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***HALAKAH AS A FOUNDATION FOR FIGHTING AGAINST  
CORRUPTION IN KENYA***

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**ABSTRACT**

Corruption in Kenya is a major challenge that affects the economy, social life, security, and livelihood. It has been practiced for many years and therefore has become part of life among the citizens. Several interventions have been applied to fight it, but the results are far from bearing fruit. It is still a significant phenomenon. Every government that comes into place promises to fight it as part of its manifesto, but it is unclear what happens when they get into power. This paper lays a foundation of obedience drawn from the Old Testament theme of *Halakah* to mitigate against corruption. This paper exposes the theme of *Halakah* in the covenant, Deuteronomistic covenant Theology that influences people's behavior. The theme of *Halakah* is seen in its three strands of Mishna, Midrash, and Talmud. It comprises of the written law, oral laws, and the interpretation of the said laws. The key issue this paper brings about is following faithfully laws, customs, regulations, and teaching so that obedience is seen. Therefore, it lays the foundation of following what is right instead of how people are influenced negatively to become corrupt from generation to generation. The *Halakah* then becomes the negation of vice followed by the posterity so that the correct values and laws are passed as a good heritage.

***Keywords:* Halakah, Corruption, Obedience.**

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## INTRODUCTION

The purpose of this paper is to present how *Halakah* in the Old Testament can be used in addressing the vice of corruption in Kenya. Corruption has become a great eye-sore in Kenya, taking the country back as it loses its resources. It seems like cancer that is hard to uproot. This paper aims to seek a new way to deal with this vice so that some mitigation is done.

*Halakah* refers to laws handed over to generations to walk in them. The term *Halakah* as will be seen later, is to walk after something. They are both written and oral laws but influence the lives of the people in question. According to Kedar (1986), *Halakah* comprises the Jewish law or the rules of Judaism, which concerns the relationship between an individual and humanity around them. In this case, it examines how people relate to others, hence their influence on one another. In this case, it is not just about the laws but how a community or an individual relates with them in obedience.

Kedar (1986:163) would further see *Halakah* having its root in the written and oral Torah. This is commonly known as the Pentateuch or Talmud, the rabbinic explanation of the five books of law. In general terms, it is the quotation of the written Pentateuch and how orally the Rabbi would interpret it to the Jewish community so that the relationship between people is enhanced.

### **The etymology of the term *Halakah***

Etymologically, Brown, Driver and Briggs (1979) note that the word *halakah* in Hebrew is drawn from the root word הלך (*Halakh*) which means "to walk" or "to go or to come. Taken literally, therefore, *Halakah* is translated as the way to walk. Holladay (1988) analyzes the word *Halakh* in qal perfect, which means go or walk and in imperative form is to come on or let go, where the action is vivid that is in progress. Further, the meaning gets to flow with, go behind, follow, or adhere to, especially when it comes to God.

Drawing from this etymology, therefore, *Halakah* becomes that law that is followed by those under authority. There is an imperative to obey the values, rules, traditions, instructions and prohibitions given by one in authority. This authority figure can be God or his agents and human beings in a leadership capacity as a Patriarch/Matriarch or those chosen by a community.

Lauterbach (1915) argues that *Halakah* is the teaching taken down from a teacher to a disciple. It is transmitted from one generation to another. The teaching includes customs, practices, rules, and customary laws that make up an interpretation or an exposition of the written law. The rules and laws are obtainable in Midrash and Mishnah, which will be analyzed below. *Halakah's* subject is closely related to passing values and traditional laws to future generations.

The Old Testament has many texts that refer to this subject of *Halakah*, as seen earlier, to mean walking in something or behind or through instruction. The Old Testament and more in the Deuteronomist literature (Joshua, Judges, 1 & kings, 1 & 2 Samuel) emphasizes fidelity, covenant, and family relationships. There is a deduction, therefore, that the *Halakah* is narrowly tied to the Deuteronomist in its language and use of words like fidelity and obedience. The covenant theology in the Deuteronomist is, therefore, a reality of obedience or disobedience. Each would have benefits and consequences. Obedience attracts the blessing of God, and disobedience attracts curses, as seen in Deuteronomy 30.

### **Strands of *Halakah*.**

*Halakah* is seen in the Old Testament and the extra-biblical traditions in three ways. This includes Midrash, Mishna and Talmud.

#### **The Midrash**

Lauterbach (1915) defines the term Midrash as coming from the shortened from Midrash-Torah. This is an exposition and interpretation of the law. It is also seen as a commentary to the written law in the Pentateuch or the Torah and uses scriptural proof. Goldsmith (2013) further divides the Midrash into two strands in style. The simple one that bears an element of a verse cited with few words to explain its meaning springs forth easily from a text. The other is the complex Midrash as a simply done exegesis commonly amplified by questions and answers that create a dialectical exegesis requiring the assistance of hermeneutic principles. This will always bring about logical conclusions and human interpretation of Biblical texts. Lauterbach (1915) notes that Midrash is purely what Moses taught on Mt. Sinai that was passed on from the commandments, therefore, purely Torah. Midrash would be defined as the written law, which authoritatively is regarded as the word of God and must be followed and obeyed, therefore, connected to *Halakah*.

#### **The Mishnah**

On the other hand, having looked at The Midrash, Lauterbach (1915) defines Mishnah as part of *Halakah*, but it works independently since it has its pronouncements without the use of scriptural proof as seen in the Midrash. It, therefore, teaches lessons independent of the scripture and not connected to the words found in the written law. For Lauterbach, Mishnah are merely rules or decisions made to assist those instructed to master the traditional law. It includes the oral tradition not written concerning the Jewish people passed from generation to generation. The Mishnah eventually became apparent after being passed on orally and required being organized into a system of learning that supported the written laws.

Kedar (1986) further explains Mishnah is essentially an assimilation or interpretation of the oral Torah as teachers and Rabbi develop it. This includes two strands: the Tannaim, that period that came before 200 C.E., and the *Amoraim*, which had many discussions, debates and interpretations that were collected and edited in Palestine around 400 C.E. and in Babylonia 500 C.E.

Gruber (1984) refers to Mishnah as oral Torah, noting how it was published and studied. God-given law is distinct from but of equal authority with the Torah or the Pentateuch. Gruber further quotes Jacob Neusner, who treats Rabbinic Judaism as unique in its concept of the Oral Torah, contained in Mishnah-Tosefta, from Sinaitic written Torah revealed to Moses. Therefore, this is the oral Torah that the Rabbi calls the Mishnah-Tosefta, which seems different from the Pentateuch.

Gruder (1984:116) further quotes R. Yohanan, who says one may come across a *halakah* with no Scriptural source and should not be ignored since many laws were dictated to Moses at Sinai that is independent of the written scripture and therefore are incorporated in the Mishnah. This fact is, however, not substantiated by any other scholar since even what is not written in the Ten Commandments has been written in other laws in the book of Leviticus.

Therefore, Mishnah would be taken as a compliment to the written law since not everything in life may be written. Whatever is in oral tradition and still has authority in life and conduct of a

community requires respect and is authoritative. The argument of Yohanan, that many laws are mosaic but not written may not hold water since the canon has been established.

### **The Talmud**

Kedar (1986) notes that The Talmud comprises two strands; the Mishnah and Gemara. Gemara is an edited interpretation of the Mishnah. This explanation can be confusing, but to demystify it is to say that the edition of Mishnah is Gemara while both make up the Talmud. Kedar (1986), in explaining the interpretation that accounts for the Talmud, is the general terms of how people live together. They are bound to hurt each other either accidentally or intentionally. If an offense is accidental (Numbers 35), there is no punishment, but if it is planned, deliberate, or out of negligence, it is punishable. The bottom line is to make life better with peaceful co-existence. The Talmud will explain the biblical text like Exodus 21:18-36 that has such offenses and their consequences.

Further thinking in this sense, these laws keep coming up since life is dynamic. This dynamism would require the laws to deal with. An example, the information technology relationships laws would change as the technology changes. Therefore, the interpretation of Mishnah, which is Gemara, would be useful in handling such a dispute. Prohibitions and rules only appear if they are relational challenges. The reality in this case, it does not mean they cannot be changed, but the other laws can keep being edited as need become evident.

### **Relationship between Midrash and Mishnah**

Lauterbach (1915) notes a connection between Midrash and Mishnah in the following manner; the customs and practices that Mishnah taught had to be recognized and implied in the written law of the Midrash to illuminate its fuller meaning. The teachers had to interpret the written law to include it or derive it from the said customs and practices. The teachings of the Mishnah, which included customs, rules, practice and traditional laws, did constitute the Halakah as a representation, interpretation or exposition of the written law. This means then that the Mishnah will complement the Midrash in the case of the areas the Midrash may not have written instruction that generations need to learn without contradictions.

Therefore, Midrash is written as law, seen from the scriptural proof while the Mishnah is the unwritten law that complements what is written. This is because in life, not everything that must be done is written down, so what is orally transmitted complements what is written.

Kedar (1986) introduces an exciting way to distinguish Mishnah and Midrash. Since laws for living governed the Jewish nation, that written law is what would be seen as Midrash while the second is the Jewish heritage which is not written but may come from tradition and this would be Talmud which comprises of Mishnah. What is noted in this comparison is the complement of the two, where if the written law is not there, the oral and unwritten tradition is used. This is to ensure that no relationships are left out of laws governing it. The Mishnah also can be the interpretation of the Midrash.

### ***Halakah* in the Ancient Near East (ANE)**

This is a community in the Dead Sea area. Hanson (2006) explains how *halakah* in the Qumran community of the dead sea, guided their interrelationships. A case in point is where there is an offence in life, should one take revenge, rebuke in anger or just be quiet or have anger that leads to bitterness. This reality gives a legal framework in relation to good neighbourhood. The purpose

of this was to ensure there was cohesion among citizens and also in case an action was taken, it was within some set framework to avoid injustice or setting the wrong precedence.

Zur (2015) alludes to the fact that halakah was used in disputes resolution and arbitration in the Babylonian Talmud. It provided a framework that made cases be decided. The decisions are made according to the wisdom of sages on what they have said in the past and then applied to settle people's differences. The purpose of this Talmud is to ensure there is a peaceful co-existence. This also ensures justice prevails so that no one complains of being favoured for the decisions are made according to what is written.

Zur (2015) further argues that whenever a case was brought up, they considered what is most reasonable, logical and sound of what the sages have said, so that the *halakhic* ruling is not uniform but reasoned within the said framework. This reasoning gave a community an open way of looking at issues so that whenever people differ, they are helped by the laws to mend their relationships.

Noam and Qimron (2009) explain how the Qumran community had restrictions against defiling the Sabbath day. The restrictions were too stringent against producing sounds like knocking on a door unmelodic sound. Still, no record was there prohibited clapping of hands, slapping of thighs, and stamping of feet production of sounds on Sabbath apart from the Talmuds. The Qumran writings support that the prohibition against playing musical instruments on the Sabbath was just an early one dated to the Second Temple time.

Noam and Qimron (2009) note that the Tannaitic halakah permitted both the blowing of trumpets on Sabbath and the playing of musical instruments. At the same time, Qumran law sanctioned the trumpet blast over the sacrifices but prohibited playing other instruments, in addition to the trumpets, singing vocally. Since written law borrows some traditions from the ancient near Eastern community (ANE), the Qumran community as stated above had some of the practices flow in the written and oral laws.

To conclude, at least some of the Rabbis did use miracles and other supernatural evidence to support their legal arguments. Not everyone shared the view of R. Joshua. Miracle stories were powerful weapons in the arsenal of ancient polemicists, Jewish and non-Jewish. They are important clues to contentious issues, vitally useful if we are to reconstruct some of the influential debates which helped shape Rabbinic Judaism (Baumgarten, 1983).

### **Corruption in Kenya**

Having addressed the *Halakah* in the Old Testament, it follows that before the conclusion that the exposure of corruption is presented, the reason that this paper seeks to address. Hughes (2010) breach of fiduciary duties, where one is a trustee but benefits themselves instead. It also means a person in a position of power does not comply with the duties and obligations of office. It is also the failure to perform or observe the public responsibility given in the public sphere. It may be fraud or personality imposition to receive false trust. Hughes (2010) has synonyms that include "decomposition, degeneration, neology, foulness, perversity, disease, deterioration, fraud, imperfection, deceit, improbity, and vice."

Waqo (2014) cites Transparency International's (TI) definition of corruption as the abuse of entrusted power for personal or private gain. The main forms of corruption are bribery, embezzlement, fraud, and extortion. Corruption can be classified as grand, petty, and political, depending on the money lost and the sector where it occurs. On the other hand, Gitonga (2011)

sees corruption as having a deep social connection. It's involvement in exploitation and dishonesty when people are different from those involved, whether ethnic, tribe, race, and gender. It can lead to the marginalization of others, nepotism, and favourism, all human rights violations. The fight against corruption often leads to hate speech, incitement, and war-mongering. This has happened in Kenya where people profile others negatively.

Corruption is propelled through a culture (Ryan, 2000). This culture of corruption in a society, though not approved since the actors do not to disclose their actions and openly show it as illegitimate, while they practice it in secret. Regardless of the social norms, they will ultimately end up participating in it. It is a way of denial. An example is in Kenya, where a policeman will ask for a bribe from public transport at the full glare of the passengers, and they all keep quiet and do not question it. They all pretend that nothing is happening. It is indeed a culture of impunity propelled before them and they spectate. Indeed, this culture is then propelled from generation to generation.

The Kenya Daily Nation Newspaper on 30<sup>th</sup> may 2018 had in its top headline, "it runs in the family," explaining how the Ngirita family from Naivasha, their Mother, Lucy Ngirita, her daughters Phillis Ngirita, Ann Ngirita and their brother Jeremiah Ngirita were aligned in court because of allegations of corruptions. Although they supplied nothing, they were accused of being paid 300 Million by the National Youth Service (NYS) (Vans, 2018). This nature of corruption in Kenya brings about the reality of negative family mentorship, inculcation of the vice into posterity, and families joining hands to participate in corruption to gather riches for themselves. The family mentioned above has not been convicted so far but released on bail.

In strengthening the theme of addressing corruption through family ties, Warburton John (2013) argues that corruption is a social process. Therefore, the mitigation must be tackled in the same way. This reality and argument resonate well with what this thesis seeks to address, the social approach of the family value system to mitigate against vice. To Warburton, since corruption thrives in secret and not in a legal way, the social interaction of trust in the transactions takes center stage. Warburton presents a social network theory used in the interaction of those involved in the deals among the actors of the vice. Although corruption may sometimes be fought using legal framework, the greatest way to overcome it is through social interaction. In this case, the family comes in handy as the first and smallest social unit in a person's life. The mentorship, parenting, and nurturing that runs through the family is, therefore, a key element in alleviating corruption in Kenya, hence the objective of this study. Harrison (2007) argues that corruption is worsening because it subverts a set of values to which people are increasingly committed and affects their social standing.

Further, there has been a significant complaint in the media that fight against corruption in Kenya is targeting some communities. This is when those connected in their community kinsmen do corrupt deals alone and when prosecuted, they complain of being profiled. The complainants attack the anti-corruption campaign. There is great corruption networking in Kenya, including cartels. Makinda (1992) presents corruption in Kenya as one that combines tribalism and nepotism; it is so pervasive that it is hard to find an office in the government that is not involved in it. He, however, suggests that there is a need for young blood of leaders with no history of impunity. He does not suggest how these leaders must be mentored to be different. This is because the present leaders have influenced the new coming ones and produce according to them.

The Kenya Youth Survey Report realized that young people want to become rich by any means. This report was commissioned by the East African Institute (EAI) and posted on standard digital on 18<sup>th</sup> January 2016. It revealed that 50 percent of youth in Kenya do not care what means one uses to make money as long as they do not end up in jail. This means they can bribe the judicial system. Further, 30 percent believe corruption is profitable with 35 percent ready to give or receive a bribe. Only 40 percent of the polled strongly believed paying taxes was important. A similar situation was displayed in the political arena, where 62 percent of youth were vulnerable to electoral bribery, with 40 percent confessing that they would only vote for aspirants who bribe them, which was exhibited more in the rural area (Kajiwa, 2018). This wrong mentorship sends a bad signal on the kind of young people Kenya is bringing up. The youth look up to what the elders are doing; therefore, their generation follows it as the gospel truth. This therefore needs a deliberate purpose to influence posterity positively and, consequently, the purpose of this study.

John Githongo said the youth's desire to get rich by any means shows precisely how a generation is copying their older counterparts. For Githongo, the youth have seen how Kenyan systems work, people stealing, and nothing is done to them over and above prosecution. It is likened to gimmicking that the nation is fighting corruption (Kajiwa, 2018). Corruption in Kenya is therefore transferred from generation to generation. The young have followed what is displayed in lifestyles, media, by leaders and their parents

### **The roots of Corruption**

This paper addressed forming a foundation of Halakah to fight corruption in Kenya. This foundation cannot be addressed if the root of the foundation is not exposed so that they are a replacement of the said roots with the right foundation.

Mulinge and Lesetedi (1998) argues that corruption in Africa has a lot to do with the roots of colonialism. The establishment of free trade imperialism pushed for new markets to get raw materials for European industries. This accompanied the industrial revolution and fuelled the scramble and partitioning of Africa. This undertaking required a monetary economy. Further, this brought about a monetary tax named the hut and later poll tax by the colonial governments that fostered the growth of corruption by the chiefs who administered them. The chief would take the tax with discrimination and accumulate for themselves, which encouraged extortion.

Khamisi (2018) further takes the chiefs' authority by enumerating how the British government appointed colonial chiefs. Also, African court members performed their duties as Elders without allocated funds or remuneration. This made them use their money to do their duty. They had to be involved in some corrupt deals to supplement their income.

To further this argument, Khamisi (2018) cites the formation of colonial paramount chiefs who benefited by having their children get free education in mission schools. He mentions chiefs like; Waruhiu wa Kung'u, Muhoho wa Gatheca, Waiyaki wa Hinga, Koinange wa Mbiyu, Josiah Njonjo, Koitalel arap Samoei, Musa Nyandusi, Owuor Kere, Ole Murumbi and Ouuduu.

The above colonial chiefs are parents or grandparents to the very well-up families in Kenya today. Their families are the political class that has ruled and continues to rule Kenya's politics, private and cooperative sectors. The education of majorly their children was a foundation of corruption in education because they cooperated with the British government, creating inequality in society. Today we have cries of citizens who historically felt underprivileged from the access to facilities that would have made them well up than their colleagues right from independence. To reach this

family level, the political class uses dubious corrupt ways to immerse wealth for survival.

Over and above the colonial chiefs, the successive governments in Kenya have laid a foundation of corruption. Citing the reality of poor governance in Kenya, Mutula, Muna and Koma (2013) present an interesting phenomenon; corruption in Kenya has been passed down from a powerful presidency to independence. The first president, Jomo Kenyatta, changed the constitution to create power to the presidency, and other arms or institutions of government became its puppet. The powerful presidency advanced political interest and left many communities and groups marginalized as a tool to rip off public coffers. This way, he entrenched corruption as a way of life. Everyone close to the presidency would loot without being accountable to anyone.

According to Mutula, Muna and Koma (2013), the second president, Daniel Arap Moi, continued consolidating power by fighting the civil society and bringing on his cronies to benefit from corruption. To gain control, Moi changed the country into a one-party system in 1981 to cement his authority. Any opposition was met with the full force of law and even the detention of some individuals. This ensured no cases against corruption would see the light of day. This nurtured a system of runaway theft of public resources, abuse of power, silencing of criticism and running down of democracy. This became a fertile ground for the brooding and propelling of corruption and impunity in Kenya.

The third President Mwai Kibaki was voted on a platform of constitution change so that there was a structure of fighting corruption due to the change of governance (Mutula, Muna & Koma, 2013). He promised zero tolerance of corruption still bore no fruits; the challenges still went on. This change still brought the challenge of the same politicians on board, just a change of presidency. The leadership was still mentored in a life of corruption of former regimes. There was no political will or stamina to address corruption matters.

Under the 4th President, Uhuru Kenyatta, there was still a great effort to curtail the independence of the Legislature and judiciary, a stride that the new constitution tried to take this country. Meetings were done with the members of his ruling party to influence decisions in parliament and the Chief Justice complains of not having enough funding to roll the wheels of justice in the country. Many constitutional offices and commissions have found themselves under the mercies of the presidency indirectly under coercion of not doing their duties well. This makes corruption find its way right from the institutions that would fight it. The president speaking to Kenyan vernacular stations on 18th January 2022 seemed helpless in the fight of corruption citing cartels that control it to a tune or losing 2 Billion every day to corruption. Many corruption scandals have come up during his tenure in office. In this case, the four presidents have laid a foundation of corruption in their governance that makes it difficult to fight corruption from below since there is no good will from the top.

Khamisi (2018) raises a pertinent issue that is the root of corruption in the abuse of African hospitality. One must give a token or gift to show gratitude but it has become a forced practice. The question of this abuse can be seen in one feeling guilty that they have not given a token for the work done, which can be required to receive services. In many cases, a public servant cannot do their job unless assured of some kickback. Some even demand it before the work is done. African hospitality calls for gratitude for work done, but the demand of it becomes the challenge.

This study deals with corruption which is dishonest or fraudulent conduct by those in power,



typically involving bribery. The synonyms are dishonest dealings, unscrupulousness, deceit, deception, duplicity, double-dealing fraud, fraudulence, misconduct, lawbreaking, crime, criminality, delinquency, and wrongdoing. Therefore, corruption is a product of impunity. Since impunity is the big thing, corruption thrives because the citizens know they can get away with it and nothing will be done to them.

### **Conclusion**

The paper addresses that the obedience embodied in Halakah, in this case would be related to their behaviour, especially in the unwritten law, Mishna. It is evident that although laws are there to be obeyed by subjects. *Halakah*, which as seen is "to walk" or "to go or to come Taken literally, walking after or obeying, has been exposed in the facets of the written and oral laws. Obedience has a foundation as seen above, of fidelity to Torah. First, that which is written, thus Midrash as more of it is seen as Sinaitic, further many other laws, the Mishnah that dictates how humanity relates to each other for good co-existence. The instruction given through *Halakah*, whether written or oral, has an endeavour to impress on the subjects to obey. Looking at the two communities (Judah and Rechabites) addressed in this thesis, there is a great difference in how each follows or walks according to what is commanded. In conclusion, therefore, the great example of fidelity to law plays a big role in informing the mitigation against corruption in Kenya, as shall be seen later in chapter six of this thesis. The question of authority to follow the oral law so strictly would answer the question of the general lives of Kenyans in walking on within a value system.

Halakah comes in handy both in the written and unwritten law to influence the Kenyan people in the fight against the vice of corruption. The authority of flowing and obedience *halakah* gives the citizenship values that will help them overcome the vices of life. The study shows corruption in Kenya as an obedience of a culture, a mentorship into it, a culture that is followed and a social influence that is inevitable. In the same breath, the theme of Halakah comes in handy as both written and unwritten laws to be followed to defeat the vice propelled from generation to generation.

As we saw in the Mishna, not all the laws are written, but there will be a dynamic law system that is oral, which controls how people think and behave. This has a very positive impact on the fight against corruption.

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