption? Noting especially that often language fractures under the weight of transcendence, and these fractures tend not to failures but to disclosures.

Discretionary power is superior to the immateriality of angels. So difficult it is to describe it! We all know it when we see it but cannot quite imprison it in lexicology. It is the darkness that brings forth life. We can only recognise its absence, never its eternal presence. We cannot articulate it in advance but when it is abused, we immediately can *feel* a revulsion! An irk so elemental our soul smirks, even if our faces remain stoic, paying homage to the *rules* – ah!, rules again – of social propriety. But internally, even our Guardian Angel turns her face away! As if terrified to have glanced at burning Sodom or the nakedness of a drunk father! The abuse of discretionary power is precisely such a curse.

It is impossible to lay down human laws to regulate the misuse of so divine, so immaterial a power. In fact, it seems that even the Divine has struggled to lay down divine or natural law to regulate the misuse of discretionary power.

Why is this so? Is this a blasphemous statement? Does God lack omnipotence if unable to devise – ah, a better verb is divine – immutable law to regulate this, core, image of the Divine? No. God is omniscient and in this all-knowing, vests the regulation of discretion in precisely that free will that he then radically democratises to all human beings! Not a few well-placed scholars, but all human beings! God is such a radical democrat!

Discretionary power is leadership. The choices, the value judgments one makes, *ordain* one to be followed by another. Discretion leads. In small choices and grand designs, it refines direction. It becomes the meaning of meaning.

It is the self-righteousness of the African scholar as described by p'Bitek that engenders the corruption of the *imago Dei*. Like Rodion Romanovich Raskolnikov, himself an ex-law student, the African scholar's pride deludes him to think himself above morality by sheer weight of rational justification.

But narcissistic intent is usually couched, beguilingly so, behind procedural rules that pretend a world without nuance. Procedure makes automatons of *imago Dei*, bludgeons out creativity and consideration, and punishes thought and good will. Such sacrilege!

Procedure makes Vogons⁹ of these creatures of the Trandescent, rubbishes this great work of creation, which is good. Even when it is not brought up in administrative minutiae, even on a short visit to Vogonsphere, one is constantly whacked for an independent thought. One quickly learns to not think. Procedural minutiae conditions Pavlov to smile every time the dog salivates to the bell ring.

It is probably for this reason that p'Bitek and Mbaye both shudder at the thought that arrogance and individualistic intent could be the meaning of meaning, the manifestation of discretion, the corporeality of the *imago Dei*.

I must say.

It is utterly impossible to run a rigorous double-blind peer reviewed journal in an irredeemably corrupt society. And "...here, I would merely like to speak about angels, and not about hope."¹⁰

The scholar must submit the privilege of scholarship to the duty to history: The usual housekeeping

The office of Editor is a solemn judicious office, as one gatekeeps by the mere function of their value system, knowledge, and with this office, one withholds passing from human to humans or allows transmittal from fleeting mind to black-ink-on-white paper immortality, the one thing we humans share with the angels: intellect, thought.

A philosopher friend, whom decency demands that I not name, insists that the office of Editor is a custodianship borne of duty. Not like an all seeing distanced hawk, ready to pounce of unsuspecting life, but like an ant on an anthill, equal in size and posture, and standing on the collective effort of the whole community. It is like duty to the communion of saints. To the Living-Dead and to the Not-Yet-Born.

⁹ Douglas Adams, *A hitchhiker's guide to the galaxy*, 1985.

¹⁰ László Krasznahorkai, 2025 Nobel Prize Lecture in Literature, 7 December 2025.

A lot of this duty is exercised in discretion. This has been dealt with above. The other part is exercised in mundane – profane – housekeeping.

In his excellent editorial, this volume’s Editor-in-Chief, Elvis Moge-sa Ongiri, has laid down a theory on the place of the student editor, and journal he runs in community. I align myself to these insights.

The midwifery of editors demands that they care for that which will never be theirs as if it were. The judicial function demands doing duty before the widow incessantly knocks on the window of the hard hearted judge. To perform the justice in open court. To abide by the determination of the jury of peer reviewers. To confidentially manage this blind intercourse between author and jury. To taper the harshness of an unjust jury. And to compel the correction of the recalcitrant author.

To do this, these editors forgo any part in the publication. Like the midwife, they must find their own children elsewhere, of their own completely distinct effort. Surely, one cannot benefit where they exercise discretion.

I am particularly thankful to the precision we have added to this issue of *Kabarak Law Review*, to the ‘Honouring Our Elders’ section. It is quite perturbing that the term of craft ‘Living-Dead’ is quite unknown to the African academy beyond philosophers and their fraternal twins, theologians. No term captures so dearly this closely beloved tradition of listening to the discourse of our ancestors, to the principles of inter-generational equity, to the duty to history than the Living-Dead. Along with the Not-Yet-Born, this transcendental community is core to our African traditions. Individualistic modernity has advanced the notion of the inutility of the intangible. The corollary of this notion is that it is only useful to celebrate our thinkers when they are alive. This is in part true.

But a world without nuance is a cruel brutal world. And without nuance we have no knowledge. So yes, we can both honour the Living-Dead, while celebrating the living and considering the Not-Yet-Born. I am most thankful to Caroline Gatonye for her Introduction to this important precision in our journal.

In lieu of concluding

In times of insanity, irredeemable corruption, and despair, it is useful to flee to the counsel of our Living-Dead. Such a one, and eminently so, is Toni Morrison:

“Once upon a time there was an old woman. Blind but wise.” Or was it an old man? A guru, perhaps. Or a griot soothing restless children. ...Once upon a time there was an old woman. Blind. Wise.

...

She is convinced that when language dies, out of carelessness, disuse, indifference and absence of esteem, or killed by fiat, not only she herself, but all users and makers are accountable for its demise.¹¹

I started in despair. I end in purgatorial dystopia. Another Ugandan of yore, Milton Obote, contemplated his super-potent station in Ugandan society as President of the political state, and at then glanced at his modest station in history, and spoke in praise¹² of the one who outlasts contemporary potency by means of nothing but the howling recognition of history – howling as do sounds across a valley in the dusk. And this is why the solace of the intellectual, the man of letters, as Obote calls him, exists at best in purgatorial dystopia. An indefinite end to the despair is nonetheless promised. And promise is hope. Hope is divine.

Toni Morrison’s blind but wise old woman was confronted by some young people in her lonesome house:

They stand before her, and one of them says, “Old woman, I hold in my hand a bird. Tell me whether it is living or dead.”

She does not answer, and the question is repeated. “Is the bird I am holding living or dead?”

Still she doesn’t answer. She is blind and cannot see her visitors, let alone what is in their hands. She does not know their colour, gender or homeland. She only knows their motive.

¹¹ Toni Morrison, Nobel Prize Lecture in Literature, 7 December 1993.

¹² Speech delivered at the Makerere Arts Festival, November 1968 by President Milton Obote, published in *Ghala*, in January 1969.

The old woman's silence is so long, the young people have trouble holding their laughter.

Finally she speaks and her voice is soft but stern. "I don't know", she says. "I don't know whether the bird you are holding is dead or alive, but what I do know is that it is in your hands. *It is in your hands.*"¹³

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¹³ Toni Morrison, Nobel Prize Lecture in Literature, 7 December 1993.