UNIVERSITY OF CAPE TOWN

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EXECUTIVE INTERFERENCE AND THE EROSION OF THE RULE OF LAW: A COMPARATIVE STUDY OF THE PROSECUTION OF OFFICIAL CORRUPTION OFFENCES IN NIGERIA, SOUTH AFRICA, AND THE UNITED STATES OF AMERICA

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DECLARATION

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DEDICATION

To you, my mother, Christie Nkeiruka Uchegbune (1963-1999), I am eternally grateful for everything you did for me.

ABSTRACT

Executive interference in prosecuting official corruption offences erodes the rule of law, threatening democratic integrity and governance. This thesis examines this erosion in Nigeria, South Africa, and the United States of America through a comparative doctrinal study, analysing how constitutional sociology, political economy, cultural politics, and political cultures shape interference.

Three hypotheses guide the research: in Nigeria, centralised control and military-shaped tolerance drive executive interference and undermine prosecutorial independence; in South Africa, state capture and an emergent democratic culture with racial nuances facilitate executive interference and weaken prosecutorial autonomy; and in the United States of America, presidential pardons and increasing executive pressure disrupt accountability and undermine prosecutorial independence.

Drawing on statutes, legal texts, case law, and secondary sources, the study reveals distinct interference mechanisms—Nigeria's Attorney General discretion and presidential pardons, South Africa's political pressure and state capture, and the United States of America's presidential pardons and political pressure—fracturing prosecutorial independence, equality and impartiality, thus breaching the promise of resource protection under the social contract. Findings highlight that constitutional design, economic incentives, cultural practices, and societal attitudes drive this interference, leading to the erosion of the rule of law, distrust of government and the depletion of state resources.

The absence of robust prosecutorial autonomy exacerbates interference, varying by Nigeria's post-military legacy, South Africa's transitional pluralism, and the United States of America's use of presidential pardons and recent executive overt hostility to the prosecution. Recommendations propose independent prosecutorial bodies, oversight mechanisms, and public accountability measures to strengthen the rule of law, deepen the separation of powers, enhance prosecutorial independence and safeguard the social contract. This study advances the understanding of the multifaceted drivers of executive interference, offering actionable insights to improve democratic governance across diverse contexts.

Key terms

Official corruption, rule of law, separation of powers, prosecutorial independence and discretion, social contract, constitutional sociology, political economy, cultural politics, and political culture.

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LIST OF ABBREVIATIONS

ANC: African National Congress

APC: All Peoples Congress

AU: African Union

CCA: Criminal Code Act

CFRN: Constitution of the Federal Republic of Nigeria

CIA: Central Intelligence Agency

CPI: Corruption Perceptions Index

DA: Democratic Alliance

DOJ: Department of Justice

DPP: Department of Public Prosecutions

EFCC: Economic and Financial Crimes Commission

EFCC Act: Economic and Financial Crimes Commission Act

EU: European Union

FBI: Federal Bureau of Investigation

GBP: Great Britain Pounds, the lawful currency of Great Britain

ICPC: Independent Corrupt Practices and Other Related Offences Commission

NDPP: National Director of Public Prosecutions

NGOs: Non-Governmental Organisations

NPA: National Prosecuting Authority

NPA Act: National Prosecuting Authority Act

OECD: The Organisation for Economic Co-operation and Development

PDP: Peoples Democratic Party

PRECCA: Prevention and Combating of Corruption Act

RICO: Racketeer Influenced and Corrupt Organisations

SADC: Southern Africa Development Community

SAPS: South African Police Service

SCA: Supreme Court of Appeal

SCNLR: Supreme Court of Nigeria Law Reports

TI: Transparency International

UNCAC: United Nations Convention Against Corruption

UK: United Kingdom

U.S.: United States of America

U.S.C: United States Code

USD: United States Dollar

₦: represents the sign of the Nigerian Naira, the lawful currency of Nigeria

$: represents the sign of United States Dollars, the lawful currency of the United States of America

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CHAPTER 1

EXECUTIVE INTERFERENCE IN OFFICIAL CORRUPTION PROSECUTIONS: CONCEPTUAL AND COMPARATIVE FOUNDATIONS

1.1 Introduction and Conceptual Study: Executive Interference in Prosecuting Official Corruption Offences

This chapter establishes the conceptual and comparative foundations for examining executive interference in official corruption prosecutions across Nigeria, South Africa, and the United States of America (U.S.). Official corruption poses a significant threat to governance and the rule of law, particularly when executive actions undermine prosecutorial processes. This study addresses a critical gap in the literature by analysing how executive interference erodes the rule of law in three distinct democratic contexts, each shaped by unique historical, socio-cultural, and political dynamics.

The chapter begins by defining key concepts—official corruption, executive interference, and the rule of law—and situating them within theoretical frameworks, including the separation of powers, prosecutorial independence and discretion and the social contract. It then introduces the comparative methodology, justifying the selection of Nigeria, South Africa, and the U.S. based on their varying constitutional designs, common law origins, and democratic status. By outlining the thesis's structure and objectives, this chapter provides a roadmap for understanding how executive interference manifests and its implications for democratic governance, setting the stage for subsequent analyses.

1.2 Purpose: Framing Executive Interference and Rule of Law Erosion

Corruption is a global issue that challenges institutions, economies, and governments. While there is a tendency to focus on corruption in developing countries and non-Western societies, the reality is that corruption is a universal phenomenon. Developed countries also grapple with corruption, but their more robust system of governance often makes its presence more insidious and sophisticated.[1]

[1] Sharma, P. 2014. Corruption is a First World Problem, too. World Economic Forum. 2014. Available: https://www.weforum.org/stories/2014/11/corruption-is-a-first-world-problem-too/ [2025, April 11].

The impact of corruption in developed countries has been studied from various perspectives, revealing its pervasive and multifaceted nature.[2] Beyond the politics of the attribution of corruption, there is consensus on its pernicious impact on countries where it predominates. For instance, in Nigeria, it has been demonstrated that corruption adversely affects economic growth, domestic spending, foreign direct investment, and governance institutions.[3]

Such a finding is not unique to Nigeria. In South Africa, it has also been proven that corruption wastes financial resources earmarked for service delivery. It crowds out the private sector and distorts the economy due to "*the monopolising positions of dysfunctional state-owned enterprises*".[4] Gossel observed that corruption leads to an outcome where "*the poor must pay an additional tax in the form of bribes to access mispriced and inefficient state services*."[5].

Considerable academic effort has gone into defining corruption, which has resulted in many definitions. These definitions reveal that corruption manifests in both stark and nuanced strands.[6] However, the strand that forms one of the two major preoccupations of this thesis is corruption involving public officials, civil servants, government functionaries, bureaucrats, or any person working within the government apparatus. This type of corruption is known as official or political corruption.[7]

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[2] Heath, A. F., Richards, L. & de Graaf, N. D. 2016. *Annual Review of Sociology*. 42(1): 51–79. See also Jacobs, J.B. 2004. Corruption and Democracy. *Phi Kappa Phi Forum*. 84(1): 22. where the author declared that "In fact, the United States has a long and sordid history of corruption, especially in city government, but also in our state houses and presidential administrations." Johnson, N.D., LaFountain, C.L., & Yamarik, S. 2011.Corruption is Bad for Growth (even in the United States). *Public Choice*. 147 (3-4): 377-393.

[3] Makar, T.A., Ngutsav, A., Ijirshar, V.U., & Ayaga, J.M. 2023. Impact of Corruption on Economic Growth in Nigeria. *Journal of Public Administration, Finance and Law*. 27: 254-275. See also PricewaterhouseCoopers. n.d. Impact of Corruption on Nigeria's Economy. Available: <https://www.pwc.com/ng/en/press-room/impact-of-corruption-on-nigeria-s-economy.html [2025, April 11], a study that showed that untackled corruption could cost Nigeria 37% of the country's Gross Domestic Product. It is noted that this cost was approximately $1,000 per head in 2014 and will climb to almost $2,000 per head by 2030.

[4] Gossel, S. 2017. How Corruption Is Fraying South Africa's Social and Economic Fabric. Available: https://theconversation.com/how-corruption-is-fraying-south-africas-social-and-economic-fabric-80690 [2025, April 11].

[5] *Ibid*.

[6] Agbiboa, D.E. 2012. Between Corruption and Development: The Political Economy of State Robbery in Nigeria. *Journal of Business Ethics.* 108 (3): 325–345.

[7] Amundsen, I.1999. Political Corruption: An Introduction to the Issues
Available: https://www.cmi.no/publications/file/1040-political-corruption.pdf [2025, April 11]. See also Hindess, B. 2005. Investigating International Anti-Corruption. *Third World Quarterly*. 26(8): 1389–1398. Caiden, G.E. 2005. An

The historical approach to the definition of corruption falls into three categories: "*public-interest-centred*", "*public office-centred*", and "*market definitions*"[8]. Heidenheimer and Johnston proposed that these categories could be used to understand political or official corruption. Transparency International (TI) describes corruption as "*the abuse of entrusted power for private gain.*"[9]. An evaluation of this definition demonstrates that it is solely focused on official corruption, which is unsurprising considering that tackling official corruption is a crucial aspect of the organisation's mission.

However, the literature shows that Nye's definition is the most widely accepted definition of official corruption. It shows that official corruption assumes different forms of manifestation and could even occur without an actual exchange of tangible resources. Understanding official corruption, therefore, requires a close probe of these various forms.[10]

Where acts of official corruption are involved, there are typically three prominent categories: embezzlement of public funds, bribe-taking, and misappropriation of public funds and property. Embezzlement and misappropriation are similar, and one may be charged with both offences from a single act. However, the difference is that embezzlement entails the conversion of funds for personal use or gain. In contrast, misappropriation entails redirecting funds or other public property for unauthorised usage, which may not be for personal gain.[11]

Official corruption may also occur when a government official uses her position to bestow a benefit on another person or to procure an intangible benefit for herself on grounds other than merit or objectivity. In other words, such conferral or procurement of benefits could not have occurred but for the inappropriate exploitation of government office or access. Given the challenges posed by corruption in general and official corruption within

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Anatomy of Official Corruption. In *Ethics in Public Management*. Frederickson, H.G. & Ghere, R.K., Eds. New York. Routledge. Caiden, G. E. 1988. Towards a General Theory of Official Corruption. *Asian Journal of Public Administration*. 10(1): 3–26.

[8] Heidenheimer, A.J. & Johnston, M. Eds. 2002. Political Corruption: Concepts & Contexts. 3rd Ed. New York. Routledge. 44. Available: https://doi.org/10.4324/9781315126647 [2025, April 11].

[9]Transparency International. What is Corruption? Available: https://www.transparency.org/en/what-is-corruption [2025, April 11].

[10] Nye, J. S.1967. Corruption and Political Development: A Cost-Benefit Analysis. *The American Political Science Review*. 61(2): 417–427.

[11] See generally Homer, E.M, & Byrne, J. M. 2023. Embezzlement. In *Handbook on Crime and Technology*. Hummer, D. & Byrne, J.M. Eds. Cheltenham: Edward Elgar Publishing.

the context of governance, governments worldwide have often taken steps to address these issues, usually through legislation. The examination of official corruption and related matters considered in this thesis is primarily situated within the context of Nigeria, South Africa, and the U.S.

In Nigeria, accepting undue gratification, fraudulently acquiring or receiving property, bribing public officers, and using an office or position for undue gratification are a few examples of the many acts of official corruption in the country.[12] Similar acts are criminalised in South Africa under the Prevention and Combating of Corruption Act (PRECCA)[13] and in the U.S.[14]

The criminalisation of corruption and the specificity of statutory anti-official corruption provisions recognise that those acts are aberrational to the proper functioning of society and undermine law and order therein. This criminalisation is consistent with the rule of law, which fundamentally eschews arbitrary exercise of power by those in authority, demands that citizens obey the law, and requires equal treatment before the law, including in the prosecution and punishment of offenders. Furthermore, the rule of law requires the maintenance of law and order, and the trial of crimes constitutes a vital tool for achieving this end in modern democratic societies.

Under the concept of the separation of powers propounded by Montesquieu, the political authority of the state is divided into legislative, executive and judicial powers, which are to be exercised by the legislature, the executive, and the judiciary, respectively. The executive is responsible for implementing and administering the legislation enacted by the legislature. The judiciary is responsible for adjudicating the legality and the propriety of the passage of the legislation.[15]

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[12] Nabiebu, M., Otu, M. T. & Alobo, E.E. 2024. Combatting Corruption in Nigeria: Assessing Legal Infrastructure and Proposals for Reform. *GNOSI: An Interdisciplinary Journal of Human Theory and Praxis*. 6(2): 210-227.

[13] *Act 12 of 2004, as amended, 2008*. Available: https://www.justice.gov.za/legislation/acts/2004-012.pdf. [2025, April 11].

[14] 18 U.S.C. § 201, which prohibits "corruptly giving, offering, or promising anything of value, directly or indirectly, to any public official or person who has been selected to be a public official or offering or promising public official or person who has been selected to be a public official anything of value with the intent to: (i) influence any official act; (ii) influence such person to commit, aid, collude in, or allow any fraud on the U.S.; or (iii) induce such person to do or omit to do any act in violation of his lawful duty" (18 U.S.C. § 201(b)(1)).

[15] Baron de Montesquieu. 1750. *The Spirit of Laws*.

In countries that practice the democratic system of government, such as Nigeria, South Africa, and the U.S., state powers are allocated among these three organs of government. Besides introducing clarity and the assignment of responsibilities, the separation of powers promotes the rule of law by preventing the excessive concentration of power in one organ, which could potentially result in despotism and the abuse of such concentrated power. This concept also contains an inherent mechanism of checks and balances through which each organ monitors and seeks to curtail any overreaching exercise of allocated power by the others.

An example of such allocated powers is criminal prosecution placed within the executive branch in Nigeria, South Africa, and the U.S. In these countries, criminal prosecution is undertaken by the executive through the instrumentality of the public prosecutor within the broader organisational context of the ministry or department of justice. The public prosecutor is known by different names in various countries.

In South Africa, it is the National Prosecuting Authority (NPA)[16] headed by the National Director of Public Prosecutions (NDPP); and in Nigeria, it is primarily the Department of Public Prosecutions (DPP),[17] a department of the Nigerian Federal Ministry of Justice under the superintendence of the Attorney General of the Federation of Nigeria.[18] In the U.S., crime at the federal level is the responsibility of the U.S. Attorney for the relevant federal district within the United States Department of Justice (DOJ). The President of the U.S. appoints each U.S. Attorney, who reports to the U.S. Attorney General.[19]

Although there are prosecutors at sub-national levels in these three countries, this thesis focuses on prosecution at the federal or national level. The term 'the Prosecution' is

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[16] Constitution of the Republic of South Africa,1996. s.179 (i); National Prosecuting Authority (NPA) Act, No. 32, 1998. Ss 2-4.

[17] Federal Ministry of Justice. <https://www.justice.gov.ng/index.php/the-ministry/departments/public-prosecution> [2025, April 11].

[18] Constitution of the Federal Republic of Nigeria (CFRN) 1999, as amended, s.150. Note that there are other agencies which have prosecutorial authority over corruption matters in Nigeria, such as the Independent Corrupt Practices Commission and Other Related Offences Commission, Economic and Financial Crimes Commission and Attorneys General of the constituent states of Nigeria pursuant to s.211, CFRN.

[19] U.S Department of Justice. *Authority of the U.S. Attorney in Criminal Division Matters/Prior Approvals*. *The Justice Manual*. Title 9: Criminal. Available: https://www.justice.gov/jm/jm-9-2000-authority-us-attorney-criminal-division-mattersprior-approvals#:~:text=The%20United%20States%20Attorney%2C%20within,the%20United%20States%20(28%20U.S.C [2025, April 11].

used herein to refer to the office responsible for investigating and prosecuting crimes at the national level. Given that prosecutorial powers are constitutionally or statutorily vested in the executive in these countries, and considering the challenge of official corruption to the rule of law, it is crucial to examine how effectively the executive has exercised these powers.

Accusations of executive interference in official corruption prosecutions have persisted across democratic nations, including Nigeria, South Africa, and the U.S. These allegations assert that the executive branch has systematically manipulated prosecutorial processes by pressuring authorities to halt investigations, avoid filing charges, or drop ongoing cases against individuals suspected of corrupt practices. Such actions undermine the rule of law and public trust in governance.[20]

Additionally, the executive has granted pardons to public officials convicted of official corruption offences. This is regarded as a corrupt exercise of authority designed to shield government officials from the penalties of the law.[21] In other cases, the executive has been accused of instigating prosecutions against political opponents for official corruption where no prima facie case may be evident.[22] Where governments selectively apply the criminal justice system in this manner, it raises apprehensions regarding the efficacy of criminal prosecution as a mechanism for maintaining law and order in society and furthering the rule of law.

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[20] See generally Adedeji, A. 2018. Prosecutorial Independence and the Effectiveness of the Nigerian Criminal Justice System. In *The Evolving Role of the Public Prosecutor: Challenges and Innovations*. Colvin, V., & Stenning, P. (Eds.). New York. Routledge. De Villiers, W. 2011. Is the Prosecuting Authority under South African Law Politically Independent? An Investigation into the South African and Analogous Models. *Journal of Contemporary Roman-Dutch Law*. 74: 247. Peterson, T.D. 2020. Federal Prosecutorial Independence. *Duke Journal of Constitutional Law & Public Policy*. 15: 217-290.

[21] Former Nigerian President Goodluck Jonathan granted a pardon to his political mentor, Diepreye Alamieyeseigha, under whom he previously served as a deputy governor. *Vanguard Newspapers*. 2013. *Alamieyeseigha: NBA slams Jonathan over pardon*. Available: <https://www.vanguardngr.com/2013/03/alamieyeseigha-nba-slamsjonathan-over-pardon> [2025, April 11]. President George Bush commuted the sentence of Lewis Libby, former Chief of Staff to the then Vice-President, Dick Cheney, who was convicted of obstruction of justice and making false statements to the United States Federal Bureau of Investigation. President Trump subsequently granted Mr. Libby a full pardon in 2018. Trumpwhitehouse. 2018. *Statement from the Press Secretary Regarding the Pardon of I "Scooter" Lewis Libby.* Available: *https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-pardon-scooter-lewis-libby/* [2025, April 11].

[22] Gordon, S. C. 2009. Assessing Partisan Bias in Federal Public Corruption Prosecutions. *American Political Science Review*. 103(4): 534-554. Da Ros, L. & Gehrke, M. 2024. Convicting Politicians for Corruption: The Politics of Criminal Accountability. *Government and Opposition: An International Journal of Comparative Politics.* 1–25.

Another function of criminal prosecution is that it constitutes a tool through which governments honour the terms of the social contract with the people. The structural content of this contract is the creation of an expectation that governments would provide security for lives and property[23] and use criminal prosecutions to address any actual or potential threat or damage to lives and property. Again, the utility of criminal prosecution in this manner is called into question against the backdrop of executive interventions. Without certainty in the application of criminal law enforcement, law and order will break down, leading to societal anarchy and resulting in the loss of lives and property.

Criminal prosecution also underscores a crucial element of the rule of law: equality before the law. What more eloquent way to demonstrate equality before the law than for every member of society, including public officials, to be subsumed under the same criminal justice system in all its ramifications? One of the areas in which this aspiration for equality is challenged is the interference of the executive in prosecuting official corruption offences. While the executive is empowered to enforce criminal law legislation, it has sometimes pronouncedly declined to exercise these powers in credibly dubious circumstances.

These interferences are occasioned in part by the structural subsummation of the Prosecution in the executive as a natural consequence of the allocation of law enforcement powers to the latter. They are further aided by the prosecutorial discretion principle that grants the Prosecution latitude to reasonably determine the cases to pursue out of the many eligible for investigations and prosecution. Unwittingly, this principle provides a shield for the executive to influence official corruption cases that are ultimately prosecuted under the cover of the exercise of prosecutorial discretion.

This situation is further exacerbated by the absence of a principle of compulsory prosecution in the relevant statutes of different democratic systems, including Nigeria, South Africa, and the U.S. However, ethical and legal guidelines buttress the principle that

[23] Abramchayev, L. 2004. A Social Contract Argument for the State's Duty to Protect from Private Violence. *St. John's Journal of Legal Commentary*. 18(3): 851. Shea, B. 2023. Bound by Agreement-The Principles of Social Contract Theory. In *Ethical Explorations: Moral Dilemmas in a Universe of Possibilities*. Available at: https://mlpp.pressbooks.pub/ethicalexplorations/chapter/chapter-6-bound-by-agreement-the-principles-of-social-contract-theory6/ [2025, April 11].

prosecutorial discretion does not allow one to wield law enforcement powers for personal, pecuniary, and partisan ends as the executive branch has done on diverse occasions.[24]

Executive interference shapes prosecutorial responses, influenced by constitutional sociology, political economy, cultural politics, and political culture. This interference undermines the rule of law, the separation of powers, prosecutorial independence, and the social contract between citizens and their governments. Nigeria's tolerance of executive overreach, South Africa's evolving democracy and pluralism, and the U.S.'s rule-of-law ethos and vigilance frame this study.

This thesis addresses four central issues: the prosecution of official corruption offences; the allocation of law enforcement powers to the executive under the separation of powers; the executive's interference in prosecuting official corruption offences through the subordination of the Prosecution; and the resulting erosion of the rule of law. These issues are analysed within the constitutional sociology, political economy, cultural politics, and political culture of the three countries under examination.

The specific forms of Executive interference are: (a) obstructing investigations and prosecutions of official corruption; (b) intervening in these prosecutions via *nolle prosequi* or case discontinuation and takeover of proceedings;[25] and (c) mitigating the impact of charges or convictions through presidential pardons. While these actions may seem objectionable, they raise a critical question: what if they are executed within the bounds of the executive's lawful authority?

In academic quarters, the propriety of executive interference has been probed through the prism of their legality.[26] For illustration, does the executive have the right under the law

[24] Hemel, D.J & Posner, E.A. 2017. Presidential Obstruction of Justice. *California Law Review* .106 (4):5.

[25] CFRN, s.211; See also *South Africa Criminal Procedure Act*, No.51 of 1977, s.6.

[26] Garvey, T. 2014. The Take Care Clause and Executive Discretion in the Enforcement of Law. Congressional Research Service. Richman, D. 2009. Political Control of Federal Prosecutions: Looking Back and Looking Forward. *Duke Law Journal*. 2087-2124. Krent, H.J. 1988. Executive Control over Criminal Law Enforcement: Some Lessons from History. *American University Law Review*. 38:275. Eastland, T. 1997. The Power to Control Prosecution. *Nexus*. 2:43. Dangel, S.A. 1990. Is Prosecution a Core Executive Function? Morrison v. Olson and the Framers' Intent. *Yale Law Journal*. 1069-1088. See *Trump v United States*, 603 U.S (2024), where the Supreme Court of the United States reiterated as follows: "And the Executive Branch has "exclusive authority and absolute discretion" to decide which crimes to investigate and prosecute, including concerning allegations of election crime. *Nixon*, 418 U. S., at 693; see *United States* v. *Texas*, 599 U. S. 670, 678–679 (2023) ("Under Article II, the Executive Branch possesses the authority to decide 'how to prioritise and how aggressively to pursue legal actions against

to (a) direct the decision of the Prosecution to institute criminal proceedings; (b) direct the investigations of the Prosecution; and (c) issue pardons at any stage of the criminal justice process?

When scrutinised against the constitutional and legislative provisions of Nigeria, South Africa, and the U.S., these questions often yield affirmative answers, as law enforcement powers are vested in the executive. However, focusing solely on legality overlooks the broader issue: the contentious outcomes these actions produce or may produce.

How, then, can this issue be resolved? The rationale behind executive interference and its alignment with the rule of law deserves careful consideration. This examination is particularly challenging given that many of these actions arguably fall within the legitimate exercise of executive authority.

For instance, the Prosecution can choose which case to prosecute, enter a *nolle prosequi*, or compromise by plea bargain. The executive also has the power to extend pardons to convicts.[27] Thus, it has always proven difficult to assemble concrete evidence of *mala fides* behind acts of executive interference.

How can one prove that a specific matter involving a public official was discontinued for political reasons or that a pardon was issued for partisan ends? Commentators often infer

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defendants who violate the law.'" (quoting *TransUnion LLC* v. *Ramirez*, 594 U. S. 413, 429 (2021))). The President may discuss potential investigations and prosecutions with his Attorney General and other Justice Department officials to carry out his constitutional duty to "take Care that the Laws be faithfully executed." Art. II, §3. The Attorney General, as head of the Justice Department, acts as the President's "chief law enforcement officer" who "provides vital assistance to [him]in the performance of [his] constitutional duty to 'preserve, protect, and defend the Constitution.'" *Mitchell* v. *Forsyth*, 472 U. S. 511, 520 (1985) (quoting Art. II, §1, cl. 8). Investigative and prosecutorial decision-making is "the special province of the Executive Branch," *Heckler* v. *Chaney*, 470 U. S. 821, 832 (1985), and the Constitution vests the entirety of the executive power in the President, Art. II, §1. For that reason, Trump's threatened removal of the Acting Attorney General likewise implicates "conclusive and preclusive" Presidential authority. As we have explained, the President's power to remove "executive officers of the United States whom he has appointed" may not be regulated by Congress or reviewed by the courts. *Myers*, 272 U. S., at 106, 176; See *supra*, at 8. The President's "management of the Executive Branch" requires him to have "unrestricted power to remove the most important of his subordinates"—such as the Attorney General—"in their most important duties." *Fitzgerald*, 457 U. S., at 750 (internal quotation marks and alteration omitted)."

[27] See also the case of *Trump v United States* (*supra*) where the Supreme Court cautioned against interrogating the motives behind the actions of the President. It states: "In dividing official from unofficial conduct, courts may not inquire into the President's motives. Such a "highly intrusive" inquiry would risk exposing even the most obvious instances of official conduct to judicial examination on the mere allegation of improper purpose. *Fitzgerald*, 457 U. S., at 756. Nor may courts deem an action unofficial merely because it allegedly violates a generally applicable law. Otherwise, Presidents would be subject to trial on "every allegation that an action was unlawful," depriving immunity of its intended effect."

executive intent in official corruption prosecution interference from circumstantial evidence and officials' public roles. This approach partly explains the focus on legality, as codified laws provide a clear framework to evaluate such interventions, ensuring robust analysis of their impact on the rule of law.

This research re-examines specific instances of executive interference, the compelling circumstances surrounding them, and their alignment with the rule of law, both in letter and spirit. By evaluating the interplay between the rule of law, the separation of powers, prosecutorial independence, discretion, and the social contract, this thesis illuminates the dangers executive interference poses to the rule of law in prosecuting official corruption offences. Nigeria, South Africa, and the U.S. are test cases analysed through a comparative methodology. This chapter subsequently discusses the rationale for selecting these countries and employing a comparative analysis.

1.3 Research Objectives

This thesis pursues three key objectives:

1. To examine the extent and mechanisms of executive interference in prosecuting official corruption offences in Nigeria, South Africa, and the U.S.

2. To assess the implications of this interference for the rule of law, focusing on the separation of powers, prosecutorial independence and the social contract.

3. To evaluate the extent to which constitutional sociology, political economy, cultural politics and political culture support the ecosystem of this interference.

1.4 Analysis: Problem Statement and Research Question(s)

The research objectives are modelled through the following research question and three sub-questions: *How do acts of executive interference in prosecuting official corruption offences in democratic societies erode the rule of law*? This is explored through the spectrum of these acts within the three categories above. The following sub-questions support the research question:

1. How does the separation of powers function as an instrument of the rule of law in prosecuting official corruption?
2. How has the executive understood and exercised its prosecutorial powers in official corruption cases, and how does this impact the rule of law?
3. How do constitutional and statutory provisions guide the exercise of prosecutorial powers, and why does the exercise of these powers sometimes conflict with the rule of law?

1.5 Analysis: Research Hypotheses Guiding Comparative Inquiry

To guide this comparative analysis, three hypotheses predict the dynamics of executive interference:

H1: In Nigeria, executive interference through centralised prosecutorial control (e.g., Attorney General's discretion) significantly weakens the rule of law indicators like prosecutorial independence, the separation of powers and equality before the law due to entrenched tolerance of executive overreach and ethnic patronage.

H2: In post-apartheid South Africa, executive interference undermines the rule of law indicators of equality and the separation of powers, and challenges prosecutorial independence due to political pressures, State Capture[28], and race politics.

H3: In the U.S., executive interference through pardon powers disrupts accountability and equality before the law, while interference in prosecutorial decisions undermines prosecutorial independence and discretion.

These hypotheses, testable through doctrinal analysis, frame the study's exploration of interference mechanisms, impacts, and solutions.

1.6 Theoretical Framework

This research is grounded in the rule of law, the separation of powers, prosecutorial independence and discretion, and the social contract theory. This chapter explores the

[28] See Chapter 5, 5.4.4 (*infra*).

linkages between these theories and their relevance to understanding executive interference in prosecuting official corruption.

Given its contested nature, this thesis does not adopt a singular definition of the rule of law. Instead, it synthesises key elements from various definitions that align with both ends-based and institutional perspectives of the rule of law.[29] This approach allows for a multifaceted exploration of the topic. For instance, Tamanaha's definition provides an ends-based view.[30] At the same time, the South African Constitutional Court's interpretation reinforces the principle that all public power must align with the Constitution and the doctrine of legality. The Court emphasised that the legislature and executive are constrained by law, with no power extending beyond what is conferred by the law, thus reinforcing constitutional controls on public power.[31]

The rule of law is the cornerstone of any democratic society, ensuring the law binds all governmental actions. In Nigeria, South Africa, and the U.S., the rule of law mandates the enforcement of criminal laws. While occasional failures to pursue criminal enforcement may be seen as benign breaches, systematic failures driven by improper motives—sometimes institutionalised as state policy—represent a betrayal of the rule of law.

The social contract theory further develops this idea, positing that societies have historically recognised the need for the rule of law as a mechanism for governance. This mutual agreement requires citizens to comply with laws and respect governmental authority, while governments must provide protection and ensure equitable treatment. This research examines how the social contract is affected by executive interference in prosecuting official corruption, particularly in the three studied jurisdictions.

The concept of the separation of powers ensures that no single branch of government holds unchecked authority to safeguard against the concentration of power. This research uses Gwyn's definition of the separation of powers to argue that the law enforcement powers of the executive branch must be balanced by constraints, with exceptions justified only for

[29] [29]Belton, R.2005. Competing Definitions of the Rule of Law: Implications for Practitioners. *Carnegie Endowment for International Peace-Democracy and Rule of Law Project*. 55:3.
[30] Tamanaha, B.Z .2009. A Concise Guide to the Rule of Law. In *Relocating the Rule of Law*. Palombella, G & Walker, N. (Eds.). Oxford: Hart Publishing.
[31] *Affordable Medicines Trust and Others v Minister of Health and Others*, 2006. (3) SA 247 (CC), paras 49.

the greater public good.[32] The executive branch relies on its agencies to execute its law enforcement mandate, yet internal separation within these agencies is vital to ensure prosecutorial independence.

Prosecutorial independence is recognised in Nigeria and South Africa, though neither country's Constitution explicitly guarantees it. In South Africa, the Constitutional Court affirmed that the phrase "*without fear, favour or prejudice*" in the Code of Conduct for the NPA provides constitutional protection.[33] In Nigeria, the Constitution grants prosecutorial authority to the Attorney General, implicitly acknowledging prosecutorial independence. The U.S Constitution does not establish prosecutorial autonomy, as its prosecutorial system is not constitutionally created.

This research argues that the Prosecution's structural placement within the executive branch makes it vulnerable to interference, hindering its ability to function independently. While advocating for reform to insulate the Prosecution from undue executive influence, the study acknowledges that some executive oversight is necessary to achieve public policy goals and uphold the rule of law. Furthermore, this research explores the role of prosecutorial discretion in balancing independence with executive direction in criminal matters.

1.7 Synthesis: Literature Review and Context

This thesis is built on several key concepts: the rule of law, the separation of powers, prosecutorial independence and discretion, and the social contract. While the rule of law is the central foundation, the other concepts are equally vital as they support and sustain the rule of law within democratic systems. Executive interference in prosecuting official corruption offences affects these concepts, shaping their application and, in turn, undermining the rule of law. The interconnectedness of these concepts underscores their relevance to this study, making a review of the literature on these topics essential.

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[32] Verkuil. P.R. 1989. Separation of Powers, the Rule of Law and the Idea of Independence. *William & Mary Law Review.* 30(2):301.

[33] *Ex Parte*: *Chairperson of the National Assembly. In re: Certification of the Constitution of the Republic of South Africa* 1996 (4) SA 744 (CC) para 146.

1.7.1 The Rule of Law

The rule of law has as many definitions as there are authors on the subject, and it remains widely debated. Staton argues that the rule of law can still be meaningfully communicated despite these variations.[34] While a single, universally accepted definition may be elusive due to differing ideological perspectives, this research contends that numerous definitions provide a clear understanding of its fundamental principles. Thus, it is essential to explore some of the key definitions.

What, then, is the rule of law? It is generally defined as the limitation of government actions by fixed rules that are not retrospective, which assures citizens of certainty about how governmental powers can be exercised.[35] However, the seminal definition comes from Albert Venn Dicey in *Introduction to the Study of the Law of the Constitution*.[36] Dicey defined the rule of law as follows:

> It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence… even of wide discretionary authority on the part of the government.
>
> It means, again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary Law Courts; the 'rule of law' in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens.
>
> The 'rule of law', lastly, may be used as a formula for expressing the fact that with us the law of the constitution, the rules which in foreign countries naturally form part of a constitutional code, are not the source but the consequences of the rights of individuals, as defined and enforced by the courts…; thus the constitution is the result of the ordinary law of the land.[37]

Anthony Mathews revised Dicey's definition into three propositions.[38] The order of the propositions is interesting in that one must grasp the second proposition to understand the first and the third, respectively. For Mathews, fundamental human

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[34] Staton, J.K. 2012. Rule-Of-Law Concepts and Rule-Of-Law Models. *Justice System Journal.* 33(2): 240.
[35] See Hayek, F.1944. The Road to Serfdom. London: Routledge; Brito, J. 2014. Agency Threats and The Rule of Law: An Offer You Can't Refuse. *Harvard Journal of Law & Public Policy.* 37: 36.
[36] 1885. London: Macmillan and Co.
[37] *Ibid*. Chapter IV.120-121.
[38] Mathews, A.1986. Freedom. State Security and the Rule of Law: Dilemmas of the Apartheid Society. Cape Town: Juta & Co. 20.

rights should be equally afforded to all citizens without discrimination. This is the second proposition.

The first proposition is that for any government to comply with the rule of law, the human rights contemplated in the second proposition with a view to their preservation must be codified clearly, succinctly, and fairly adjudicated by courts and tribunals. The third and final proposition is that any limitation or deprivation of the rights in the second proposition, as codified under the first proposition, must conform to the prescribed legal rules for such restriction or deprivation. Matthews's definition is also unique because it adds human rights as part of the rule of law, an addition not found in the earlier postulations of the concept.

Lord Bingham, the former Lord Justice of England and Wales, also expressed views on the rule of law similar to those of Mathews. Bingham proposed regarding the rule of law that:

> The core of the existing principle is, I suggest, that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts. This statement is not comprehensive…, and even the most ardent constitutionalist would not suggest that it could be universally applied without exception or qualification. But generally speaking, any departure from the rule … calls for close consideration and clear justification.[39]

Tamanaha provided a succinct definition of the rule of law as follows:

> The rule of law, at its core, requires that government officials and citizens are bound by and act consistent with the law. This basic requirement entails a set of minimal characteristics: law must be set forth in advance (be prospective), be made public, be general, be clear, be stable and certain, and be applied to everyone according to its terms.[40]

From these definitions, the fundamental elements of the rule of law emerge. These are the codification of laws, the subjection of all individuals to the law, the avoidance of arbitrary power, the preservation of human rights, the deprivation of rights only through legal means, and adjudication based on codified laws. The rule of

[39] Bingham, T. 2010. The Rule of Law. London: Penguin Press. 8.
[40] Tamanaha, B.Z .2009. A Concise Guide to the Rule of Law. In *Relocating the Rule of Law*. Palombella, G & Walker, N. (Eds). Oxford: Hart Publishing.

law can thus be summarised as the absence of arbitrary government rule, the presence of publicly accessible, non-retrospective laws, and the impartial application of these laws to all within the state's jurisdiction.[41]

Belton classified definitions of the rule of law into two categories, namely:

> (1) those that emphasize the ends that the rule of law is intended to serve within society (such as upholding law and order, or providing predictable and efficient judgments), and (2) those that highlight the institutional attributes believed necessary to actuate the rule of law (such as comprehensive laws, well-functioning courts, and trained law enforcement agencies). [42]

She further describes the first category as "*ends-based definitions*" and the second as "*institutional attributes*".[43] Belton submits that the ends-based definitions comprise:

> five separate, socially desirable goods, or ends: (1) a government bound by law; (2) equality before the law; (3) law and order; (4) predictable and efficient rulings; and (5) human rights.[44]

She posits that the institutional approach comprises (1) laws; (2) a grounded judiciary; and (3) an enforcement or compliance force.[45]

Trebilcock and Daniels agree with Belton's broad categorisation as they view the rule of law as:

> …both a set of ideals and an institutional framework… it is concerned first and foremost with both the conceptual soundness and institutional protection of rules… interpretative and applicational methodologies, and… processes of judicial and other enforcement with the axiological purpose of providing such functions as social and economic coordination.[46]

Belton's classification presents a valuable framework for understanding the various aspects of the rule of law. It provides a critical foundation for analysing

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[41] Albert, I.O. 2019. Beyond Recrimination: The Rule of Law and Nigeria's Anti-Graft War. *African Development.* 44 (4): 55.

[42]Belton, R.2005. Competing Definitions of the Rule of Law: Implications for Practitioners (*supra*), at 55:3.

[43] *Ibid*. 6.

[44] *Ibid*. 6.

[45] *Ibid.* 16.

[46] Trebilcock, M.J & Daniels, R.J. 2008. Rule of Law Reform and Development: Charting the Fragile Path of Progress. Cheltenham, UK: Edward Elgar Press. 5. See Bedner, A. 2010. An Elementary Approach to the Rule of Law. *Hague Journal on the Rule of Law*. 2:55 for a critique of Belton's categorisation

Executive interference, assessing its impact on the rule of law, and exploring potential solutions.

After utilising and analysing the components of Belton's two categories, I recharacterise them as the Eight Rule of Law indicators: the first category comprises five Ends-Based Rule-of-Law Indicators, and the second contains three Institutional Rule-of-Law Indicators.

John Locke offers a classic example of an institutional attribute's definition of the rule of law. He described the features of a legitimate government as one:

> …bound to govern by established *standing Laws*, promulgated and known to the People, and not by Extemporary Decrees, by *indifferent* and upright *Judges*, who are to decide Controversies by those Laws; and to employ the force of the community at home *only in the execution of such* Laws, or abroad to prevent or redress foreign injuries, and secure the community from inroads and invasion. All this to be directed to no other *end*, but the *peace*, *safety*, and *public good* of the people.[47]

Beyond the emphasis on the stability of laws and their uniform application, as highlighted in the institutional attributes, some scholars have approached the rule of law from an economic perspective. They argue that the rule of law is essential for any society aiming to maximise economic growth and attract foreign investment.[48]

Other authors have tried to describe the rule of law by the effects of its absence. For instance, Eiras argues that the rule of law is the one fulcrum that limits corruption, maintains economic groups, and improves citizens' standard of living.[49] She submits that without the rule of law, society lacks the capacity to stop abuses and arbitrariness.

While these authors correctly describe the consequences of an environment devoid of the rule of law, their suggestion that the mere presence of the mechanisms of the rule of law is sufficient to achieve its ends is mistaken. A better understanding of the rule of law requires defining its contours and frontiers. With an enhanced

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[47] Locke, J. 1764. Two Treatises of Government. London MDCLXXXVIII: Millar, A et al. (Eds.). Section 131.

[48] Reed, O.L. 2001. Law, the Rule of Law, and Property: A Foundation for the Private Market and Business Study. *American Business Law Journal*. 38:441.

[49] Eiras, A. 2003. Make the Rule of Law a Necessary Condition for the Millennium Challenge Account. Available:https://www.heritage.org/trade/report/make-the-rule-law-necessary-condition-the-millenniumchallenge-account [2025, April 11].

description, we can better evaluate its application across different societies and reasonably compare trends.

Some authors have introduced the concept of differentiation in understanding the rule of law, arguing that its definition varies from country to country. Such arguments have been used to justify the increasingly authoritarian tendencies of democratically elected governments in Turkey, Hungary, and Poland.[50] Kelemen rejected this position as neither "*normatively desirable nor practically feasible*".[51]

Allowing the meaning of the rule of law to vary by context invites despots to justify authoritarianism under their own definitions, trivialising the concept into a subjective contest. As Raz argues, a universal standard sets clear parameters, enabling robust assessments of compliance across societies and providing a measurable benchmark for legal systems.[52] In effect, there must be a universal ideal of the rule of law—the bellwether of what society aspires to attain in the governance of its members.

By deploying the core principles of the rule of law derived from key definitions, this study juxtaposes the rule of law against executive interference, highlighting how this interference undermines it. For instance, Van Aaken, Salzberger, and Voigt argue that equality before the law, a fundamental aspect of the rule of law, is compromised when crimes committed by government officials are not punished as they would be for ordinary citizens.[53]

Literature on the rule of law in Africa provides vital context. Osaghae links Nigeria's governance failures and executive overreach to fragility in the rule of law,[54] while Suberu highlights ethnic conflicts that undermine constitutional norms.[55] Ekeh's

[50] Kelemen, R.D. 2019. Is Differentiation Possible in Rule of Law? *Comparative European Politics.* 17 (2):246.
[51] *Ibid*.
[52] Raz, J.1979. The Authority of Law: Essays on Law and Morality. London. Oxford University Press. Rajah, J. 2011. Punishing Bodies, Securing the Nation: How Rule of Law Can Legitimate the Urbane Authoritarian State. *Law & Social Inquiry*. 36 (4): 945-70; Rajah, J. 2012. Authoritarian Rule of Law: Legislation, Discourse and Legitimacy in Singapore. London. Cambridge University Press; Wilson, S. 2014. A review of Authoritarian Rule of Law: Legislation, Discourse and Legitimacy in Singapore by Jothie Rajah. *Indiana Journal of Global Legal Studies*. 21 (1): 297-301.
[53] Van Aaken, A., Salzberger, E. & Voigt, S. 2004. The Prosecution of Public Figures and the Separation of Powers: Confusion within the Executive Branch- A Conceptual Framework. *Constitutional Political Economy*. 15:277.
[54] Osaghae, E.1998. Crippled Giant: Nigeria Since Independence. Indiana. Indiana University Press. 22.
[55] Suberu, R. 2001. Federalism and Ethnic Conflict in Nigeria. Washington, DC. *U.S Institute of Peace Press*.

concept of Africa's dual publics presents a cultural barrier to adherence to the rule of law in Nigeria.[56]

In South Africa, Mutua critiques universal rule of law models, advocating for Africa-specific approaches,[57] while Klug details post-apartheid constitutional challenges.[58] Habib challenges the governance of the African National Congress (ANC) in South Africa, noting the erosion of the rule of law under their administration.[59] Broader African perspectives include Fombad, who identifies a post-1990s rule of law crisis in Africa,[60] and Kelly, who connects the rule of law to state-citizen trust.[61]

This study builds on these ideas and examines how executive interference erodes the equality and supremacy of the law. Krygier's critiques of abstract rule of law definitions are instrumental to the contextual approach to the subject in this study.[62]In addition to analysing the rule of law, the coterminous concept of the separation of powers is also evaluated.

1.7.2 The Separation of Powers

The separation of powers is a concept under which the three major arms of government are separated, each allotted its portfolio of powers and responsibilities. Like the rule of law, it is antiquated and subject to many academic analyses and disputations.[63] One of the mischiefs that the separation of powers attempts to resolve is avoiding a situation of powers in one arm, which could lead to abuse.

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[56] Ekeh, P.P. 1975. Colonialism and the Two Publics in Africa: A Theoretical Statement. *Comparative Studies in Society and History*. 17(1): 91-93.
[57] Mutua, M. 2016. Africa and the Rule of Law. University at Buffalo Law School. 164.
[58] Klug, H. 2016. Towards a Sociology of Constitutional Transformation: Understanding South Africa's Post-Apartheid Constitutional Order. *University of Wisconsin Law School Legal Research Paper*. 1373.
[59] Habib, A. 2013. South Africa's Suspended Revolution: Hopes and Prospects. Johannesburg. Wits University Press.
[60] Fombad, C. 2020. Corruption and the Crisis of Constitutionalism in Africa. In *Corruption and Constitutionalism in Africa*. Fombad, C., & Steytler, N, (Eds.). Oxford. Oxford University Press. 20.
[61] Kelly, C.L. 2023. The Impact of the Rule of Law on National Security in African Countries. *Judicature International*. 1.
[62] Krygier, M. 2011. Four Puzzles about the Rule of Law: Why, What, Where? And Who Cares? *Getting to the Rule of Law*. *NOMOS L*, New York. New York University Press. 74.
[63] Burns, A.1 et al. 1987. Understanding Separation of Powers. *Pace Law Review*. 7(3): 575-607; Verkuil. P.R. 1989. Separation of Powers, the Rule of Law and the Idea of Independence. *William & Mary Law Review*. 30(2):301.

The Founding Fathers[64] of the U.S. Constitution were concerned about such concentration of power in the executive branch of the U.S. government. This enabled the entrenchment of the principle of the separation of powers in the U.S. Constitution.[65] James Madison, one of the Founding Fathers, provided an insight into their thinking in this respect:

> The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.[66]

The doctrine of the separation of powers is ever-present in the discourse about the rule of law, amongst others[67] and "*is the classical core of a constitution founded on the rule of law*"[68]. Verkuil regarded Gwyn's 'rule of law version' of the separation of powers as the most intriguing alternative analysis of the separation of powers.[69]

The rule of law provides the most intuitive explanation for the separation of powers, as all critical features of this concept rest on the foundation of the rule of law. The division of powers among the three branches of government aims to prevent arbitrariness, a core end of the rule of law. Each branch is constitutionally mandated to fulfil its duties within the confines of the law.

In essence, the separation of powers upholds the rule of law both from an ends-based perspective and through its institutional attributes. This is evident in the distinct roles of each branch: the executive enforces laws, the legislature creates laws, and the judiciary interprets laws. This study relies on this foundation to examine the impact of

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Katyal, N.K. 2005. Internal Separation of Powers: Checking Today's Most Dangerous Branch from Within. *Yale Law Journal.* 115: 2314.

[64] The White House. Our Founding Fathers. https://www.whitehouse.gov/founding-fathers/ [2025, April 11].

[65] Michaels, J.D. 2015. An Enduring, Evolving Separation of Powers. *Columbia Law Review.* 115(3):525.

[66] See the Federalist Papers: No 47 on *The Particular Structure of the New Government and the Distribution of Power Among its Different Parts*, February 1, 1788.Available: https://avalon.law.yale.edu/18th_century/fed47.asp [2025, April 11].

[67] Mesonia, G.2020. The Principle of the Separation of Powers: The Ontological Presumption of An Ideologeme. *Baltic Journal of Law & Politics: A Journal of Vytautas Magnus University*. 13(2):1.

[68] Bumke, C. & Voßkuhle, A. 2019. German Constitutional Law. Introduction, Cases, and Principles. Oxford: Oxford University Press. 347, cited in Mesonia, G. 2020. *The Principle of Separation of Powers: The Ontological Presumption of an Ideologeme* (*supra*), at 17.

[69] Verkuil, P.R. 1989. Separation of Powers, the Rule of Law and the Idea of Independence (*supra*) at 304, citing Gwyn, W.B. 1965. The Meaning of the Separation of Powers: An Analysis of the Doctrine from Its Origin to the Adoption of the United States Constitution. New Orleans. Tulane University.

executive interference in prosecuting official corruption offences and how this interference undermines the fundamentals of this doctrine and, inevitably, that of the rule of law.

The overarching concern is that the executive might be hesitant or biased in prosecuting members within its ranks who are reasonably suspected of official corruption. Given that the executive constitutionally holds the state's prosecutorial powers, a biased exercise of this power would threaten the independence of the Prosecution. Krauss argues that the separation of powers supports prosecutorial independence, as U.S. courts are typically reluctant to interfere with the Prosecution's decisions on whether to prosecute.[70]

There are significant concerns about the erosion of the rule of law through executive actions that undermine prosecutorial independence. These actions, exercised within powers allocated exclusively to the executive under the separation of powers, are intended to uphold and sustain the rule of law. However, are these powers now being exercised in a way that undermines their allocated purposes? To tentatively grasp the implications of this issue, the theories of prosecutorial independence, discretion, and the social contract are preliminarily explored.

1.7.3 Prosecutorial Independence

The starting point in any discussion of prosecutorial independence is the fundamental question: independence from what? Given that the executive's role in enforcing laws, including prosecuting crimes, is within the separation of powers framework, the reasonable answer is independence from executive interference or influence.

Concerns about executive interference in prosecutorial processes have provoked interest among legal practitioners and academics in prosecutorial independence. This

[70] Krauss, R. 2009. The Theory of Prosecutorial Discretion in Federal Law: Origins and Developments. *Seton Law Review.* 6(1):5.

concept advocates for the Prosecution to perform its law enforcement role without external influence or interference.

Such influence or interference could arguably come from several interest sources, such as religious groups (especially in deeply conservative religious societies), influential labour unions, and behemoth corporations such as big pharmaceuticals or oil exploration giants. However, this thesis focuses on the executive's influence and interference as the ultimate control point of the prosecutorial process.

These arguments have commentators at opposite ends of the field. While some argue that the executive's powers circumscribe prosecutorial independence, others have contended the opposite.[71] Green and Roiphe assert that "*prosecutorial independence has become a cornerstone of American democracy, built into how the country is governed*."[72]

While these authors concede the absence of any express statutory authority for prosecutorial independence, they counter that the same could be said for the executive's complete power regarding prosecutions. The views of the authors that "*effective and impartial administration of justice rests on a healthy distance between the President and prosecuting attorneys*"[73]is a feasible basis for arguing prosecutorial independence. In support, Voigt and Wulf posit that in the absence of this independence, the Prosecution may be susceptible to undue influence by the executive to partisan ends.[74] Based on this, improper executive interference could affect the administration of justice and erode the rule of law.

Van Aaken, Salzberger, and Voigt also argue for considerable prosecutorial independence from the Executive branch. They reviewed the position of the

[71] Wendel, W.B. 2017. Government Lawyers in the Trump Administration. *Cornell Law School Research Paper.* No. 17-4.

[72] Green, B.A., & Roiphe, R. 2018. Can the President Control the Department of Justice? *Alabama Law Review*. 70 (1): 4; See also Foster, J. 2019. Charges to be Declined: Legal Challenges and Policy Debates Surrounding Non-Prosecution Initiatives in Massachusetts. *Boston College Law Review.* 60 (8): 2536.

[73] Green, B.A & Roiphe, R. 2018. Can the President Control the Department of Justice? (*supra*), at 59.

[74] Voigt, S & Wulf, A.J. 2019. What Makes Prosecutors Independent? Analysing the Institutional Determinants of Prosecutorial Independence. *Journal of Institutional Economics*. 15(1): 99.

Prosecution within the executive in certain European countries and made recommendations regarding its independence.[75] Harriger recognises that executive control of the Prosecution creates tension between the realities of political power and the rule of law.[76]

He concedes that this tension can never be eradicated but can only be managed to achieve the desired balance between democratic accountability/executive control and independence/the rule of law.[77] Beyond the implicit recognition of these issues, he did not analyse how the executive's control of the Prosecution affects the rule of law or how the desired balance between executive control and the rule of law may be achieved.

While acknowledging prosecutorial independence, the U.S. Supreme Court clarified its limits by asserting that the decision not to indict "*has long been regarded as the special province of the Executive Branch*."[78] Similarly, the Nigerian Supreme Court has affirmed the importance of prosecutorial independence.[79]

In South Africa, this principle is implicitly embedded in the preamble to the Code of Conduct for Members of the NPA.[80] This provision emphasises the crucial role of prosecutors in the administration of justice. It highlights that their impartiality and ability to operate without fear, favour, prejudice, or undue influence—including political, public, or judicial interference—are essential for a fair and effective justice system. However, in practice, this independence is often compromised. Omar notes

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[75] Van Aaken, A., Salzberger, E., & S. Voigt. 2004. The Prosecution of Public Figures and the Separation of Powers: Confusion within the Executive Branch- A Conceptual Framework (*supra)*, at 266-273.

[76] Harriger, K.J. 2008. The Law: Executive Power and Prosecution: Lessons from the Libby Trial and the U.S. Attorney Firings. *Presidential Studies Quarterly*. 38(3):492.

[77] Harriger, K.J. 2008. The Law: Executive Power and Prosecution: Lessons from the Libby Trial and the U.S. Attorney Firings. *Presidential Studies Quarterly*. 38(3):492.

[78] *Heckler v. Chaney*, 1985. 470 US 821, 832; *United States v. Armstrong*, 1996. 517 US 456, 464 (holding that the separation of powers doctrine requires broad prosecutorial discretion).

[79] *State v Ilori*, 1983. 1 SCNLR 94.

[80] Omar, J. 2017. *How South Africa Can Stop Political Interference in Who Gets Prosecuted*. Available: https://theconversation.com/how-south-africa-can-stop-political-interference-in-who-gets-prosecuted-79442 [2025, April 11].

that the South African Prosecution is vulnerable to executive interference due to the Constitution's lack of clarity on this issue.[81]

Prosecutorial discretion arises from prosecutorial independence. It refers to the authority of the Prosecution to determine how to conduct criminal prosecutions based on their legal expertise, understanding of the facts, and management of prosecutorial resources. Green and Roiphe observed a broad consensus on the critical role of prosecutorial discretion in administering justice.[82]

Umeche and Okoli, citing the Nigerian authority of *Attorney General of Anambra State v Attorney General of the Federation*[83], affirm that the Attorney General's authority to initiate criminal proceedings is discretionary. Although courts may, in rare instances, compel the Attorney General by mandamus to consider an application for her fiat, they cannot mandate her to grant it or challenge the propriety of her decision to refuse it.[84]

In South Africa, the Prosecution has a duty to prosecute once a prima facie case is made, and there is no compelling reason not to prosecute.[85] Unlike in Nigeria and the U.S., a decision not to prosecute may be subject to judicial review in cases where it was made in bad faith.[86] There are also challenges to prosecutorial discretion flowing from the same origin as the challenge to executive control of the Prosecution. The focal concern of this opposite stance is that discretion permits arbitrariness, which begets inequity.[87]

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[81] *Ibid*.
[82] Green, B.A., & Roiphe, R. 2018. Can the President Control the Department of Justice (*supra*), at 59:808.
[83] 1992. 7 Nigerian Weekly Law Reports (NWLR) (PT256) 711.
[84] Umeche, C.I & Okoli, P.N. 2008. An Appraisal of the Powers of the Attorney General of the Federation with respect to Criminal Proceedings under the Nigerian Constitution. *Commonwealth Law Bulletin* 34(1): 45.
[85] Redpath, J. 2012. Failing to Prosecute? Assessing the State of the National Prosecuting Authority in South Africa. Available: https://issafrica.org/research/monographs/failing-to-prosecute-assessing-the-state-of-the-national-prosecuting-authority-in-south-africa [2025, April 11].
[86] *Ibid*.
[87] Foster, J. 2019. Charges to be Declined: Legal Challenges and Policy Debates Surrounding Non-Prosecution Initiatives in Massachusetts (*supra*) 2536.

This thesis examines how the executive may influence prosecutorial discretion to investigate or prosecute acts of official corruption offences and how the rule of law applies to prosecutorial discretion.[88]

1.7.4 The Social Contract

Having analysed the preceding concepts, the final concept in this thesis is considered: the social contract. The economic impact of official corruption is well-documented, as societal resources, held in commonwealth, are finite. When these resources are misused, it becomes increasingly challenging to distribute them equitably among the qualifying members of society. This issue of ownership and stewardship is central to the social contract, which seeks to explain the formation of society and the role of law and order in maintaining it.[89]

A common theme of this concept is that humans formed societies based on contracts formulated to protect their lives and property. In exchange for this protection delivered by the government, they surrendered some of their rights to the government and pledged obedience to its authority. Thus, in forming a state, humans exchanged protection of life and property as consideration for submitting some of their rights to the government.[90]

The major proponents of the social contract, such as John Locke, Thomas Hobbes, and Jean-Jacques Rousseau, were nearly unanimous on the fundamental rationale for forming a social contract. Still, they differed on specific details of the concept. These points of divergence are subsequently examined herein in analysing the place of this concept in official corruption and the rule of law.[91]

Hobbes theorised that humans' inherent self-preservation compelled them to enter the social contract. On the contrary, Locke submitted that protecting their

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[88] See Chapter 4, 4.4.2 (*infra*).
[89] Black, A. 1993. The Juristic Origins of Social Contract Theory. *History of Political Thought*. 14(1):57-76.
[90] Laskar. M.E. 2014. Summary of Social Contract Theory by Hobbes, Locke and Rousseau. *SSRN Electronic Journal.* 1.
[91] See Chapter 6, 6.3 (*infra*).

property drove humans into the social contract.[92] For Rousseau, the invention of property resulted from the evolution of society. It led humans to seek the protection of the social contract to preserve their property. His view, in summary, is that the emergence of property signalled '"*humanity's fall from grace*" out of the State of Nature'.[93]

This thesis examines the social contract concerning executive interference in prosecuting official corruption, focusing on citizens' rights to government property, often the target of such corruption.[94] Building on the ideas of Locke and Rousseau, it argues that by entering into the social contract and surrendering certain rights to the state, individuals collectively relinquish the benefits of their economic rights to create a shared national wealth. This wealth, representing a country's resources, belongs to all citizens.[95]

Official corruption erodes this wealth, leading to scarcity and inequality. The state, entrusted with the duty to protect these common economic rights, must punish those who misappropriate them. Any failure to penalise offenders undermines the rule of law which demands the even application of the law. This thesis explores how executive interference in prosecuting official corruption impacts the social contract and its broader effects on the rule of law.[96]

1.8 **The Need for this Study**

Official corruption plagues democracies worldwide, undermining governance and resource equity. Despite robust anti-corruption laws and prosecutorial systems, executive interference often shields corrupt officials, as seen in Nigeria, South Africa, and the U.S. While research has explored executive control within the separation of powers and

[92]Hobbes, T. 1996. Leviathan. Gaskin, J.C.A., ed. Oxford: Oxford University Press. Lloyd, A.H. 1901. The Organic Theory of the Society. Passing of the Social Contract. *American Journal of Sociology*. 6 (11): 580; See also Gauthier, D. 1977. The Social Contract as Ideology. *Philosophy & Public Affairs*. 6(2): 134.

[93] Laskar, M.E. 2014. Summary of Social Contract Theory by Hobbes, Locke and Rousseau (*supra*); Lloyd, A.H. 1901. The Organic Theory of the Society. Passing of the Social Contract (*supra*). 583; Gauthier, D. 1977. The Social Contract as Ideology (*supra*), at 146.

[94] See Chapter 6, 6.3 (*infra*).

[95] *Ibid.*

[96] *Ibid.*

prosecutorial independence, the broader impact on the rule of law remains understudied. Unchecked executive interference fosters impunity, erodes public trust, and risks democratic collapse. This study addresses this gap by examining how executive actions disrupt principles of the rule of law and proposing strategies to strengthen accountability, which is vital for sustaining democratic integrity.

The economic and developmental toll of official corruption—misallocated resources, stunted growth—demands rigorous prosecution. Unchecked executive interference signals impunity, eroding trust in institutions and risking societal breakdown. Consistent enforcement upholds law and order whereas failure deepens official corruption and weakens the rule of law. This study probes these dynamics to inform policy and safeguard democratic societies.

Executive interference in official corruption prosecutions reveals influence over the Prosecution, implicating the separation of powers and prosecutorial independence. Scrutinising this interference exposes its profound impact on the rule of law, offering insights to shape constitutional reforms and strengthen governance in democratic systems.

This study also explores how executive interference breaches the social contract. Legal systems thrive on public compliance and are reliant on fair enforcement.[97] When executives protect corrupt elites, signalling some are above the law, public cooperation falters, compromising justice and governance.

Finally, this study assesses the extent of the erosion of the rule of law caused by executive interference and proposes targeted solutions based on the rule of law. Grounding recommendations in the rule of law principles aims to curb interference, bolster accountability, and fortify democratic foundations across Nigeria, South Africa, and the U.S.

1.9 **Synthesis: Research Methodologies**

This study employs doctrinal analysis and comparative study to probe executive interference in official corruption prosecutions. Doctrinal analysis involves rigorous content review of peer-reviewed journals, academic articles, case law, statutes, and reports. Its

[97] Tyler, T.R. 2003. Procedural Justice, Legitimacy, and the Effective Rule of Law. *Crime and Justice*. 30: 291.

descriptive approach ensures reliable conclusions by integrating facts, concepts, and legal principles. This multi-dimensional perspective of this method strengthens the analysis of the rule of law, the separation of powers, prosecutorial independence and the social contract across Nigeria, South Africa, and the U.S.

Comparative analysis complements this approach by examining similarities and differences in prosecutorial systems and constitutional frameworks across the three jurisdictions. This method identifies patterns, tests theories, and yields generalisable insights. Rooted in legal scholarship, it is ideal for assessing how executive interference impacts statutory and case law interpretation, offering a robust framework to understand variations in governance and accountability.

The research relies on desktop and library-based methods, deeply engaging with scholarly articles, case law, and statutes on the rule of law, the separation of powers, social contract, and prosecutorial independence and discretion. Case studies from Nigeria, South Africa, and the U.S. anchor the doctrinal framework alongside constitutional and statutory analyses. These sources illuminate executive powers and prosecutorial roles, directly addressing the research question.

A key limitation is potential bias in academic sources, as scholars' viewpoints may skew arguments. The study draws on diverse sources to counter this, ensuring a balanced perspective. Multiple statutory interpretation rules clarify legal intent, enhancing the validity of the conclusions. This comprehensive approach fortifies the thesis's examination of executive interference and its rule of law implications.

1.10 Additional Justifications for the Comparative Approach

In assessing executive interference, it is vital to understand the distinct socio-political dynamics of each country under review. The comparative approach is complemented by four analytical nodes which view executive interference through a contextual lens. These consider the distinct socio-political dynamics of each country under review.

1.10.1 Constitutional Sociology

Constitutional sociology looks beyond constitutions as legal documents, viewing them as dynamic reflections of society's historical and social realities. Thornhill traces this process back to medieval Europe, where struggles for power, such as the push for the Magna Carta in 1215, shaped early constitutional norms.[98] Chand extends this insight and emphasises that constitutions are designed to address societal demands, such as economic growth and ethnic tensions.[99] This approach highlights that constitutions are not static but evolve in response to social forces.

Constitutional frameworks for Nigeria, South Africa, and the U.S. are deeply rooted in each country's history and culture. The interplay of culture and politics forms the bedrock of a nation's constitutional sociology, shaping how legal systems confront challenges like official corruption and executive overreach.

Thornhill demonstrates that constitutions reflect the cultural values of a society, whether through trust, loyalty, or communal healing.[100] Chand underscores that the efficacy of a constitution hinges on its alignment with these cultural currents; where misalignment occurs, political power distorts legal intent, undermining the rule of law.[101]

1.10.2 Political Economy

Political economy explores the relationship between political institutions and economic systems, analysing how both influence societal outcomes. This interdisciplinary approach traces its roots to classical economists like Adam Smith and

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[98] Thornhill, C. 2011. A Sociology of Constitutions: Constitutions and State Legitimacy in Historical-Sociological Perspective. Cambridge University Press. 9-11, 51.
[99] Chand, H.1977. A Sociological Approach to the Study of Constitutional Law. *Journal of the Indian Law Institute*. 19(1): 11.
[100] Thornhill, C. 2011. A Sociology of Constitutions: Constitutions and State Legitimacy in Historical-Sociological Perspective (*supra*), at 13-14.
[101] Chand, H.1977. A Sociological Approach to the Study of Constitutional Law (*supra*), at 7-8.

has been further developed through institutional economics, public choice theory, and comparative political economy.[102]

In the context of this research, political economy provides critical insight into how the economic foundations of Nigeria, South Africa, and the U.S. shape executive interference in prosecuting official corruption. Nigeria's oil-dependent economy fosters a system of rent-seeking behaviour, where economic power is concentrated in the hands of a few, enabling corruption to thrive. South Africa, transitioning from apartheid, faces the challenge of redressing historical inequalities, with State Capture emerging as a form of corruption.[103] The U.S., with its intricate banking and financial system, contends with the influence of financial institutions that may bias legal processes and complicate the prosecution of corruption.[104]

1.10.3 Cultural Politics

Cultural politics examines the intersection between culture and politics, focusing on how cultural narratives and identities influence political processes and power dynamics.[105] In this context, it helps to understand how executive interference in official corruption prosecutions is shaped by culture. Cultural politics reveals how groups negotiate meaning and power within political structures, with issues like race, gender, and class becoming central to political struggles.[106]

For instance, partisan identities in the U.S. deeply influence public support for executive interventions in corruption cases. In Nigeria, ethnic diversity plays a similar role, with cultural affiliations often determining how official corruption cases are perceived. In South Africa, racial politics also influence attitudes regarding official

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[102] Gilpin, R. 2001. Global Political Economy. Princeton. Princeton University Press. 14, 25, 42,49. Hudson, D., & Leftwich, A. 2014. From Political Economy to Political Analysis. *Development Leadership Program Research Paper*. 32-34.
[103] See Chapter 5, 5.4.4 (*infra*).
[104] See Chapter 3, 3.1.3 (*infra)*.
[105] Nash, K. 2001. The 'Cultural Turn' in Social Theory: Towards a Theory of Cultural Politics. *Sociology*. 35(1). 77–92.
[106] Gellner, E. 1987. Culture, Identity and Politics. Cambridge. Cambridge University Press.

corruption.[107] Cultural politics provides insight into these dynamics, showing how executive actions are supported or resisted based on cultural identities.[108]

1.10.4 Political Culture

Political culture examines the shared attitudes, values, and beliefs that influence political behaviour within a society. It provides essential insights into how political systems function and evolve. Building on the works of Almond and Verba,[109] political culture expands to include elements like political trust, legitimacy, and civic engagement.[110]

This research explores how the political cultures of Nigeria, South Africa, and the U.S. shape their responses to official corruption, especially in the context of executive interference. For instance, Almond and Verba's typology—parochial, subject, and participant cultures—helps categorise how citizens engage with political systems.[111] Subject cultures such as Nigeria might foster deference to authority and executive overreach, while in the U.S., a more active participant culture encourages accountability, potentially enhancing anti-corruption efforts. South Africa's political culture, shaped by its transition from apartheid, is marked by both an eagerness for justice and a reluctance to confront past injustices, complicating efforts to hold officials accountable for corruption.[112]

1.10.5 Differentiation Between Political Culture and Cultural Politics

While political culture and cultural politics are closely related, they serve distinct functions in understanding societal dynamics. Political culture refers to the foundational attitudes and beliefs that shape political systems, while cultural politics focuses on the ongoing negotiation and contestation of values and power within a

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[107] See Chapter 3, 3.1 (*infra*).
[108] *Ibid*.
[109] Almond, G. & Verba, S. 1963. The Civil Culture: Political Attitudes and Democracy in Five Nations. Princeton. Princeton University Press.
[110] Putnam, R.D. 1994. Social Capital and Public Affairs. *Bulletin of the American Academy of Arts and Sciences*. 47(8): 5-19.
[111] Almond, G. & Verba, S. 1963. The Civil Culture: Political Attitudes and Democracy in Five Nations. (*supra*), at 38.
[112] See Chapter 3, 3.1 (*infra*).

society. Johnston's definition of political culture emphasises its role in shaping citizens' engagement with government,[113] while Almond and Verba regard it as where citizens actively influence government, highlighting its focus on shared norms that underpin political systems.[114]

In contrast, cultural politics examines how culture actively becomes a site of political struggle, focusing on the negotiation of meaning, identity, and power within a society. It can be seen in symbolic struggles like parades or media representations.[115] Gendzel further supports this, suggesting that cultural politics emerge when historians apply anthropological lenses to political culture, turning it into a dynamic process of power negotiation rather than a static set of beliefs.[116]

For example, in the U.S., cultural politics manifests in debates over executive interventions like the commutation of Roger Stone's sentencing, where partisan identities contested the meaning of justice, differing from the broader legalistic norms of political culture.[117] In Nigeria and South Africa, cultural politics involve ethnic or post-apartheid narratives shaping corruption perceptions, distinct from the structural characteristics of their political culture.[118]

1.11 **Approach: Rationale for Comparative Country Selection**

The three countries share similarities in their systems of government but also possess key differences, making comparisons crucial for this thesis. All three are constitutional democracies with written constitutions that delineate government power, allocation, and responsibilities. While Nigeria and the U.S. operate under a presidential system with power

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[113] Johnston, M. 1989. Corruption and Political Culture in Britain and The U.S. Innovation. *The European Journal of Social Science Research*. 424.
[114] Almond, G. & Verba, S. 1963. The Civil Culture: Political Attitudes and Democracy in Five Nations. (*supra*), at 38.
[115] Formisano, P. 2001. The Concept of Political Culture. *The Journal of Interdisciplinary History*. 31(3): 413-418.
[116] Gendzel, G. 1997. Political Culture: Genealogy of a Concept. *The Journal of Interdisciplinary History*. 233.
[117] Jenican, J. 2020. The Roger Stone Affair: An Examination of the Legal, Normative, and Ethical Restraints on Presidential Interference in Prosecutorial Decisions. *Georgetown Journal of Legal Ethics*. 34:1057; See Chapter 2, 2.4.3.1 (*infra*).
[118] See Chapter 3, 3.1 (*infra*).

clearly delineated between federal and state governments in the U.S., South Africa adopts a hybrid of presidential and parliamentary systems.

All three countries trace their legal systems to English common law, though Nigeria is the only country considered to be a common-law country. The influence of English common law is deeply embedded in their legal systems due to their shared colonial past. Despite their colonial histories, each country's path to independence and subsequent legal evolution reflects distinct experiences.[119]

Each nation upholds principles like the rule of law, the separation of powers, the social contract, and prosecutorial independence and discretion, which serve as common grounds for comparison. These principles help identify both commonalities and divergences in their application, ensuring that the recommendations derived from this study are relevant to these countries and potentially extendable to others outside of this study.

Politically and economically, these countries hold significant regional and global influence. The U.S., as the world's largest economy,[120] provides a longstanding framework for understanding democratic governance. In contrast, Nigeria and South Africa, both leading economies in Africa, offer diverse contexts for examining the implementation of these concepts, contributing to a deeper understanding of political and legal dynamics in emerging democracies.

Most importantly, these countries are beset by official corruption and executive interference in prosecuting it. The prevalence of official corruption in Nigeria is well documented, and the approach of democratically elected Nigerian governments to it since the commencement of the Nigerian Fourth Republic[121] in 1999 has been sporadic.

Official corruption came to the fore in South Africa during the tenure of President Zuma. Allegations of executive interference in the prosecution of official corruption offences were rife during this period. Though the presidency of Jacob Zuma is in the past, South

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[119] See Chapter 2 (*infra*).

[120] FBS. 2025. The World's Top 20 Economies: 2025 GDP Rankings and Insights. Available: https://fbs.com/fbs-academy/traders-blog/the-world-s-top-20-economies-2025-gdp-rankings-and-insights. [2025, April 11].

[121] This refers to Nigeria's fourth Constitution, which heralded its fourth democratic rule. See generally Adebanwi, W. 2023. Nigeria's Fourth Republic: An Introduction. In *Democracy and Nigeria's Fourth Republic: Governance, Political Economy, and Party Politics 1999–2023*. Adebanwi, W. et al (Eds.). Boydell and Brewer 1-32.

Africa continues to struggle with the legacy of Zuma's corrupt administration. None of these countries has provided more grist to the mill of this research topic than the U.S.

The presidency of Donald Trump during his first tenure as the 45th President of the U.S.,[122] laid bare the underbelly of America's democracy concerning official corruption. This issue became reminiscent of Richard Nixon's presidency.[123] Executive interference in the trial of official corruption offences and using presidential pardons became resurgent areas of law for academics, political analysts, and commentators under President Trump.

Despite the similarities described above, there are fundamental differences between these countries. The U.S. is the most advanced democracy and possesses the most developed government apparatus out of the three countries. South Africa's democracy is recent, in comparison, forged out of the struggle against racial inequality and apartheid. Nigeria's latest democratic experiment is the youngest of the three countries. Still, its past democratic dispensations, pockmarked by intervening years of military dictatorships, provide it with more settled materials on the themes of this research than South Africa. This thesis spotlights these differences and how much the differences in historical antecedents influenced the development of the research themes in these countries.

Finally, by adopting a comparative analysis lens, one can understand their areas of commonalities and divergencies, how they inform realities and ascertain the extent to which their observations may be generalised. Additionally, the comparative analysis approach is apt for testing the various legal concepts discussed in this thesis across different jurisdictions and the extent of their application. It facilitates a deeper understanding of the issues by selecting and focusing on a narrow sample of acts of executive interference in prosecuting official corruption in these countries. It demonstrates how areas of convergence and divergence across these countries could yield similar or different results.

[122] References to the Donald Trump presidency in this thesis pertain mostly to his first term in office. As at the conclusion of this thesis, he won a non-consecutive second term in office, becoming the 47th President of the United States. He took office in January 2025. The impact of his nascent second term on this thesis is partially referenced.
[123] See Chapter 5, 5.5.2 (*infra*).

1.12 Conclusion

This chapter has outlined the research problem, research question, and sub-questions that guide this study while also establishing the theoretical framework and jurisdictional scope. It introduced the core concepts of executive interference in prosecuting official corruption, demonstrated their relevance to the rule of law, and explained the research methodologies employed. The comparative approach taken in this research, focusing on Nigeria, South Africa, and the U.S., allows for a deeper understanding of the dynamics of executive influence and its implications across distinct legal and political contexts.

By examining these countries through the lenses of constitutional sociology, political economy, cultural politics, and political culture, this chapter has set the stage for the subsequent sections of this thesis, which will explore in more detail how executive interference undermines the rule of law. The research findings are intended to contribute to understanding the erosion of prosecutorial independence and the broader impact on democratic governance and the rule of law.

As the thesis progresses, the following chapters will delve deeper into the theoretical underpinnings of these issues, providing a comprehensive analysis of the separation of powers, prosecutorial independence and discretion, and the social contract in relation to the rule of law. The comparative methodology will further illuminate how the intersection of these theories manifests in the distinct political, legal, and cultural environments of the three countries under review. Chapter 2 will explore the nature of official corruption and criminalisation in these jurisdictions, setting the stage for deeper analysis.

This research intends to make a significant original contribution to knowledge by *demonstrating how executive interference in prosecuting official corruption offences erodes the rule of law through the synthesis of the theories of the separation of powers, prosecutorial independence and discretion, and the social contract with the rule of law.*

CHAPTER 2
OFFICIAL CORRUPTION AND CRIMINALISATION: LEGAL FRAMEWORKS IN NIGERIA, SOUTH AFRICA AND THE U.S.

2.1 Purpose: Analysing Tri-National and Cross-Border Anti-Corruption Frameworks

Chapter 2 examines the legal frameworks governing official corruption and its criminalisation in Nigeria, South Africa, and the U.S. It provides a foundation for understanding how executive interference interacts with anti-corruption regimes. Official corruption, a pervasive challenge across democratic systems, undermines public trust and governance, necessitating robust legal responses.

This chapter explores the historical origins of official corruption, its definitions, and the international and national mechanisms designed to combat it. Through a comparative lens, it analyses Nigeria's multiple-agency model, South Africa's post-apartheid anti-corruption laws, and the U.S.'s federal statutes, highlighting how constitutional sociology and cultural factors shape these frameworks. By mapping the legal landscape, this chapter identifies the structural vulnerabilities that enable executive interference, setting the stage for subsequent discussions on its impact on the rule of law. This analysis contributes to the thesis by demonstrating how legal systems, while designed to uphold accountability, can be manipulated by executive actions.

2.2 Origins of Official Corruption

2.2.1 Historical Background

Official corruption is an enduring issue of antiquity, making comparing its prevalence across different historical periods challenging. However, globalisation and the advent of the World Wide Web have brought the pervasiveness of contemporary official corruption into sharp focus. The rapid dissemination of information has exposed egregious instances of official corruption, inciting public outrage, mass protests, and, in some cases, revolutionary changes in governance.[124]

[124] This was the case in the "Arab Spring". This is the term by which the wave of public demonstrations, civil disobedience, armed conflict and change of governments that swept across much of the Arab world from 2011 was known. It was engendered by an act of self-immolation by Mohammed Bouazizi, a Tunisian citizen, against official

No society is devoid of official corruption, and it is present in all political systems with variations in origin, occurrence and importance.[125] Its manifestation is contextual, influenced by the exercise of public power and the strength of governance institutions.[126] In Asia, for instance, "*large parts of the public and private sectors are riddled with corrupt practices, gravely undermining efforts to expedite the conduct of 'good governance.*" [127]

Official corruption is inherently linked to power, as the presence of power creates opportunities for its abuse and misuse.[128] As Caiden observed:

> Ever since the dawn of civilisation, it has been recognised that anyone put into a position of exercising communal or collective or public power and commanding public obedience is tempted to use public office for personal gain and advantage. Deviant conduct has been expected and fairly accurately recorded by historians, brave enough to write about Chinese rulers, Hebrew kings and Roman emperors. ...[129]

Official corruption is insidious, often recognised only by its consequences, as the acts typically occur outside of public scrutiny. Its capacity to become institutionalised and replicated makes it particularly dangerous.[130]

According to Caiden, early efforts to tackle official corruption were rooted in the advent of civilisation, when communities excommunicated members for behaving in an antisocial manner.[131] He submitted that official corruption grew as governments focused on engaging in wars, expanding their territories, and entrenching their legacies. He continued that governments became preoccupied with protecting their

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corruption. See Salih, K.E.O. 2013. The Roots and Causes of the 2011 Arab Uprisings. *Arab Studies Quarterly*. 35(2).1. Kürşad Özekin, M. and Hüseyin Akkaş, H. An Empirical Look to The Arab Spring: Causes and Consequences. *Turkish Journal of International Relations*. 13(1–2):76.

[125] Abjorensen, N. 2014. Combating Corruption: Implications of the G20 Action Plan for the Asia-Pacific Region. 5. Available: http://www.kas.de/wf/doc/kas_40089-544-1-30.pdf?150107025755. [2025, April 11]. See also the description of corruption as ''ubiquitous'' by Gardiner, J. 1970. The Politics of Corruption. New York: Russell Sage Foundation. 93.

[126] Abjorensen, N. 2014. Combating Corruption: Implications of the G20 Action Plan for the Asia-Pacific Region (*supra*).

[127] *Ibid*. 1.

[128] *Ibid.* 5. See also Banfield, E. C. 1975. Corruption as a Feature of Governmental Organization. *Journal of Law and Economics.* 18(3): 593.

[129] Caiden, G. E. 1988. Toward a General Theory of Official Corruption (*supra*), at 3. See also Graaf, G. De. 2007. Causes of Corruption: Towards A Contextual Theory of Corruption. *Public Administration Quarterly*. 4, 5.

[130] *Ibid*.

[131] Caiden, G.E. 2013. A Checkered History of Combating Official Corruption. *Asian Education and Development Studies*. 2(2): 95.

image, which provided cover for corrupt officials who knew that the desire to present an appearance of probity by their governments was more critical than publicly disclosing acts of official corruption amongst the ranks of government officials. [132] This observation remains true where governments are more wary of covering official corruption scandals than tackling them.

Caiden further posited that governments did not care about the costs of official corruption insofar as results were achieved. This resulted in a culture of impunity and a lack of accountability. It meant that citizens' property was not protected from wrongful confiscation and expropriation, and that justice was removed from the reach of the common man.[133]

The enormity of the challenge posed by official corruption is evident in Caiden's views, which convey a resignation to the notion that official corruption may only be managed but cannot be eradicated. This pessimistic outlook is not unfounded, given the persistent nature of official corruption across numerous countries and the lack of enduring success from anti-corruption initiatives. For instance, despite China's severe measures, including the application of the death penalty on conviction of official corruption, it has not succeeded in eliminating this issue.[134]

Historically, public perceptions and attitudes towards official corruption have evolved to differing degrees. A common feature is that official corruption is regarded as antisocial conduct, contrary to what is considered exemplary in various societies.[135] It bears a dubious association with deprivation, the repurposing of the commonwealth of nations for parochial purposes, and the stifling of prosperity. Its consequences are evident in revolutions and violent changes in governments.[136]

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[132] *Ibid.*
[133] *Ibid.*
[134] Zhu, J. 2012. Do Severe Penalties Deter Corruption? A Game-theoretic Analysis of the Chinese Case. *China Review.* 1-32. Shen, P.M. 2021. Governing through Corruption: The Symbolism of the Death Penalty for Chinese Corrupt Officials. *National Taiwan University Law Review.* 16:81.
[135] Graaf, G. De. 2007. Causes of Corruption: Towards A Contextual Theory of Corruption. (*supra*). 43-44.
[136] The Arab Spring, for example.

Fundamentally, official corruption unmasks failings in human conduct, governance, and discipline. Consequently, a successful challenge to official corruption must commence with a re-evaluation of societal mores and governance, and "*the remedies must therefore be within human will, instruction, ingenuity, invention, organisation, and determination to reduce its occurrence and harm*."[137] To this end, combating official corruption requires a multifaceted approach integrating the threat of prosecution and conviction with civic education and the embarrassment of opprobrium for official corruption.

The effectiveness of combating official corruption largely depends on the efficiency of the institutions responsible for this task. In constitutional democracies, the framework for this fight is well-established: the executive enforces anti-corruption measures through prosecutorial agencies, the legislature enacts relevant laws, and the judiciary interprets and applies these laws to specific cases. As Kaufman observed, the success in addressing official corruption is partly contingent on recognising it as a symptom of broader societal issues, such as "*the failure of institutions and governance, resulting in poor management of revenues and resources and the absence of delivery of public goods and services*".[138]

Focusing on official corruption is crucial because the government, as the primary institution responsible for organising human affairs, is staffed by functionaries who implement policies and steer its operations. These individuals are vested with the privileged legitimacy of governmental authority, making their conduct particularly significant. Given the government's central role in maintaining law and order, governments and their operatives must remain beyond reproach in public administration.

Actions taken in the name of the government must be executed with the utmost diligence and integrity to ensure the proper functioning of society. These aspirations are seriously undermined by the involvement of government officials in acts of official

[137] Caiden, G.E. 2013. A Checkered History of Combating Official Corruption. (*supra*), at 93.
[138] Kaufmann, D. 2012. Rethinking the Fight Against Corruption. *Huffington Post.* Available: https://www.huffpost.com/entry/rethinking-the-fight-corruption_b_2204591 [2025, April 11].

corruption, considering that the government is the repository of society's collective patrimony and resources.

Official corruption engenders distrust in governments and their institutions. It generates apathy to politics among the citizenry, impoverishes the masses, incentivises negative emulations, and sometimes leads to violent unrest and revolutions.[139] Constant attention is required to police it, and the mechanisms should be introduced to tackle it. Such mechanisms include equipping relevant institutions to detect and punish it and, most importantly, making it too expensive. The latter could involve stripping guilty officials of all assets traceable as proceeds of corruption, depriving them of their pensions and other emoluments, permanently barring them from political office, and imprisonment.

2.2.2 International Anti-Corruption Initiatives

The international community has long been engaged in combating official corruption, though for a long time, this was seen as a domestic issue for individual states to address.[140] However, globalisation revealed the widespread nature of corruption, even in developed nations once considered immune, such as the U.S. As corrupt officials shared methods across borders, international cooperation became essential.

Initially, international focus on official corruption was limited, particularly during the Cold War when geopolitical concerns often took precedence over addressing internal corruption.[141] This changed in the 1970s with the U.S. Foreign Corrupt Practices Act, which criminalised foreign bribery by American corporations,

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[139] See Gray, C.W. & Kaufman, D. 1998. Corruption and Development. PREM Notes; No.4. World Bank. Washington, DC. Available: http://hdl.handle.net/10986/11545; [2025, April 11]. Bardhan, P. 2017. Corruption and Development: A Review of Issues. In *Political Corruption: A Handbook*. Heidenheimer, A.J., Johnston, M and Levine, V.T. (Eds.). New Brunswick: Transaction Publishers; Della Porta, D., & Vannucci, A. 1997. The 'Perverse Effects' of Political Corruption. *Political Studies*. 45(3): 518.

[140] Hindess, B. 2005. Investigating International Anti-Corruption. *Third World Quarterly*, *26*(8). 1389-1398. Villeneuve, J.P., Mugellini, G. & Heide, M. 2020. International Anti-Corruption Initiatives: A Classification of Policy Interventions. *European Journal on Criminal Policy and Research*. 26 (4): 431-455.

[141] *Ibid*. See also Wolf, S. and Schmidt-Pfister, D. 2010. Between Corruption, Integration, and Culture: The Politics of International Anti-Corruption. 13-22. *Nomos Verlagsgesellschaft mbH & Co*. KG.

marking the beginning of a more coordinated global response.[142] Over time, global awareness of the damaging effects of corruption on development and governance spurred the establishment of major anti-corruption conventions.[143]

The United Nations Convention Against Corruption (UNCAC),[144]adopted in 2003, remains the key legally binding international anti-corruption instrument.[145] Its broad mandate focuses on promoting efficient measures to combat corruption, including official corruption, facilitating international cooperation, and ensuring transparency in public governance. UNCAC's provisions, particularly on obstructing justice and interference in official corruption investigations, make clear that signatory states, including Nigeria, South Africa, and the U.S., must refrain from obstructing the prosecution of corruption, directly addressing executive interference in these matters.[146]

The creation of TI in 1993[147] was a pivotal moment, sparking a global push for transparency and accountability, galvanising anti-corruption efforts.[148] TI's advocacy spurred regional frameworks like the 2003 African Union (AU) Convention on Preventing and Combating Corruption,[149] and the Southern Africa Development Community (SADC) Protocol[150], which seek to harmonise anti-corruption laws and enhance judicial cooperation within their regions. While these initiatives address corruption generally, they also contain substantial themes on official corruption.

Despite the legal frameworks in place, the effectiveness of these global initiatives depends on the political will and the active participation of the signatories. For example, although numerous conventions and protocols have been adopted in

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[142] McCoy, J.L. 2001. The Emergence of a Global Anti-Corruption Norm. *International Politics*. 38:65-90.
[143] Van Klaveren, J. 2002. Corruption as a Historical Phenomenon. In *Political Corruption: Concepts & Contexts*. Heidenheimer, A.J. & Johnston, M. (Eds). 2002. 3rd ed. New York. Routledge. 83-94.
[144] Available: https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf [2025, April 11].
[145] Caiden, G.E. 2013. A Checkered History of Combating Official Corruption. (*supra*), at 103.
[146] *Ibid*. Article 5.
[147] Transparency International, 2020. Our history. Available: https://www.transparency.org/en/our-story [2025, April 11].
[148] Caiden, G.E. 2013. A Checkered History of Combating Official Corruption. (*supra*), at 103.
[149] Available: https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf [2025, April 11].
[150] Available at https://www.sadc.int/files/7913/5292/8361/Protocol_Against_Corruption2001.pdf [2025, April 11].

Africa, the political and institutional realities often hinder their full implementation. As such, it is crucial for governments to meaningfully commit to anti-corruption frameworks to combat official corruption. Such commitments are essential for reducing the systemic official corruption plaguing countries like Nigeria and South Africa.

In conclusion, while international and regional anti-corruption initiatives provide essential tools for addressing official corruption, their success hinges on aligning political will, legal frameworks, and societal engagement. Executive interference in prosecuting corruption remains a critical issue, particularly in countries with weak institutional checks. As this chapter has shown, aligning these initiatives with national realities is crucial to combat official corruption and uphold the rule of law.

Having explored the origins of official corruption and the various international and transnational initiatives addressing it, it is essential to probe the definitions of corruption. Definitions are crucial as they bring clarity to discussions, distinguishing what falls within the scope of the issue from what does not. Engaging in definitional discussions also prompts a deeper examination of the problem, as a more precise understanding often emerges from analysing its features and components.

2.3 **Defining Official Corruption**

The lack of a universal definition of corruption is problematic.[151] Attempts at a unanimous definition have encountered various problems related to the social, criminological, and political aspects of their critiques.[152] Some elements of what might be termed "*corrupt*" may be viewed in some societies as societal norms which may not be inherently wrong but are weaponised to nefarious and corrupt ends.[153]

[151] Rogow, A.A & Lasswell, H.D. 1963. Power, Corruption and Rectitude. Englewood Cliffs, N.J.: Prentice-Hall. 2.
[152] Farrales, M. J. 2005. What is Corruption? A History of Corruption Studies and the Great Definitions Debate. 13. Available: http://dx.doi.org/10.2139/ssrn.1739962. [2025, April 11].
[153] See Chapter 2, 2.6 (*infra*).

Some have argued that "*the term corruption is value-laden and thus analytically weak or simply vacuous*."[154] Corruption is like the proverbial chair, which may not easily lend itself to a definition but can undoubtedly be identified by all and sundry upon sighting. It has also been likened to an elephant, which, though difficult to describe, is generally not difficult to identify at sight.[155]

The absence of a universalised definition is problematic because what is defined is measured and modelled. This, in turn, influences the design of the policy initiatives, strategies and instruments to combat corruption.[156] However, the lack of such a definition has not impeded anti-corruption efforts, at least not significantly. Despite this definitional lacuna, corrupt practices possess ample shared characteristics to make concrete anti-corruption efforts, policies, initiatives, strategies, and legislation possible.

The World Bank and the UN Development Programme's definitions of corruption emphasise official corruption and closely align with TI's.[157] It describes corruption as "*the abuse or misuse of public office for private gain*".[158] Governments, development agencies, donors, policymakers, and political and social activists appear to focus primarily on official corruption when addressing the issue. This is unsurprising, as the tone of corruption in the private sector is often set in the public sector.

The term "*official corruption*" is a spectrum of wrongful conduct, some of which may not even constitute a crime.[159] The definition of official corruption has largely taken two

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[154] Robbins, P. 2020. The Rotten Institution: Corruption in Natural Resource Management. *Political Geography*. 19:423-443. Cited in Abjorensen, N. 2014. Combating Corruption-Implications of the G20 Action Plan for the Asia Pacific Region. (*supra*).

[155] See Tanzi, V. 1998. Corruption Around the World: Causes, Consequences, Scope, and Cures. *IMF Working Paper* WP/98/63. 8. Cited in Abjorensen, N. 2014. Combating Corruption-Implications of the G20 Action Plan for the Asia Pacific Region (*supra*).

[156] Abjorensen, N. 2014. Combating Corruption-Implications of the G20 Action Plan for the Asia Pacific Region. (*supra*) 14.

[157] Abjorensen, N. 2014. Combating Corruption-Implications of the G20 Action Plan for the Asia Pacific Region. (*supra*) 14.

[158] *Ibid*. 15.

[159] *McDonnell v United States*, 2016: 136 Supreme Court. 2355. where the United States Supreme Court held that though an act of a receiving money by a sitting governor given by a donor heightened access to key political figures, it did not amount to bribery under the Federal Bribery Statute within the element of thing of value received in the performance of "Official acts" under that statute. In the court's view, politicians arranging or hosting meetings is an everyday affair that is not specific to their office and does not constitute official acts. Many critics bemoaned this decision as opening a door to a legalised form of "soft corruption". See Murphy, C. 2017. McDonnell v United States: Defining "Official Acts" in Public Corruption. *Duke Journal of Constitutional Law and Public Policy*.

approaches, and both use bribery as their fulcrum. The approach often favoured by lawyers and jurists limits the definition to purely illegal acts grown out of bribery.[160] The other, by academics from different fields, retains the illegal acts founded on bribery but further expands into wider social manifestations of official corruption that may not be strictly illegal but are still found objectionable enough to attract widespread condemnation.[161]

Irrespective of the multifaceted definitions of corruption, it is crucial to have an unambiguous definition from a purely legal point of view. As offences must be clear, accurate and precise in their prescription to be violable, it is essential that criminal legislation unambiguously define acts regarded as corrupt. This is to notify citizens, law enforcement agencies, and organisations about what constitutes outlawed acts. This thesis is focused on the legal definition of official corruption because it is in the context of its application that acts of executive interference in prosecuting it are considered.

Certain features are standard in the definition of corruption in anti-corruption legislation. Firstly, there are penalties for conduct (acts and omissions) regarded as corrupt. They are sanctionable because they contradict the prevailing mores in a democratic society.[162] Secondly, it demonstrates power, meaning that an entrusted position has been abused in preference to special interests in exchange for private gain. Thirdly, it involves a conflict of interest between the actor and her position versus legal, societal, and public demands, conferring ill-gotten advantages on an ascriptive basis. These three commonalities are observable in the anti-corruption legislation of Nigeria, South Africa, and the U.S.

2.4 **Approach: Anti-Corruption Legal Frameworks and Comparative Legal Texts**

Corruption is "*a regular, repetitive, integral part of the operation of most political systems*"[163] including democracies. However, its prevalence in democratic systems must not

12:284. Other critics lampooned the decision as a "major blow to the fight against public corruption" and that it would make it harder to bring corruption cases against public officials. See Parker, T. A. 2018. Prosecution Corruption after McDonnell v. United States. *Notre Dame Law Review*. 94(2):1.

[160] Lowenstein, D.H. 1985. Political Bribery and the Intermediate Theory of Politics. *UCLA L. Rev*. 32: 784-786.

[161] Henning, P.J. 2001. Public Corruption: A Comparative Analysis of International Corruption Conventions and United States Law. *Arizona Journal of International and Comparative Law*. 18(3): 803.

[162] Abjorensen, N. 2014. Combating Corruption-Implications of the G20 Action Plan for the Asia Pacific Region. (*supra*) 19.

[163] Scott, J.C. 1972. Comparative Political Corruption. Englewood Cliffs, NJ. Prentice Hall. 11.

undermine the foundational pillars of democracy, particularly the rule of law. Anti-corruption regimes counter these offences, but their efficacy varies. This section compares their evolution and structure across the three countries.

2.4.1 Analysis: Nigeria Official Corruption Criminalisation Framework

Official corruption has been a persistent problem in Nigeria since its independence in 1960, deeply embedded in government procurement, economic management, and public administration.[164] Though corruption has roots in the colonial era, it escalated post-independence, growing in variety, magnitude, and brazenness.[165] According to TI's Corruption Perception Index (CPI), Nigeria consistently ranks among the most corrupt nations.[166]

Efforts to address corruption have been largely ineffective, with many measures being performative. During its First Republic,[167] under Alhaji Abubakar Tafawa Balewa, allegations of official corruption led to the overthrow of his government through a military coup. Successive military governments failed to curb official corruption. General Olusegun Obasanjo's regime continued this trend, which was marked by significant official corruption involving oil revenues and foreign loans. While Obasanjo handed power to a civilian government in 1979, President Shehu Shagari's civilian administration was described as "*uncontrollably corrupt*", leading to another military coup in 1983.[168]

Under General Muhammadu Buhari, anti-corruption measures were enacted, including the 1984 State Security Decree, but these came with excessive penalties and

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[164] Mustapha, M. 2010. Corruption in Nigeria: Conceptual and Empirical Notes. *Information, Society and Justice Journal*. 3(2):167.

[165] Chukwuemeka, E., Ugwuanyi, B. & Ewuim, N. 2012. Curbing Corruption in Nigeria: The Imperatives of Good Leadership. *African Research Review*. 6(3): 338.

[166] In 2022 and 2023, it ranked 150 and 145, respectively, out of 180 countries surveyed. Available: https://www.premiumtimesng.com/news/663552-nigeria-moves-five-places-up-in-tis-corruption-perception-ranking.html?tztc=1 [2025, April 11]; United Nations Office on Drugs and Crime Prevention. 2016. *Bibliography of Corruption in Nigeria*. Available at: https://www.unodc.org/conig/uploads/documents/publications/Anti-Corruption-Project-Nigeria/Bibliography_of_Corruption_in_Nigeria._final.pdf [2025. April 11].

[167] This is Nigeria's first democratic dispensation immediately after independence, which ushered in its first Constitution.

[168] Chukwuemeka, E., Ugwuanyi, B. & Ewuim, N. 2012. Curbing Corruption in Nigeria: The Imperatives of Good Leadership (*supra*), at 343.

human rights violations.[169] The military regimes, particularly under General Ibrahim Babangida and General Sani Abacha, were marked by rampant official corruption, with official corruption elevated to state policy. General Abubakar's brief tenure after Abacha's death saw no significant anti-corruption efforts.

In 1999, Chief Olusegun Obasanjo returned as a civilian president. Despite enacting anti-corruption laws, his administration was criticised for massive official corruption, notably the misappropriation of $16 billion earmarked for the energy sector.[170] His successor, Dr. Goodluck Jonathan, presided over a period where corruption peaked, leading to President Buhari's election in 2015 on an anti-corruption campaign platform. Despite this, many politicians gained immunity from prosecution by aligning with President Buhari's ruling party.[171]

Nigeria's anti-corruption framework dates back to the 1960s, with laws from military regimes forming the foundation of its current legal system. The 1999 Nigerian Constitution integrates provisions for the declaration of assets and anti-corruption rules, which apply to all public officials.[172] Nigeria adopts the multiple-agency anti-corruption model,[173] involving bodies that address corruption at various levels. These include the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC).

The ICPC, established in 2000, operates under the Corrupt Practices and Other Related Offences Act (the "Corrupt Practices Act"),[174] which applies nationally and

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[169] Kofele-Kale, N. 2006. Change or The Illusion of Change: The War Against Official Corruption in Africa. *George Washington International Law Review*. 38: 698-699.
[170] *Ibid.* 169.
[171] Ovuorie, T. 2022.https://www.dw.com/en/nigerias-hopeless-fight-against-corruption/a-61946896. [2025, April 11]. Vanguard Newspapers. 2015. President Buhari's Inaugural Speech. Available at: https://www.vanguardngr.com/2015/05/president-buhari-inaugural-speech/. [2025, April 11]. See Chapter 5, 5.3.1 (*infra*).
[172] The CFRN 1999 creates a Code of Conduct Tribunal to preside over public officers accused of contravening the provisions of the Constitution, finding them guilty where appropriate and imposing penalties. See Schedule 5 CFRN. It also creates a Code of Conduct Bureau that receives the asset declarations of public officials and receives complaints about non-compliance with or breach of the provisions of the Code of Conduct or any law in relation thereto, investigates the complaint and, where appropriate, refers such matters to the Code of Conduct Tribunal for trial. See Schedule 3 CFRN.
[173] Williams, R. & Doig, A., 2004. A Good Idea Gone Wrong. Anti-Corruption Commissions in The Twenty-First Century. *Bergen: The Christian Michelsen Institute*.
[174] 2000 Act No. 5. LFN.

covers both public and private corruption. The EFCC plays a central role in investigating and prosecuting economic crimes, including official corruption offences. Both agencies were created under Obasanjo's administration. Although challenges persist, these agencies aim to combat Nigeria's entrenched corruption.[175]

One such challenge is the Nigerian Attorney General's superintendence over anti-corruption agencies. The Attorney General is also the sole determinant of prosecutorial directions in Nigeria. Such centralisation of prosecutorial powers means that the Attorney General, an appointee of the Nigerian President, is susceptible to executive influence and directions regarding official corruption prosecutions. Therefore, it is vital to understand the constitutional sociology behind this centralisation.

2.4.1.1 The Constitutional Sociology of the Nigerian Criminalisation Framework

The Attorney General's dominance exemplifies executive influence, undermining independence.[176] Rooted in post-military reforms, it reflects a political economy of centralised power, yet ethnic loyalties often shield perpetrators.

Osaghae argues that Nigeria's political challenges stem from its colonial creation, particularly the 1914 amalgamation of diverse Northern and Southern protectorates.[177] This historical juncture, driven by British administrative expediency rather than organic nation-building, set the stage for a fragile constitutional framework. From a constitutional sociology perspective, this imposed unity created a "crippled state" by embedding structural divisions—ethnic, regional, and religious—that no post-independence constitution has fully resolved.

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[175] The Nigerian Criminal Code Act, LFN 2024 (CCA), also criminalises acts of official corruption. CCA, 2004. See sections 98, 98a, 98 b, 98c, 98d, and 99. These provisions are identical to those of the Corrupt Practices Act on official corruption, meaning that the Prosecution in Nigeria may utilise the Corrupt Practices Act, the Economic and Financial Crimes Commission Act, or the CCA in pursuit of official corruption cases.

[176] *State v. Ilori*, 1983 2 SC, 158.

[177] Osaghae, E.1998. Crippled Giant: Nigeria Since Independence. (*supra*), at 1-5.

Osaghae chronicles Nigeria's oscillation between civilian and military rule, each phase marked by attempts to craft or amend the Constitution to address societal fractures. However, Osaghae highlights how this system collapsed due to ethnic-based party politics, electoral crises, and military coups, reinforcing a "military federalism" prioritising centralised control over democratic legitimacy.[178] Constitutional sociology would interpret this as a mismatch between the formal constitutional design (modelled on British majoritarianism) and Nigeria's pluralistic social reality, where ethnic loyalties trump national identity.

This background has influenced official corruption in Nigeria, with most Nigerians viewing it through partisan lenses. Consequently, the response to acts of official corruption or the intervention of the executive in undermining its prosecution would depend on the tribal identity or religious leanings of the person involved.[179] It has also empowered an executive seen as nearly above the law due to the centralisation of presidential powers within the Nigerian executive branch.

Nwabueze frames the 1979 Nigerian Constitution, a precursor to the current Nigerian Constitution, as an attempt to balance a strong presidency with competing power centres (legislature, judiciary) to curb tribal factionalism—a legacy of the collapse of the First Republic.[180] He also highlights its deliberate design to foster national unity and constrain autocracy, adapting American federalism to Nigeria's volatile ethnic context. Though Nigeria had adapted U.S. federalism versus its ethnic reality, its strong presidency is considerably more powerful than its U.S. counterpart.[181]

Obi regards Nigeria's post-1999 democracy as a paradox: transitions orchestrated by military elites legitimising a hegemonic bloc that monopolises power and oil resources, adopting democracy's "*platform and appearance*"

[178] *Ibid.* 24, 39-47, 56-61.
[179] Obasanjo, O. 2014. My Watch, Early Life and the Military. Lagos. Prestige. 169.
[180] Nwabueze, B.O. 1982. A Constitutional History of Nigeria. London. C. Hurst and Co., London.
[181] Nwabueze, B.O. 1982. The Presidential Constitution of Nigeria. London. C. Hurst and Co., London.

while blocking authentic participation.[182] Militarism, defined as a legacy of force, impunity, and intolerance of dissent, permeates politics via retired generals, civilian "godfathers," and armed militias.[183]

Nwankpa agrees with the assessment of the militarisation of Nigerian democracy. He argues that Nigeria's Fourth Republic (1999-2025),[184] despite being the country's most extended democratic period, remains a "*militarised democracy*" shaped by colonial and military legacies and unique post-1999 dynamics.[185] He traces this through the flaws of the 1999 Constitution, electoral violence, secessionist movements, religious insurgency, and resource shifts toward security.[186]

The outcome is an all-powerful executive that relies on force rather than persuasion in governance. This situation emboldens the Nigerian executive to interfere in prosecuting official corruption offences with impunity. Cowed by years of harsh military rule, the majority of the Nigerian population is resigned to such acts of misgovernance and, in some cases, voice support for it if such acts of intervention favour their identity politics.

2.4.2 Analysis: South Africa Official Corruption Criminalisation Framework

Official corruption has been a persistent issue in post-apartheid South Africa, with governments struggling to tackle it effectively.[187] While official corruption existed during apartheid, it surged in the post-apartheid era, making good governance and anti-corruption efforts key challenges for the country.[188] Lodge highlights that

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[182] Obi, C.I. 2007. Democratising Nigerian Politics: Transcending the Shadows of Militarism. *Review of African Political Economy*. 34 (112): 379.
[183] *Ibid.*
[184] To date.
[185] Nwankpa, M. 2023. Nigeria's Fourth Republic, 1999-2021: A Militarised Democracy. London. Routledge. 2.
[186] *Ibid.* 170.
[187] Geldenhuys, N. 2018. Combating Corruption in South Africa: Assessing the Performance of Investigating and Prosecuting Agencies. *Southern African Journal of Criminology*. 31(2):23; Krsteski, N.G.H. 2017. Corruption in South Africa: Genesis and Outlook. *Journal of Process Management and New Technologies*. 5(4); Budhram, T. & Geldenhuys, N. 2018. Corruption in South Africa: The Demise of a Nation? New and Improved Strategies to Combat Corruption. *South African Journal of Criminal Justice*. 31(1):26-57.
[188] Bruce, D. 2014. Control, Discipline and Punish? Addressing Corruption in South Africa. *SA Crime Quarterly*. (48):50, 56.

corruption began to escalate in the 1980s, with significant losses attributed to nepotism and fraud as apartheid ended.[189] An arms procurement deal in the 1990s, the Strategic Defence Procurement Package, is often cited as a turning point in South Africa's official corruption.[190]

Under President Jacob Zuma, official corruption reached alarming levels, nearly becoming state policy. Zuma's administration was heavily influenced by special interest groups headed by the Gupta family, which has several business interests in the country.[191] These groups used their connections to secure lucrative government contracts and appointments. Along with influential public officials, they subjected the South African Treasury, the country's Office of the Public Protector, its judiciary, and the banking system to relentless attacks and pressure in a bid to enrich themselves at the expense of the public.[192]

Zuma's disregard for public trust was evident when he ignored the Public Protector's directive to repay public funds he redirected for repairs at his private residence, only complying when the courts intervened.[193] The "State Capture"[194] report by former Public Protector Thuli Madonsela further implicated Zuma and the Guptas in corrupt practices, including undue influence over senior government appointments.[195]

In 2015, a survey showed that 83% of South Africans believed corruption was rising,[196] and by 2023, South Africa had its worst ranking on TI's CPI at 41 out of

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[189] Lodge, T. 1997. Political Corruption in South Africa. *African Affairs*. 97: (387):6-8.
[190] Geldenhuys, N. 2018. Combating Corruption in South Africa: Assessing the Performance of Investigating and Prosecuting Agencies (*supra*), at 25.
[191] Bonorchis, R. 2002. Meet the Gupta Family, Symbols of South Africa's Corruption. *Bloomberg*. Available: https://www.bloomberg.com/news/articles/2022-06-07/meet-the-guptas-symbols-of-south-african-corruption-quicktake?embedded-checkout=true [2025, April 11]; How the Gupta's Brand Turned Toxic. 2007. *British Broadcasting Corporation*. Available: https://www.bbc.com/news/world-africa-4152404 [2025, April 11].
[192] Isa, M. 2016. A Longer Walk to Corruption. *The World Today*. 72 (6):38.
[193] *Ibid.*
[194] See Chapter 5, 5.4.4 (*infra*).
[195] Isa, M. 2016. A Longer Walk to Corruption (*supra*), at 40.
[196] Transparency International. 2015. People and Corruption: African Survey 2015. *Global Corruption Barometer*. 3. Available: https://www.afrobarometer.org/publication/people-and-corruption-africa-survey-2015-global-corruption-barometer/ [2025, April 11].

100.[197] Allegations of official corruption have continued under Zuma's successor, President Cyril Ramaphosa, with reports accusing his government of interfering in prosecuting official corruption cases.[198] In 2024, South Africa witnessed its lowest score on TI's corruption perception index ranking under the Ramaphosa presidency.[199]

Despite numerous anti-corruption laws and frameworks, official corruption remains pervasive. South Africa has an extensive anti-corruption legal system, including the *Public Sector Integrity Management Framework*[200] and various codes of conduct for public officials. These efforts, however, were often undermined during Zuma's presidency.

South Africa, like Nigeria, employs a multiple-agency model to combat corruption. This model includes bodies like the NPA, the Asset Forfeiture Unit, and the Directorate for Priority Crime Investigations, known as Hawks. These agencies investigate, prosecute, and confiscate the proceeds of corruption. However, their effectiveness is often debated, with some arguing that despite the presence of these agencies, corruption persists due to a lack of political will and institutional weaknesses.[201]

The PRECCA is South Africa's primary anti-corruption legislation, criminalising bribery and corrupt activities by public officials. Penalties for corruption include imprisonment, fines, and asset forfeiture. Other laws, such as the *Public*

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[197] Democratic Alliance. 2024. CPI Report Confirms SA is more Corrupt under Ramaphosa than under Zuma. Available:https://www.da.org.za/2024/01/cpi-report-confirms-that-sa-is-more-corrupt-under-ramaphosa-than-under-zuma#:~:text=The%20latest%20annual%20Corruption%20Perceptions,of%20his%20predecessor%2C%20Jacob%20Zuma. [2025, April 11].

[198] U.S. Department of State. 2023 Country Reports on Human Rights. Available: https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/south-africa/ [2025, April 11].

[199] Moonstone. 2024. South Africa's Corruption Crisis: Lowest Score Yet on Global Perception Index. https://www.moonstone.co.za/south-africas-corruption-crisis-lowest-score-yet-on-global-perceptions-index/ [2025, April 11].

[200] Available at https://pmg.org.za/files/docs/120612public.rtf ; [2025, April 11].

[201] Marchant, M. 2023. Injustice and Impunity: Crime and Corruption in Austerity's Wake. *Mail & Guardian*. Available: https://www.opensecrets.org.za/injustice-and-impunity-crime-and-corruption-in-austeritys-wake/ [2025, April 11]; Sabela, Z. 2024. Inefficiencies in the Country's Anti-Corruption Agencies Worrying—COSATU. *Politicsweb*. Available: https://www.politicsweb.co.za/politics/inefficiencies-in-countrys-anticorruption-agencies [2025. April 11].

Finance Management Act (1999) and the *Municipal Finance Management Act* (2003), also address financial mismanagement and procurement-related corruption.

While South Africa has made strides in enacting anti-corruption laws, their enforcement remains inconsistent, and official corruption continues to undermine governance, erode public trust, and stymie socio-economic progress. The constitutional sociology that informed South Africa's framework of criminalisation of official corruption is pertinent. This is because it provides the context for the persistent cases of official corruption and the challenges the Prosecution faces in prosecuting them.

2.4.2.1 The Constitutional Sociology of the South African Criminalisation Framework

The constitutional sociology of present-day South Africa evolved from apartheid-era opacity to democratic accountability, depicting a transition from racial to democratic norms. Klug provides a deep historical-sociological analysis of South Africa's constitutional evolution, from colonial roots through apartheid to the post-1994 democratic order, focusing on how social processes shape constitutional legitimacy and governance.[202]

The 1909 South Africa Act birthed a bifurcated state—parliamentary democracy for whites, autocracy for Africans—rooting executive dominance in racial exclusion.[203] The 1996 South African Constitution emerged from a negotiated transition. Its hybrid design balances parliamentary oversight with executive influence, a marked shift from apartheid autocracy.

Powell critiques the failure of South Africa's transitional justice to redress the racial and economic inequalities of apartheid. He argues that these factors continue to present problems in South Africa and foster political, elitist, classist,

[202] Klug, H. 2016. Towards a Sociology of Constitutional Transformation: Understanding South Africa's Post-Apartheid Constitutional Order (*supra*), at 3-6. See also Sachs, A. 1997. The Creation of South Africa's Constitution. New York Law School Review. 41(2). 669, 674.
[203] *Ibid.* 5.

and racial divisions in the country.[204] This peculiar constitutional sociology of South Africa has resulted in elitist politicians engaging in official corruption and relying on the partisan divides of South African society to shield them from accountability.

Post-1994, South Africa's constitutional stage is a battleground—its sociology exposes a noble script undermined by unreliable actors. It has failed to emerge from the pangs of apartheid unscathed. The exact constitutional sociology with a focus on social justice and reconciliation that helped transition the country to majority and democratic rule has been unable to shield it from official corruption.

The state claims authority, yet State Capture and the defanging of the NPA show power evading accountability. Elitist pressures clash with the constitutional ideals, and the populace is left to take sides, mainly driven by primordial interests.[205] The government of President Zuma exploited this peculiar sociology to engage in official corruption and interfere in any attempts to hold him accountable, confident in the knowledge that he had the support of the majority of black South Africans. The same pattern appears to continue under President Ramaphosa, but in a less brazen form.

2.4.3 Analysis: United States Official Corruption Criminalisation Framework

At the federal level, U.S. Attorneys investigate and prosecute official corruption using statutes such as the Mail Fraud Act,[206] the Travel Act,[207] the Hobbs Act,[208] the Racketeer Influenced and Corrupt Organizations (RICO) Act,[209] and the Federal Bribery Statute.

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[204] Powell, D. 2010. The Role of Constitution Making and Institution Building in Furthering Peace, Justice and Development: South Africa's Democratic Transition. *International Journal of Transitional Justice*. 4. 234.
[205] Mutua, M. 2016. Africa and the Rule of Law (*supra*), at 161.
[206] 18 U.S.C. § 1341.
[207] 18 U.S.C. § 1952.
[208] 18 U.S.C. § 1951.
[209] 18 U.S.C. § § 1961-168.

The Mail Fraud Act targets fraudulent schemes using U.S. mail, covering both tangible property theft and the deprivation of civil rights. It has been particularly effective in prosecuting official corruption, as violations are easier to prove, especially in cases where public officials fail to disclose or misrepresent their interests for personal gain.[210]

Originally designed to combat organised crime[211], the Travel Act criminalises interstate travel for unlawful activities, including bribery and extortion. Public officials can be charged under this act if their corrupt actions involve interstate commerce or facilities.[212]

The Hobbs Act prohibits extortion or robbery affecting interstate commerce. It defines extortion as the wrongful obtaining of property under "*color of official right*",[213]allowing prosecution of public officials involved in extorting or attempting to extort.

RICO is a pivotal tool in the U.S. for prosecuting official corruption. It targets organised criminal enterprises through a broad definition of racketeering activities, including bribery and extortion. RICO's civil and criminal provisions enable prosecutors to tackle corrupt networks within government by proving a pattern of illegal activity, enhancing accountability where executive interference might otherwise shield public officials.

The Federal Bribery Statute[214] is the primary law for prosecuting bribery, graft, and conflicts of interest. It prohibits the influence of public officials through bribery or unauthorised gratuities. The term "public official" has been broadly interpreted, and bribery offences require proof of a quid pro quo, while gratuity payments do not.

Anti-corruption efforts in the U.S. have sparked debates on the separation of powers. Official corruption has featured prominently in the eye of those controversies

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[210] *Ibid.* 1048.
[211] Curato, R.J., Mccurrie, J.D., Plifka, K.F., Relation, A.J. & Toohill, S.T. 1983. Government Fraud, Waste, and Abuse: A Practical Guide to Fighting Official Corruption. *The Notre Dame Law Review*. 58 (5):1031.
[212] *Ibid.*
[213] 18 U.S.C. § 1951. (a).
[214] 18 U.S.C §201.

"*from the beginning of the Republic to the present*".[215] There is also evidence of "*partisan influences on prosecutorial discretion*" in the U.S. and a "*clear and systematic partisan effect on the priorities of U.S Attorneys regarding public corruption cases*".[216]

Similar to the analysis in Nigeria and South Africa, it is essential to understand the constitutional sociology of the U.S.'s corruption criminalisation framework. Constitutional sociology will provide insight into the structure of the U.S. Constitution and how it has subsequently influenced other aspects of U.S. legislation and the approach to official corruption.

2.4.3.1 The Constitutional Sociology of the United States Criminalisation Framework

Hockett traces U.S. constitutionalism to English roots resulting from the British colonial rule of the U.S.[217] The U.S. Constitution emerged from this colonial experience shaped by economic and political conflicts.[218] Its federal structure embeds a legalistic culture that resists interference but struggles with discretionary powers. This is the reason the U.S. possesses strong institutions with an emphasis on the separation of powers.

The U.S. constitutional sociology binds the nation with faith in its own rules. The birth of its 1787 Constitution became a sacred knot tying law to trust, not just power.[219] The democratic institutions of the U.S. have lasted because they fit: a culture of rights and checks, from colonial independence, the end of slavery, civil rights, and other social upheavals.[220] Febbrajo and Corsi identify the inherent paradox in this arrangement—its legitimacy rests on vague ideals

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[215] Schroth, P.W. 2006. Corruption and accountability of the civil service in the United States. *American Journal of Comparative Law*. 54 (SUPPL.): 553.
[216] James, A. & Lassen, D. 2010. Enforcement and Public Corruption: Evidence from US States. 553. Available: http://hdl.handle.net/10419/82128%0A [2025, April 11].
[217]Hockett, H. 1939. The Constitutional History of the U.S, 1776- 1826. The Blessings of Liberty. New York. The Macmillan Company. 366-367.
[218] *Ibid.*
[219] Thornhill, C. 2011. A Sociology of Constitutions: Constitutions and State Legitimacy in Historical-Sociological Perspective (*supra*), at 181-215.
[220] Chand, H.1977. A Sociological Approach to the Study of Constitutional Law (*supra*), 5-6.

like liberty, endlessly debated yet fiercely guarded. It is a tightrope held steady by belief, not force, a rare feat in constitutional history.[221]

It is this vigilance that has made the U.S. DOJ one of the most independent prosecutorial agencies in the world[222] notwithstanding the recent challenges to this independence by the presidency of Donald Trump.[223] While the constitutional sociology of the U.S. historically limits executive overreach via checks and balances,[224] this was severely tested during President Trump's first term, and early indications are ominous that it will be even more tested during his present second term.

Amar highlights the robust presidential authority of the U.S. executive and the federal supremacy and oversight of states. He opines that the U.S. constitutional amendments reflect a legalistic culture.[225] Dworkin's rights thesis frames U.S. constitutional sociology as rooted in moral-political rights, which reflect a legalistic culture valuing autonomy.[226]

Slez and Martin argue that U.S. constitutional decisions were not static reflections of fixed material or ideological interests but evolved temporally, with each vote reshaping future issues and alliances.[227] Tushnet concludes that the longevity of the U.S. Constitution and political organisation, especially under presidential leadership, drives constitutional meaning, thus framing the U.S constitutional sociology as adaptive.[228] This framework reflects a mature constitutional design.

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[221] Corsi, G. 2016. On Paradoxes in Constitutions. In *Sociology of Constitutions*. Oxon. Routledge. Febbrajo, A & Corsi, G (Eds.). 13-5.
[222] Centre for American Progress. 2020. Restoring Integrity and Independence at the U.S. Justice Department. https://www.americanprogress.org/article/restoring-integrity-independence-u-s-justice-department/ [2025, April 11].
[223] Tucker, E. & Richer, A. Justice Department's Independence is Threatened as Trump's Team Asserts Power over Cases and Staff. *Associated Press*. https://apnews.com/article/fbi-justice-department-trump-bondi-bove-adams-a003af9d9aebe89cd289361a65c9401b [2025, April 11].
[224] Hockett, H. 1939. The Constitutional History of the U.S, 1776- 1826. The Blessings of Liberty. (*supra*) 366.
[225] Amar, A. 2006.America's Constitution and the Yale School of Constitutional Interpretation. *The Yale Law Journal*. 1997-2014.
[226] Dworkin, R. 1977. Taking Rights Seriously. Cambridge. Harvard University Press. 203.
[227] Slez, A & Martin, J. 2007. Political Action and Party Formation in the U.S Constitutional Convention. *American Sociological Review.* 43-45.
[228] Tushnet, M. 2008. The Constitution of the U.S: A Contextual Analysis. Oxford. Hart Publishing. 262-263.

> In effect, the U.S. anti-corruption framework is contained within a constitutional framework of independence driven by centuries of determination for freedom, equality, and rights. This has enabled the U.S. anti-corruption laws to combat official corruption effectively. However, the judicially recognised control of the executive over the DOJ has enabled the executive to influence the prosecution of official corruption offences in the country.[229]

2.5 Synthesis: Comparative Legal Dynamics of Constitutional Sociology

Analysis: Nigeria's Colonial and Military Influenced Criminalisation Framework

Official corruption is entrenched in Nigeria's political system due to the country's military-influenced tolerance of corruption and ethnic patronage networks. Nigeria's constitutional sociology, heavily shaped by colonialism and subsequent military rule, has contributed to centralising power within the executive. The military legacy has resulted in a governance style where ethnic and regional loyalties significantly influence prosecutorial decisions. The EFCC, tasked with investigating corruption, operates under the Attorney General's influence, undermining its independence.

From a constitutional sociology perspective, Nigeria's post-colonial constitutional framework is a patchwork of solutions to its ethnically and regionally fragmented society, where political power is often distributed to appease various groups. Executive interference in prosecuting official corruption is common, and the centralised presidential powers allow the executive to exercise significant control over legal processes, including blocking investigations or granting pardons. This level of executive power, combined with ethnic patronage, creates an environment where official corruption thrives, and the rule of law is often subverted based on political and tribal affiliations.

Analysis: South Africa Post-Apartheid Laws

South Africa's constitutional sociology evolved from apartheid-era autocracy to a democratic pluralism, deeply influencing its approach to official corruption. The 1996 South African Constitution emerged from a negotiated transition, and while it embodies principles

[229] See Chapter 5, 5.6.4 (*infra*).

of democratic accountability and equality, post-apartheid politics is marred by elitist corruption and State Capture. South Africa's constitutional sociology shows how the country's history of racial divisions, inherited from apartheid, continues to shape official corruption dynamics.

Executive interference remains a challenge despite a relatively strong institutional framework, exemplified by the State Capture scandal, which revealed how political elites manipulate state resources for personal gain. Despite its official independence, the NPA is often at the mercy of executive influence, reflecting partisan corruption. The constitutional sociology of South Africa endeavoured to bridge racial and class divides. However, this fragmentation persists, and attitudes to official corruption are often based on political loyalty rather than legal accountability.[230]

Analysis: U.S. Federal Anti-Corruption Regime

The U.S. presents a different case, shaped by its legalistic culture and constitutional design emphasising the separation of powers and checks and balances. The U.S. Constitution, a product of English colonial roots, established a federal system that limits executive power through rigorous oversight by the judiciary and legislature. This structure was intended to prevent executive overreach, and over time, it has created a robust framework for combating official corruption.

However, events under President Donald Trump's first administration have tested the limits of this constitutional framework. Executive interference in corruption cases, particularly involving figures close to the President, has raised concerns about the DOJ's independence.[231] While the separation of powers in the U.S. theoretically curtails executive control, the executive's influence over the DOJ has sometimes been used to shield individuals from prosecution.[232] Despite these concerns, the U.S system remains more

[230] See Chapter 5, 5.4.4 (*infra*).
[231] Lynch, M. 2020. Regressive Prosecutors: Law and Order Politics and Practices in Trump's DOJ. *Hastings J. Crime & Punishment.* 1.195; Green, B.A. and Roiphe, R., 2021. Who Should Police Politicization of the DOJ?. *Notre Dame Journal of Law, Ethics & Public Policy*. 35.671.
[232] See Chapter 5, 5.4.4 (*infra*).

resilient due to its deeply ingrained legalistic culture, which has historically protected against official corruption.

2.6 Customary Law Influence on Anti-Official Corruption Frameworks

Customary law influences perceptions of official corruption, particularly in Nigeria and South Africa. In much of sub-Saharan Africa, tribal customs normalise gift-giving, blurring bribery's legal boundaries. Many cultural practices across the world conflict with the Western view regarding what constitutes corruption. What might qualify as a corrupt practice in the U.S. may not be viewed the same in Nigeria or South Africa.[233]

The introduction of Western-style governments in non-Western societies, primarily through colonialism, has resulted in a clash of ethos between traditional and customary practices and corruption, especially in government. While Western-styled governments are rule-based, African cultural practices place substantial emphasis on relationships. Consequently, there is an expectation that something of value must be given in return for something within the African context.[234]

Thus, there is an ever-present conflict between cultural norms that seemingly facilitate contemporary corrupt practices and subsisting legislation criminalising such practices. There is sometimes genuine consternation amongst the African population, especially within the rural areas, about why certain actions by public officials that they deem completely socially acceptable are assessed as corrupt under the law.

This notwithstanding, people in public service understand and ought to understand the limitations of cultural practices and norms in contemporary governments. Many cases of official corruption are societally harmful and are not supported by cultural practices. No cultural practice or norm encourages diverting resources meant for the public into private coffers. It is not customary to inflate project costs and keep the difference. This would not be acceptable practice in private relationships in a customary context.

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[233] Hooker, J., 2009. Corruption from a Cross-Cultural Perspective. *Cross-Cultural Management: An International Journal*. 16(3).251-267.
[234] *Ibid*.

In Nigeria, there is a near-universal acknowledgement that official corruption is unacceptable conduct. However, other factors support such conduct. These include poverty, status symbols, and the perception that government resources are free-for-all and can be taken by any means possible. Even though ancient customary practices generally do not support corruption, Nigeria's evolving sub-culture perceives corruption as pragmatic, especially when viewed through tribal, ethnic and partisan lenses.[235]

In South Africa, customary practices like Ubuntu, a philosophy emphasising "*I am because we are*," may drive support for acts of official corruption.[236] This is not because the philosophy promotes corrupt practices. Instead, it promotes communal harmony and forgiveness, potentially softening anti-corruption enforcement in rural areas. This can occur where corrupt practices are disguised as enhancing community-oriented governance and wealth redistribution to the country's impoverished black population.

Ubuntu may also foster support for official corruption through community loyalty and encouraging citizens of a particular ethnicity to support acts of executive participation in official corruption and to back executive decisions that shield corrupt officials if they deliver benefits like jobs or projects. This is particularly evident in areas with historical inequalities, where communities prioritise collective interests, viewing intervention as a defence against external threats.

In effect, while Ubuntu as a standalone philosophy may not encourage official corruption or executive support, paired with cultural politics of identity and race, it may transform into a philosophy for backing ethnic based acts of official corruption in South Africa. If corrupt officials are perceived as benefiting their community, the executive might intervene to align with Ubuntu's values. During the presidency of Jacob Zuma, executive participation in official corruption was sometimes justified as redistributing resources to

[235] Nomishan, T.S., 2022. African Cultural Values and Corruption in Nigeria: New Insights. Journal of Anthropological Research. 3-4.
[236] Patel, M, Mohammed, T, & Koen, R. 2024. Ubuntu in Post-Apartheid South Africa: Educational, Cultural and Philosophical Considerations. *Philosophies* 9(1): 21. https://doi.org/10.3390/philosophies9010021 [2025, April 11].

previously disadvantaged groups, reflecting a cultural preference for collective well-being over individual accountability.[237]

Cultural influence on official corruption is a phenomenon that is inapplicable to the U.S. for various reasons. The U.S. is a Western culture and does not possess the same cultural belief systems and practices as sub-Saharan African countries. Its centuries of democratic evolution have erased any atavistic leanings towards community practices that might support acts of official corruption. In effect, there is uniformity of expectations regarding what constitutes official corruption between the government and the people. Such consensus has not yet been attained in many sub-Saharan African societies, including Nigeria and South Africa.

2.7 Conclusion: Legal Foundations and Historical Contexts

In conclusion, this chapter has explored the pervasive issue of official corruption and its criminalisation in Nigeria, South Africa, and the U.S., offering a comparative analysis of the legal frameworks across these jurisdictions. It has highlighted the role of constitutional sociology in shaping each country's response to corruption, showing how historical legacies, political structures, and cultural norms influence the criminalisation and prosecution of official corruption.

In Nigeria, the entrenched military legacy, combined with centralised executive power, has hindered the effectiveness of anti-corruption measures. Ethnic patronage networks further complicate efforts to address corruption, often shielding perpetrators from prosecution. South Africa, despite a strong constitutional framework, struggles with corruption rooted in its apartheid history and exacerbated by State Capture and elitist interests. Executive interference remains a significant challenge to effective prosecution, as demonstrated by the Zuma administration's exploitation of political loyalties.

The U.S., with its legalistic culture and robust separation of powers, provides a contrasting model. While its constitutional design offers safeguards against executive

[237] Friedman, S. 2016. Economic Exclusion Feeds the Politics of Patronage in South Africa. https://theconversation.com/economic-exclusion-feeds-the-politics-of-patronage-in-south-africa-69996 [2025, April 11].

overreach, recent events have raised concerns about the executive's influence on corruption prosecutions. Despite these challenges, the U.S. framework remains resilient, owing to its deep commitment to the rule of law and institutional independence.

The chapter also delves into the role of customary law in shaping perceptions of official corruption, particularly in Nigeria and South Africa, where cultural practices sometimes conflict with modern anti-corruption legislation. While these cultural norms do not explicitly condone corruption, they influence public attitudes and complicate the enforcement of anti-corruption laws.

This chapter has thus advanced the original contribution to knowledge by comprehensively analysing the legal frameworks criminalising official corruption in Nigeria, South Africa and the U.S., distinguishing the development process. The historical and socio-cultural factors identified underscore how these factors can influence executive interference in prosecuting official corruption and inform attitudes in this respect.

In furtherance of this contribution, it has also shown the significant harm caused by official corruption and the near-universal recognition of this harm that has resulted in domestic and international anti-official corruption initiatives. These findings lay a critical foundation for understanding the broader implications of executive interference. The next chapter focuses on the rule of law, exploring how socio-cultural and political influences exacerbate executive interference in corruption prosecutions and their impact on democratic governance.

CHAPTER 3
THE RULE OF LAW AND SOCIO-CULTURAL AND POLITICAL INFLUENCES ON EXECUTIVE INTERFERENCE IN OFFICIAL CORRUPTION PROSECUTIONS

3.1 Purpose: The Rule of Law as a Prosecutorial Bedrock

This chapter investigates the rule of law as a cornerstone of democratic governance, focusing on how socio-cultural and political factors influence executive interference in official corruption prosecutions in Nigeria, South Africa, and the U.S. The rule of law, encompassing the principles of legal supremacy, equality, and impartiality, is essential for ensuring accountability in official corruption cases. However, executive actions obstructing prosecutions can erode these principles, threatening democratic integrity.

This chapter traces the conceptual and historical foundations of the rule of law, drawing on Eurocentric, Anglocentric, and Africanist perspectives to contextualise its application in the three jurisdictions. It examines how constitutional sociology, political economy, political culture, and cultural politics—such as Nigeria's ethnic loyalties, South Africa's post-apartheid racial dynamics, and the U.S.'s partisan divides—shape executive interference and its impact on the rule of law. By highlighting these contextual drivers, this chapter contributes to the thesis's broader inquiry into the erosion of democratic principles.

3.2 The Legal and Theoretical Basis of the Rule of Law

Democratic societies are founded on the rule of law[238] and assessing their governance is usually benchmarked against the principles of the rule of law. It is commonplace to read arguments by social commentators, politicians, activists, and economists that a particular government action or policy is against the rule of law. The rule of law illuminates the course of governance for democracies, and deviations from its course portend a significant threat. If left unchecked, such deviations could lead to cracks, gradual weakening, and the ultimate erosion of the rule of law, a scenario that must be urgently addressed.

[238] O'Donnell, G., 2004. The Quality of Democracy: Why the Rule of Law Matters. *Journal of Democracy*. 15(4):32-46; Ferejohn, J. & Pasquino, P. 2003. Rule of Democracy and Rule of Law. *Democracy and the Rule of Law*. 5:242; Rosenfeld, M. 2000. The Rule of Law and the Legitimacy of Constitutional Democracy. *Southern California Law Review*. 74:1307.

Executive interference in prosecuting official corruption offences constitutes one of those government actions that necessitates an examination against the principles of the rule of law for several reasons. Firstly, the Constitutions of the three countries under analysis are based on the rule of law, and their respective allocations of executive powers reflect these principles.

Secondly, the legitimacy and propriety of the exercise of those powers can only be usefully considered against the backdrop of their purpose, which is maintaining a society governed by the rule of law, a principle that the rule of law itself upholds. Consequently, the legitimacy and propriety of acts of executive interference and questions regarding whether they advance a society guided by the rule of law can only be determined by applying the principles of the rule of law to them.

3.2.1 Conceptual Foundations of the Rule of Law

The Eurocentric and Anglocentric perspectives have been selected for this analysis due to their pivotal roles in shaping and disseminating the contemporary understanding of the rule of law,[239] particularly in the three jurisdictions examined in this thesis. However, long before these dominant frameworks emerged, societies throughout history employed various forms of the rule of law to regulate themselves, offering mechanisms for resisting and challenging the excesses of those in power.

Albert Venn Dicey is often credited with devising the phrase "*the rule of law*" in his seminal work, *Introduction to the Study of the Law of the Constitution*.[240] However, the foundations and characteristics of the concept were established long before Dicey.[241] Tamanaha traces the origins of the rule of law to Aristotle, who contrasted it with the rule of man.[242] He observes that many scholars identify the roots of the rule of law in classical Greek thought, particularly in the writings of Plato and Aristotle.[243]

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[239] Nedzel, N.E. & Capaldi, N. 2019. The Anglo-American Conception of the Rule of Law. Palgrave Macmillan; Allalyev, R.M. 2023. Rule of Law as a Political and Legal Ideal in the Anglo-Saxon Legal Tradition. *RUDN Journal of Law*. 27(4): 859-870.
[240] 1885. London: Macmillan and Co.
[241] Bingham, T. 2010. The Rule of Law. (*supra*) 11.
[242] Tamanaha, B.Z. 2004. On the Rule of Law: History, Politics, Theory. Cambridge University Press. 8–9.
[243] *Ibid*. 7.

In *The Rule of Laws*[244], Pirie presents a compelling account of the evolution of legal systems over the past four thousand years across different societies. She demonstrates that the contemporary version of the rule of law, spread through European colonial dominance, often replaced preexisting systems that had effectively functioned within those societies.

Pirie also notes that while extensive records exist of laws in ancient societies to regulate various aspects of human affairs, not all societies had written laws. Instead, these societies employed diverse methods to maintain order, such as mediation, conciliation, revenge tactics, avoidance strategies, and collective action against adversaries.[245]

While some societies lacked written laws, they nonetheless embedded forms of the rule of law within their strategies for maintaining order. These societies developed processes for dispute resolution, commerce, combat, and the systematic punishment of crimes. For example, despite not having written laws, many ancient communities in sub-Saharan Africa maintained impressive systems of records, legal precedents, and consistent administration of justice, all grounded in oral traditions and the memories of witnesses and elderly community members.

Laws have always existed within human society. The critical difference lies in their complexity, which has evolved alongside the development of society. As societies grew more sophisticated, creating laws to address the increasing intricacies and variations within them became necessary, leading inevitably to the codification of laws.

Examining the origins of the rule of law, Costa argues that an initial understanding of the "*cardinal points of the rule of law*" is essential. [246] He identified these points as political power (sovereignty, the state), law (objective law, norms), and individuals. He further explored the evolution of the rule of law from the Age of

[244] Pirie, F. 2021. The Rule of Laws: A 4000-year Quest to Order the World. New York: Basic Books. 202.
[245] *Ibid*. 10.
[246] Costa, P. 2007. The Rule of Law: A Historical Introduction. In *The Rule of Law: History, Theory and Criticism*. Costa, P. Danilo, Z, (Eds.). Springer: 78.

Enlightenment,[247] which introduced the Age of Reason and Science to the French Revolution.[248]

During this period, the law limited individual freedom and served as the foundation of community order and as an instrument of authority for the sovereign. Costa referred to Locke and Montesquieu, who advanced the idea that the law is primarily a means of expressing freedom rather than something that ceases where individual rights begin.[249] The law, therefore, guarantees an individual's freedom, including protecting property and rights, and guards against arbitrariness. This conception of the law gave rise to the principles of lawfulness and equality of persons within society.

The French Revolution strengthened these ideas, leading to the demand that "*sovereignty must protect individual rights, above all freedom and property*."[250] This Revolution also redefined sovereignty, shifting it from a titular, all-powerful monarch to the masses, asserting that sovereignty now resided with the people. This marked the emergence of foundational elements of the rule of law, including the interrelationship between rights, freedom, property, and sovereignty. In this period, the French revolutionaries considered the sovereign the guarantor and disseminator of individual rights.

Great Britain's political and societal structures differed significantly during the same period. Order was maintained through the actions and interactions of individuals concerning property and contracts, with society organising itself spontaneously around fundamental rules. The sovereign's role was more about protecting from external threats rather than directly intervening in internal affairs. Within this framework, order was autonomously upheld by the rules of the society on freedom and the protection of

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[247] White, M. 2018. The Enlightenment. Available: https://www.bl.uk/restoration-18th-century-literature/articles/the-enlightenment [2025, April 11].

[248] This was a long period of radical and political change in France, which resulted, amongst other changes, in the abolition of the French Monarchy and the entrenchment of the principles of liberal democracy of *liberté, égalité, fraternité*. See James, L. 2001. Making Democracy in the French Revolution. Harvard University Press. 140.

[249] Costa, P. 2007. The Rule of Law: A Historical Introduction. In *The Rule of Law: History, Theory and Criticism* (*supra*) 13, 78.

[250] *Ibid*. See Hunt, L.1996. The French Revolution and Human Rights. Boston. St. Martin's Press; Baker, E. 2022. Human Rights and Humanity's Rights During Year Three of the French Revolution. Springer Nature.

property, requiring only occasional intervention from political or sovereign authority to enforce contracts. [251]

The *Magna Carta Libertatum,*[252]commonly known as the Magna Carta, was pivotal in developing the rule of law in Great Britain. King John agreed to this royal charter as a compromise with rebelling barons who opposed his perceived overreach. Bingham noted that the Magna Carta contained the embryo of the rule of law. [253] He identified several key features that made the Magna Carta a foundational platform for the contemporary rule of law.

First, it addressed legal freedom for all members of society. Second, it was not a hastily crafted document but one that drew upon the culture and prior writings of English kings, ensuring that it reflected the needs of the parties involved. Third, it represented a decisive rejection of the sovereign's unbridled power. Finally, its far-reaching and global influence beyond British borders marked the beginning of the exportation of the British rule of law.[254]

The Petition of Rights of 1628 followed the Magna Carta. It arose from legislative opposition to King Charles I's excesses, particularly his detention of citizens who refused to pay arbitrary taxes imposed to fund his overseas wars.[255] The Petition of Rights enshrined the protection of individual freedoms and property and represented the triumph of the rule of law over monarchical overreach.

The enactment of the Bill of Rights in 1689 was another milestone in the development of the rule of law in Great Britain. The Bill of Rights established several foundational principles: the subjection of the sovereign to the law, the protection of

[251] Costa, P. 2007.The Rule of Law: A Historical Introduction. In *The Rule of Law: History, Theory and Criticism* (*supra*) 81; Pargendler, M. 2018. The Role of the State in Contract Law: The Common-Civil Law Divide. *Yale Journal of International Law.* 43:143; Swain, W. 2015. The Law of Contract 1670–1870. Cambridge University Press.
[252] 1215.
[253] Bingham, T. The Rule of Law. 2010. London. Penguin Books. 23.
[254] *Ibid*. 21-24.
[255] *Ibid*. 29-32.

individual freedom and property, the authority and independence of Parliament, and the protection of jury trials.

The evolution of the rule of law in the U.S. was profoundly influenced by the French and British experiences, each shaped by distinct historical factors. In Britain, the rule of law emerged from resistance to sovereign authority, while in France, it arose from a revolt against feudalism. In contrast, the American model was driven by popular will, rejecting British legislative absolutism and tyranny.[256] Notwithstanding the differing catalysts and circumstances in these countries, their developments share a commonality in defining the relationship between sovereignty, law, and individual freedoms, particularly concerning rights and property.

The theme of individual freedoms is central to Liberalism, a political theory that has profoundly influenced the Western approach to the rule of law.[257] It embraces equality, asserting that everyone embodies freedom and rights that the law must equally protect without discrimination. According to Locke, individual freedom led society to form a government to preserve the freedom, rights, and property of its members.[258]

Locke advocated for the separation of powers between the sovereign and the legislature but did not call for a separate judicial branch. He believed limiting the sovereign's absolute power was necessary, as such power was incompatible with the social contract that formed the basis of government.[259] Locke's avowed belief in property ownership[260] resulted in the society forming a government in his imagined state of nature.

Consequently, the government is a guardian of society's resources and properties. While some properties were individualistic, such as land rights, others, like natural resources and the collected taxes, were communal. Thus, when the government

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[256] Costa, P. 2007.The Rule of Law: A Historical Introduction. In *The Rule of Law: History, Theory and Criticism* (*supra*) 84.
[257] Tamanaha, B.Z. 2004. Of the Rule of Law, History, Politics, Theory. (*supra*) 32.
[258] Locke, J. 1764. Two Treatises of Government (*supra*) 95.
[259] Locke, J. 1980. Second Treatise of Government. Chap 2. 8-14. Indianapolis. Hackett.
[260] Tamanaha, B.Z. 2004. Of the Rule of Law, History, Politics, Theory. (*supra*) 50.

and its officials indulge in official corruption, it is an abuse of office and a violation of the oath of stewardship over communal property. This is further exacerbated when the government impedes the due process of remedying such violations by interfering in prosecuting officials who corruptly misuse such resources.

Similarly, Montesquieu recognised the significant risk of sovereign power being abused. He argued that while individual freedoms are crucial, they hold little value if there is no system of laws within which they can be meaningfully exercised and enjoyed. He further noted that the mere presence of an entrenched legal system does not guarantee freedom, as laws themselves can be oppressive.[261] His solution was to advocate for a government structure that includes a system of checks and balances through the separation of powers. He positioned the judiciary at a critical juncture, serving as a check on both the executive and legislative branches while safeguarding the rights of the people.[262]

The preceding analysis offers a concise overview of the origins of the rule of law, its developmental trajectory, and the perspectives of its key proponents. This foundation is crucial for understanding the central theme of this thesis, which explores the rule of law and its core components, including sovereignty, individual rights and freedoms, and the supremacy of the law. In pursuit of this objective, the following paragraphs will examine major definitions of the rule of law and some of their critiques, especially from an Africanist view.

3.2.2 Definitions of the Rule of Law

In this thesis, the analysis of the definitions of the rule of law is conducted through a dual perspective. Some definitions focus on the ends or goods the rule of law is meant to deliver ("Ends-Based"). In contrast, others focus on the institutional attributes that a society must possess ("Institution-Based") to actuate the rule of law.[263]

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[261] Charles Louis de Secondat, B. de M.1777. Spirit of the Laws Montesquieu. London.
[262] *Ibid*.
[263] Belton, R. 2005. Competing Definitions of the Rule of Law: Implications for Practitioners. (*supra*). 55:3; See Chapter 1.7.1 *(supra)*.

Belton observed that legal and political theorists prefer the Ends-Based definitions, whereas rule-of-law practitioners, such as development agencies and not-for-profit organisations, prefer the second.[264] Both definitions are important in analysing the challenge of prosecuting official corruption and the rule of law.

Krygier argues that the primary aim of the rule of law is to reduce the possibility of arbitrary exercise of power.[265] He distinguishes between two ways of understanding the rule of law: a theological approach, focusing on its aims, and an anatomical approach, focusing on rules and institutions. Krygier favours the theological approach. He believes that one must ascertain the ends of the rule of law before working to achieve them. Essentially, the institutions are merely a means to the ends of the rule of law.[266]

Dicey's classic Ends-Based definition is the starting point in considering these salient definitions.[267] The three meanings identified in Dicey's definition are essential in considering official corruption in the first instance and the frustration in prosecuting it. Prosecuting official corruption coincides with the first component of Dicey's definition regarding the prescription of laws. It also responds to the equality component while reflecting the rights of the citizens to have their resources protected from despoliation. On the reverse side, undermining prosecuting official corruption undercuts the supremacy of the law and poses a challenge to all three components.

Thus, we see the inherent tension, particularly at play between prosecuting official corruption and its opposition, viz, the ends of the rule of law. This dynamic is also evident in other societal contexts where those in authority attempt to consolidate absolute power, often in opposition to the legal constraints that limit such power. In doing so, they may seek to weaken the institutions responsible for upholding the rule of law, thereby undermining its effectiveness.

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[264] *Ibid.* 13.
[265] Krygier, M. 2011. Four Puzzles about the Rule of Law: Why, What, Where? And Who Cares? *Getting to the Rule of Law*. (*supra*). 74.
[266] *Ibid.*
[267] See Chapter 1.7.1 (*supra*).

Like Dicey, Hayek recognises the central importance of curbing arbitrary power and ensuring the equal application of the law to all within the framework of the rule of law. He postulates that the rule of law:

> Stripped of all technicalities, this means that government in all its actions is bound by rules fixed and announced beforehand – rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances and to plan one's individual affairs on the basis of this knowledge.[268]

In Hayek's definition, a definite body of laws is emphasised to provide citizens with explicit knowledge of the circumstances under which the state's coercive powers may be applied and the boundaries within which they can freely exercise their liberties. Hayek further stresses that "*the laws must be general, equal, and certain*."[269] In terms of generality, he elaborates that:

> When I say that the province of the law is always general, I mean that the law considers all subjects collectively and all actions in the abstract; it does not consider any individual man or any specific action.[270]

Hayek's views on the rule of law resonate with Dicey's emphasis on equality. Hayek acknowledges that there may be instances where the law is applied differently to account for specific distinctions. Still, he insists that such variations must be grounded in the law and not be arbitrary.[271] This approach does not endorse preferential or selective treatment but recognises the ideal of equality and the practical need to treat certain cases differently to achieve equity and justice.

From an Ends-Based perspective, Hayek consolidates the principles of the generality of the law, its equal application, and its certainty. Consequently, in a society where these principles prevail, there is likely to be a higher level of compliance with

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[268] Hayek, F.A. 1956. The Road to Serfdom. Chicago. University of Chicago Press. Xliii.
[269] *Ibid*. Hayek, F. A.1960. The Constitution of Liberty. University of Chicago Press. 205-209.
[270] Hayek, F.A. 1955. The Political Idea of the Rule of Law. [Lecture]. Cairo: National Bank of Egypt. 34.
[271] Hayek, F. A. 1960. The Constitution of Liberty. (*supra*). 210; Hayek, F.A. 1955. The Political Idea of the Rule of Law. (*supra*).

the law and a corresponding readiness of the state to use its coercive powers to enforce it.

In a society with clear-cut anti-corruption legislation that consistently enforces equal treatment under the law, members are more likely to comply, driven by the deterrent effect of predictable and swift justice. Conversely, in a society with similar laws but a weak enforcement record, compliance would be lower, with fewer instances of enforcement against infractions.

When comparing these two societies, a paradoxical outcome might emerge: the society with the greater rule of law compliance may appear to have more cases of breach due to its higher enforcement rate. In comparison, a society with less compliance with the rule of law might appear to have fewer breaches simply because of its lower enforcement rate. This comparison highlights the complex relationship between the rule of law, compliance, and enforcement.

Locke offers a foundational description of the Institution-Based rule of law.[272] This definition reveals certain identifiable features of modern appreciation of the rule of law. First, laws must be publicly made and readily identifiable; no valid laws can be created in secrecy or under obscure circumstances. Laws must be transparent and understandable for citizens to be held accountable for breaches.

Secondly, an efficient and impartial judiciary is essential for the rule of law to function. Even the most well-drafted laws are rendered ineffective if not upheld by an independent and unbiased judiciary. Thirdly, the government must have a coercive mechanism to enforce laws. While much of the population typically complies with laws voluntarily, a means of compelling compliance must exist to maintain law and order. Although this force may rarely be used, its presence serves as a deterrent, reinforcing the authority of the law and discouraging potential transgressors.

The final point in this definition emphasises the government's protection of human rights. Locke and Hobbes co-introduced the idea that the rule of law must

[272] See Chapter 1.7.1 (*supra*).

encompass law and order and safeguard human rights. They theorised that people form governments to protect their property and maintain law and order, asserting that individual rights and property can only be secured within a framework of law and order.[273]

Clarity about the conditions under which these rights and properties may be legally deprived gives members of society a clear understanding of acceptable conduct. At the same time, the mechanisms of penalty and redress for illegal deprivation offer protection and assurance. In the context of official corruption, failing to prosecute such offences represents a failure of the core benefits that the rule of law is intended to provide.

The rule of law definition in the 2004 Report of the Secretary General of the United Nations, entitled *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,* provides as follows:

> [The rule of law] refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.[274]

The preceding describes a society where the rule of law is present. Given the often irreconcilable definitions of the rule of law, it is more productive to focus on understanding its fundamentals, markers, and demands and how these can be meaningfully observed and measured. While the rule of law is an ideal that no society may fully achieve, some countries come closer to this ideal, while others fall further away. The United Nations' description of the rule of law incorporates elements of both Ends-Based and Institution-Based definitions, making it a strong foundation for

[273] Zuckert, M.P. 1994. Hobbes, Locke, and the Problem of the Rule of Law. *NOMOS: American Society for Political and Legal Philosophy*. 36:74-75.
[274] U.N. Secretary-General.2004. The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies. U.N. Doc. S/2004/616.6.

transitioning into an analysis of the substantive and procedural aspects of the rule of law.

3.2.3 Substantive and Procedural Aspects of the Rule of Law

The principles of the rule of law are often categorised into substantive and procedural (or formal) components. However, proponents of each classification frequently debate their relative importance.[275] Formalists argue that the rule of law is solely concerned with procedures and should not be involved with the content of the law or its moral quality. The essence of the rule of law is fulfilled as long as justice is delivered efficiently, procedurally, and with equality. They are unconcerned with whether laws are just or unjust, maintaining that human rights considerations fall outside the scope of the rule of law. In their view, the rule of law is being served as long as statutes are promulgated, administered, and enforced to ensure the predictability of outcomes. [276]

In contrast, Substantivists argue that the rule of law is incomplete without focusing on the content of laws, which must aim at the common good or human rights in more modern terms. Locke, a key proponent of this thought, asserted that the purpose of any legitimate law is "*to be directed to no other end, but the peace, safety, and public good of the people*." [277] The Magna Carta, with its emphasis on protecting the rights of citizens, serves as a historical example of the substantive aspect of the rule of law.

Substantivists also contend that a purely formalist approach risks reducing the rule of law to mere "*rule by law*", which can lead to injustice. Zanghellini's analysis reinforces this view, drawing on Aristotle to argue that the absence of good laws undermines the rule of law. It is immaterial if other features like written laws,

[275] Belton, R. 2005. Competing Definitions of the Rule of Law: Implications for Practitioners. (*supra*) 55:13; Zanghellini, A. 2016. The Foundations of the Rule of Law. *Yale Journal of Law and Humanities*. 212.
[276] Zanghellini, A. 2016. The Foundations of the Rule of Law. (*supra*). 212.
[277] Locke, J. 1764. The Second Treatise. (*supra*). Section 131.

established enforcement procedures, equality of application, and procedural efficiency are present.[278]

Waldron, previously in opposition to the substantive approach, appeared to have revised his perspective[279]and admitted a "*natural overlap*"[280] between the two classifications. He observed that the formal and procedural were not interchangeable but rather complementary. In addition to Lon Fuller's eight formal principles,[281] he added procedural features to accompany the formal principles.

The arguments regarding substantivity and formalism can be persuasive only if they are limited to discovering the features that enhance and build out the rule of law. To the extent that the arguments seek to discount the utility of the other side, they lose their vigour and undermine the essence of the rule of law.

A close analysis of the formal and procedural elements makes it apparent that for the rule of law to exist, formalities must be in place to ensure the delivery of justice in an efficient, procedural form with due regard to the equality of the subject matter. Attributing the rule of law to a country without entrenched procedures for efficiently enforcing justice would be untenable. Conversely, a state with grounded procedural elements without deference to fundamental rights would be difficult to characterise as representative of the rule of law.

However, a third perspective exists that reflects the qualitative nature of the rule of law and questions the extent to which compliance with it can be observed and measured. The rule of law can be seen as a destination and an aspirational ideal. Certain fundamental features must be present in a society to be considered generally compliant with the rule of law. However, the presence and implementation of additional, secondary features make the rule of law an ongoing aspiration.

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[278] Zanghellini, A. 2016. The Foundations of the Rule of Law. (*supra*). 214.

[279] Waldron, J. 2011. The Rule of Law and the Importance of Procedure. *NOMOS: American Society for Political and Legal Philosophy*.4; See also Waldron, J. 1989. The Rule of Law in Contemporary Liberal Theory. *Ratio Juris*. 2: 79.

[280] Waldron, J. 2011. The Rule of Law and the Importance of Procedure. (*supra*).

[281] (a) Generality; (b) Publicity; (c) Prospectivity; (d) Intelligibility; (e) Consistency; (f) Practicability; (g) Stability; and (h) Congruence. See, Fuller, L. 1964. The Morality of Law. 2nd ed. New Haven. Yale University Press. 39.

When comparing two countries, it is possible to acknowledge that both possess the essential elements of the rule of law. Yet, they may differ in how deeply these elements are entrenched and how effectively they guide the conduct of the state and its citizens. Regardless of how formalised the rule of law is, it can easily be repurposed as a tool for oppression without justness. This is where the substantive view becomes crucial, complementing and, in a sense, rescuing the formalist perspective by ensuring that the rule of law is not only procedural but also just and equitable.

The substantive view centres on the justness and fairness of the law. In addition, such laws must be clear and insulated from arbitrariness. People naturally conceive of this value element of the law when they think of the rule of law. It has driven human rights campaigns and civil rights movements. It is the crux of many acts of civil disobedience because unjust laws undermine the rights of citizens.

This is one of the reasons why human beings formed societies and governments to protect their rights to property and freedom and, progressively, to additional rights. Disregarding this fundamental feature of the rule of law and focusing solely on formalism is a mechanical approach that strips the rule of law of its soul. A formalised system of justice that relentlessly and efficiently delivers on the enforcement of unjust law cannot be convincingly argued to reflect the rule of law.

Thus, substantive and formal-procedural aspects are necessary for understanding the rule of law. In analysing these elements, they could be almost neatly collapsed into the classification of the Ends-Based and the Institution-Based definitions, with the substantive elements falling into the Ends and the formal and procedural into the Institutional. This means that no matter how the rule of law is dissected and the form of that exercise, its basic principles remain present, observable and measurable.

3.2.4 A Contemporary Understanding of the Rule of Law

The description of the rule of law is crucial for benchmarking what constitutes a society governed by this principle, determining the extent of a society’s compliance, and identifying areas for improvement. While the rule of law is an ideal, this should

not serve as an excuse for failing to make genuine efforts toward building a society that closely aligns with that ideal.

Differentiation in what constitutes the rule of law should not be encouraged, as such distinctions are often superficial and misleading. The original proponents of the rule of law and their successors fundamentally agree on certain core principles.[282] These principles should not be diluted to accommodate authoritarian regimes, even if democratically elected, that seek to project an image of adherence to the rule of law while undermining or disregarding its essential components.

Rajah masterfully analyses the subject of the authoritarian rule of law in her treatise.[283] She dispels the notion that authoritarianism and the rule of law are mutually incompatible by demonstrating how strange bedfellows could emerge. She uses Singapore as an example of a state which created a society that is putatively governed by the rule of law but with features that are apposite to it.[284]

Rajah further shows that when the rule of law is hijacked and reconfigured in such a manner as to dispense authoritarian ends, it is no longer the rule of law but the rule by law. She states that:

> Briefly, 'rule of law' signifies 'law' which, in content and in institutional arrangements, prevents "arbitrary power and excludes wide discretionary authority". In contrast, 'rule by law' signifies 'law' which, in content and institutional execution, is susceptible to power such that the rights content of 'law', and restraints on and scrutiny of state power, are undermined. [285]

The danger of this formulation of the rule by law is not limited to Singapore. It is also present in contemporary Russia, Hungary, and Poland. Hungary and Poland have caused grave disquiet in Europe as both are members of the European Union (EU), which prides itself on being under the rule of law.[286] The EU was so concerned

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[282] Limitations on arbitrariness, State and Citizen Equality, State Accountability, Independent Judiciary and strong institutions, and Due Process.

[283] Rajah, J. 2012. Authoritarian Rule of Law: Legislation, Discourse and Legitimacy in Singapore. (*supra*).

[284] *Ibid*. See generally 1-4.

[285] *Ibid*. 3.

[286] "The rule of law is one of the fundamental values of the Union, enshrined in Article 2 of the Treaty on European Union. It is also a prerequisite for the protection of all the other fundamental values of the Union, including for fundamental rights and democracy. Respect for the rule of law is essential for the very functioning of the EU: for

that it issued several resolutions on the rule of law situation in Hungary and Poland[287] and devised a framework for evaluating and monitoring the state of the rule of law in its member countries.[288]

In countering the insidious state of the rule of law in Hungary and Poland, the European Commission (EC), the executive arm of the EU, took a preliminary step to establish a standard regarding what the rule of law means to the body. The EC, in *Strengthening the Rule of Law within the Union: A Blueprint for Action*[289]acknowledges the diversity in applying the rule of law due to different legal systems, national identities, and traditions, but insists that the core principles of the rule of law remain the same across all its constituent states and are not negotiable.[290]

It is instructive that the EC dispensed with attempts to define the rule of law. Instead, it adopted a descriptive approach that demonstrably signifies the rule of law and what it is expected to be. In doing this, its constituent states are clear about what is expected of them to ensure compliance with the rule of law within the EU.

This EU description covers the five core rule of law principles identified above.[291] These core principles are what governments that have been described as "*authoritarian, semi-authoritarian, soft authoritarian, semi-democracy, illiberal democracy, communitarian democracy, dictatorship, pseudo-democracy, limited democracy, mandatory democracy, despotic state, "decent, non-democratic state" and*

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the effective application of EU law, for the proper functioning of the internal market, for maintaining an investment-friendly environment and for mutual trust. The core of the rule of law is effective judicial protection, which requires the independence, quality and efficiency of national justice systems." See https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law_en [2025, April 11].

[287] "In recent years, the European Commission has been confronted with crisis events in some EU countries, which revealed systemic threats to the rule of law. The Commission reacted by adopting the rule of law framework to address such threats in EU countries" https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-framework_en [2025, April 11].

[288] *Ibid*. "The objective of the rule of law framework is to prevent emerging threats to the rule of law to escalate to the point where the Commission has to trigger the mechanisms of Article 7 of the Treaty on European Union (TEU). This is done through dialogue with the EU country concerned."

[289] European Union. 2019.Strengthening the Rule of Law within the Union: A Blueprint for Action. 1https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0343&from=EN [2025, April 11].

[290] European Union. 2019. Strengthening the Rule of Law within the Union: A Blueprint for Action (*supra*).

[291] See Chapter 3, 3.2.2. (*supra*).

hegemonic electoral authoritarian"[292] have relied on to create their version of the rule of law, resulting in the rule-by-law product.

Using Singapore as a backdrop, Rajah notes that it is "*characterised by a concentration of power and the obstruction of serious political competition with, or scrutiny of, that power*."[293] Subverting the core principles yields anomalous results. These include deliberate failure to prosecute official corruption offences, withdrawal of pending cases in court, and as a last blow to any lasting bastion of judicial censure, granting official pardons to persons convicted of official corruption.

Objectivity is a fundamental factor in implementing the rule of law in various discussions. In this context, objectivity depicts the disposition to apply the law detachedly, devoid of self-interest, partiality, and other base considerations. However, objectivity can only stand on the shoulders of the various requirements of the rule of law articulated by the Formalists.

It is untenable to demand an objective application of the rule of law where the laws are opaque or haphazardly interpreted. Therefore, beyond having clear laws on the books, the objective implementation of these laws is desirable to create a society where individuals can orient their conduct based on the predictability of laws, their enforcement, and their adjudication. It is also a recognised judicial principle in South Africa that all governmental action must meet the objective test.[294]

In *Objectivity and the Rule of Law*,[295] Kramer argues that objectivity in applying the rule of law is integral in entrenching impartiality. He submits that:

> A dearth of impartiality, then, fosters decision-making that frequently deviates from any tight correspondence between the law as it is formulated and the law as it is administered. Because quite a firm correspondence of that kind is indispensable for the existence of a functional legal system, impartiality on the part of legal officials – not perforce as something that they invariably maintain, but at least as something that they typically maintain – is itself indispensable for the rule of law. An ample degree of

[292] See Rajah, J. 2012. Authoritarian Rule of Law: Legislation, Discourse and Legitimacy in Singapore. (*supra*) 7-8.
[293] *Ibid*. 8.
[294] Kohn, L. 2022. The National Prosecuting Authority as Part of South Africa's Integrity and Accountability Branch and the Related Case for an Anti-Corruption Redress System. *Constitutional Court Review*. 12(1): 23-24.
[295] See generally, Kramer, M.H. 2007. Objectivity and the Rule of Law. Cambridge. Cambridge University Press.

> impartiality in the authoritative activities of legal officials is a necessary condition for the status of a regime of law as such.[296]

Several factors must be established or function in unison for the rule of law to be effectively and universally applied. This necessitates abandoning the quest for a perfect definition in favour of a descriptive approach that delineates what the rule of law ought to be or is.

Regardless of their leanings, proponents of the rule of law envision a society where individual rights are assured and protected, mechanisms exist for redressing breaches of such rights, and the government is restrained from overreaching its powers and is subject to the law. When the government unlawfully encroaches upon individual rights, there must be a system to confine it within its proper bounds.

Also, laws should be clearly articulated and adhere to the fundamental principles of human rights and the common good. These expectations must be supported by an objective approach to implementing the rule of law, ensuring these features are in place. In the absence of impartiality, perverse outcomes will inevitably arise.

Acts of executive interference in prosecuting official corruption offences are devoid of objectivity and undermine the common good. Such actions cause the citizens to distrust the government and lead to uncertainty in the people's decision-making. This is because they cannot predict governmental response to infractions.

Contemporarily, this means that proponents of the rule of law must reclaim the initiative in describing the rule of law. They must not allow those who espouse an alternative and perverse view to dominate the theoretical discourse. It must be unequivocally stated that any interpretation of the rule of law that fails to recognise the common good or detracts from its spirit cannot be acknowledged as the rule of law but rather as an aberration—a faux rule of law.

In other words, it is crucial to understand the rule of law, its ideals, and its parameters clearly articulated and universally accepted. Simultaneously, efforts must

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[296] *Ibid*. 134.

be made to disavow those who seek to misuse the term to legitimise their anomalous application of the law. This underscores the importance of moving away from endless debates over the definition of the rule of law. Instead, focusing on a descriptive understanding of what the rule of law is or ought to be holds more significant potential for achieving consensus. This approach will be more helpful in challenging claims by any executive that their acts of interference in prosecuting official corruption were carried out lawfully within their powers.

It is essential to understand that the rule of law evolves differently across societies. This evolution depends on various factors, including history, culture, and environment. This is particularly cogent in the case of Africa.

Africanist scholar Mamdani critiques universalist models, noting colonial legacies fragment the rule of law in post-colonial states like Uganda and South Africa.[297] This also applies to Nigeria. Mutua challenges Western liberal frameworks in Africa, highlighting their limited effectiveness due to cultural and historical differences.[298] He emphasises the need for culturally sensitive legal and developmental strategies rather than imposing external models.

Mutua's core argument is that the Western concept of the rule of law, often seen as essential for democracy and sustainable development, cannot be directly transplanted to African states without adaptation. He highlights that while many African countries have constitutions prioritising the rule of law, they have not achieved true justice or stability, primarily due to historical traumas such as colonialism, the slave trade, and post-colonial governance challenges.[299]

Fombad recognises the rule of law as a contested concept essential for constitutional democracy. Based on the frameworks of the United Nations, the World

[297] Mamdani, M. 1996. Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism. Princeton. Princeton University Press.

[298] See Chapter 3, 3.2.4 (*supra*).
[299] Mutua, M. 2016. Africa and the Rule of Law. (*supra*).

Justice Project, and the Venice Commission, he outlines core elements like legality, non-discrimination, and access to justice.[300]

Steytler noted that the 1990s marked a "*third wave*" of democratisation in Africa, with many countries adopting new constitutions that emphasised the rule of law, democracy, and human rights. However, this progress has weakened in recent years, with signs of authoritarianism re-emerging and official corruption on the rise.[301]

The imposition of the Western rule of law model in Africa has been fraught with challenges. This is mainly due to the lack of recognition of the historical and cultural differences of the African societies where they have been imposed. Consequently, there is a constant struggle to balance the ubiquitous Western style of governance with local norms and traditions that are incompatible in parts. This is the gap that must be filled, and each country must undertake this exercise to address these differences and formulate autochthonous solutions for them.

3.3 Influence of Constitutional Sociology, Political Economy, Cultural Politics and Political Culture on the Rule of Law

3.1.1 Analysis: Nigeria: Rule of Law Amid Centralisation and Ethnicity

The rule of law in Nigeria can be understood through two distinct periods: military regimes and civilian rule. From Nigeria's First Republic in 1963 to its return to civilian governance in 1999, the country endured long stretches of military rule, punctuated by brief democratic intervals. Despite seizing power through force, military juntas frequently proclaimed the rule of law as a foundational principle of their regimes, although their actions contradicted these declarations.[302] For example, during the Buhari/Idiagbon military regime (1984–1985), Major General Idiagbon cited the

[300] Fombad, C. 2020. Corruption and the Crisis of Constitutionalism in Africa. *In Corruption and Constitutionalism in Africa*. Fombad, C., & Steytler, N, (Eds.). Oxford. Oxford University Press. 21.
[301] Steytler, N. 2020. Towards Understanding and Combating the Crime of Corruption in Africa. *In Corruption and Constitutionalism in Africa*. Fombad, C., & Steytler, N, (Eds.). Oxford. Oxford University Press.19.
[302] Agbaje, F. 2005. The Rule of Law and the Third Republic. In *Fundamental Legal Issues in Nigeria*. N.L.R.ED. P Series No.1, 45.

importance of the rule of law. Still, the regime was marked by authoritarianism and widespread disregard for legal norms.

Under military governments, constitutional provisions were routinely suspended, undermining the rule of law and consolidating power within the central government.[303] The Armed Forces and Police (Special Powers) Decree[304] exemplified this trend by granting the Inspector General of Police and the Army Chief of Staff the authority to order detentions without judicial oversight. This infringed upon citizens' rights and revealed the military's disdain for constitutional principles.

It is against this backdrop that Nigeria returned to civilian rule in 1999. This return resulted in the extant 1999 Constitution with a centralised executive. The Constitution created a dual role for the Attorney General as the justice minister and the chief prosecutor. This places unbridled power within the Nigerian executive, laying the basis for abuse and the erosion of the rule of law.

Nigerian civilian governments have exploited this concentration of power since the advent of Nigeria's Fourth Republic in 1999. The Nigerian judiciary has also provided judicial backing for this, acknowledging the absolute power of the Nigerian Attorney General and, by implication, the Nigerian executive to conduct and direct prosecutions as she sees fit.[305]

Nigeria's cultural politics play a crucial role in the rule of law and in the process of Executive interference in prosecuting official corruption offences. Cultural politics in Nigeria act like a tangled web, weaving ethnic loyalty and precolonial norms into a shield for executive meddling in corruption cases. Osha highlights how divided the line between public and private domains rooted in Ekeh's "Two Publics,[306]are in Nigeria.[307]

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[303] Keay, E.A. 1966. Legal and Constitutional Changes in Nigeria Under the Military Government1. *Journal of African Law.* 10(2), 92-105.
[304] No. 24 of 1967.
[305] *State v. Ilori* (*supra*).
[306] See Chapter 1, 1.7.1 (*supra*).
[307] Osha, S. 2011. The Order/Other of Political Culture: Reflections on Nigeria's Fourth Democratic Experiment. *Socialism and Democracy*. 25(2). 155-158.

The theory of Two Publics provides a critical framework for understanding the socio-cultural dynamics that perpetuate corruption in Nigeria, particularly in the context of executive interference in official corruption prosecutions. This theory posits that the Nigerian society operates within two distinct spheres: the primordial public and the civic public. The primordial public encompasses kinship, ethnic, and tribal affiliations, characterised by strong moral obligations to support one's community. In contrast, the civic public includes the broader societal structures, such as the public and private sectors, where individuals engage in professional roles. According to Ekeh, Nigerians prioritise loyalty to their primordial public over the civic public, leading to conflicts of interest that foster unethical practices in governance.[308]

In the primordial public, individuals view their duties as moral imperatives to benefit their ethnic or tribal groups, often at the expense of the civic public's interests. When tensions arise between these spheres, loyalty to kinship typically prevails, resulting in actions undermining the integrity of the civic public. For instance, a public official may engage in corrupt practices, such as embezzling state funds, to channel resources to their ethnic community, viewing such actions as legitimate contributions to their primordial public. This behavior is often met with approval within the ethnic group, despite its detrimental impact on national governance.[309]

Ekeh argues that Nigerians perceive the state as a source of benefits (rights) without corresponding responsibilities (duties) to the civic public. Instead, duties are owed to the primordial public, which forms a moral realm where loyalty and generosity are paramount. Conversely, the civic public is seen as an amoral arena where exploiting state resources for personal or ethnic gain is tolerated and sometimes considered patriotic.[310]

This duality creates a dialectical tension: a virtuous member of the primordial public is expected to divert resources from the civic public to their ethnic group,

[308] Ekeh, P.P. 1975. Colonialism and the Two Publics in Africa: A Theoretical Statement (*supra*). 91–112.
[309] Azelama, J. 2002. Tribalism, Corruption and Despair in Nigeria. Benin City: University of Benin Press.
[310] Ekeh, P.P. 1975. Colonialism and the Two Publics in Africa: A Theoretical Statement (*supra*). 91–112.

legitimising corruption to strengthen kinship ties.[311] Ekeh encapsulates this dynamic by noting that a "good" citizen of the primordial public selflessly contributes to their community. In contrast, a "successful" citizen of the civic public extracts benefits from the state and redirects them to their ethnic group, avoiding personal enrichment to maintain moral standing.[312] This permits the executive, through the agency of the Attorney General, to halt prosecutions or issue pardons to persons convicted of official corruption because loyalty to ethnic enclaves trumps legal accountability.[313]

Nigeria's ethnic patchwork—Hausa, Yoruba, Igbo, and more—brews a loyalty potion that drowns impartiality, letting the executive steer corruption cases off-course. Osha notes how premodern communalism clashes with modern law, so a governor or minister caught in corrupt practices is not regarded as a criminal if their ethnic group sees them as benefactors.[314]

This cultural politics fuels executive interference—rival officials from other tribes get prosecuted, and allies get a pass. Ethnic lenses turn corruption into a grey zone: a looter is a villain unless they are funnelling cash home, in which case, they are not. This split vision, which reflects Ekeh's two publics, means the nation does not universally rage at executive interference.

Arowolo confirms that corruption is deeply rooted in ethnic groups, with ethnicity promoting tolerance for corrupt acts that benefit the community.[315] In southwestern Nigeria, this manifests as support for executive intervention when it shields leaders seen as advancing tribal interests, such as through patronage or infrastructure development, even if legally questionable.[316] This scenario is replicated in the southeastern and northern regions of the country. The interplay of cultural

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[311] Ogundiya, I.S. 2009. The Cycle of Legitimacy Crisis in Nigeria: A Theoretical Exploration. *Journal of Social Sciences*, 20(2).129–143.
[312] Ekeh, P.P. 1975. Colonialism and the Two Publics in Africa: A Theoretical Statement (*supra*), at 108.
[313] *Ibid*.
[314] Osha, S. 2011. The Order/Other of Political Culture: Reflections on Nigeria's Fourth Democratic Experiment (*supra*), at 158.
[315] Arowolo, D.E. 2022. Ethnicisation of Corruption in Nigeria. *Journal of Financial Crime*. 29 (1). 246-257.
[316] *Ibid.*

politics and ethnic identity poses significant challenges for combating corruption in Nigeria.

Executive interventions, supported by cultural narratives, undermine legal accountability across Nigeria. This ambivalence in public attitude, where corruption is tolerated for ethnic benefits, hinders the development of a unified national anti-corruption framework. Nigeria's cultural politics have set a shaky foundation for its political culture.

Strong ethnic loyalties and a history of military rule mark Nigeria's political culture. It often leads the executive to intervene in official corruption cases with the approval of some sections of the country. Leaders may protect co-ethnics or political allies to maintain support, using powers like the Attorney General's *nolle prosequi* to halt prosecutions, as seen in the case of James Ibori, convicted abroad but shielded locally.[317]

Many Nigerians back the executive if they benefit from patronage, like jobs or projects, creating dependency in a context of weak institutions. Ethnic identification also drives support, with communities viewing interventions as protecting their interests against perceived marginalisation. This dependency means citizens may overlook interventions, viewing them as necessary for stability, especially in the context of poverty.

For instance, Diepreye Alamieyeseigha's pardon in 2013 was supported by his ethnic communities, which benefited from his generosity.[318] Thus, the prevalence of two publics in Nigeria facilitates executive interference because Nigeria's civic public is a free-for-all, not a rule-bound space.

Another factor influencing executive behaviour in Nigeria is the country's political economy. Nigeria's economy relies heavily on oil, and the Nigerian Constitution gives the executive branch sole control over this and other natural

[317] British Broadcasting Corporation. 2012. James Ibori: How a Thief Almost Became Nigeria's President. https://www.bbc.com/news/world-africa-17184075 [2025. April 11].
[318] British Broadcasting Corporation. 2013. Nigeria Pardons Goodluck Jonathan Ally, Alamieyeseigha. https://www.bbc.com/news/world-africa-21769047 [2025, April 11].

resources.[319] This control enables patronage, where the executive distributes wealth to allies, often intervening in corruption cases to shield them.

Ake argues that African states lack autonomy from economic interests, leading to a situation where political power is used for economic accumulation.[320] He discusses the rentier state model, where states rely on external rents rather than taxation, reducing accountability to citizens and fostering corruption. He also highlights the weakness of civil society and democratic institutions, allowing executives to act without sufficient checks and balances.[321] This analysis is apt in the Nigerian situation.

With the return to civilian rule in 1999, there was an expectation that the rule of law would prevail. However, Nigeria's political culture, shaped by decades of military governance, remain prone to autocratic tendencies, even under civilian leadership. Both President Olusegun Obasanjo[322] (1999–2007) and President Muhammadu Buhari (2015–2023), former military rulers, demonstrated a troubling tendency to undermine the rule of law.

Obasanjo's actions, such as the military's violent retaliation in Odi in 1999 at his behest[323] and allegations of financial misappropriation further eroded the rule of law.[324] Similarly, despite promises to uphold the rule of law, Buhari's presidency was characterised by autocratic and arbitrary actions, including his refusal to adhere to court rulings.[325]

Though it does not explicitly mention the rule of law, the Nigerian Constitution enshrines it through the principles of supremacy and legal authority. Section 1 of the

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[319] Nigerian Constitution, II Schedule, Part 1.
[320] Ake, C. 1981. A Political Economy of Africa. Longman Nigeria Limited. 45, 67, 89.
[321] *Ibid*.
[322] Formerly Major General Olusegun Obasanjo. He was the Chief of Staff to the Military Government of General Murtala Mohammed, who came to power via a coup in Nigeria in 1975. He would eventually become the head of that Military Government and the leader of Nigeria from 1976 to 1979 after General Murtala Mohammed was assassinated. To his credit, he hastily handed over government to a civilian elected leadership in 1979.
[323] Human Rights Watch. 1999. The Destruction of Odi and Rape in Choba. Available: https://www.hrw.org/legacy/press/1999/dec/nibg1299.htm [2025, April 11].
[324] Efeboh, E. 2015. Democracy and the Rule of Law in Nigeria: 1999-2015. *Research on Humanities and Social Studies*. 5 (20): 72-81. Available: www.iiste.org [2025, April 11].
[325] Punch Newspapers. 2019. Buhari's Lawlessness: Our Stand. Available: https://punchng.com/buharis-lawlessness-our-stand/. [2025, April 11]; Punch Newspapers. 2019. Buhari: The General and the Democracy. Available: https://punchng.com/buhari-the-general-and-the-democracy. [2025, April 11].

Constitution affirms its supremacy, requiring all actions to be consistent with its provisions. The Nigerian Supreme Court has consistently upheld this constitutional framework, reinforcing the idea that the rule of law must govern the state, with the judiciary playing an essential role in upholding citizens' rights and resolving disputes.[326]

In landmark rulings, the Supreme Court has emphasised that the rule of law requires that no one, including the government, act outside the law. In cases like *Military Governor of Lagos State vs Ojukwu*[327], the Court asserted that the rule of law must prevail over any arbitrary use of power, even during military rule. This serves as a reminder that in a civilian government, the rule of law is an essential foundation for governance and must be always upheld.

Thus, while Nigeria's struggle with official corruption and executive interference in the rule of law continues, the Constitution remains a vital tool in safeguarding democratic principles and promoting accountability within the government. Therefore, the continued evolution of Nigeria's legal and political system must prioritise strengthening the rule of law to ensure that governance is both just and equitable for all citizens.

3.1.2 Analysis: South Africa: Rule of Law in Transition and Democratic Struggles

The focus on the rule of law in South Africa is based on its post-apartheid dispensation, which saw the emergence of majority rule in 1994. Unlike the Nigerian Constitution, the South African Constitution expressly establishes the supremacy of the rule of law.[328]

It also states that it is founded on the values of human dignity and the advancement of human rights and freedoms.[329] Like the U.S. and the Nigerian Constitutions, the South African Constitution is the supreme law of the land, and any

[326] *Nafiu Rabiu vs State*, 1980. 1 LRLR Vol 1, 128.
[327] 2001 FWLR Pt. 50 P. 1779.
[328] s.1(c).
[329] *Ibid*.s.1(a).

law or conduct inconsistent with it is invalid.[330] The South African Constitution further establishes a justiciable bill of rights with all the hallmarks of the rule of law.[331]

Like Nigeria, there are challenges to the rule of law in South Africa, especially from the executive branch. This was at its height during Jacob Zuma's presidency, which witnessed blatant violations of the rule of law in South Africa, including, but not limited to, disregard for court rulings and constitutional violations.[332] As part of the assault on the rule of law, prosecutorial independence faced significant threats under President Zuma.

According to Ramsden, these threats were twofold. First, the ruling party frequently levelled exaggerated accusations of "*judicial overreach*" against the judiciary whenever court rulings went against them. Second, the executive consistently engaged in public criticism of the judiciary, aiming to pressure judges into delivering more "*favourable*" decisions.[333]

The courts in South Africa have consistently underscored the importance of the rule of law in guiding governance. In *United Democratic Movement v President of the Republic of South Africa*, the Constitutional Court affirmed that the rule of law is integral to the interpretation of the Constitution, stating that:

> [t]hese founding values have an important place in our Constitution. They inform the interpretation of the Constitution and other law and set positive standards with which all law must comply in order to be valid.[334]

This establishes the rule of law as a foundational principle for all legal frameworks in the country. Further emphasising the rule of law, the Constitutional Court highlighted the doctrine of legality, noting that "*the exercise of public power*

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[330] *Ibid*.s.2.
[331] *Ibid*. Ch.2.
[332] For an excellent exposition of the corruption of President Zuma and the state of the rule of law in South Africa under his presidency, see Bhorat, H., et al. 2017. Betrayal of the Promise: How South Africa is Being Stolen. *State Capacity Research.* Available: https://pari.org.za/wp-content/uploads/2017/05/Betrayal-of-the-Promise-25052017.pdf [2025, April 11].
[333] Ramsden, C. 2017. Opinion: Judicial Overreach. Available: https://www.politicsweb.co.za/opinion/judicial-overreach [2025, April 11].
[334] 1 2002 11 BCLR 1179 (CC) – at paragraph 19.

must therefore comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law."[335]

The Court explained that the doctrine of legality, a critical element of the rule of law, ensures that both the legislature and the executive are restricted to exercising powers explicitly granted by the law. This ruling reinforces the role of the Constitution in regulating public power and protecting the fundamental principle that all government actions must align with legal authority.

South Africa's rule of law evolved from the anomaly of apartheid. Consequently, its Constitution contains several safeguards and protections designed to address this background. First, its constitutional sociology highlights judicial independence and a considerable degree of prosecutorial independence.[336] However, executive interference in anti-official corruption efforts compromises these constitutional guardrails and the rule of law.

For instance, in 2008, the government disbanded the Scorpions, a Directorate of Special Operations established with a specific mandate to investigate organised crime and official corruption.[337] This action was widely seen as retribution for their pursuit of investigations and prosecutions of highly connected politicians and individuals, including Jacob Zuma, who became the President in the immediate aftermath of the dissolution.[338]

South Africa's political culture also drives executive interference. It is influenced by its history of liberation struggles, particularly the vanguard role of the ANC in that process. Melber highlights that liberation movements often operate with a "*military mindset*" once in power, prioritising command and obedience over

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[335] *Affordable Medicines Trust and Others v Minister of Health and Others* [2006] (3) SA 247 (CC), paras 49 (emphasis added).
[336] Section 165, 179.
[337] S.7 of the NPA Act (*supra*) provides that the South African president "may, by proclamation in the Gazette, establish not more than three Investigating Directorates in the Office of the National Director, in respect of specific offences or specified categories of offences." In 2001, in furtherance of this provision, a Directorate of Special Operations was established with a specific mandate to investigate organized crime and corruption. This directorate was known as the "Scorpions".
[338] British Broadcasting Corporation.2008. SA Abolishes Crime Fighting Unit. Available: http://news.bbc.co.uk/2/hi/africa/7685927.stm [2025, April 11].

democratic discourse.[339] Suttner's analysis describes the ANC as a "*prototype of a state within the state*"[340], where individual judgment is suppressed in favour of collective loyalty.[341]

This creates a political environment where loyalty to the party and its leaders is paramount, often at the expense of accountability and transparency. Suttner notes that the ANC uses a notion of "*family*" to suppress individual autonomy, fostering a hierarchical structure where the leader is akin to a father figure, further entrenching support even in the face of corruption.[342] The ANC has maintained this culture in its leadership of South Africa, which facilitates executive participation in official corruption.

The political culture is also marked by a refusal to accept opposition as legitimate, viewing it as an "*imperialist conspiracy*"[343]rather than a democratic necessity. This further entrenches the liberation movement's grip on power. This culture of loyalty and collective identity is a legacy of the struggle against apartheid, where discipline and unity were essential for survival. However, it challenges democratic governance, particularly in addressing official corruption.

Another aspect of the South African political culture is race. Southall discusses the persistent significance of race in South African politics.[344] Despite the country's commitment to non-racialism following the move to constitutional democracy in 1994, race continues to be used by politicians to mobilise political support.

The ANC casts the opposition Democratic Alliance (DA) as the "*political vehicle of white people*"[345] as a reminder to the majority black population about their

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[339] Melber, H. 2009. Southern African Liberation Movements as Governments and the Limits to Liberation. *Review of African Political* Economy. 36(121).451-459.
[340] *Ibid*. 453.
[341] *Ibid*. 456.
[342] *Ibid*.
[343] *Ibid.*
[344] Southall, P. 2023. The Thorny Issue of 'race' in South African Politics: Why it Endures Almost 30 Years after Apartheid Ended. *The Conversation*. Available: https://theconversation.com/the-thorny-issue-of-race-in-south-african-politics-why-it-endures-almost-30-years-after-apartheid-ended-215269.
[345] *Ibid*.

racial subjugation under apartheid. This racial othering aims to discredit the views of the opposition amongst the black population, regardless of their validity.

Southall highlighted two main reasons for this enduring issue. Firstly, the country's brutal history of racial oppression has entrenched race as a significant factor in politics. Secondly, the 1994 political settlement has failed to significantly improve the conditions of the majority of South Africans who are black. This has led to a situation where only a small black elite and middle class have been admitted to the old order of white economic prosperity and privilege.[346]

However, the majority of the black population continues to support the ruling ANC despite its misgovernance. South Africa's racial history continues to outsize any misdeeds of the ANC, irrespective of how much the majority of the black population may disagree with them. They seem to have chosen to support the ANC, which was at the vanguard of the liberation struggle, rather than try an alternative government, which may most likely be led by white South Africans. The political culture of South Africa is variegated and pockmarked by racial and economic leanings, which influence the political attitudes of the citizenry.[347] Politicians exploit these divisions to entrench themselves and shield their conduct from lawful scrutiny.

A precursor of the foregoing could be seen in the cultural politics of South Africa. Cultural politics provide substantial support for the ANC-led South African governments when their actions align with the racial, ethnic, or cultural identities of the majority black population. The ANC's historical role in the anti-apartheid struggle gives it cultural legitimacy among black South Africans, leading to backing for executive actions that protect black leaders from corruption charges. For instance, Zuma maintained support among Zulu communities by invoking cultural ties. His mastery of cultural repertoires, including indigenous languages, helped engage the public.[348]

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[346] *Ibid.*
[347] Combrink, N. 2004. Analysing the Resilience of the Emergent Political Culture of Constitutionalism in South Africa. *Journal for Contemporary History*. 43.
[348] Louw, L.2021. WhyAfrica. Why Some Zulus in South Africa Say They Will Die for Zuma. https://www.whyafrica.co.za/why-some-zulus-in-south-africa-will-die-for-zuma/; [2025, April 11]; Amin, S.2025.

Such support for the ANC is not uniform; opposition parties like the DA, with stronger white support, may be more likely to criticise government actions, thereby highlighting racial divides. However, within ANC strongholds, cultural politics creates a base that tolerates executive excesses, especially when framed as protecting community interests against perceived racial bias. In effect, racial and ethnic divides complicate attitudes.

Black South Africans may tolerate ANC corruption as part of empowerment, while white South Africans are more critical, seeing it as a governance failure.[349] This tension creates a national attitude where corruption is condemned in principle but accepted in practice if tied to cultural or political loyalties, hindering uniform anti-corruption efforts.

Natural resources historically dominate South Africa's economy. However, the legacy of apartheid created deep economic inequalities. The transition to democracy has created a political economy where politicians have an opportunity to redress the imbalance. This has not happened, as South Africa has witnessed rampant official corruption involving the executive soon after the transition to democracy. Instead, private interests co-opted state institutions, particularly during Zuma's presidency, to control economic resources and foster patronage politics.[350]

Like Nigeria, it is evident that, irrespective of the various challenges to the rule of law in South Africa, the courts have remained a consistent bulwark in fending off attempts and righting the course of South African governance on the path of the rule of law.

Jacob Zuma's Enduring Relevance. https://africasacountry.com/2025/01/jacob-zumas-enduring-relevance [2025, April 11].

[349] Tamir, C & Budiman, A. 2019. In South Africa, Racial Divisions and Pessimism about Democracy Loom over Elections. https://www.pewresearch.org/short-reads/2019/05/03/in-south-africa-racial-divisions-and-pessimism-over-democracy-loom-over-elections/ [2025, April 11].

[350] Fine, B. 2018. The Conversation. The Political Economy of South Africa: From Minerals-Energy Complex to Industrialisation. Routledge; Friedman, S. 2016. Economic Exclusion Feeds the Politics of Patronage in South Africa. (*supra*).

3.1.3 Analysis: United States: Rule of Law, Federal Balance and Resilience

The U.S. is often considered a leading advocate for the rule of law, even though its Constitution does not explicitly mention the concept. Nonetheless, the Constitution includes several provisions that embody the principles of the rule of law and establish institutional mechanisms for its enforcement. For instance, Article 1, Sections 2 and 3 empower the House of Representatives to impeach the President and the Senate to try impeachment cases, reinforcing the idea that no one, including the President, is above the law.

The Constitution further enshrines the principles of the rule of law, such as the prohibition of indefinite detention in the Sixth Amendment and the right to a public trial by jury. Additionally, the Fifth Amendment ensures protection against double jeopardy, and the Fourth Amendment guarantees that all searches must be carried out with a valid warrant.

These provisions reflect core aspects of the rule of law, such as equality before the law, fair treatment, and protection against arbitrary government action. The Constitution's supremacy clause in Article VI asserts that the Constitution is the supreme law of the land, which the Supreme Court affirmed in *Marbury v. Madison*[351]. In this landmark case, Chief Justice John Marshall ruled that any law contrary to the Constitution is void, establishing judicial review as a central tenet of U.S. constitutional law.

The original version of the U.S. Constitution did not include a Bill of Rights because the framers believed this was unnecessary. They thought the Constitution did not grant the government powers to deprive citizens of their fundamental rights, so a Bill of Rights was needless.[352] In his treatise *Constitutional Limitations*, Thomas Cooley argued that the failure to grant such powers rendered the inclusion of a Bill of

[351] 1803, 5 U.S. 137.
[352] Tamanaha. B.Z. On the Rule of Law, History, Politics, Theory (*supra*). 55.

Rights unnecessary.[353] However, in 1791, the Bill of Rights was added, providing explicit protection for individual freedoms.[354]

The U.S. rule of law, grounded in the Constitution, balances federal power with accountability. First, its constitutional sociology entrenches a well-defined separation of powers between the arms of government. As part of the allocated powers, the federal prosecution headed by the DOJ is within the wheelhouse of the U.S. executive. This subsummation of the Prosecution within the executive branch has given rise to periodic interferences in the DOJ's activities, with increasing frequency under President Donald Trump.[355]

The U.S. political culture, marked by egalitarianism, moralism, and a focus on individual responsibility, influences how executive interventions in prosecuting official corruption are viewed. This culture relies heavily on formal laws to combat corruption, as interpersonal trust is weaker than in other nations, which can create a framework where executive actions are scrutinised and sometimes supported.[356] Since its independence, this culture has enabled the rule of law in the U.S.

Americans believe in equality and opportunity. They also place a cultural emphasis on social mobility, where individuals are told they can succeed or fail based on their efforts.[357] There is a strong moral undertone, with expectations of ethical behaviour, but also a suspicion of power and privilege, fearing that authority might override democratic norms and the rule of law.[358] The culture values individual initiative, with success often measured by tangible gains. However, this can foster competition and distrust, particularly towards public officials. The U.S. has an active

[353] Cooley, T.M. 1868. A Treatise on The Constitutional Limitations Which Rest Upon the Legislative Power of the States of The American Union 58. Boston. Little, Brown, & Co., Chapter IX, 255.
[354] National Archives. N.d. Bill of Rights. Available: https://www.archives.gov/founding-docs/bill-of-rights-transcript [2025, April 11].
[355] See Chapter 5 (*infra*).
[356] Johnston, M. 2012. Corruption and Political Culture in Great Britain and the U.S. *European Journal of Social Science Research*. 424-429.
[357] *Ibid*. 424.
[358] *Ibid*. 427. 4; Lipset, S.M. 1996. American Exceptionalism: A Double-Edged Sword. New York: W.W. Norton.

participatory culture in political affairs, where citizens generally demand accountability from political officeholders.[359]

Americans focus more on individual wrongdoing than systemic issues, as seen in the outcome of the post-Watergate era.[360] This resulted in a diminished trust in individuals like Nixon[361], but institutions remained largely intact. Due to weaker interpersonal trust, there is a heavy reliance on formal laws and codes to combat official corruption.[362] This reliance creates a legalistic environment in which the DOJ has acquired expansive prosecutorial powers over the past two centuries.[363]

Despite this historical independence, various U.S. federal administrations have systematically interfered with it. However, during his first term (2017-2021), Donald Trump's administration was more brazen in this respect, and his early second term (2025–present) has continued in this form.[364] Increasingly, the U.S. is seeing more culture of partisan divides across national issues like official corruption.

In the Stone case,[365] Senate Republicans defended Attorney General Barr's intervention, with some arguing that the initial sentencing recommendation for Mr. Stone was excessive.[366] This reflects the culture's partisan divide, where support for the executive is stronger among those who share its political affiliation. The culture's emphasis on individual cases rather than systemic issues can lead citizens to view interventions as protecting allies from unfair prosecution, especially if they distrust the justice system.

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[359] *Ibid*. 424-425.
[360] Kutler, S.I., 1990. The Wars of Watergate: The Last Crisis of Richard Nixon. New York: Knopf.
[361] See Chapter 5, 5.5.2 (*infra*).
[362] Kutler, S.I., 1990. The Wars of Watergate: The Last Crisis of Richard Nixon (*supra*). 425-428.
[363] Poulin, A.B. 1997. Prosecutorial Discretion and Selective Prosecution: Enforcing Protection After U.S v. Armstrong. *American Criminal Law Review*. 34: 1071, 1076.
[364] Arnsdorf, I., Dawsey, J. & Barrett, D. 2023. Trump and Allies Plot Revenge, Justice Department Control in a Second Term. *Washington Post*. Available: https://link.gale.com/apps/doc/A771600946/AONE?u=anon~a9059ae2&sid=googleScholar&xid=c08bc2aa [2025, April 11]; Savage, C. 2020. Trump's War on the Justice Department. New York: Penguin Random House.
[365] See Chapter 5, 5.5.4 (*infra*).
[366]Picket, K. 2020. Senate Republicans Defend Barr Intervention in Sentencing Recommendation. *Washington Examiner*. Available: https://www.washingtonexaminer.com/news/senate-republicans-defend-barr-intervention-in-roger-stone-sentencing-recommendation [2025, April 11].

Thus, the U.S. political culture generally limits executive intervention in corruption prosecutions by emphasising formal laws and individual accountability, providing protections through legal authority. However, this culture increasingly admits partisan loyalty, where executive interference is seen through political prisms and supported by partisan loyalty. The national attitude towards official corruption is complex, with polarised views reflecting the culture's deep divides, particularly in high-profile cases.

Though the U.S. is a participant culture[367] there is a progressive decline of trust in the political system.[368] Abramowitz argues that this decline is specific to particular issues and temporary, attributed to apathy, the reluctance of political elites to support structural reforms, and the two-party system's ability to manage discontent.[369] This suggests a political culture that, while stable, faces challenges in maintaining public trust, with a reliance on established political structures to mitigate dissent.

Cultural politics also affects the executive's propensity to interfere in prosecutorial processes and citizens' attitudes in this regard. In the U.S., cultural politics encompasses partisan loyalties, racial identities, and religious affiliations. It plays a crucial role in shaping these dynamics, particularly in a polarised political landscape.

Cultural politics significantly influence executive intervention in corruption prosecutions in the U.S., particularly through the intersection of religious and partisan identities. Executive actions, such as presidential pardons, are often driven by cultural and political considerations. For instance, President Trump's pardons of allies like Paul Manafort and Roger Stone[370]were seen as rewarding loyalty, appealing to his

[367] See Chapter 1, 1.10.4 (*supra*).
[368] Abramowitz, A. 1980. The U.S: Political Culture under Stress. In *The Civic Culture Revisited: An Analytic Study*. Almond, G., & Verba, S. (Eds.). Boston. Little, Brown. 205.
[369] *Ibid.*
[370] See Chapter 5, 5.5.4 (*infra*).

Conservative base's cultural values of challenging perceived biases in the legal system.[371]

These interventions were embedded in a broader cultural narrative that portrayed the legal system as biased against Conservatives, resonating with his base's distrust of federal institutions. Trump's two-term emergence as the President of the U.S. is widely regarded as a result of cultural politics of race, Christian conservatism[372] and rural working-class ethos.[373]

The U.S. political economy, characterised by free markets and financial sector dominance, may also drive executive intervention in corruption cases generally. The concentration of economic power in large corporations and financial institutions that donate to conservative or liberal electoral movements may influence prosecutorial directions in favour of such entities by an ideologically compatible federal government.[374]

Also linked to the political economy is the issue of the revolving door between the financial sector and the regulatory bodies in the U.S. This is where bankers move to work with market regulators such as the Securities and Exchange Commission, or officers of the latter move into the financial sector. This scenario potentially contributes to the ability of big financial institutions to influence government policies in their favour.[375] For example, during the 2008 financial crisis, no high-level Wall Street executives were prosecuted, possibly to prevent further economic turmoil.[376] This research did not find evidence that this political economy influences executive

[371] Hochschild, A.R. 2016. Strangers In Their Own Land: Anger and Mourning on the American Right. New York: The New Press.
[372]Wilson-Hartgrove, J. 2018. Why Evangelicals Support Trump Despite His Immorality. The New York Times. Available: https://time.com/5161349/president-trump-white-evangelical-support-slaveholders/ [2025, April 11].
[373] Lewsey, F. 2024. Vast Majority of Trump Voters Believe American Values and Prosperity are 'Under Threat'. University of Cambridge. Available: https://www.cam.ac.uk/stories/trump-voters-2024. [2025, April 11].
[374] Mettenheim, K. 2022. Political Economy of Financialization in the U.S. New York. Routledge. 9.
[375] *Ibid*. 239.
[376]Cohan, W. 2015. How Wall Street's Bankers Stayed Out of Jail. *The Atlantic.* Available: https://www.theatlantic.com/magazine/archive/2015/09/how-wall-streets-bankers-stayed-out-of-jail/399368/. [2025, April 11].

interference in official corruption cases in the U.S. However, it might drive such interference in favour of private sector corruption.

From a constitutional perspective, the rule of law in the U.S. shares similarities with Nigeria and South Africa. Unlike Nigeria and South Africa, the U.S. benefits from centuries of constitutional refinement, entrenching a mature rule of law compared to the growing pains of Nigeria and South Africa. However, this does not imply that the U.S. has perfected the rule of law, but rather that its challenges are more nuanced.

3.4 **Synthesis: Comparative Erosion Patterns**

3.4.1 Nigeria: Centralisation and Ethnicity as Corruption Enablers

In Nigeria, the erosion of the rule of law is primarily driven by executive centralisation and the complex interplay of ethnic loyalty and patronage networks. The 1999 Constitution offers a framework for legal accountability, but it is undermined by the concentration of power within the executive branch, particularly through the Attorney General's role.

This centralisation allows the executive to exercise significant control over the prosecution of official corruption, with the Attorney General holding prosecutorial discretion. This feature exacerbates official corruption by permitting executive interference. Ethnic and regional loyalties further complicate accountability, as official corruption cases are often viewed through the lens of tribal identity, where public figures are shielded from prosecution due to ethnic affiliations. The result is a system where executive intervention becomes a tool for political patronage, with public support often conditional on personal or communal benefits rather than legal principles.

3.4.2 South Africa: Democratic Struggles and State Capture

In South Africa, the erosion of the rule of law manifests through executive interference rooted in the country's post-apartheid history. The 1996 Constitution provides strong safeguards for judicial and prosecutorial independence, but the political culture shaped by the ANC's liberation struggle complicates accountability.

Loyalty to the ANC often supersedes the pursuit of justice, especially when corruption cases involve high-ranking party officials. State capture, most notably during Jacob Zuma's presidency, exemplifies this erosion, where institutions like the NPA were subverted to protect party interests. The ANC's internal culture of unity, loyalty, and patronage compromises prosecutorial independence, as party loyalty often outweighs legal considerations.

The post-apartheid desire for racial reconciliation also influences the public's acceptance of executive interventions in corruption cases, viewing them as a means of protecting the party's leadership rather than ensuring justice. Despite strong legal frameworks, cultural politics and political loyalty have allowed executive interference to thrive, obstructing the full realisation of the rule of law.

3.4.3 U.S.: Institutional Checks and Partisan Divides

In the U.S, the rule of law is embedded in a legalistic culture rooted in the Constitution's separation of powers. While executive interference in official corruption prosecutions is not as systemic as in Nigeria or South Africa, it remains a significant concern, particularly when the executive uses its powers to influence or obstruct investigations.

Despite its historical independence, the DOJ has faced increasing pressure during President Trump's administration, with decisions like presidential pardons and direct influence over prosecutorial discretion. This represents a shift from a culture of egalitarianism and moralism, where the law is seen as a bulwark against corruption, to a more partisan environment, where official corruption investigations are increasingly framed through political lenses.

The cultural politics of the U.S. play a pivotal role here, as partisan loyalty increasingly informs public perception and response to executive interference. The rise of polarised political environments means that executive interventions are often viewed through a partisan filter—supporters view them as necessary protections, while opponents see them as an abuse of power. Thus, cultural politics is a key factor in understanding how executive interference in corruption cases is justified and contested

in the U.S. Although political economy drives executive interference in private sector corruption, there is no evidence of a corresponding influence on interventions in official corruption cases.

3.5 **Conclusion: Diverse Roots of Erosion**

This chapter has explored the intricate relationship between the rule of law and official corruption prosecutions in Nigeria, South Africa, and the U.S. It reveals the vulnerabilities of the rule of law when confronted with executive overreach, focusing on constitutional frameworks, political cultures, and the role of legal institutions. In all three jurisdictions, despite constitutional commitments to the rule of law, the political economy, political culture and cultural politics play critical roles in undermining legal accountability.

In Nigeria, the concentration of power in the executive, particularly through the Attorney General's office, enables significant interference in official corruption prosecutions. This is often compounded by ethnic and regional loyalties that shield corrupt officials from prosecution. This system, marked by patronage and the politicisation of legal processes, weakens the rule of law and stifles genuine accountability.

In South Africa, the post-apartheid political culture has allowed the ANC to prioritise party loyalty over the rule of law. The erosion of prosecutorial independence, most notably during Jacob Zuma's presidency, has undermined efforts to hold corrupt officials accountable. Despite robust constitutional safeguards, political loyalty and the desire for racial reconciliation have contributed to a culture where executive interference in corruption cases is tolerated.

In the U.S., the rule of law has been historically enshrined in a legalistic framework with clear institutional checks. However, the increasing partisan polarisation of the political landscape, particularly during President Trump's first administration and the continuing part in his second administration, has seen executive interventions in official corruption prosecutions framed through a political lens. While executive interference is less systemic than in Nigeria and South Africa, its growing frequency and partisan nature pose significant challenges to the integrity of the rule of law.

Ultimately, this chapter underscores that while legal frameworks may support the rule of law, cultural and political factors often influence the erosion of its application. In each country, the interplay of executive power, cultural politics, political culture, constitutional sociology and legal institutions complicates the fight against official corruption. This highlights the need for a holistic approach to preserving the rule of law. The comparative analysis highlights a universal tension: strong legal frameworks alone cannot ensure justice without impartial enforcement and societal commitment to accountability. These insights set the stage for further exploration of the impact of executive interference on governance and anti-corruption efforts.

CHAPTER 4
THE SEPARATION OF POWERS AND EXECUTIVE INFLUENCE ON OFFICIAL CORRUPTION PROSECUTIONS: A TRI-NATIONAL STUDY

4.1 Purpose: Separation of Powers as a Safeguard

The separation of powers, the division of government into executive, legislative, and judicial branches, is a cornerstone of democratic governance, intended to prevent the abuse of power. However, executive interference in prosecuting official corruption often tests this principle. This chapter examines how the doctrine of separation of powers shapes prosecutorial systems in Nigeria, South Africa, and the U.S, with particular focus on the role of the executive. It reveals how executive dominance over prosecutorial agencies can undermine the balance the separation of powers seeks to achieve, enabling interference in corruption cases.

The analysis integrates constitutional frameworks, political economy, cultural influences, and political culture, which influence how executive interference in prosecuting corruption is manifested and sustained. By examining how these structures either curb or facilitate executive control, this chapter contributes to the thesis by highlighting the institutional factors that exacerbate the erosion of the rule of law, setting the stage for a detailed analysis of interference mechanisms.

4.2 The Conceptual Basis of the Separation of Powers

The rule of law is foundational to democratic governance, ensuring that authority is exercised within defined legal frameworks and preventing arbitrary power. The separation of powers is a critical safeguard against the concentration of unchecked power, ensuring that no single branch of government can dominate. This structure, which delineates the roles and responsibilities of each branch, protects against conflicts of interest and upholds checks and balances.

Locke emphasised the necessity of this separation to guard against abuses of power and the erosion of individual freedoms.[377] Justice Brandeis further clarified that the purpose

[377] Locke, J. 1764. Two Treatises of Government. (*supra*).

of this division is not efficiency but the prevention of arbitrary power.[378] Given that prosecutorial powers rest within the executive branch, it is crucial to examine their allocation and exercise to ensure they align with the core principles of equity, equality, and non-arbitrariness that underpin the rule of law.

4.2.1 Origin of the Separation of Powers

Rooted in ancient Greece through Aristotle[379] and later formalised by Montesquieu, this principle emerged as a safeguard against arbitrary governance. Montesquieu asserted that political liberty is only achievable when there is no abuse of power, emphasising the necessity of checks to balance power within the government.[380] This framework is built on a deep-seated mistrust of government, driven by concerns that the concentration of power leads to infringements on individual liberties, including arbitrary punishment, unequal application of laws, and violations of rights.

Wright echoed this mistrust, noting the flaws in human nature that make those in power susceptible to selfishness, caprice, and prejudice.[381] In framing the separation of powers, Madison highlighted the need for ambition to counteract ambition, acknowledging that government, composed of imperfect humans, must be structured to restrain itself.[382] These reflections underscore the core goal of the separation of powers: to ensure that the government can control the governed but is restrained from overreaching its bounds.

The separation of powers is not merely about allocating authority across branches of government; it also establishes a system of interdependence to prevent abuses.[383] Through checks and balances, each branch can monitor and limit the others'

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[378] *Myers v. United States*, 1926 272 U.S. 52, 293.
[379] Susemihl, F. & Hicks, R.D. 1894. The Politics of Aristotle: Books IV: Chapter 14. A revised text. Arno Press.
[380] Charles Louis de Secondat, Baron de Montesquieu.1748. The Spirit of the Laws. (*supra*) Book XI Chap IV; Harrington, J. 1656. Commonwealth of Oceana. Available: https://www.gutenberg.org/files/2801/2801-h/2801-h.htm [2025, April 11].
[381] See the introduction in Wright, B.F. 1961. The Federalist. *By Alexander Hamilton, James Madison and John Jay*. The Belknap Press of Harvard University Press.
[382] Cooke, J. (Ed.). 1961.The Federalist No. 51, at 347-48 (J. Madison).
[383] Kurland, P.B. 1986. The Rise and Fall of the Doctrine of Separation of Powers. *Michigan Law Review*. 85(3): 593.

actions. For example, while the legislature can propose laws, the executive branch can veto them, forcing a reconsideration or amendment. Similarly, the judiciary serves anticipatory and corrective functions, ensuring that unlawful executive or legislative actions can be halted or reversed. This system ensures that each branch operates within its legal limits, fostering accountability and preventing the concentration of power.

However, the separation of powers is not absolute. While each branch has distinct functions, practical governance often requires some overlap. Madison recognised this overlap, noting that despite efforts to delineate the powers of each branch clearly, complete separation is unfeasible.[384] This interplay is integral to the functioning of the system, as it allows for flexibility and adaptation while maintaining the core principle of limiting power.

The role of the judiciary in the separation of powers has evolved, becoming a co-equal branch in its capacity to review and check the actions of the executive and legislature. Historically seen as the weakest branch, the judiciary now serves as the final arbiter in matters of legality, exercising judicial review to ensure that all actions conform to the Constitution. Judicial review, in particular, affirms the supremacy of the rule of law, empowering the courts to invalidate unconstitutional actions by the other branches.

Ultimately, the separation of powers is a dynamic concept that ensures that governmental power is distributed and checked. While the application of this doctrine may vary, its core function in safeguarding liberty by preventing the abuse of authority remains a cornerstone of democratic governance.

4.2.2 The Separation of Powers and the Rule of Law

The emergence of the separation of powers is attributed to various foundational reasons. One perspective, focused on efficiency, asserts that dividing governmental powers among distinct branches is necessary to ensure efficient governance.[385] A contrasting view, however, suggests that the separation of powers was primarily

[384] *Ibid*. 597.
[385] Verkuil, P.R. 1989. Separation of Powers, the Rule of Law and the Idea of Independence. (*supra*) 303.

designed to counteract arbitrary governmental power.[386] This version aims to prevent abuse by ensuring that no branch holds unchecked authority.

Gwyn outlined several doctrinal bases for the separation of powers, including efficiency, common interest, impartiality, accountability, and balance of powers.[387] He also proposed a "rule-of-law" interpretation of the separation of powers, emphasising its role in preventing arbitrary governance and ensuring fairness and justice. Verkuil supports this view, noting that the rule of law perspective offers distinct analytical advantages and encompasses the other justifications for the separation of powers.[388]

The fundamental principles of the rule of law—clear laws, the prohibition of retroactive punishment, and the equal subjection of all to the law—align with the efficiency rationale for the separation of powers. An efficiently governed state is better positioned to uphold the rule of law. By allocating powers across branches, the separation of powers enhances the likelihood that governance will align with the rule of law principles, fostering fairness and equity.

Impartiality in governance is another cornerstone of the rule of law, which is supported by the separation of powers. Centralising power in a single branch would inevitably lead to conflicts of interest, undermining impartiality. Without institutional checks, government officials might act based on personal interests, undermining justice. Therefore, the separation of powers helps maintain impartiality, ensuring that governance remains fair and just.

Separating the executive, legislative, and judicial functions minimises potential conflicts of interest. Even when such conflicts arise, the structure of the separated powers makes it difficult for officials to act in self-interest without facing oversight and potential correction by other branches of government. This design fosters accountability by enabling a more precise attribution of responsibility for any failings in governance.

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[386] *Ibid*.
[387] Gwyn, W.B. 1965. The Meaning of the Separation of Powers: An Analysis of the Doctrine from its Origin to the Adoption of the United States Constitution. (*supra*) 127-128.
[388] Verkuil, P.R. 1989. Separation of Powers, the Rule of Law and the Idea of Independence. (*supra*) 303.

Accountability is intrinsic to the rule of law, which is fundamentally about ensuring that governmental powers are exercised for the benefit of the governed. The separation of powers enhances accountability by clearly delineating the functions of each branch, making it easier to identify when and where failures occur and to hold the appropriate branch accountable. This clarity is essential in maintaining the rule of law.

The balance of powers is crucial in maintaining the rule of law. It prevents the abuse and tyranny that would arise if all governmental powers were concentrated in a single institution. By ensuring that each branch has the authority to check the others, the balance of powers protects against the overreach of any one branch, preserving a fair and just system of governance.

In conclusion, all the rationales for the separation of powers serve the rule of law. Given this, examining prosecutorial powers within the executive branch is essential to assess whether these powers are exercised in a manner that supports the rule of law. This requires analysing various prosecutorial theories to understand how the separation of powers influences prosecutorial practices and governance.

4.3 **Analysis: Introduction to Theories of Prosecution**

Consolidating prosecutorial powers within the Prosecution is essential for an organised and responsive administration of the criminal justice system. From a risk allocation perspective, the executive, with its broad constitutional powers of law enforcement, is best equipped to empower a Prosecution that remains accountable to the people.

Scholars have been unable to agree on a unifying theory of prosecution that illuminates the role of the Prosecution in liberal democracies. In *Theories of Prosecution*,[389] Bellin advances the servant of the law theory. In *Prosecutorial Constitutionalism*,[390] Fish argues for the constitutional protection theory, while in *Why Should Prosecutors 'Seek Justice'?*[391] Green supports the justice theory.

[389] Bellin, J. 2020. Theories of Prosecution. *California Law Review*. 108(4):1203-1253.
[390] Fish, E.S. 2017. Prosecutorial Constitutionalism. *Southern California Law Review*. 90(2): 237, 253–54.
[391] Green, B.A., 1999. Why Should Prosecutors Seek Justice? *Fordham Urban Law Journal* 26: 60, 612.

At its core, the inquiry into a normative theory of Prosecution seeks to determine its role beyond the apparent task of prosecuting offences. Establishing a theory of Prosecution will facilitate a better understanding of its place within the administration of the criminal justice system and its desirable features of prosecutorial independence and discretion.

The case of *Berger v. United States*[392] constitutes the rallying point for the proponents of the justice theory of prosecution. The Supreme Court held that:

> a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.[393]

Bellin disagrees with the justice theory on several grounds, especially that it is nebulous and offers no concrete guide as to what justice means besides a mere rhetorical appeal.[394] He argues that the Prosecution's sense of justice varies depending on the number of prosecutors. One prosecutor's sense of justice may lead her to seek a severe outcome on a set of facts, whereas another prosecutor may lean on leniency on the same set of facts, also driven by her sense of justice.[395]

The fundamental challenge with the justice theory of prosecution primarily concerns the indeterminate nature of justice. Much like other concepts of legal theory, it has proven elusive to attach a universally acclaimed definition, even if there is some measure of consensus as to what justice means at a basic level. Thus, the justice theory of prosecution is automatically hobbled by the problem of the unsettled definition of justice in regulating the role of Prosecution.

Bellin instead posits a '*servant of the law model*' of Prosecution. The crux of this model was sown in *Berger*'s case but was undeveloped as the Court held that the Prosecution was "*in a peculiar and very definite sense the servant of the law*."[396] Bellin argues that a servant of the law mindset affords the Prosecution impartiality and detachment in executing their

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[392] *Berger v. United States*, 1935 295 U.S. 78.
[393] *Ibid*. 85.
[394] Bellin, J. 2020. Theories of Prosecution (*supra*), at 1210.
[395] *Ibid*. 1211.
[396] *Berger v. United States* (*supra*) 88.

role such that whatever the outcome of any prosecution, the Prosecution would rest assured that the ends of justice have been served.[397]

The servant of the law proposition is not different from the justice theory in terms of their challenges. If anything, the servant-of-the-law approach is vaguer than the justice theory. In terms of the latter, virtually every commentator possesses, to a varying degree, an idea of what justice means, and the Prosecution has a base from which to work.

The servant-of-the-law approach raises more questions about the duties of the servant; how the servant is meant to conduct these duties, who determines how well the duties have been conducted and how a self-introspecting servant evaluates herself that she has carried out her duties faithfully. In the justice theory, it is clearer to see if justice has been done or not. These questions do not necessarily make the servant-of-the-law theory an improvement over the justice theory regarding the injection of clarity.

For Fish, there is an inherent tension between the role of the lawyers of the Prosecution as adversarial prosecutors and as government officials sworn by oath to protect constitutional rights and to apply the Constitution in good faith.[398] He submits that the Prosecution must assume the role of a constitutional protector in the face of such conflict. However, he acknowledges that making this determination should not be left to the whims of individual prosecutors.

To safeguard the process and ensure consistency of performance and determinacy in prosecutorial attitude, the Prosecution should adopt clear rules and internal guidelines on prosecutorial decision-making. These guidelines pertain to matters safeguarding defendants' rights, such as presenting exculpatory evidence, plea bargaining, charging decisions, exonerations, etc.[399]

The constitutional protection theory provides a pathway to ensuring that the Prosecution does not breach the Constitution in the process of purportedly enforcing it. Faced with a conflict between the desire to convict and a potential constitutional infringement, the Prosecution's surest and defensible way of navigating through this dilemma is by upholding

[397] Bellin, J. 2020. Theories of Prosecution (*supra*), at 1212.
[398] Fish, E.S. 2017. Prosecutorial Constitutionalism (*supra*), at 245.
[399] *Ibid*. 237-238.

constitutional principles. In any legal challenge, upholding constitutional principles will pass muster. The reverse would most likely not be the case.

Assume a scenario where a prosecutor withholds exculpatory evidence to secure a conviction. If such a process undergoes judicial scrutiny, that conviction may likely be overturned because the defendant was not afforded a fair hearing, and the courts did not have the full facts before the conviction.

The ramifications of such an outcome may be more severe if the prosecutor could still have secured a conviction by providing the exculpatory evidence, but maybe not the level of conviction she would have wanted —for instance, securing a conviction for manslaughter rather than murder. The withheld evidence may cause the quashing of the murder conviction, and the defendant might not be retried on the same set of facts for manslaughter (due to the principle of double jeopardy), thereby leaving society worse off in this respect.

Notwithstanding the value of the constitutional protection theory, it remains important to support the Prosecution with additional theories beyond the formalistic prescription of constitutionalism charted by internal rules and guidelines. One such theory is the fiduciary prosecution theory advocated by Greene and Roiphe.[400] The fiduciary theory turns on two issues that are not too dissimilar from constitutionalism.

These are the questions of how the Prosecution makes discretionary decisions and how it can be held accountable for those decisions.[401] However, for the Prosecution to be meaningfully held accountable for its discretionary decisions, some form of rules ought to chart this decision-making, which in turn provides a plinth for the Prosecution to be assessed.[402] The fiduciary theory does not jettison other competing theories but accommodates them and helps further their aims. It delivers three seminal contributions to the discussion of prosecution theories.

Firstly, it focuses on the duty of care and the loyalty the Prosecution owes to the public as the fiduciary's beneficiary. Where the Prosecution appropriately delivers on this duty, it delivers on the duty to seek justice, which is the primary goal of the citizenry in criminal

[400]Green, B.A. & Roiphe, R. 2020. A Fiduciary Theory of Prosecution. *American University Law Review*. 69.
[401] *Ibid*. 807.
[402] *Ibid*. 809.

justice administration. Secondly, this theory narrows the various considerations that the Prosecution must contemplate when making decisions. Although these considerations might not be central to the fiduciary duty of pursuing the public's interest in justice, they are nevertheless important as they form part of the components of arriving at a just outcome. Justice must not only be done but must also be seen as done.[403]

Hence, considerations such as diplomatic relations between countries when handling an offence committed in one country by a ranking citizen of another country or political considerations that are extrinsic to justice must be balanced with the intrinsic considerations of justice, such as avoiding wrongful conviction, deterrence, and equality. Their fiduciary role ensures that the Prosecution does not unnecessarily subsume intrinsic considerations to the extrinsic ones, thereby possibly occasioning a miscarriage of justice.

Thirdly, the fiduciary theory informs the narrowing of the field of prosecutorial regulation and the need to strike a balance between prosecutorial discretion and consequential regulation and independence. Green and Roiphe believe that the calibration of prosecutorial discretion and regulation aids in furthering the Prosecution's fiduciary duties to wit, care, and loyalty. They admit that while the fiduciary theory might not provide all the answers, it can form a bedrock on which to build an institutional design that will optimise prosecutorial discretion and regulation.[404]

The reference to institutional design in the fiduciary theory demonstrates its confluence with the constitutional theory of prosecution. The role of the Prosecution would be best illuminated by a combination of the fiduciary and constitutional theories, as one holds up what is lacking in the other. In approaching their constitutional duties of enforcing the law, the Prosecution must be seen to give effect to constitutional principles. It must not utilise their adversarial credentials in undermining the Constitution they swore to uphold. The Prosecution must also envision itself as a fiduciary or conduit of the aspirations of the public for the pursuit of justice.

This role demands loyalty to the beneficiaries of their powers and care in the manner of execution of those powers. Pursuing justice in the criminal justice system warrants a

[403] See the dictum of Lord Hewart, in *Rex v. Sussex Justices*, 1924 1 KB 256.
[404] Green, B.A. & Roiphe, R. 2020. A Fiduciary Theory of Prosecution *(supra*), at 812.

balancing act between competing interests. These interests include the prosecutors as adversarial advocates that might desperately want to secure a conviction and, in the process, trample on the rights of the accused; the duty to uphold constitutional requirements even if it means not securing a conviction or a more stringent penalty; the pathway to justice requirements of disclosing exculpatory evidence and deciding whether to bring a charge or not and external considerations such as political implications.

This balance can only be effectively achieved when there are clear institutional guidelines for dealing with these issues. Such guidelines must be underpinned by the constitutionalism of the Prosecution and its fiduciary role. When approached in this manner, these guidelines would benefit and be informed by the attendant constitutional and fiduciary principles, which would ground the parameters for the conduct of the Prosecution. This institutional design thus facilitates evaluating the performance of the Prosecution against the set standards for their respective roles. Fundamentally, the ultimate beneficiary, the public, could also assess the Prosecution's performance.

Why is it critical that the Prosecution constitutionally performs its fiduciary role? There are many answers to this, but the most pertinent one is that it would further the ends of the rule of law, and the Prosecution "*owe the public a deep and abiding commitment to the rule of law*."[405] The separation of powers, including allocating prosecutorial powers to the executive, is a key driver of the rule of law.

A Prosecution that is cavalier about its role both as a fiduciary and as a constitutional creation portends great danger to the rule of law. Inappropriate conduct, such as the corrupt exercise of prosecutorial discretion, the weaponisation of prosecutorial processes against perceived political opponents of the executive and the anomalous entry of *nolleprosequi* are all antithetical to the rule of law and can have far-reaching consequences on society if not curtailed. Thus, the theories of Prosecution, in addition to their doctrinal importance, help provide a compass with which a Prosecution can follow the guiding lights of the rule of law in its conduct and operations.

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[405] Lemke, S. 2021. Judicial and Prosecutorial Independence in Europe: How Politicized Judges and Prosecutors Undermine the Right to a Fair Trial in Eastern Europe and Central Asia. In *Theory and Practice of the European Convention on Human Rights*. van Dijk, P. & van Hoof, G.J.H. (Eds.). Nomos Verlagsgesellschaft mbH & Co. KG. 235.

4.4 **Analysis: Prosecutorial Independence and Prosecutorial Discretion**

Having examined the theories and utility of Prosecution, it is pertinent to address one of the twin pillars of prosecution: prosecutorial independence.

4.4.1 Prosecutorial Independence

Prosecutorial independence refers to the ability of the Prosecution to carry out its duties without external interference or fear of negative repercussions. These repercussions may include reassignment to less prestigious roles, relocation to inactive stations, pay cuts, or dismissal.[406] The United Nations Office on Drugs and Crime (UNODC) asserts that prosecutors must act impartially, consistently, and expeditiously, respecting human dignity and upholding human rights to ensure the smooth operation of the criminal justice system.[407] However, such duties can only be fulfilled when the Prosecution operates independently.

Prosecutorial independence is crucial for maintaining the rule of law, due process, and the efficient functioning of the criminal justice system. The UNODC further emphasises that this independence must be safeguarded against external pressures, including those from the media, individuals, or interest groups.[408] A Prosecution dependent on the executive may be less inclined to prosecute crimes committed by government officials, including corruption offences, leading to impunity. This would, in turn, incentivise such crimes.

However, independence without oversight can also foster impunity, especially if the Prosecution uses its discretion to avoid prosecuting official corruption cases. Therefore, institutional guidelines and accountability mechanisms are essential to ensure that prosecutorial independence does not lead to biased decisions.

In examining prosecutorial independence, Van Aaken, Feld, and Voigt distinguish between *de jure* and *de facto* independence. *De jure* elements include

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[406] Gutmann, J. & Voigt, S. 2019. The Independence of Prosecutors and Government Accountability. *Supreme Court Economic Review*. 27(1):2.
[407] United Nations Office on Drugs and Crime. 2014. The Status and Role of Prosecutors. Criminal Justice Handbook Series. Vienna: International Association of Prosecutors.
[408] *Ibid.*

whether the Prosecution is constitutionally recognised, the personal autonomy of its members in terms of appointment, transfer, promotion, and removal, and whether the Prosecution operates autonomously from the executive.[409]

They argue that an explicit constitutional mention of the Prosecution signals its intended independence. They also note the importance of evaluating the independence of high-level prosecutors, such as the Attorney General, who typically hold significant influence within the Prosecution. The independence of such officials is central to the overall functioning of the Prosecution.[410]

Van Aaken, Feld, and Voigt further assert that term length, renewability, and the body responsible for appointments influence prosecutorial independence. They found that long-term, non-renewable appointments and independence from political figures are crucial for ensuring prosecutorial autonomy. In contrast, political appointments, particularly those subject to renewal, reduce independence.[411]

The independence of the Prosecution is also influenced by the degree of political control over career progression, including removals, transfers, and redeployments. A system where a self-regulating body handles promotions and removals within the Prosecution is more likely to preserve independence than one influenced by political figures.

Regarding formal independence, Van Aaken, Feld, and Voigt distinguish between internal instructions from high-ranking prosecutors and external directives from political appointees, such as the Minister of Justice or the Attorney General. External instructions can undermine independence as they allow political figures to manipulate prosecutions. This potential for external influence is significant in assessing prosecutorial autonomy. If political figures can change the prosecutor handling a case, the Prosecution cannot be considered independent.[412]

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[409] Van Aaken, A, Feld, L.P. & Voigt, S. 2010. Do Independent Prosecutors Deter Political Corruption? An Empirical Evaluation Across Seventy-eight Countries. *American Law and Economics Review*. 12 (1): 204–244.
[410] *Ibid*.
[411] *Ibid*. 215-216.
[412] *Ibid*. 215.

Prosecutorial discretion is a critical factor in determining independence. Under the mandatory prosecution principle, prosecutors must initiate cases with sufficient evidence, while the opportunity principle allows for selective prosecution based on resource availability and other factors. The Prosecution's discretion to choose cases, including decisions on plea bargains, can be influenced by external pressures, complicating efforts to ensure fairness.

A monopoly of prosecutions by the Prosecution also affects its independence. Van Aaken, Feld, and Voigt argue that political interference becomes more likely when the Prosecution holds such a monopoly. However, diversifying the prosecution process by allowing other entities to initiate cases can reduce political influence.[413]

This diversification is particularly important in combating official corruption as it makes it more difficult for politicians to control prosecutions. It also enhances accountability, as prosecutors must justify why certain cases are not pursued. Judicial review of prosecutorial decisions further strengthens accountability by enabling the courts to compel the Prosecution to act.

Prosecutorial independence is essential for bringing cases to court and ensuring that justice is delivered impartially. Judges rely on the Prosecution to present cases, as they do not initiate prosecutions themselves. An unconscionable Prosecution can undermine the judicial process by failing to bring cases to court or neglecting to prosecute them diligently. Additionally, the Prosecution can enter a *nolle prosequi* without proper justification, thereby stalling the judicial process.[414] Given the Prosecution's extensive powers in investigation, decision-making, and prosecutorial strategy, it plays a critical role in the functioning of the criminal justice system.

De facto prosecutorial independence refers to how these legal protections are implemented in practice. Van Aaken, Feld, and Voigt assess this through factors such as whether prosecutors are removed or forced into early retirement, whether they face

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[413] *Ibid*. 216.

[414] See Di Federico, G.1998. Prosecutorial Independence and the Democratic Requirement of Accountability in Italy: Analysis of a Deviant Case in a Comparative Perspective. *British Journal of Criminology*: 38(3):371 "*We all know that public prosecutors are the gate-keepers of criminal justice, because without their intervention judicial sanctions cannot occur*."

diminished pay or undesirable transfers, and the frequency of changes in the legal framework concerning the prosecution of government officials.[415] They also consider the adequacy of prosecutorial funding and the number of cases initiated by non-governmental actors.

In conclusion, an independent Prosecution is essential for the rule of law, particularly in prosecuting official corruption offences. The various factors that influence prosecutorial independence, including the degree of political control and the oversight mechanisms in place, must be carefully considered to ensure that the Prosecution can operate impartially and hold government officials accountable. The next section explores the implications of prosecutorial discretion and its impact on the integrity of the justice system.

4.4.2 Prosecutorial Discretion

Prosecutorial discretion refers to the authority of prosecutors to decide which cases to pursue, the charges to bring, and the allocation of resources for investigations. However, the exercise of this discretion must remain free from external influence, particularly from the executive or any political body. If prosecutorial discretion is compromised by such interference, it undermines the integrity of the judicial system and the fairness of legal proceedings.

In the U.S., the courts have consistently affirmed the broad discretion of prosecutors in deciding which cases to prosecute, in line with the separation of

[415] Van Aaken, A, Feld, L.P. & Voigt, S. 2010. Do Independent Prosecutors Deter Political Corruption? An Empirical Evaluation Across Seventy-eight Countries (*supra*), at 209.

powers.[416] In *Town of Newton v. Rumery*[417], the U.S. Supreme Court emphasised that prosecutorial decisions regarding whom to prosecute, based on probable cause, rest primarily with the prosecutor's discretion. The Court's position reflects a recognition of the inherent limitations of the judiciary in evaluating prosecutorial motivations and an understanding of the need for executive autonomy in criminal justice administration. The Court further elaborated in *Wayte v. United States*[418] that prosecutorial decisions often involve factors like case strength, deterrence, and the government's enforcement priorities beyond judicial analysis. Interfering with prosecutorial discretion could delay proceedings and undermine law enforcement by subjecting prosecutors to external scrutiny.

Similarly, the Nigerian courts recognise prosecutorial discretion, particularly the powers of the Attorney General to enter a *nolle prosequi*, or to discontinue a case. The Nigerian Supreme Court, in *Audu v. Attorney General of the Federation of Nigeria*,[419] upheld the authority of the Attorney General to discontinue criminal proceedings at any stage before judgment, stating that the judiciary cannot question this power. However, the Court noted that public interest, the interest of justice, and the need to prevent abuse of legal processes must guide the exercise of such powers.[420]

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[416] See, *U.S v. Armstrong*, 1995 116 S. Ct. 1480, 1486 (Separation of powers concerns and systemic costs of judicial intrusions caution against setting threshold showing for discovery for selective prosecution claims too low); *U.S. v Smith*, 1995 55 F.3d 157, 159 (4th Cir.) (separation of powers doctrine prohibits the court from denying prosecutor's motion to dismiss absent showing motion motivated by considerations clearly contrary to public interest, such as bribery, dislike of victim, or dissatisfaction with impaneled jury); *U.S v. Chagra*, 1982 669 F. 2d 241, 247 (5th Cir.) (Constitutional authority for faithful execution of laws textually committed to the executive branch)." Cited in Aaken, A. Van, Salzberger, E. and Voigt, S.2004. The Prosecution of Public Figures and the Separation of Powers. Confusion within the Executive Branch - A Conceptual Framework, Constitutional Political Economy (*supra*). Gutmann, J. and Voigt, S. 2019. The Independence of Prosecutors and Government Accountability. *Supreme Court Economic Review*. 27:1–19; Harriger, K.J. 2008. The Law: Executive Power and Prosecution: Lessons from the Libby Trial and the U.S. Attorney Firings. (*supra*) 491–505; *Massey v Smith*, 1977 555 F.2d, 1356 (8th Cir.) ("*The authority to decide against whom federal indictments shall be sought lies almost exclusively with the U.S Attorneys or the Justice Department, and their decisions in this regard are not generally subject to judicial review*."; *Newman v. United States*, 1967 382 F.2d 479, 480 (D.C. Cir) ("*Few subjects are less adapted to judicial review than the exercise by the Executive of his discretion in deciding when and where to institute criminal proceedings, or what precise charge shall be made or whether to dismiss a proceeding once brought*.") both cited in Loewenstein, A.B. 2001. Judicial Review and the Limits of Prosecutorial Discretion. *American Criminal Law Review*, 38(2): 366-367.

[417] 1987 480 U.S. 386.

[418] 470 U.S., 1985 598, 607-608.

[419] 2012 LPELR-15527(SC), 19, paras B-E.

[420] *State V. Ilori*, 1983 2 SC, 158.

In South Africa, prosecutorial independence and discretion are enshrined in the Constitution, which mandates that national legislation should ensure the Prosecution exercises its powers without interference.[421] The NPA Act further ensures that no person or state organ may obstruct or hinder the Prosecution's functions.[422] The South African Court of Appeal has affirmed that prosecutorial discretion lies with the Prosecution, not the Minister of Justice.[423] The Minister may have final responsibility, but cannot direct individual prosecutorial decisions. This separation ensures the prosecution's independence, safeguarding it from political interference.

Prosecutorial discretion is essential for efficient justice administration, allowing prosecutors to prioritise cases based on public policy, available resources, and state interests.[424] However, concerns arise about potentially abusing this discretion, particularly in politically charged cases.[425] If prosecutors exercise discretion for personal or political gain, this can result in selective prosecution or the deliberate omission of critical cases, particularly official corruption offences.

Several jurisdictions have implemented safeguards to mitigate the risk of misusing prosecutorial discretion. Van Aaken, Feld, and Voigt suggest measures such as allowing third parties to initiate prosecutions, thereby diversifying the sources of criminal proceedings.[426] This could include giving victims' families, other government agencies, or public interest groups the right to bring cases. Such reforms, already implemented in countries like the U.S. (where a special counsel prosecutes high-ranking officials), Germany (where courts can order criminal proceedings), and France

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[421] S. 179 (6).
[422] Woolaver, H & Bishop, M. A. 2008. Submission to the Enquiry into the National Director of Public Prosecutions. *South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC)*. Available: https://journals.co.za/doi/pdf/10.10520/AJA10128743_423. [2025, April 11].
[423] *Zuma v NDPP* 2009 (2) SA 277 (SCA) para 32.
[424] Kohn, L. 2022. The National Prosecuting Authority as Part of South Africa's Integrity and Accountability Branch and the Related Case for an Anti-Corruption Redress System (*supra*), at 21-22.
[425] The United Kingdom is one such jurisdiction. See generally Legal Guidance. 2024. Judicial Review of CPS Prosecuting Decisions (Appeals). *Crown Prosecuting Service*. Revised. Available: https://www.cps.gov.uk/legal-guidance/judicial-review-cps-prosecuting-decisions-appeals. [2025, April 11]; Corns, C. 2022. Prosecution Accountability and Judicial Review. *Victoria University of Wellington Law Review*. 53(1):1–28, on the judicial review of prosecutorial decisions in Australia; The Canadian Supreme Court decision in *Operation Dismantle Inc v. R*, 1985 1 S.C.R. 441 [Operation Dismantle] holden that prosecutorial decisions were subject to judicial review in Canada.
[426] Van Aaken, A. Feld, L.P. and Voigt, S. 2010. Do Independent Prosecutors Deter Political Corruption? An Empirical Evaluation Across Seventy-eight Countries (*supra*), at 216.

(where reforms were introduced to limit political influence on prosecutorial decisions), aim to curb improper influence and enhance accountability.

In the U.S., judicial review of prosecutorial discretion is permitted, but it is approached cautiously to avoid infringing upon the separation of powers. Courts may intervene when prosecutorial decisions are based on unconstitutional motives, such as racial discrimination or the infringement of constitutional rights. In cases of selective prosecution, the burden of proof lies with the complainant, who must demonstrate that discriminatory or vindictive motives influenced the decision not to prosecute.[427]

In Nigeria, however, the approach to prosecutorial discretion is more rigid. The Nigerian Supreme Court has consistently held that the exercise of the Attorney General's discretion, such as the power to institute or discontinue criminal proceedings, is not subject to judicial review.[428] This broad, unchecked discretion has led to concerns about potential abuses, particularly in politically sensitive cases.

Although the Constitution requires the Attorney General to consider public interest, justice, and the prevention of abuse of process when exercising this power, the lack of oversight presents a significant risk. The Nigerian stance has led to an environment where prosecutorial decisions, particularly in high-profile cases, can be influenced by political considerations, undermining the rule of law.

Ultimately, the tension between prosecutorial discretion and accountability is a central challenge in democratic governance. While discretion is necessary for prosecutors to manage cases effectively, it can be misused without adequate safeguards.[429] Striking a balance between the necessary autonomy of prosecutors and the imperative for oversight and accountability remains a complex and evolving issue.

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[427] *Wade v. U.S.*, 504 U.S. 181, 185-86. *Yick Wo v. Hopkins*, 1886 118 U.S. 356, 373-74 (The discretion is circumscribed by equality of treatment and Chinese laundry owners should not be prosecutors where similarly situated non-Chinese laundry owners are let off). *U.S v Redondo-Lemosi,* 1994 27 F.3d 439 (9th Cir.).

[428] *Ezomo v A.G Bendel*, 1986 LPELR-1215(SC).

[429] For a well-reasoned exposition on the challenges of prosecutorial independence and discretion in the face of misuse, abuse or manipulation, see Di Federico, G.1998. Prosecutorial Independence and the Democratic Requirement of Accountability in Italy: Analysis of a Deviant Case in a Comparative Perspective (*supra*). See also Kohn, L. 2022. The National Prosecuting Authority as Part of South Africa's Integrity and Accountability Branch and the Related Case for an Anti-Corruption Redress System (*supra*), at 23.

Efforts to enhance transparency, introduce mechanisms for judicial review, and diversify the initiation of prosecutions are essential to ensure that prosecutorial discretion serves the public good and upholds the principles of justice.

4.5 Approach: Examining the Reality of Prosecutorial Independence and Prosecutorial Discretion in the Three Jurisdictions

The analysis of prosecutorial discretion and independence in the three jurisdictions substantially utilises the *de jure* and *de facto* paradigms set out by Van Aaken, Feld, and Voigt.[430]

4.5.1 Nigeria: Presidential Power and Prosecutorial Control

In Nigeria, the Prosecution is established under the Constitution and is vested with extensive prosecutorial powers, primarily under the Attorney General. As the "*Chief Law Officer of the Federation and a Minister of the Government of the Federation*",[431] the Attorney General holds significant authority, including the power to initiate criminal proceedings, take over prosecutions from other agencies, and discontinue any criminal proceedings before judgment.[432] These powers can be exercised directly or through the Ministry of Justice, which is composed of various prosecutors, investigators, and staff.[433]

The Prosecution is institutionally part of the executive branch, with the President appointing the Attorney General, who can also be dismissed at the President's discretion.[434] This creates a strong link between the Prosecution and the executive, compromising its independence. Moreover, members of the Ministry of Justice, who are part of Nigeria's federal civil service, are governed by the Nigerian Civil Service Rules.[435] While protecting employees from arbitrary dismissal, these rules allow for subjective judgment in promotions, redeployments, and terminations. The Ministry's

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[430] Van Aaken, A. Feld, L.P. and Voigt, S. 2010. Do Independent Prosecutors Deter Political Corruption? An Empirical Evaluation Across Seventy-eight Countries. American Law and Economics Review. 12(1): 204–244.
[431] CFRN, s.150.
[432] *Ibid*. s. 174.
[433] *Ibid*. s. 174(2).
[434] *Ibid.* s.147.
[435] No. 57, Vol. 96, 2008 Edition.

leadership, which is appointed by the President, influences such decisions, fostering a power dynamic that undermines the Prosecution's autonomy.

Despite the Attorney General's vast constitutional powers, the Prosecution in Nigeria cannot be regarded as independent from the executive. While there are no direct orders from the executive on prosecutorial conduct, numerous instances show that the Prosecution often aligns with the political interests of the executive. This alignment is particularly evident in high-profile official corruption cases where political considerations shape prosecutorial decisions.

In addition to the Attorney General, other agencies, such as the EFCC, the Nigerian Police, and the ICPC,[436] also hold prosecutorial powers. However, the Attorney General retains ultimate control over prosecutions initiated by these agencies, allowing the executive to influence the direction of cases, particularly those related to official corruption. This reliance raises concerns about potential political motivations influencing prosecutorial decisions. The Nigerian judiciary has recognised this issue, noting that the Attorney General's political appointment may lead to decisions driven by political factors rather than legal considerations, such as issuing a *nolle prosequi* to terminate a criminal trial.[437]

The placement of the Ministry of Justice within the Nigerian Civil Service further weakens prosecutorial independence. The influence of the executive over the Ministry's budget, appointments, and promotions means that prosecutorial discretion is susceptible to political pressure. Additionally, the absence of specific legislation dedicated to prosecuting government officials for corruption leaves prosecutorial actions in such cases vulnerable to the executive's control, despite the legal framework provided by the Nigerian Criminal Code Act,[438] the EFCC Act,[439] and the ICPC Act.[440]

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[436] See Chapter 2, 2.4.1 (*supra*).
[437] *State v Ilori,* 1983. (*supra*).
[438] L.F.N 2004.
[439] Economic and Financial Crimes Act 2004. The legislation was first enacted in 2022 as the Economic and Financial Crimes Commission (Establishment) Act, 2002, repealed by the 2023 Act and repealed again by the 2024 Act.
[440] Chapter 2, 2.4.1 (*supra*).

While the Prosecution holds significant powers under Nigerian law, its *de facto* independence is compromised by its *de jure* structural integration within the executive. This dependence influences the prosecution of official corruption offences, reinforcing concerns about impartiality and accountability.

This centralisation, a product of Nigeria's post-colonial legacy and military history, creates an environment conducive to executive interference.[441] Constitutional sociology reveals that the Attorney General's dual capacity as chief prosecutor and executive minister allows the executive to halt or discontinue corruption cases at will.

Political patronage amplifies this influence, with presidents shielding political allies from prosecution.[442] Cultural politics, deeply rooted in Nigeria's ethnic loyalties, often influence the Attorney General's decisions.[443] Ethnic loyalty, rather than adherence to the rule of law, can dictate prosecutorial responses, leading to selective enforcement. While discretion and independence exist in theory, they are compromised in practice by these dynamics.

4.5.2 South Africa: Ministerial Oversight and Executive Influence

The South African Constitution enshrines the NPA's independence, enabling it to exercise its prosecutorial powers without external interference. The Constitution grants the NPA the authority to prosecute offences, with the Director of Public Prosecutions (NDPP) at the helm. The NDPP is responsible for establishing prosecution policies and issuing directives to guide the NPA's actions. The NDPP also holds the power to intervene in cases of non-compliance with policy and to review prosecutorial decisions, ensuring consistency and adherence to legal standards.

While the NPA operates under the executive's domain, it is designed to function independently in its prosecutorial capacity. Section 179 of the South African Constitution vests oversight of the NPA in the Minister of Justice, who is a political appointee of the President. However, the Minister's oversight is limited to approving prosecution policies and receiving regular reports; the Minister cannot direct

[441] See Chapter 2, 2.1.1 (*supra*).
[442] See Chapter 2, 2.5(*supra*).
[443] See Chapter 2, 2.5, 2.7 (*supra*).

prosecutorial decisions on individual cases.[444] This distinction ensures that prosecutorial discretion remains within the NPA, protecting its independence from political influence.

The South African Supreme Court has affirmed that the Minister of Justice's role is not to intervene in the NPA's day-to-day operations but to ensure its accountability. In *Zuma v NDPP*, the court upheld the principle that the NDPP must make prosecutorial decisions without political influence, emphasising the need for the prosecutorial authority to operate free from government interference.[445] This ruling reinforced the view that prosecutorial independence is crucial for the integrity of the legal system and to prevent the political misuse of prosecutorial powers.

The NPA also enjoys discretion in initiating prosecutions. Although it operates under the umbrella of the executive, its ability to make independent decisions regarding whether to prosecute is vital to maintaining a just legal process.[446] This discretion has been a point of contention, particularly when political motivations may influence prosecuting decisions, as seen in the challenges relating to high-profile cases.

One safeguard to ensure the NPA's independence is the tenure and appointment of the NDPP. The NDPP is appointed by the President for a fixed term of ten years, which is non-renewable. This ensures job security and reduces susceptibility to political pressures.[447] The NPA Act also provides mechanisms for the President to remove the NDPP or a Deputy NDPP for misconduct. However, Parliament must scrutinise these decisions, ensuring that the President cannot act unilaterally.[448]

However, the South African courts ruled that the President's power to extend the NDPP's tenure upon reaching the age of sixty-five was unconstitutional, citing that it

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[444] Woolaver, H, & Bishop, M. A. 2008. Submission to the Enquiry into the National Director of Public Prosecutions (*supra*).
[445] 2009 (1) BCLR 62 (N) paras 89 and 90.
[446] Mokoena, M.T. 2012. Taming Prosecutorial Beast: Of Independence, Discretion and Accountability. *Stellenbosch Law Review*. 303; van Zyl Smit, D. and Steyn, E., 2000. Prosecuting Authority in the New South Africa. *Centre for the Independence of Judges and Lawyers Yearbook* 8:137-150; See also Kohn, L. 2022. The National Prosecuting Authority as Part of South Africa's Integrity and Accountability Branch and the Related Case for an Anti-Corruption Redress System (*supra*), at 21-22.
[447] NPA Act, s. 10.
[448] *Ibid.* s. 12(6)(b).

undermines the independence of the office. The court's decision in *Corruption Watch* clarified that such powers could compel the NDPP to act in a manner aligned with the President's political interests, undermining the independence of the NPA.[449]

Despite these institutional safeguards, the executive has challenged the NPA's independence. Notably, the *Corruption Watch* case highlights an attempt by the President to remove the NDPP through alternative means, raising concerns about the NPA's long-term independence. Since its establishment in 1998, no NDPP has completed their full ten-year term, with each leaving office for various reasons. These further question the NPA's ability to operate free from political influence.[450]

Constitutional sociology reveals a tension between the Justice Minister and the NPA, which can lead to executive interference.[451] During President Zuma's tenure, State Capture weakened the NPA despite its independence. Cultural politics, particularly Ubuntu, influence how executive power is perceived in rural areas, where there may be more leniency toward political allies in power.[452] The ANC's tolerance of executive excesses,[453] particularly during the Zuma years, demonstrates how cultural and political loyalty can compromise prosecutorial independence, slowing justice delivery and undermining the rule of law.

In summary, while South Africa has established constitutional and legislative measures to protect the NPA's independence, the practical application of these safeguards has been inconsistent. The potential for political interference remains a challenge, as evidenced by the recurring instability within the office of the NDPP and the efforts to undermine prosecutorial discretion. Ensuring the NPA's continued independence will require stronger, more consistent protection against political pressures.

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[449] Corruption Watch & Others v. The President of the Republic of South Africa [2018] ZACC 23.
[450] See Dyani-Mhango, N. 2021. Reflections on Prosecutorial Independence and Impartiality in South Africa: The Recent Jurisprudence of the Courts (2021). *Southern African Public Law*. 35(2):2 for a detailed rendition of the circumstances surrounding the departures from the office of the NDPP.
[451] See Chapter 2, 2.4.2.1 (*supra*).
[452] See Chapter 2, 2.6 (*supra*).
[453] See Chapter 6, 6.3.3 (*infra*).

4.5.3 United States: Flawed Independence and Executive Control

The U.S. Prosecution, created under the Judiciary Act of 1789, grants federal prosecutors broad discretion to conduct criminal proceedings.[454] The Prosecution, led by the Attorney General, enjoys considerable independence, which the courts have consistently upheld.[455] Prosecutors can decide which crimes to charge, how to prosecute, whether to grant immunity, accept plea bargains, or dismiss charges.[456] The courts recognise that this discretion is part of the separation of powers, acknowledging that the judicial system should not interfere with prosecutorial decisions unless there are significant legal reasons to do so.

The U.S. Supreme Court emphasises the importance of prosecutorial discretion, especially in cases like *United States v. Cox*[457] and *Wayte v. United States*,[458] where it held that prosecutorial decisions are the domain of the executive. This discretion includes deciding which criminal statutes to apply, whether to charge a defendant, and whether to continue or discontinue a prosecution. Courts are generally reluctant to intervene in these decisions due to concerns about encroaching on the executive's constitutional authority.[459]

Historically, prosecutorial discretion in the U.S. was not always aligned with the executive branch.[460] The original Judiciary Act did not place U.S. Attorneys directly under the Attorney General's control. Over time, however, the creation of the DOJ in

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[454] Chapter 20, s. 35.
[455] Department of Justice. Bicentennial Celebration of the U.S Attorneys, 1789-1989. 6. Available: https://www.justice.gov/d9/pages/attachments/2018/02/23/bicentennial_celebration.pdf. [2025, April 11].
[456] Krauss, R. 2009. The Theory of Prosecutorial Discretion in Federal Law: Origins and Developments. *Seton Hall Circuit Review*. 6.
[457] 342 F.2d 167, 171 (5th Cir. 1965).
[458] 470 U.S., 1985 598, 607-608 (*supra*).
[459] See *Inmates of Attica Corr. Facility v. Rockefeller*, 477 F.2d 375, 379 (2d Cir. 1973) ("*The primary ground upon which this traditional judicial aversion to compelling prosecutions has been based is the separation of powers doctrine*.").
[460] Bloch, S.L. 1989. The Early Role of the Attorney General in Our Constitutional Scheme: In the Beginning There Was Pragmatism. *Duke Law Journal*. 561; Dangel, S.A. 1990. Is Prosecution a Core Executive Function? Morrison v. Olson and the Framers' Intent (*supra*); Gwyn, W.B. 1965. The Meaning of the Separation of Powers: An Analysis of the Doctrine from its Origin to the Adoption of the United States Constitution (*supra*). Krent, H.J. 1989. Executive Control over Criminal Law Enforcement: Some Lessons from History (*supra*); Lessig, L. & Sunstein, C.R., 1994. The President and the Administration. *Columbia Law Review*. 94(1): 1-12. Krauss, R. 2009. The Theory of Prosecutorial Discretion in Federal Law: Origins and Developments (*supra*), at 14.

1870 formalised the Attorney General's oversight of federal prosecutors.[461] This shift gave the Attorney General greater control over the prosecution process while still preserving a high degree of prosecutorial independence.

Despite these safeguards, the relationship between the Prosecution and the executive is complex and sometimes tense.[462] U.S. Attorneys, appointed by the President and subject to the Attorney General's guidance, retain significant autonomy in their prosecutorial decisions within their respective districts. However, the President retains the authority to appoint and remove U.S. Attorneys, leading to potential political interference in high-profile cases.

Prosecutorial independence in the U.S. is not absolute. The 2006 dismissal of nine U.S. Attorneys under the Bush administration highlighted concerns about the political nature of prosecutorial decisions. These dismissals were found to be politically motivated, particularly since some of the U.S. Attorneys were investigating matters that could have negatively impacted the President's political allies.[463] This incident revealed how political pressures can influence the exercise of prosecutorial discretion.

While the U.S. Prosecution is statutorily independent, its connection to the executive branch complicates its total independence. The President's power to appoint and dismiss high-ranking prosecutorial officials, such as the Attorney General and U.S. Attorneys, means that the executive retains significant control over prosecutorial functions. This creates tension between prosecutorial independence and political influence in prosecutorial decisions. For example, during a debate regarding the legality of depositing federal funds in state banks, President Jackson reportedly instructed his Attorney General, Roger Taney, saying, "*Sir, you must find a law authorizing the act or I will appoint an Attorney General who will*".[464]

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[461] Seymour, W.N. Jr. 1975. *U.S Attorney.* New York: William Morrow and Company, Inc. 46. Cited in Bicentennial Celebration of the U.S Attorneys, 1789-1989 (*supra*).
[462] Harriger, K.J. 2008. The Law: Executive Power and Prosecution: Lessons from the Libby Trial and the U.S. Attorney Firings (*supra*), at 491.
[463] An Investigation into the Removal of Nine U.S Attorneys in 2006. 325, 355- 358. Available: https://web.archive.org/web/20200302142947 /https://oig.justice.gov/special/s0809a/final.pdf. [2025, April 11].
[464] Green, B.A. and Roiphe, R. 2018. Can the President Control the Department of Justice? (*supra*), at 45.

One such instance was Preet Bharara, a former U.S. attorney for the Eastern District of New York, who was asked to resign by Attorney General Jeff Sessions on March 10, 2017. President-elect Donald Trump had initially requested that Mr. Bharara remain in his role.[465] However, Mr. Bharara was later dismissed from his position.

Reports indicated that his removal was linked to his investigation of political allies of President Trump, including then-Secretary of the Department of Health and Human Services Tom Price, over allegations of insider trading,[466] and Fox News, which was often seen as aligned with President Trump, for allegedly covering up sexual abuse claims involving its former chairman, Roger Ailes.[467]

Constitutional sociology ensures that DOJ autonomy exists, particularly in case selection, but the Attorney General, as an executive appointee, is subject to influence. Two instances under President Trump's first term bear this out. Notably, the actions of William Barr, the Attorney General during the first term of Donald Trump's Presidency, exemplify how executive influence can shape the prosecution of official corruption.[468] William Barr's predecessor, Jeff Sessions, was fired by President Trump for not following his instructions, which Sessions did not consider lawful.[469]

Additionally, the questionable use of pardons double undermines prosecutorial efforts and judicial authority and process, thus becoming an instrument for reshaping judicial outcomes.[470] Despite its legalistic culture, partisan divides also frame

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[465] The Straits Times. 2011. US Attorney General Jeff Sessions Asks 46 Obama-era Attorneys to Resign. Available: https://www.straitstimes.com/world/united-states/us-attorney-general-jeff-sessions-asks-46-obama-era-us-attorneys-to-resign. [2025, April 11].
[466] Faturechi, R. 2017. Fired U.S. Attorney Preet Bharara Said to Have Been Investigating HHS Secretary Tom Price. *ProPublica*. https://www.propublica.org/article/preet-bharara-fired-investigating-tom-price-hhs-stock-trading. [2025, April 11].
[467] Pleat, Z. 2017. US Attorney Preet Bharara Was Investigating Fox News When Trump Fired Him. *Media Matters for America.* https://www.mediamatters.org/donald-trump/us-attorney-preet-bharara-was-investigating-fox-news-when-trump-fired-him. [2025, April 11].
[468] See Chapter 5 (*infra*).
[469] Lach, E. 2017. Trump Fires Jeff Sessions and Throws His Administration into Chaos. The New York Times. Available: https://www.newyorker.com/news/current/trump-fires-jeff-sessions-and-throws-his-administration-back-into-chaos. [2025, April 11].
[470] See Chapter 5 (*infra*).

executive actions in interfering with the Prosecution[471] as politically motivated.[472] Depending on the side of the divide, it complicates the public's perception of executive interference in prosecuting official corruption offences.[473]

In summary, while the U.S. Prosecution is one of the most independent globally, it is not entirely immune to political pressures. The constitutional and statutory framework provides for prosecutorial discretion and independence, but the executive's appointment power and occasional political interference highlight the challenges in maintaining a completely impartial prosecutorial system.

4.6 **Conclusion: Power Imbalances**

The separation of powers is fundamental in shaping governance and prosecutorial outcomes. In Nigeria, the concentration of executive power and the lack of effective separation lead to impunity, eroding trust in the legal system and enabling official corruption. In South Africa, while parliamentary oversight provides some checks, executive influence, especially during the Zuma administration, delayed justice and protected those in power. The U.S. has a more robust separation of powers. Yet, the use of presidential pardons and executive influence over the DOJ highlights that even a strong separation of powers can be undermined by executive overreach.

Prosecutorial autonomy varies significantly across the three countries. In Nigeria, the prosecution is subordinated to the Attorney General, who is heavily influenced by the executive and lacks oversight by Parliament. The NPA enjoys statutory autonomy in South Africa but is subject to ministerial oversight, allowing for executive interference, particularly in high-profile cases. The DOJ operates with greater independence in the U.S., but executive influence is a notable exception. These disparities can be partly attributed to differences in constitutional design, political economy, and cultural politics, each presenting unique challenges to maintaining prosecutorial independence.

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[471] See Chapter 5 (*infra*).
[472] See Chapter 3, 3.1.3. (*supra*).
[473] *Ibid.*

This chapter has demonstrated that the separation of powers significantly influences executive control over corruption prosecutions, with varying outcomes across Nigeria, South Africa, and the U.S. Nigeria's centralised executive undermines prosecutorial autonomy, South Africa's democratic framework struggles against ANC-driven interference, and the U.S.'s checks and balances face challenges from partisan executive actions. These findings underscore how constitutional design can mitigate or exacerbate executive overreach, impacting the rule of law. Building on this structural analysis, the next chapter examines the specific mechanisms of executive interference, providing factual evidence of how these dynamics manifest in practice across the three jurisdictions.

CHAPTER 5
MECHANISMS OF EXECUTIVE INTERFERENCE: EVIDENCE FROM NIGERIA, SOUTH AFRICA AND THE U.S.

5.1 Purpose: Mechanisms Undermining Prosecution

This chapter investigates the specific mechanisms through which executive interference manifests in official corruption prosecutions in Nigeria, South Africa, and the U.S., grounding the thesis in factual evidence. While prior chapters explored the legal, socio-cultural, and constitutional contexts enabling interference, this chapter focuses on the practical tools and strategies executives employ, such as prosecutorial discretion, pardons, institutional subversion, and political pressure.

Through a comparative analysis, it examines Nigeria's use of centralised prosecutorial authority, South Africa's state capture tactics, and the U.S.'s partisan interventions, drawing on case studies and legal records to illustrate these mechanisms. This chapter contributes to the thesis by providing concrete examples of how executive interference undermines prosecutorial independence, offering insights into the operational dynamics that erode the rule of law and setting the stage for synthesising these impacts.

5.2 Approach: Comparative Evidence Framework

This analysis focuses on key mechanisms through which executive interference affects the prosecution of official corruption across the three countries. The framework explores Attorney General discretion, State Capture, and pardon power by drawing on constitutional sociology, political economy, cultural politics, and political culture, where applicable. This multidimensional approach helps to contextualise the varying forms of interference in each jurisdiction and assesses their impact on prosecutorial independence.

5.3 Analysis: Selected Cases of Executive Interference in Nigeria

Nigeria faces persistent challenges with official corruption, often ranking among the world's most corrupt nations.[474] Given the vast sums of public funds misappropriated through corrupt practices,[475] it is arguable that official corruption has become a *de facto* state policy. This section explores instances of executive interference in prosecuting official corruption cases, shedding light on how political culture, political economy, and constitutional sociology drive these cases.

5.3.1 Impeding Investigations

This case illustrates how executive interference in prosecuting official corruption manifests in the corridors of power in Nigeria. It is emblematic of how party fealty and parochial interests undermine prosecutorial independence in the country. It also demonstrates the ineffectiveness of the current Nigerian prosecutorial structure in the face of executive overreach.

Senator Godswill Akpabio's Case

Senator Godswill Akpabio, former governor of Akwa Ibom State (2007–2015), has been at the centre of corruption allegations. In 2015, activist Leo Ekpenyong petitioned the EFCC, presenting evidence suggesting Akpabio had embezzled N108.1 billion[476] during his governorship.[477] Despite the severity of the allegations, investigations stalled once Akpabio defected from the opposition Peoples Democratic Party (PDP) to the ruling All Progressives Congress (APC).[478] Akpabio's support for

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[474] https://www.unodc.org/conig/uploads/documents/publications/Anti-Corruption-Project-Nigeria/Bibliography_of_Corruption_in_Nigeria._final.pdf [2025, April 11]. See Chapter 2, 2.4.1 (*supra*).

[475] As of 2021, it was reported that Nigeria has lost $582 billion in corruption in 61 years. Ogune, M. 2021. Guardian Newspapers. Available:https://guardian.ng/news/nigeria-loses-582-billion-to-corruption-in-61yrs-yiaga-africa/. [2025, April 11].

[476] The average USD to Naira exchange rate in 2015 was USD1 to N197.78. See https://www.exchange-rates.org/exchange-rate-history/usd-ngn-2015. [2025, April 11]. At this exchange rate, the sum involved was over half a billion USD.

[477] Premium Times. 2015.EFCC begins probe of ex-Governor Akpabio over alleged N108.1bn fraud. Available: https://www.premiumtimesng.com/news/headlines/185621-efcc-begins-probe-of-ex-governor-akpabio-over-alleged-n108-1bn-fraud.html?tztc=1. [2025, April 11].

[478] Akpabio's Defection Puts Buhari's Anti-Corruption War Under the Spotlight, 2018. *Punch Newspapers*. Available at: https://punchng.com/akpabios-defection-puts-buharis-anti-corruption-war-under-the-spotlight. [2025, April 11].

President Bola Tinubu in the 2023 elections raised suspicions of executive influence shielding him from prosecution.

Despite being under investigation, Akpabio's swift rise to Senate President in 2023 reinforced these suspicions. Critics saw the APC's decision to support him for Senate leadership[479] as a political quid pro quo for Akpabio's support during Tinubu's election campaign.[480] This case exemplifies the Nigerian political culture, where the ruling party often protects its allies from scrutiny and prosecution.[481]

This was a consistent theme throughout the tenure of former President Buhari's APC administration from 2015 to 2023. During this period, swathes of Nigerian politicians from opposition parties saddled with official corruption cases defected to the ruling APC and found a haven from prosecution for official corruption. During the 2019 elections, Adams Oshiomhole, a former National Chairman of the APC, brazenly announced that those who joined the APC would have their "*sins*" forgiven.[482]

The executive branch's influence on the EFCC, especially when politicians move between parties, demonstrates a lack of genuine political will to address official corruption. It also reflects Nigeria's constitutional sociology of militarism,[483] where, despite democratic governance, the executive branch still conducts itself with impunity.

Under Nigeria's political economy, politicians are often shielded from the legal system due to party loyalty and patronage networks. This culture fosters impunity, with elected officials exploiting political influence to avoid accountability. The case of Akpabio and subsequent elevation to the Senate leadership starkly contrasts with

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[479] Newsdirect.ng. 2023. EFCC Boss, Bawa Briefs President Tinubu On Akpabio's Corruption Cases. Available: https://newsdirect.ng/efcc-boss-bawa-briefs-president-tinubu-on-akpabios-corruption-cases/ [2025, April 11].
[480] Anichukwueze, D. 2023. https://www.channelstv.com/2023/06/07/tinubu-told-me-akpabio-is-his-preferred-candidate-for-senate-president-ndume/#:~:text=%E2%80%9CThe%20President%20told%20me%20that. [2025, April 11].
[481] See Chapter 3, 3.1.1 (*supra*).
[482] Sahara Reporters. 2021. REVEALED: Nigerian Politicians with Corruption Cases Who Joined Ruling Party, APC To Escape Prosecution. https://saharareporters.com/2021/09/16/revealed-nigerian-politicians-corruption-cases-who-joined-ruling-party-apc-escape. [2025, April 11].
[483] See Chapter 2, 2.4.1.1 (*supra*).

the commitment to anti-corruption measures, highlighting how executive interference stifles the prosecution of high-profile official corruption cases.[484]

5.3.2 Influencing the Bringing of Prosecutions

Over several years, Nigerian governments have flagrantly abused the prosecutorial process in anti-corruption prosecutions based on cronyism, nepotism, and ascriptive motivations. The following case is emblematic of this problem.

Abdullahi Adamu's Case

Abdullahi Adamu, a former governor of Nasarawa State and a prominent APC figure, has faced multiple accusations of official corruption. His case became emblematic of the misuse of prosecutorial power, particularly within the context of Nigeria's political culture and cultural politics, where cronyism, nepotism, and partisan loyalties shape legal outcomes. In 2010, Adamu was charged with misappropriating N15 billion[485] during his tenure as governor.[486] However, the case has seen numerous delays, and despite the serious allegations, Adamu's political career flourished, especially after he joined the APC in 2014.

In 2022, Adamu ascended to the APC chairmanship position with former President Buhari's endorsement.[487] It is noteworthy that Messrs. Adamu and Buhari are of the same ethnicity, region, and religion. During this period, the EFCC appeared conspicuously silent, suggesting executive intervention in halting or delaying his prosecution. In a widely condemned statement, the Presidency asserted that Adamu

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[484] Okocha, C. 2023. HURIWA Queries EFCC over Unconcluded Probe of Akpabio. *ThisDay Newspapers*. Available: https://www.thisdaylive.com/index.php/2023/05/13/huriwa-queries-efcc-over-unconcluded-probe-of-akpabio. [2025, April 11].

[485] The average USD to Naira exchange rate in 2010 was USD 1 to N151.10. See https://www.exchange-rates.org/exchange-rate-history/usd-ngn-20150. At this exchange rate, the sum involved was nearly a hundred million USD. [2025, April 11].

[486] Shibayan, D. 2022. Rewind: In 2010, EFCC Arraigned Adamu, 'Preferred APC Chairmanship Candidate', over 'N15bn Fraud. *The Cable*. https://www.thecable.ng/rewind-in-2010-efcc-arraigned-adamu-preferred-apc-chairmanship-candidate-over-n15bn-fraud/. [2025, April 11].

[487] How Buhari's Candidate Under Prosecution for N15 Billion Fraud, Abdullahi Adamu, Emerged APC National Chairman. 2022. *Sahara Reporters*. Available at: https://saharareporters.com/2022/03/27/how-buharis-candidate-under-prosecution-n15billion-fraud-abdullahi-adamu-emerged-apc. [2025, April 11].

and others accused of official corruption had "*repented*", implying that their past financial transgressions had been absolved.[488] The Nigerian government effectively acknowledged Adamu's culpability but supplanted the Nigerian criminal justice system with partisan considerations. This reflects Nigerian cultural politics, where access to power often guarantees immunity from legal repercussions.[489]

Adamu was eventually removed as party chairman in 2023 for embezzling party funds.[490] However, he incurred no further legal repercussions.[491] The Presidency's defence of Abdullahi and the EFCC's inaction pointed to the broader issue of selective enforcement and political manipulation of prosecutorial powers. This case exemplifies how the executive, in tandem with political party affiliations, can influence which prosecutions proceed and which are sidelined, reinforcing the culture of impunity.

Abdullahi's case and the APC chairmanship controversy underscore the entrenched problem of official corruption in Nigeria. The fact that a political figure facing such serious official corruption allegations could not only remain politically active but also ascend to the highest echelons of the ruling party raises credible concerns about the integrity of the Nigerian political system.

Furthermore, the Presidency's defence of Adamu and the EFCC's inaction point to a worrying trend—the selective application of anti-corruption measures and disregard for the rule of law. This perception inevitably erodes public trust in the government's commitment to tackling official corruption and fosters a culture of impunity among the Nigerian political class.

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[488]Nwachukwu, O. 2022. Alleged corruption: Adamu, others have repented – Presidency replies PDP. *DailyPost.* https://dailypost.ng/2022/03/28/alleged-corruption-adamu-others-have-repented-presidency-replies-pdp/. [2025, April 11].

[489] Premium Times. 2022. Profile of New APC Chairman, Abdullahi Adamu. Available: https://www.premiumtimesng.com/news/headlines/519885-profile-of-new-apc-national-chairman-abdullahi-adamu.html?tztc=1. [2025, April 11].

[490] Abdulganiy, M., 2023. Revealed: The N32bn "Final Straw" that Led to the Ouster of Adamu as APC Chair. *The Cable*. Available at: https://www.thecable.ng/revealed-the-n32bn-final-straw-that-led-to-the-ouster-of-adamu-as-apc-chair. [2025, April 11].

[491]https://www.thecable.ng/revealed-the-n32bn-final-straw-that-led-to-the-ouster-of-adamu-as-apc-chair/' [2025, April 11].

5.3.3 Dissuading Prosecutions

Several instances have occurred where surrounding facts point to a deliberate decision not to conduct investigations into official corruption allegations or to bring related prosecutions. One case that typifies this anomaly is the case of the incumbent Nigerian President, Bola Tinubu.

Bola Ahmed Tinubu's Case

Bola Tinubu, Nigeria's current President, has long been the subject of corruption allegations, particularly concerning money laundering and illicit enrichment during his tenure as governor of Lagos State. Before he was elected President in 2023, Bola Tinubu was a dominant force in Nigerian politics and the national leader of the APC. He had long been the subject of serious official corruption allegations.[492]

Critics cite a history of discrepancies in asset declarations, potential money laundering, illicit enrichment, and abuse of office during his tenure as governor.[493] Despite mounting public pressure, investigations into his conduct showed negligible progress. This pattern suggests that a powerful web of executive political interference protects high-profile political figures in Nigeria from legitimate scrutiny and accountability.

One of the most significant cases was the 2019 "Bullion Van Affair", in which unmarked vans filled with cash were seen entering Tinubu's residence during the presidential election. While Tinubu claimed the funds were for legitimate political expenses,[494] the incident raised serious questions about potential violations of campaign finance laws and money laundering.[495]

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[492] France24.2023. Bola Tinubu: Nigeria's Political 'Godfather'. Available: https://www.france24.com/en/live-news/20230301-bola-tinubu-nigeria-s-political-godfather.

[493] ThisDay Newspaper. 2022. Three Hunchbacks: Their Case Against Tinubu. Available: https://www.thisdaylive.com/index.php/2022/07/09/three-hunchbacks-their-case-against-tinubu. [2025, April 11].

[494] The Cable.ng.2019. 'What's your headache?' — Tinubu Confirms Bullion Vans Brought Cash to Bourdillon on Election Eve. Available: https://www.thecable.ng/is-it-govt-money-what-is-your-headache-tinubu-speaks-on-two-bullion-vans-at-bourdillon. [2025, April 11].

[495] Money Laundering (Prevention & Prohibition) Act 2022, s.2(1) (a)(b) retained the threshold value of cash payments and transactions sum exceeding ₦10,000,000 (ten million naira) for corporate bodies and ₦5,000,000 (five million naira) for individuals.

Despite widespread public outcry, no investigation or prosecution followed. The response of Ibrahim Magu, the then-chairman of the EFCC, further highlighted the extent of executive influence over the anti-corruption agencies. His dismissive attitude toward the allegations underscored how Nigeria's political culture and the concentration of power in the hands of the executive can shield individuals from legal accountability.[496]

It is widely understood that Tinubu was afforded immunity from investigation and prosecution because he was instrumental in Buhari's emergence as President both as a political and financial force.[497] The absence of any investigation reflects the failure of the prosecutorial system to act independently, as political patronage and influence prevent meaningful legal scrutiny of influential figures.

Tinubu's case underscores the role of cultural politics and political economy in shaping anti-corruption efforts in Nigeria. As a key political figure with extensive political and financial influence, Tinubu's protection from prosecution and eventual ascension to the Nigerian presidency indicates how political networks can manipulate legal processes. This case also illustrates how prosecutorial agencies are often complicit in shielding politically connected individuals, undermining public trust in the integrity of the legal system.

5.3.4 Discontinuing or Compromising Prosecutions

Another case involving Danjuma Goje exposed the labyrinth of executive interference in prosecuting official corruption offences in Nigeria.

Danjuma Goje's Case

Danjuma Goje, a former governor of Gombe State, faced multiple corruption charges after leaving office in 2011. He was initially charged with a twenty-one-count

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[496] Opejobi, S. 2019. Bullion Vans: How Magu Reacted to Petition Calling on EFCC to Probe Tinubu. *Daily Post*. Available: https://dailypost.ng/2019/11/01/bullion-vans-how-magu-reacted-to-petition-calling-on-efcc-to-probe-tinubu/ [2025, April 11].

[497] Kabir, A. 2020. How Tinubu Raised Funds for Buhari's 2015 Election—Babachir Lawal. *Premium Times*. Available: https://www.premiumtimesng.com/news/top-news/410285-how-tinubu-raised-funds-for-buharis-2015-election-babachir-lawal.html. [2025, April 11].

indictment alleging conspiracy, money laundering, and the diversion of state funds totalling ₦25,000,000,000.[498] The case stalled repeatedly, with jurisdictional struggles and lengthy delays hampering the EFCC's efforts to prosecute him.[499]

In 2019, the Attorney General's office took over the prosecution but abruptly withdrew the charges after Goje announced his intention to run for Senate President.[500] This decision raised suspicions of political interference, as Goje's alignment with the ruling APC was seen as a key factor in the abrupt halt of his case.

Three years later, the charges were reinstated as he contested again for the Senate Presidency under the APC. This time, he was not the party's preferred choice. He eventually withdrew his candidacy in favour of the party's preferred choice.[501] Given his alignment with the party leadership, the charges were again withdrawn. In 2022, the Attorney General filed a *nolle prosequi*, formally ending the case.

It was widely alleged that Mr. Goje used his political influence to broker a deal that resulted in the *nolle prosequi*.[502] The timing of the withdrawals, coinciding with his political alignment, strongly suggested that the executive politically motivated the discharge.

This sequence of events highlights the deep entanglement of politics and law enforcement in Nigeria, where prosecutorial decisions are often based on political calculations rather than the rule of law. The case also reflects how political culture, cultural politics, and constitutional sociology in Nigeria intersect with the executive

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[498] Approximately $65,000,000 (sixty-five million) at the time, though the amounts fluctuated during the legal proceedings. The Cable. 2024. Malami: Why N25BN Fraud Case Against Goje was Withdrawn. Available: https://www.thecable.ng/malami-why-n25bn-fraud-case-against-goje-was-withdrawn/. [2025, April 11]; ICIR. 2016. EFCC May Arrest Former Governor over N25 Billion Fraud. Available : https://www.icirnigeria.org/efcc-may-arrest-former-governor-n25-billion-fraud/. [2025, April 11].

[499] The Punch Newspaper. 2016. Alleged N25bn fraud: Court orders arrest of Gombe ex-gov, Goje https://punchng.com/court-orders-ex-gov-gojes-arrest-alleged-n25bn-fraud/. Available: [2025, April 11].

[500] EFCC Media. 2019. AGF Took Over Goje's N5BN Corruption Case, Evoked Nolle Prosequi. Available: https://www.efcc.gov.ng/efcc/news-and-information/news-release/4615-agf-took-over-goje-s-n5bn-corruption-case-evoked-nolle-prosequi. [2025, April 11].

[501] The Punch Newspaper. 2019. Goje Withdraws, Endorses Lawan as Next Senate President. Available: https://punchng.com/goje-withdraws-endorses-lawan-as-next-senate-president. [2025, April 11].

[502] This Day Newspaper. 2019. Goje and the Abuse of Nolle Prosequi. Available: https://www.thisdaylive.com/index.php/2019/07/06/goje-and-the-abuse-of-nolle-prosequi. [2025, April 11].

and party interests, influencing the prosecution process and obstructing the pursuit of justice.

5.3.5 Pardon

Nigerian governments have also used the instrument of pardon to subvert the judicial process for convictions secured in official corruption offences.

Diepreye Alamieyeseigha's Case

Diepreye Alamieyeseigha, a former governor of Bayelsa State, was convicted of corruption charges in 2007 after fleeing to Nigeria from the UK, where he was arrested for money laundering.[503] In 2007, he pleaded guilty to six charges of corruption and was sentenced to two years' imprisonment on each charge, which were to run concurrently.[504]

Most of his assets were forfeited to the Bayelsa State government[505] and some to the U.S. government.[506] In 2013, then-President Goodluck Jonathan granted him a controversial pardon. The pardon allowed Alamieyeseigha to regain his civil rights and return to politics. The context of this pardon is instructive. Alamieyeseigha was Jonathan's political mentor. [507]

Both men were of the same ethnicity and came from the Niger-Delta area of Nigeria. Jonathan also served as the deputy governor of Bayelsa State under

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[503] British Broadcasting Corporation. 2005. Nigeria's Runaway Governor. Available: http://news.bbc.co.uk/2/hi/africa/4499962.stm. [2025, April 11].

[504] Sahara Reporters. 2007. https://saharareporters.com/2007/07/25/dsp-alamieyeseigha-pleads-guilty-jailed-2-years; [2025, April 11]. Roberts, S. 2015. Diepreye Alamieyeseigha, Nigerian Notorious for Corruption, Dies at 62. *New York Times*. Available: https://www.nytimes.com/2015/10/15/world/diepreye-alamieyeseigha-nigerian-ex-governor-dies-at-62.html [2025, April 11].

[505] Mr. Alamieyeisegha purchased one of his London properties for the sum of GBP1, 750,000,000 cash. Mojeed, M. 2009. Alamieyeseigha's London Properties for Sale. *Next*. https://web.archive.org/web/20091120153416/http:/234next.com/csp/cms/sites/Next/News/National/5451341-147/story.csp. [2025, April 11]. Ibekwe, N. 2013. The Many Crimes of Alamieyeisegha and Those of His Fellow Ex-Convicts. Premium Times. Available at: https://www.premiumtimesng.com/news/124417-the-many-crimes-of-alamieyeisegha-and-those-of-his-fellow-ex-convicts.html?tztc=1. [2025, April 11].

[506] U.S Immigration and Customs Enforcement. 2021. DOJ/HSI Forfeits More Than $400,000 In Corruption Proceeds Linked to Former Nigerian Governor Available:https://www.ice.gov/news/releases/dojhsi-forfeits-more-400000-corruption-proceeds-linked-former-nigerian-governor. [2025, April 11].

[507] The News. 2015. Alamieyeseigha Was My Mentor, Says Jonathan. Available: https://thenewsnigeria.com.ng/2015/05/30/alamieyeseigha-was-my-mentor-says-jonathan. [2025, April 11].

Alamieyeseigha. This case exemplifies the intersection of cultural politics and corruption, as the pardon was seen as a partisan move to provide reprieve to a fellow tribesman and political affiliate.

Senator Joshua Dariye's Case

Senator Joshua Dariye was convicted of embezzling N1.16 billion[508]during his tenure as governor of Plateau State. He was sentenced to 14 years in prison for criminal breach of trust and two years for misappropriation of public funds, which were to run concurrently.[509] The Nigerian Supreme Court upheld his conviction in February 2020. However, on appeal, his 14-year sentence was reduced to 10 years.[510] In 2022, the administration of then-president Muhammadu Buhari granted him a state pardon, ostensibly due to his ill health and age.[511]

These pardons illustrate the erosion of legal accountability in Nigeria, where political considerations often trump legal processes. They also demonstrate the use of executive powers for political ends. The pardon power, while constitutionally vested, has been weaponised to shield corrupt officials from justice, reinforcing the culture of impunity and undermining efforts to combat official corruption.

These cases underscore the significant impact of political culture, cultural politics, political economy, and constitutional sociology on the prosecution of corruption in Nigeria. The centralisation of power in the executive and the role of political affiliations in prosecutorial decisions create an environment where official corruption often goes unchecked. The entwinement of legal processes with partisan

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[508] EFCC Alert! .2018. Available: https://www.efcc.gov.ng/efcc/images/efcc_alert/2018%20EFCC%20ALERTS/EFCC_Alert_July_2018.pdf [2025, April 11]. The USD to Naira exchange rate at the time was an average of USD1 to ₦126, which meant that he was charged with embezzling an equivalent of over $8,000,000.

[509] EFCC Media Report. 2018. Senator Joshua Dariye Bags 14 Years for N1.16BN Fraud. Available: https://www.efcc.gov.ng/efcc/news-and-information/news-release/3269-senator-joshua-dariye-bags-14-years-for-n1-16bn-fraud [2025, April 11].

[510] Oyeleke, S. 2021. Supreme Court Upholds Ex-Plateau Gov Dariye's 10-Year Jail Term. *Punch Newspapers*. Available: https://punchng.com/breaking-supreme-court-upholds-ex-plateau-gov-dariyes-10-year-jail-term [2025, April 11].

[511] Premium Times. 2022. Buhari Pardons Ex-Governors Dariye, Nyame Serving Jail Terms for Corruption; 157 others. Available: https://www.premiumtimesng.com/news/headlines/523946-buhari-pardons-ex-governors-dariye-nyame-serving-jail-terms-for-corruption-157-others.html?tztc=1 [2025, April 11].

politics fosters a culture of impunity, where the rule of law is frequently subordinated to political interests. The cases examined in this section reveal how executive interference, selective enforcement, and the misuse of pardon powers perpetuate official corruption and undermine trust in the Nigerian legal system.

5.4 Analysis: Selected Cases of Executive Interference in South Africa

The post-apartheid transition to majority rule in South Africa, particularly under the leadership of the ANC, has been besmirched by corruption at the highest levels of government.[512] While Nelson Mandela's presidency was largely free from corruption allegations, the expectation that successive ANC administrations would uphold this standard has proven misguided. The presidencies of Thabo Mbeki, Jacob Zuma, and Cyril Ramaphosa have all been tainted by corruption scandals.[513]

Jacob Zuma's tenure brought South Africa into the global spotlight for official corruption, culminating in the phenomenon of "State Capture".[514] However, even during Thabo Mbeki's presidency, the roots of official corruption were already taking hold. South Africa has witnessed numerous instances of executive interference in prosecuting official corruption, manifesting in various forms ranging from overt actions to a complex web of strategic state appointments, positioning of loyalists, and the deliberate weakening of state institutions.

These measures were often aimed at sustaining corrupt practices and preventing their prosecution. Many of these cases occurred under President Jacob Zuma, during which corruption became pervasive, earning the country the notorious label of being "*state captured.*"[515] This section examines instances of executive interference in prosecuting

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[512] Maseko, N. 2022. South Africa's Zondo Commission: Damning Report Exposes Rampant Corruption. *British Broadcasting Corporation*. https://www.bbc.com/news/world-africa-61912737 [2025, April 11].
[513] Haffajee, F. 2021. ANC Fails to Stop the Corruption Train – 32 Major Scandals, Four in 2021 Alone. Daily Maverick. https://www.dailymaverick.co.za/article/2021-10-07-anc-fails-to-stop-the-corruption-train-32-major-scandals-four-in-2021-alone [2025, April 11].
[514] See Chapter 5, 5.4.4 (*infra*); Raballand, G & Rijkers, B. 2021.State Capture Analysis: A How to Guide for Practitioners. Available: https://documents1.worldbank.org/curated/en/909361621214855803/pdf/State-Capture-Analysis-A-How-to-Guide-for-Practitioners.pdf [2025, April 11].
[515] Arun, N. 2019. State Capture, Zuma, the Guptas and the Sale of South Africa. *British Broadcasting Corporation*. Available: https://www.bbc.com/news/world-africa-48980964 [2025, April 11].

official corruption offences in South Africa, shaped by political culture, political economy, constitutional sociology, and cultural politics.

5.4.1 Impeding Investigations

Jackie Selebi's Case[516]

In 2006, the Scorpions,[517] South Africa's now-dissolved elite crime-fighting unit, began investigating Jackie Selebi, the then National Police Commissioner, for his connections to organised crime syndicates. The investigation uncovered credible allegations that Selebi had protected the criminals due to his long-standing personal relationship with their leader. Despite substantial evidence, the investigation encountered obstruction at various levels, particularly within the South African Police Service (SAPS), which withheld critical documents and video footage.

This interference highlighted the pervasive culture of political patronage and clientelism, where loyalty to the ruling party and its political leadership often took precedence over the rule of law. The NDPP, Advocate Vusi Pikoli, escalated the matter to the Minister of Justice and the Presidency, but SAPS continued to withhold the evidence.

In June 2007, during a briefing with the Minister of Justice, Advocate Pikoli conveyed the intention to prosecute Commissioner Selebi. Subsequently, upon obtaining arrest and search warrants for Selebi, the NDPP notified the Minister of Justice, urging her to inform President Mbeki and arrange a meeting for briefing purposes.

The NDPP subsequently met with the President to brief him on the developments in the case. Further to the directions of the Director General in the Presidency, the NDPP submitted a written report on the matter to the President. On receipt of the

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[516] Most of the information in this section is derived from the Frene Ginwala, Report of the Enquiry into the Fitness of Advocate VP Pikoli to Hold the Office of National Director of Public Prosecutions (November 2008) ("Ginwala Report"). https://www.gov.za/documents/other/report-enquiry-fitness-advocate-vp-pikoli-hold-office-national-director-public; [2025, April 11] and the excellent summary of the facts in Stenning, P.C. 2009. Discretion, Politics, and the Public Interest in "high-profile" Criminal Investigations and Prosecutions. *Canadian Journal of Law and Society*. 24(3): 350–355.

[517] See Chapter 3, 3.1.2 (*supra*).

report, the President noted to the NDPP that he would summon a plenary of the National Security Council to debrief them on the matter.

Subsequently, the Minister of Justice wrote to the NDPP demanding to be informed of the legal and evidentiary basis of the NDPP's case against Selebi. She also appeared to instruct the NDPP not to pursue the case against Selebi unless the NDPP received her approval. The NDPP challenged the constitutional validity of the Minister of Justice's demands and was suspended by the Minister of Justice and the Presidency.

Following the NDPP's suspension, the government set up the Ginwala Commission of Inquiry (the "Ginwala Commission"), headed by Dr. Frene Ginwala, to determine the NDPP's fit and proper character to hold office.[518] This revealed a troubling picture of executive interference in the prosecutorial process. The Ginwala Commission found that the government's rationale for suspending Advocate Pikoli was unsubstantiated. Advocate Pikoli submitted to the Commission that his suspension was motivated by the President's attempt to shield his friend, Commissioner Selebi, from prosecution.[519] However, based on other surrounding facts, the Ginwala Commission disagreed that this was the case.[520]

Furthermore, the Ginwala Commission found that the Minister of Justice's letter to Advocate Pikoli was an unlawful attempt to interfere with Advocate Pikoli's prosecutorial independence.[521] The Ginwala Commission found that the government did not prove its grounds for suspending the NDPP and recommended his reinstatement. However, the President of South Africa, Kgalema Motlanthe, who had replaced President Mbeki, citing the "*illogical*"[522]recommendations of the Ginwala

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[518] Ginwala, F. 2008. *Report of the Enquiry into the Fitness of Advocate VP Pikoli to Hold the Office of National Director of Public Prosecutions*. Available at: https://www.gov.za/documents/other/report-enquiry-fitness-advocate-vp-pikoli-hold-office-national-director-public [2025, April 11].
[519] Ginwala Report. 175, para 282.
[520] *Ibid*. 175-176, paras 282-284.
[521] *Ibid*. 179, para 289.
[522] Stenning, P.C 2009. Discretion, Politics, and the Public Interest in "high-profile" Criminal Investigations and Prosecutions (*supra*), at 355.

Commission, opted not to reinstate the NDPP.[523] Consequently, Parliament upheld the NDPP's suspension, leading to legal challenges by Advocate Pikoli.

A couple of weeks after his suspension, Acting NDPP Moketedi Mpshe successfully applied to have Selebi's arrest warrant cancelled pending the outcome of a review of the case. However, he was unsuccessful in his application to cancel the search warrants.[524]The Ginwala Report was very detailed and presented an insightful analysis regarding the place of the Prosecution within the South African executive and the challenges of prosecutorial independence.

Although the Ginwala Commission did not find that Pikoli was suspended to forestall the investigation of Selebi, it must be noted that the circumstances leading up to the suspension were suspiciously redolent of unlawful interference in the investigation of Commissioner Selebi. The fact that the Acting NDPP moved swiftly to vacate Commissioner Selebi's search and arrest warrants lent credence to arguments about attempts to impede his investigation.[525] This situation underscores how ascriptive influence, personal interests, and executive pressures can exert undue influence over prosecutorial actions.

5.4.2 Influencing the Bringing of Prosecutions

Jacob Zuma and the Arms Deal Case[526]

This case was contemporaneous with Commissioner Selebi's investigation, and it exemplifies the intersection of prosecutorial independence and political interference. It resulted in far-reaching political ramifications in the country, with President Thabo Mbeki resigning and Jacob Zuma eventually emerging as President. Zuma was a long-time friend and ally of President Mbeki, and both were part of the liberation struggle

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[523] President Motlanthe claimed that "[t]he recommendations made by the report that Pikoli should be restored to office is illogical. Once you have gone through the full report including his own representations, you would come to that same conclusion." Stenning, P.C. 2009. Discretion, Politics, and the Public Interest in "high-profile" Criminal Investigations and Prosecutions (*supra*), at 355.

[524] National Prosecuting Authority. 2007. National Prosecuting Authority on Investigation of J Selebi. Available: https://www.gov.za/news/national-prosecuting-authority-investigation-j-selebi-05-oct-2007 [2025, April 11].

[525] Letsoala, M & Rossouw, M. 2010. Court Finds Selebi Guilty. *Mail & Guardian*. Available: https://mg.co.za/article/2010-07-02-court-finds-selebi-guilty. [2025, April 11].

[526] Most of the facts of this case were culled from the excellent summary of the facts in Stenning, P.C. 2009. Discretion, Politics, and the Public Interest in "high-profile" Criminal Investigations and Prosecutions. (*supra*), at 350–355.

to transition South Africa to majority rule. He was also the Deputy President under President Mbeki and intended to succeed his principal eventually. Their relationship subsequently became strained.

Zuma was implicated in receiving bribes as Deputy President in a multi-billion-dollar arms procurement deal and found himself at the heart of a prolonged legal battle. Despite a prima facie case against him, the NPA initially decided not to prosecute, citing weak prospects of success.[527]The context of this decision was instructive.

Tony Yengeni, the then ANC Chief Whip, was convicted for his involvement in the bribery scheme on the same facts that the NDPP based their decision not to prosecute Zuma. Secondly, the decision was made by the same NDPP who replaced Advocate Pikoli and sought to vacate his arrest and search warrants for Selebi. At the time, the decision not to prosecute Zuma was widely perceived as politically motivated, particularly when considering his upcoming leadership challenge against President Mbeki within the ANC.

In 2005, President Mbeki relieved Zuma of his duties as Deputy President following the conviction of Schabir Shaik, Zuma's financial adviser, for corruption and fraud. During Mr. Shaik's trial, his close relationship with Zuma featured prominently, and the trial judge noted that the relationship between the two men was of "*mutually beneficial symbiosis*."[528]

The NPA eventually charged Zuma with corruption. However, the charges relating to his involvement in the arms deal graft were struck out after the court dismissed the NPA's application for an extension to procure admissible evidence in connection with that case. Zuma and his legal team argued that the case against him was politically driven to undermine his aspirations to challenge President Mbeki for the leadership of the ANC and, ultimately, the South African Presidency.[529]

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[527] *National Director of Public Prosecutions v. Zuma*, 2009 ZASCA 1 (S.C.A.) at para. 40 [NDPP v. Zuma].
[528] Stenning, P.C. 2009. Discretion, Politics, and the Public Interest in "high-profile" Criminal Investigations and Prosecutions (*supra*), at 21.
[529] Feinstein, A. 2008. The ANC's Awful Choice. Prospect. 142. Available: https://www.prospectmagazine.co.uk/opinions/51973/the-ancs-awful-choice [2025, April 11].

After Zuma replaced Mbeki as ANC leader, the NPA's decision was reversed, but accusations of political manoeuvring again tainted this new decision.[530] The role of political culture and party loyalty in shaping the NPA's actions cannot be understated. As the ANC's internal power struggles unfolded, Zuma's prosecution seemed to be contingent on his political fortunes rather than the merits of the case, highlighting the fusion of politics with legal proceedings.

There was a judicial finding[531] that some cases against Zuma were politically driven under suspicious circumstances.[532] Although this did not go to the merits of those cases,[533]it showed that the executive deployed the Prosecution as an instrument of political retribution. Consequently, President Mbeki was forced to resign from office by his opponents and Zuma's supporters in the ANC.

Zuma contemporaneously contested the presidency of South Africa while the charges against him were pending. After meeting with Zuma's lawyers, the NPA disclosed tape recordings that allegedly demonstrated political interference in the decision to re-indict Zuma. The NDPP again reversed the decision to prosecute Zuma[534] and he was elected President soon after.[535]

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[530] Mail & Guardian online. 2007. Zuma Charged with Corruption, Fraud. Available: http://www.mg.co.za/article/2007-12-28-zuma-charged-with-corruption-fraud. [2025, April 11].

[531] See generally, *Zuma v. National Director of Public Prosecutions*, 2008 ZAKZHC 71, [2009] All S.A. 54 (Natal Prov. Div.).

[532] Stenning, P.C. 2009. Discretion, Politics, and the Public Interest in "high-profile" Criminal Investigations and Prosecutions (*supra*), at 357. For example, the NDPP decided not to prosecute Zuma when they prosecuted his alleged co-conspirator, Mr. Shaik, on the same facts; the vacillation by the NDPP to charge Zuma which suspiciously coincided with political events regarding his contention for the ANC presidency; the presence of the Minister of Justice at the press conference held by the NDPP to announce the decision to re-indict Zuma; as well as the circumstances surrounding the suspension of the erstwhile NDPP over the Selebi matter.

[533] *National Director of Public Prosecutions v. Zuma*, [2009] ZASCA 1 (S.C.A.). See generally, de Vos, P. 2009. SCA Delivers a Scathing Critique of Nicholson. Available: https://constitutionallyspeaking.co.za/sca-delivers-a-scathing-critique-of-nicholson/. [2025, April 11].

[534] Mpshe, M. 2009. Statement by the National Director of Public Prosecutions on the Matter S v Zuma and Others. http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=124273&sn=Detail. [2025, April 11].

[535] The decision to discontinue the charges again was successfully contested by the South African opposition party, the Democratic Alliance. In 2016, the Pretoria High Court ruled that the decision to discontinue the charges was improper and procedurally flawed. President Zuma and the NPA challenged this decision without success at the Supreme Court of Appeal. Barely a month after he resigned from office, the NDPP decided to reinstate the charges against Zuma for fraud, corruption, racketeering and money laundering.

This case demonstrates the influence of cultural politics, exemplified by partisan politics and constitutional sociology, which is typified by Zuma's liberation struggle credentials on prosecutorial decision-making. The legal entanglements, compounded by the suspension of key figures within the NPA, reveal how executive interference can delay justice and ultimately undermine the credibility of the prosecutorial system. This case demonstrates how cultural politics undermine prosecutorial independence and how political loyalty and party affiliations shape the trajectory of legal processes. It also shows the inequality under the law in South Africa, where persons involved in the same scandal as Zuma were convicted while Zuma ascended to the South African presidency.

5.4.3 Dissuading Prosecutions

State Capture

State Capture refers to the systematic abuse of power by politicians and business elites who manipulate state institutions for personal gain, undermining the integrity of government institutions.[536] During Zuma's presidency, the Gupta family[537] and their associates were implicated in pervasive corruption, with ties to state-owned enterprises and key government ministries.[538] This widespread corruption and political influence network infiltrated law enforcement and intelligence agencies, creating a façade of legitimacy for the unlawful diversion of public resources.

Various actors, including opposition parties, civil society, and investigative bodies, spearheaded the resistance against State Capture. However, Zuma's direct interference with prosecutorial agencies, particularly the NPA, significantly impeded meaningful legal action against those involved in State Capture. The ANC's cadre deployment policy, introduced in 1997, further entrenched corruption by placing loyal

[536] Alence, R. & Pitcher, A. 2019. Resisting State Capture in South Africa. *Journal of Democracy*. 30(4):18.
[537] See Chapter 2, 2.4.2 (*supra*).
[538] Alence, R. & Pitcher, A. 2019. Resisting State Capture in South Africa (*supra*), at 13.

ANC members in key positions within state institutions regardless of their qualifications.[539]

In 2016, the DA filed a complaint with the Public Protector,[540] alleging the involvement of President Zuma and the Gupta family[541] in corrupt activities. The Public Protector, Thuli Madonsela, investigated these allegations, leading to the eventual release of the culmination of her findings in October 2016 in a report titled "*State of Capture*".[542] The report recommended the establishment of a commission of inquiry into State Capture. President Zuma resisted this recommendation and applied to the High Court to set it aside, among other grounds, that the Public Prosecutor overreached herself and that her recommendations directing the President to institute a commission of inquiry were unconstitutional.[543]

The High Court dismissed this application, and President Zuma appealed. Contemporaneously, there were political pressures from within his party and the opposition to constitute the commission of inquiry. Perhaps perceiving that his chances of success through both courts or by way of political manoeuvring were negligible, President Zuma yielded and constituted the commission of inquiry, the Zondo Commission. He resigned a few months later.[544]

The Zondo Commission is eponymously named after its chairperson, Deputy Chief Justice Raymond Zondo. Per its terms of reference, it was mandated to "*investigate allegations of State Capture, Corruption, Fraud and other allegations in the Public Sector in South Africa*."[545] After four years of extensive investigation, it

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[539] Democratic Alliance. N.d. Get Things Done: State Capture. Available: https://cdn.da.org.za/wp-content/uploads/2022/04/25090142/Gets-Things-Done-State-Capture.pdf. [2025, April 11].
[540] An office constitutionally established for the strengthening of constitutional democracy in South Africa. See South African Constitution. s.181 (1) (a).
[541] See Chapter 2, 2.4.2 (*supra*).
[542] State Capture. Report of No: 6 of 2016/17. Available : https://www.gov.za/sites/default/files/gcis_document/201611/stateofcapturereport14october2016_0.pdf. [2025, April 11].
[543] See generally the summary of the facts in *Zuma v Office of the Public Protector and Others* (1447/2018) [2020] ZASCA 138.
[544] See generally the summary of the facts in *Zuma v Office of the Public Protector and Others* (1447/2018) [2020] ZASCA 138 (30 October 2020).
[545] Government Gazette, 25 January 2018, Proclamation No. 3, of 2018. Available at www.gpwonline.co.za [2025, April 11].

submitted its report in June 2022.[546] The report was painstaking and comprehensive and implicated over 1,438 people in corruption and State Capture.

It found that State Capture in South Africa was "*facilitated by a deliberate effort to exploit or weaken key state institutions and public entities, but also including law enforcement institutions and the intelligence services*."[547] The report also contained extensive recommendations to address the structural imbalances in the government that led to State Capture and to forestall future occurrences. Furthermore, it found that the ANC was a massive beneficiary of State Capture and that its officers were instrumental in its facilitation through active engagement in corrupt practices. It also determined that the ANC allowed corruption to flourish under its leadership and created a conducive environment for State Capture under President Zuma.[548]

The Zondo Commission submitted that the ANC's cadre employment policy contributed to State Capture. This is because it led to the appointment of many unqualified and inexperienced persons into public service positions, thereby weakening public service institutions and rendering them vulnerable to corruption and State Capture.[549] The NPA's failure to act decisively against State Capture highlights the limitations of prosecutorial independence in a system where political patronage and party loyalty override institutional integrity.

These cases illustrate how executive interference, driven by political culture, cultural politics, and constitutional sociology, has shaped executive interference in prosecuting official corruption offences in South Africa. The political manoeuvring and power struggles within the ANC have often overridden the rule of law, with high-ranking officials using their influence to obstruct or delay justice. Zuma's tenure, marked by State Capture, underscores how political influence can infiltrate legal institutions and compromise their independence.

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[546] Available: https://www.statecapture.org.za/site/information/reports. [2025, April 11]
[547] State of the Nation: The State Capture Inquiry. https://www.stateofthenation.gov.za/priorities/fighting-corruption/the-state-capture-inquiry. [2025, April 11].
[548] See Zondo Commission. Judicial Commission of Inquiry into State Capture Report. Vol 6. Part 2. 197: paras 507-509.
[549] *Ibid*. 282: para 733.

While South Africa has a legal framework that theoretically supports prosecutorial independence, the reality of executive overreach and party politics often undermine these principles. The Zondo Commission's findings were a sobering reminder of the systemic failures that allowed corruption to thrive at the highest levels of government. Ultimately, the challenge remains for South Africa to strengthen its legal institutions and ensure that political influence does not compromise the pursuit of justice, particularly in the fight against official corruption.

5.5 Analysis: Selected Cases of Executive Interference in the United States

The U.S., with its long history of democratic governance, has been no stranger to executive interference in prosecuting official corruption and other offences. Despite its well-established system of checks and balances, the U.S. has consistently faced challenges of executive overreach. These challenges are exacerbated by partisanship, cultural politics, and political patronage, which influence executive interference and undermine the independence of prosecutorial bodies.

5.5.1 Impeding Investigations

The Watergate Scandal[550]

The Watergate scandal is one of the most pivotal moments in U.S. political history, shaping the relationship between the executive branch and the rule of law.[551] In brief, it centred on concerted efforts of President Nixon's administration to conceal its involvement in the illegal burglary and illicit wiretapping of the Democratic National Committee headquarters in the Watergate Office Building, Washington, D.C.

While Nixon's direct involvement in the break-in remained unproven, evidence emerged suggesting his participation in the subsequent cover-up and obstruction of justice. This event exposed the executive's failure to uphold the law and highlighted the dangers of unchecked executive power. Nixon's refusal to release evidence, his interference with the investigation, and the eventual dismissal of Special Prosecutor

[550]Perlstein, R. 2025. Watergate Trial and Aftermath. *Britannica*. Available: https://www.britannica.com/event/Watergate-Scandal/Watergate-trial-and-aftermath; [2025, April 11]; Chouinard, K. 2017. The Watergate Scandal and Its Aftermath. *Journal of Political Sciences & Public Affairs*. 5(04):4–6.

[551] Cannon, J. 2014. Gerald R. Ford: An Honorable Life. Michigan. University of Michigan State Press. 4.

Archibald Cox exemplified the political culture that prioritised executive protection over legal accountability.

Nixon's attempt to persuade the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA) to refrain from investigating his involvement demonstrated how political loyalty, shaped by partisan ties and a patronage system, can distort the rule of law and compromise prosecutorial independence. The case underlined how the political culture of the time incentivised the protection of political power at the expense of accountability.

In the wake of the Watergate Scandal, the U.S. Congress introduced several measures, including legislation limiting executive control over the DOJ. These include the Foreign Intelligence Surveillance Act,[552] The Ethics in Government Act,[553] and the Inspector General Act.[554] Still, in response to the Watergate Scandal, a succession of Attorneys General implemented various internal reforms within the DOJ to forestall a similar occurrence.[555]

5.5.2 Influencing and Dissuading the Bringing of Prosecutions

Donald Trump's Influence over the DOJ

During his first term as President (January 2017-January 2021), Donald Trump's repeated assertions of his authority to control the DOJ exemplified a fundamental challenge to the principle of prosecutorial independence. Trump's claim that he had the "*absolute right*"[556] to direct the Justice Department to open or close investigations reflected a broader constitutional sociology in which the executive sought to consolidate power over the legal apparatus. His actions, including pressuring federal

[552] Foreign Intelligence Surveillance Act, 1978, Pub. L. 95-4511, 92 Stat. 1783. This legislation prescribes the process that must be followed by the United States government before surveilling United States citizens and provides congressional and judicial oversight over that process.
[553] Ethics and Government Act, 1978, Pub. L. 95-521, 92 Stat. 1824. This legislation is famously known for setting out the basis for the appointment of a special counsel by the Attorney General.
[554] Inspector General Act,1978, Pub. L. 95-452, 92 Stat. 1101, as amended at 5 U.S.C. App. § 1 *et. Seq*, which creates the offices of the Inspector General for various departments and grants them the powers to conduct investigations into fraud and to review internal documents.
[555] See generally Peterson, T.D. 2020. Federal Prosecutorial Independence (*supra*), at 266-269.
[556] New York Times. 2017. Excerpts of Trump's Interview with The Times. Available: https://www.nytimes.com/2017/12/28/us/politics/trump-interview-excerpts.html. [2025, April 11].

prosecutors to pursue charges against political rivals and halt investigations into allies, highlighted the executive's potential to influence prosecutorial outcomes for partisan advantage.

Trump's statement on his ability to influence investigations, including those involving his 2016 election rival, Hillary Clinton, illustrated his belief in executive supremacy over prosecutorial independence.[557] By attempting to direct the course of investigations, including his interference in the investigation of Roger Stone, Trump's actions reinforced the political culture of patronage that permeated his administration. Roger Stone, a political ally of President Trump, was convicted of lying to the U.S. Congress in connection with the Robert Mueller investigation.[558] President Trump and his political allies, including the then-U.S. Attorney General, Bill Barr, interfered in Mr. Stone's sentencing recommendations to grant him a much-reduced prison term than had been recommended by prosecutors.

The intervention in Stone's sentencing, where Trump and Attorney General Bill Barr sought to reduce the sentence of a close ally, revealed how political loyalty was rewarded with prosecutorial leniency, contributing to public disillusionment with the justice system. The resignation of the four prosecutors who worked on Stone's case symbolised the ethical conflict faced by legal professionals when subjected to such political pressure.[559]

A former U.S. Attorney, Geoffrey Berman, alleged that Barr tried to dissuade him from prosecuting the President's allies. When he refused, he was dismissed from the job. Barr intended to replace Berman with a more pliable attorney who would be

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[557] Zapotosky, M & Nakashima, E. 2016. Trump's Comments on Clinton Raise Questions About Justice Department Independence. *The Washington Post*. www.washingtonpost.com/world/national-security/trumps-comments-on-clinton-raises-questions-about-justice-department-independence/2016/11/22/7de6eaaa-b0cc-11e6-840f-e3ebab6bcdd3_story.html. [2025, April 11].

[558] This was an investigation into an alleged collusion by Trump with the Russian Federation to influence the 2016 United States presidential elections. Mueller, R.S. 2019. *The Mueller Report*. e-artnow. Available: https://copblaster.com/uploads/files/mueller-report_compressed.pdf. [2025, April 11].

[559] Shortell, D., Perez, E., Polantz, K., Collins, K., & Herb, J. *CNN*.2020. All 4 Federal Prosecutors Quit Stone Case After DoJ Overrules Prosecutors on Sentencing Request. Available: https://www.cnn.com/2020/02/11/politics/roger-stone-sentencing-justice-department/index.html. [2025, April 11]; See also, Jenican, J. .2020. The Roger Stone Affair: An Examination of the Legal, Normative, and Ethical Restraints on Presidential Interference in Prosecutorial Decisions. *Georgetown Journal of Legal Ethics* (*supra*), at 1057.

subservient to Barr's and President Trump's wishes.[560] This culture of interference continued even after Trump's successful second-term re-election bid in 2024.

On assumption of office in 2025, Trump pushed for the dismissal of corruption charges against Eric Adams, allegedly in exchange for political support. Adams, a Democrat and a New York state mayor, was indicted for acts of official corruption and faced federal charges. After Trump's re-election, Adams visited Trump several times before his inauguration. He also openly supported Trump's policies, especially on immigration, despite being a Democrat.

President Trump's Attorney General, Pam Bondi, directed the DOJ to dismiss all the charges against Adams. This caused widespread outcry and allegations that this was a quid pro quo arrangement between President Trump and Adams to reward the latter's support of the former's immigration policies. Though President Trump denied that he instructed the Prosecution to drop the charges, communication from the Deputy Attorney General, Emil Bove, contradicted this claim. In his response to the objections of the federal prosecutors in charge of the case to the dismissal, Bove claimed that the prosecutors were "*disobeying direct orders implementing the policy of a duly elected President*".[561]

Trump also dismissed some DOJ lawyers who investigated his alleged misuse of classified documents when he lost his first re-election bid. Trump officials claimed that the lawyers could not be trusted to implement his policies.[562] This further illustrated the extent to which the executive sought to control legal proceedings, undermining the DOJ's autonomy. These instances of interference underscore the dangers of a politicised justice system, where political expediency often influences legal outcomes

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[560] Green, B.A. & Roiphe, R. 2023. Depoliticizing Federal Prosecution. *Denver Law Review*. 100(4):819. Lynch, S., 2020. Democrats Accuse 'President's Fixer' Barr of Political Meddling in U.S. Justice System. *Reuters*. Available: https://www.reuters.com/article/us-usa-congress-justice/democrats-accuse-presidents-fixer-barr-of-political-meddling-in-u-s-justice-system-idUSKBN23V2KT. [2025, April 11].

[561] Berger, Eric. 2025. Eric Adams, Trump and a New York Story That's Stress-Testing the Rule of Law. *The Guardian*. Available: https://www.theguardian.com/us-news/2025/feb/18/eric-adams-donald-trump-corruption-case. [2025, April 11].

[562] Upadhyay, B. 2025. Trump Administration Fires Justice Department Lawyers Who Investigated Him. *BBC News*. Available: https://www.bbc.com/news/articles/cy48j7yxl08o. [2025, April 11].

rather than fairness and impartiality. Furthermore, his decision to dismiss a career prosecutor within the DOJ has heightened fears about the executive's attempt to blur the post-Watergate line of separation between the executive and the Prosecution in the U.S.[563]

5.5.3 Pardons and Commutations

The Use of Pardons as Executive Leverage

A significant aspect of Trump's interference in legal proceedings is the use of the presidential pardon power. The issuance of pardons and commutations to political allies convicted of corruption and other offences demonstrated how the executive could exercise this power to reward loyalty and quash potential consequences for political figures. Trump's pardoning of Roger Stone, Paul Manafort,[564] and Rod Blagojevich[565] exemplified how presidential clemency could be wielded to protect political associates from the legal repercussions of their actions.

Roger Stone and Paul Manafort

The case of Roger Stone highlights the role of pardons in reinforcing the political patronage system. Trump's commutation of Stone's sentence, followed by a full pardon, was seen as a direct challenge to the rule of law,[566] as it allowed a politically connected individual to evade the consequences of criminal conduct. Similarly, Paul Manafort, Trump's campaign chairman, received a pardon after being convicted of financial crimes. Trump framed the decision as a response to "*blatant prosecutorial*

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[563] Reilly, R. 2025. White House Firing of a Career Prosecutor Pulls Justice Department under Ever-Closer Control. Available: https://www.nbcnews.com/politics/justice-department/white-house-firing-career-prosecutor-pulls-justice-department-ever-clo-rcna198864. [2025, April 11].

[564] Paul Manafort Convicted: What Did We Learn from Trial? 2018. British Broadcasting Corporation. Available: https://www.bbc.com/news/world-us-canada-45200224. [2025, April 11].

[565] Edelman, A & Gregorian, D. 2021. NBC News. Trump Commutes Sentence of Former Ill. Gov. Rod Blagojevich, Pardons ex-NYPD Commissioner Bernard Kerik. *NBC News*. Available: https://www.nbcnews.com/politics/donald-trump/trump-expected-grant-clemency-former-ill-gov-rod-blagojevich-ex-n881051. [2025, April 11].

[566] Kelly, A., Lucas, R., & Romo, V. 2020. Trump Pardons Roger Stone, Paul Manafort, and Charles Kushner. National Public Radio. Available: https://www.npr.org/2020/12/23/949820820/trump-pardons-roger-stone-paul-manafort-and-charles-kushner. [2025, April 11].

overreach",[567] further deepening the partisan divide. This statement demonstrates that President Trump did not grasp his constitutional position within the U.S. government. He felt better placed to direct prosecutions and determine who should be found guilty or acquitted.

Rod Blagojevich

Trump's commutation of Rod Blagojevich's sentence raised additional concerns about the erosion of the separation of powers and the rule of law. Blagojevich, a former Illinois governor convicted of corruption, was granted clemency by Trump, despite the severity of his crimes. Trump's justification, claiming that Blagojevich had received an overly harsh sentence, reflected his tendency to prioritise political loyalty over legal principles, further undermining public trust in the fairness of the justice system.[568]

January 6 Rioters

On his return to office, Trump issued blanket presidential pardons and commutations to the 1,600 people convicted of rioting at the U.S. Capitol on January 6, 2021. The riot occurred in the immediate aftermath of Trump's loss of his first re-election bid to Joe Biden in November 2020. His supporters descended on the U.S Capitol building in Washington, D.C, causing destruction of property and harm to law enforcement personnel. Most of them were eventually tried and convicted under the Biden administration.[569]

Trump always maintained that the trials were witch-hunts and a sham, like all the investigations and trials against him.[570] He vowed to pardon the rioters if he ever

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[567] Kelly, A., Lucas, R., & Romo, V. 2020. Trump Pardons Roger Stone, Paul Manafort, and Charles Kushner. National Public Radio. https://www.npr.org/2020/12/23/949820820/trump-pardons-roger-stone-paul-manafort-and-charles-kushner. [2025, April 11].
[568] Edelman, A & Gregorian, D. 2021. NBC News. Trump Commutes Sentence of Former Ill. Gov. Rod Blagojevich, Pardons ex-NYPD Commissioner Bernard Kerik (*supra*).
[569] FitzGerald, J. What Are Presidential Pardons and Who Are The 1,600 People Trump Has Pardoned? *BBC News*. Available: https://www.bbc.com/news/articles/c99x07ny8lro. [2025, April 11].
[570] Han, H. 2023. Debunking Trump's Witch Hunt Theory. *Lawfare*. Available: https://www.lawfaremedia.org/article/debunking-trump-s-witch-hunt-theory. [2025, April 11]. France24. 2023. Trump Turns New York Fraud Trial into Campaign Stop, 'A Witch Hunt'. Available: https://www.france24.com/en/americas/20231003-trump-turns-new-york-fraud-trial-into-campaign-stop-a-witch-hunt. [2025, April 11].

won re-election to the White House. Democrats and other members of the opposition heavily criticised these pardons. Trump's pardons for individuals involved in the January 6, 2021, Capitol riots added to the concerns surrounding his use of executive clemency. By issuing pardons to those convicted of rioting, Trump's actions reinforced the idea that loyalty to the executive could shield individuals from legal accountability, especially in cases where political motivations were involved.

Biden's Pardons

Towards the end of his presidency, President Joe Biden issued many controversial pardons, including those to his son, his siblings, and political associates. He claimed that this was done to shield them from inevitable political persecution by the incoming Trump administration. President-elect Trump and his Republican supporters lampooned the pardons, which they regarded as corrupt and a subversion of justice.[571]

Biden's pardons demonstrated how the pardon power remained a political tool, often used to shield politically affiliated individuals from prosecution. The political divide surrounding pardons—whether granted by Trump or Biden—revealed the extent to which partisan interests shaped legal outcomes and exacerbated tensions within the U.S. political system.

These cases reveal how executive interference in prosecutorial processes has undermined the rule of law in the U.S. From the Watergate scandal, where Nixon's efforts to obstruct justice highlighted the dangers of unchecked executive power, to the politically motivated pardons and commutations under Presidents Trump and Biden, the U.S. has witnessed numerous instances where the political culture and cultural politics have allowed the executive to exert undue influence over legal proceedings. While the U.S. has a well-established system of checks and balances, these cases demonstrate that executive overreach remains a persistent challenge, particularly when political loyalty and partisan considerations dictate legal decisions.

[571] Debusmann, D, & Wong, V. 2025. Biden Issues Pre-Emptive Pardons for Siblings, Fauci and Jan 6 Riot Panel. *BBC News*. Available: https://www.bbc.com/news/articles/c8r5g5dezk4o. [2025, April 11].

The political culture in the U.S., characterised by increasing partisanship and loyalty to political leaders, further complicates the relationship between the executive and the Prosecution. As political figures use their power to reward allies and punish enemies through the justice system, the separation of powers is tested, leading to questions about the independence of the prosecutorial bodies.

The role of pardons and commutations in shaping the legal landscape further demonstrates how the political culture and cultural politics can erode the impartiality of the justice system. Ultimately, these examples illustrate the need for continuous vigilance to protect prosecutorial independence and ensure that the rule of law prevails, regardless of political pressures.

5.6 Analysis: Constitutional and Statutory Allocation of Prosecutorial Powers

The recurring instances of executive interference in the three countries raise significant concerns regarding the rule of law, the separation of powers, and the independence of the prosecutorial function. As previously noted, the separation of powers is one of the supporting pillars of the rule of law in democratic societies.[572] Its primary aims of delineating powers amongst the arms of government and providing accountability mechanisms through the guideposts of checks and balances bolster the rule of law principle of the absence of absolutism. Since the executive has continued to exercise suzerainty over prosecutions, we must ascertain how this power has been separated and allocated to the executive constitutionally or statutorily.

5.6.1 Analysis: Nigeria

In Nigeria, the Constitution explicitly vests the prosecution of criminal offences in the executive branch,[573] specifically assigning prosecutorial powers to the Attorney General, a political appointee of the executive.[574] This structure places the Attorney General directly under the influence of the President. This political relationship compromises the independence of the Prosecution and fosters an environment where

[572] *Myers v. United States*, 1926 272 U.S. 52, 293.
[573] CFRN. s.5. See Chapter 5, 5.3 (*supra*).
[574] *Ibid. s.*150. See Chapter 5, 5.3 (*supra*).

legal processes are often manipulated to protect the interests of the President and their ruling party.[575]

The lack of clear constitutional guidelines governing the exercise of prosecutorial powers creates room for executive interference, particularly when political interests are at stake. However, the constitutional requirement is that the Attorney General will balance prosecutorial duties with "*regard to the public interest, the interest of justice and the need to prevent abuse of legal* process".[576]

Given the constitutional guidance to the Attorney General, the President is obligated to appoint a person who is fit for the office and capable of fulfilling its requirements, including adhering to applicable constitutional guidelines in executing their duties. Since prosecution is exclusively an executive function in Nigeria, the guidance provided to the Attorney General also implicitly applies to the President.

If the executive is rightly expected to demand that the Attorney General adhere faithfully to the constitutional guidelines, it would be inconsistent for the executive to take actions or issue instructions that would undermine the Attorney General's ability to comply with these guidelines. This implies that the executive must not only appoint an Attorney General who meets the required standards but must also refrain from interfering in a manner that would compromise the Attorney General's adherence to the applicable constitutional principles.

The Nigerian Supreme Court's interpretation of prosecutorial independence has further entrenched a problematic situation. The Court has ruled that the criteria set forth by the Constitution to guide the Attorney General's actions, such as public interest and the need to prevent legal process abuse, are not mandatory conditions for prosecutorial decision-making.[577] This has facilitated an entrenched culture of improper presidential control over the Prosecution, hinged on political patronage rather than adherence to legal principles.

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[575] See Chapter 5, 5.3 (*supra*).
[576] CFRN. s174 (3).
[577] *State v. Ilori & Ors* (*supra*) per Kayode, Eso. J.S.C.

Since the Fourth Republic,[578] this pattern of behaviour has persisted regardless of the party or individual occupying the presidency, as every administration treats the Prosecution as an extension of its power.[579] At first glance, this situation appears to fall within the executive's constitutionally allocated powers, as even the highest court has affirmed its authority in this respect. However, a closer examination of the Constitution reveals that such exertion of control, particularly when it undermines the rule of law, is fundamentally unconstitutional.

The purpose of the Nigerian Constitution is "…*promot[e] the good government and welfare of all persons in our country, on the principles of freedom, equality and justice*....".[580] A literal and purposive interpretation of this provision highlights the framers' intent for the Constitution to serve as a lodestar for the rule of law in Nigeria's governance.

The influence of inequitable and partisan considerations in prosecuting official corruption offences undermines the constitutional principles of equality and justice. Those in power must be reminded that their authority is derived, and its exercise must be measured, justified, or challenged against the benchmark of this higher constitutional purpose.[581] Although the Constitution does not contain detailed guidance on exercising prosecutorial powers, it provides sufficient principles to demand the just exercise of this power. Therefore, the executive must self-regulate and submit to the rule of law, recognising that its authority is derivative and does not originate from transient political power.

Another aspect of the separation of powers similarly compromised is the pardon power. Like prosecutorial authority, the Nigerian Constitution does not provide specific guidelines for the executive to consider when exercising pardon powers.[582]

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[578] See Chapter 1, 1.1 (*supra*).
[579] See Egbe, O.D. & Muhammad, A. A .2024. Interrogating Democratisation Deficits in Nigeria's Fourth Republic.4 In *Nigeria's Democracy in the Fourth Republic.* Egbe, O.D & Muhammad, A.A (Eds). Cambridge Scholars Publishing.
[580] Preamble to the CFRN.
[581] Harvey, W.B. 1961. The Rule of Law in Historical Perspective. *Michigan Law Review*. 59:49.
[582] CFRN, s.175(1) (a-d).

The Constitution provides that the President must consult with the Council of State before exercising the pardon power.[583]

The Council of State is a mere advisory body headed by the President as Chairman, the Vice President, the Senate President, the Speaker of the House of Representatives, former presidents, all former Chief Justices of Nigeria and the Attorney General.[584] Considering that half of this body's membership comprises the President and functionaries who are most likely members of his party or his appointees, it is plausible that this body would rubber stamp the President's course of action. Even if they recommend to the contrary, the President is only required to consult them but not heed their recommendation.

Nigeria's political culture and cultural politics have reinforced the systemic nature of executive interference in prosecuting official corruption. Political patronage, where loyalty to the ruling party is rewarded with protection from prosecution, has created a climate where official corruption can flourish unchecked. This system is exacerbated by the cultural politics, where the consolidation of power within the executive ensures that prosecutions align with the interests of those in power. This creates an environment of selective justice, where only specific individuals or political parties face the consequences of corruption, while others are shielded by their political affiliations.

The executive's unchecked power over the Prosecution, combined with the systemic corruption of political institutions, undermines the legitimacy of the legal system and the capacity of the state to enforce accountability. The Nigerian case illustrates how political culture, cultural politics, and constitutional sociology shape the effectiveness of legal frameworks meant to curb corruption.

[583] *Ibid*. s.175(2).
[584] *Ibid*. Third Schedule, Part I, B.

5.6.2 Analysis: South Africa

South Africa's constitutional framework establishes the principle of the separation of powers, although the term itself is not explicitly used.[585] While the Prosecution is recognised as a constitutional entity, it falls under the control of the executive.[586] However, the Constitution ensures safeguards against potential abuses by the executive, which could undermine prosecutorial independence.

The South African Constitution is explicitly committed to preventing executive interference with the prosecution process. It stipulates that national legislation governing the Prosecution must ensure that it operates without fear, favour, or prejudice.[587] The NPA Act, which gives effect to these provisions, asserts that no person or state organ, including the executive, may interfere with the Prosecution in the performance of its functions. The Act provides that the Prosecution must be free from external and internal pressures that may compromise its independence. This reflects a clear intention to protect the NPA from potential political influence that could distort justice.

Despite these constitutional protections, the South African executive, particularly under Presidents Thabo Mbeki and Jacob Zuma, repeatedly influenced the Prosecution.[588] President Zuma's tenure was marked by efforts to control investigations and prosecutions related to corruption allegations against him and his associates. This interference threatened the integrity of the prosecutorial process, undermining public trust in the ability of the legal system to hold influential figures accountable.[589]

In contrast to Nigeria, South Africa's judiciary has been a crucial counterbalance to executive overreach. The South African courts have consistently upheld the independence of the NPA, reaffirming that prosecutorial discretion cannot be

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[585] See Ss. 43, 85, and 165, which allocate powers to the legislature, the executive, and the judiciary, respectively.
[586] South African Constitution, s.85(2)(a). Seedorf, S & Sibanda, S. 2009. Separation of powers. In *Constitutional Law of South Africa*. Woolman *et al* (Eds.). (loose-leaf updated to 1 July 2009) 12-32.
[587] South African Constitution, s. 179 (4).
[588] See Chapter 5, 5.4 (*supra*).
[589] See Chapter 5, 5.4 (*supra*).

manipulated for political or partisan gain.[590] These rulings reflect the deep commitment of South Africa's legal system to upholding constitutional principles and the rule of law, particularly in the context of prosecuting official corruption.

The Constitution further reinforces the rule of law by explicitly establishing an "*open and democratic society*" where the government is accountable to the people and all citizens are equally protected by the law.[591] The executive's attempts to control or influence the prosecution of official corruption offences undermine this foundational principle, and any such interference is deemed unconstitutional.[592] Court decisions that invalidate such actions reinforce South Africa's dedication to constitutionalism and foster greater public confidence in the justice system.

The South African experience underlines the importance of clear guidance for exercising separated powers. While the South African Constitution and NPA Act set out the necessary safeguards to protect prosecutorial independence, historical examples show that allocating power without clear, enforceable constraints can lead to abuse and arbitrary action. Even in democratic systems with well-crafted constitutional provisions, there remains a persistent risk that those in power will attempt to sidestep or weaken these constraints. However, where the lines are clear, it aids an activist judiciary in checking executive excesses.

Additionally, South Africa highlights the crucial role of a strong judiciary in upholding constitutional principles. Despite significant political pressures, the judiciary has steadfastly defended prosecutorial independence. This has reinforced the notion that constitutional and statutory provisions must be more than theoretical; they must be actively enforced by the courts to maintain the integrity of the prosecutorial process and, by extension, the rule of law.

Cultural politics and the political culture of South Africa have contributed to executive interference. Succeeding ANC governments have engaged in official corruption, taking advantage of the good faith of the majority of the population based

[590] See Chapter 5, 5.4 (*supra*).
[591] South African Constitution, Preamble.
[592] *Ibid*. s.2.

on their anti-apartheid exploits. Cultural politics ensure that the executive secures enough support from the majority black population. The political culture of race, where politics is viewed through a racial lens, also ensures support for the ANC in the face of official corruption.[593]

Another point of comparison between South Africa and Nigeria is the position of pardon powers. Both countries possess similar constitutional provisions in this respect.[594] However, the South African Constitution does not prescribe any detailed procedure for its exercise other than requiring the President to consult with the Executive Deputy Presidents before exercising the power.[595] This research did not uncover any exercise of the pardon power akin to the position in Nigeria[596] or the U.S.[597]

5.6.3 Analysis: United States

The U.S. has a unique historical context regarding the separation of powers and its implications for prosecutorial independence. Early in the nation's history, criminal prosecutions were not solely under the executive branch's control.[598] In the colonial period, prosecution was primarily managed by prosecutors who were not answerable to the President. The growing role of the executive in prosecutorial functions, particularly through the DOJ, has been a contentious issue, reflecting both legal and political debates that often align with partisan perspectives.[599]

The U.S. Constitution does not explicitly allocate prosecutorial powers to the executive, apart from the general clause stating, "*The executive power shall be vested in a President of the United States of America*."[600] As a result, legal scholars and

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[593] See Chapter 3, 3.4.2 (*infra*).
[594] South African Constitution, s.83(2)(j). See Chapter 5, 5.3 (*supra*).
[595] *Ibid.* s.84(3)(g).
[596] See Chapter 5, 5.3 (*supra*).
[597] See Chapter 5, 5.5 (*supra*).
[598] Jenican, J. 2020. The Roger Stone Affair: An Examination of the Legal, Normative, and Ethical Restraints on Presidential Interference in Prosecutorial Decisions (*supra*), at 1065.
[599] See generally, Green, B.A. & Roiphe, R. 2018. Can the President Control the Department of Justice? (*supra*), at 1–75; Jenican, J. 2020. The Roger Stone Affair: An Examination of the Legal, Normative, and Ethical Restraints on Presidential Interference in Prosecutorial Decisions. (*supra*), at 1057–1072; Peterson, T.D. 2020. Federal Prosecutorial Independence (*supra*), at 218-289.
[600] United States Constitution, Art. II, § 1, cl. 1.

constitutional historians have turned to the writings of the framers, the legislative history, and the context of the time to understand the extent of the President's authority over criminal prosecutions.[601]

Dangel argues that the framers did not intend for prosecutorial power to be a presidential prerogative, suggesting that while prosecutorial functions were to be carried out by executive officials, they were not intended to be directly controlled by the President.[602] Similarly, Green and Roiphe contend that the President lacked constitutional authority to direct individual prosecutions, emphasising that Congress retained the power to determine the extent to which the Attorney General and other subordinate prosecutors answered to the President.[603]

The early legal opinions on the matter reflected differing views on the President's role in prosecutorial functions. One opinion held that the President could not intervene in criminal proceedings to influence a particular outcome.[604] In contrast, another opinion, articulated by Attorney General Taney, argued that the President could dismiss a U.S. Attorney for failing to comply with a directive to dismiss a prosecution.[605] This view was later affirmed by the Supreme Court case in *Myers v. United States*, where they upheld the President's authority to remove executive officials.[606]

However, the case of *Morrison v. Olson* represented a departure from this interpretation. The Court ruled that the President did not have the authority to terminate the appointment of an independent counsel under the Ethics in Government Act of 1978. In his dissent, Justice Scalia argued that the decision undermined the separation of powers by restricting the President's ability to dismiss an official conducting

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[601] Dangel, S.A. 1990. Is Prosecution a Core Executive Function? Morrison v. Olson and the Framers' Intent (*supra*), at 1069, 1076.
[602] *Ibid*. 1069.
[603] Green, B.A. & Roiphe, R. 2018. Can the President Control the Department of Justice? (*supra*), at 7.
[604] See the opinion of Attorney General William Wirt, In *The President and Accounting Officers*, 1 Op. A.G. 624 (1823) (William Wirt), cited in Jenican, J. 2020. The Roger Stone Affair: An Examination of the Legal, Normative, and Ethical Restraints on Presidential Interference in Prosecutorial Decisions (*supra*), at 1065.
[605] See the opinion of Attorney General Roger Taney In *The Jewels of the Princess of Orange*, 2 Op. A.G. 482 (1831) (Roger Taney), cited in Jenican, J. 2020. The Roger Stone Affair: An Examination of the Legal, Normative, and Ethical Restraints on Presidential Interference in Prosecutorial Decisions (*supra*), at 1065.
[606] *Myers v. United States*, 1926 272 U.S. 52.

prosecutorial activities.[607] Many legal commentators agreed with the dissenting opinion, and in a possible acknowledgement of its validity, the U.S. Congress permitted the Independent Counsel Act[608] to lapse without renewing it.[609]

Given these varying interpretations, the U.S. has relied on norms, policies, and ethical guidelines to regulate the balance between presidential control and prosecutorial independence.[610] This reliance on non-legal measures has sometimes proven inadequate, particularly when Presidents have sought to wield prosecutorial power for political purposes.

The Watergate Scandal serves as a prime example of executive overreach, with President Nixon's attempts to obstruct justice, including the dismissal of Special Prosecutor Archibald Cox, epitomising the potential for political interference in prosecutorial matters. Nixon's frustration with his Attorney General, John Mitchell, is telling:

> John is just too damn good a lawyer, you know. He's a good, strong lawyer. It just repels him to do these horrible things, but they've got to be done.[611]

This attitude reflects a long-standing view of the DOJ as a tool for achieving partisan goals rather than as an impartial legal entity.

The issue of executive overreach was further highlighted during President Trump's first term. Throughout this term, he repeatedly used his authority to influence legal proceedings, most notably through his interference with the prosecution of political allies and perceived adversaries.[612] These practices exemplified the risks of a politicised prosecutorial system, where decisions about legal actions were made based

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[607] *Morrison v Olson* (*supra*), at 705-733.
[608] This Act formed Title VI of the Ethics in Government Act. It is now replaced by Title 28, Chapter VI
[609] Wurman, I. 2018. On Presidents v. Special Counsels, Justice Scalia Got it Right Long Ago. Available: https://thehill.com/opinion/judiciary/385506-on-presidents-v-special-counsels-justice-scalia-got-it-right-long-ago. [2025, April 11]. See also the discussion involving Lawson, G., Pildes, R., and Olson, T. In The Great Dissent: Justice Scalia's Opinion in Morrison v. Olson. The Federalist Society. 2018. The Great Dissent: Justice Scalia's Opinion in Morrison v. Olson. Available: https://fedsoc.org/commentary/videos/the-great-dissent-justice-scalia-s-opinion-in-morrison-v-olson. [2025, April 11].
[610] See generally Peterson, T.D. 2020. Federal Prosecutorial Independence (*supra*), at 266-269.
[611] Green, B.A. & Roiphe, R. 2018. Can the President Control the Department of Justice? (*supra*), at 62.
[612] See Chapter 5, 5.5 (*supra*).

on partisan considerations rather than legal principles. These instances underscore a broader pattern in U.S. history, where presidents have used their executive powers to influence prosecutorial outcomes, often to the detriment of the rule of law.

Longstanding norms, generally accepted boundaries of conduct, policy guidelines, and the historical independence of DOJ prosecutors have historically constrained the executive from overly interfering with the Prosecution. However, recent events, especially during Donald Trump's first term, have strained the system. Presidents have occasionally used their pardon power to protect political allies, a practice that raises questions about the integrity of the justice system. However, this practice gathered steam under Trump's presidency.[613]

The U.S. experience highlights the complexity of balancing prosecutorial independence with executive control. While the Constitution does not grant the President absolute authority over prosecutions, the lack of clear, enforceable guidelines and the reliance on norms and discretionary practices have allowed for significant executive influence. The Watergate Scandal and more recent examples under President Trump demonstrate how executive overreach can erode the independence of the Prosecution, undermining public trust in the legal system.

Therefore, despite constitutional safeguards, the U.S. continues to grapple with the tension between executive power and prosecutorial autonomy, with political culture, party loyalties, and historical practices influencing the extent of this interference. These dynamics illustrate the ongoing challenge of maintaining an independent prosecutorial system that is accountable to the rule of law.

5.6.4 Synthesis: Comparative Interference Patterns

The separation of powers is a cornerstone of democratic governance, ensuring that no single branch of government can dominate or undermine the others. In the context of prosecutorial independence, this principle is crucial for upholding the rule of law and ensuring accountability, particularly in cases of official corruption. The cases from Nigeria, South Africa, and the U.S. highlight significant challenges in

[613] *Ibid.*

safeguarding prosecutorial autonomy from political influence and executive overreach.

In Nigeria, the executive's overwhelming control over prosecutorial powers has resulted in a culture of impunity, where political loyalty and patronage dictate the course of justice. Judicial interpretations have weakened the constitutional provisions to guide the Attorney General's actions, thereby enabling executive manipulation. This has led to a pattern of selective justice, where influential political figures are shielded from prosecution, undermining the core principles of equality and fairness enshrined in the Constitution.

While constitutionally committed to prosecutorial independence, South Africa has experienced significant executive interference, particularly under President Jacob Zuma. Zuma's efforts to control the NPA and shield his allies from prosecution demonstrate the fragility of prosecutorial independence in the face of political pressure. However, the South African judiciary has played a crucial role in upholding constitutional safeguards, reinforcing the importance of judicial oversight in maintaining the rule of law. Despite these safeguards, political culture and loyalty continue to influence prosecutorial decisions, posing ongoing challenges to the effective functioning of the NPA.

The executive has long held significant influence over prosecutorial functions in the U.S., despite constitutional norms and safeguards designed to prevent excessive control. The Watergate scandal, President Nixon's actions, and the interference by President Trump in the Justice Department all highlight the risks of executive overreach. While the U.S. possesses stronger institutional safeguards, such as judicial oversight and well-established legal norms and customs for prosecutorial independence, the political culture of partisanship contributes to significant executive interference in prosecutorial processes. Using pardons and commutations to shield political allies further illustrates how executive power can undermine the integrity of the prosecutorial and judicial systems.

5.7 Conclusion

The cases of executive interference in prosecuting official corruption offences in Nigeria, South Africa, and the U.S. reveal significant challenges in safeguarding the rule of law and prosecutorial independence. While each jurisdiction has attempted to insulate the Prosecution from political influence, the effectiveness of these safeguards varies significantly. In Nigeria, the concentration of executive power over the Prosecution has led to a lack of accountability and a culture of impunity.

Despite a more precise separation of powers in South Africa, the executive has frequently tested the boundaries of prosecutorial independence, particularly under President Zuma. However, the South African judiciary has been a critical safeguard against these attempts, emphasising the importance of judicial oversight in maintaining the rule of law.

In both South Africa and Nigeria, political culture and cultural politics play a significant role in shaping the effectiveness of prosecutorial independence. Political loyalty and patronage often influence prosecutorial decisions, leading to selective justice. In the U.S., while general constitutional safeguards are robust, executive influence and political interference have also led to concerns about the politicisation of the prosecution process.

Overall, these cases underscore the importance of maintaining a clear separation of powers, ensuring that the executive is held accountable for its actions, and safeguarding the independence of the prosecution. A functional democracy requires that prosecutorial discretion be exercised free from political interference, and such independence can be preserved through a combination of explicit constitutional provisions, judicial oversight, and political will.

This chapter has provided a detailed examination of the mechanisms of executive interference in corruption prosecutions, revealing distinct patterns across Nigeria, South Africa and the U.S. Nigeria’s reliance on centralised prosecutorial control, South Africa’s state capture under ANC leadership, and the U.S.’s partisan pardons and prosecutorial pressures demonstrate how executives exploit institutional vulnerabilities to obstruct justice. These findings highlight the practical dimensions of interference and their detrimental effects on prosecutorial integrity and the separation of powers. The next chapter synthesises

these insights with prior analyses to evaluate how executive interference undermines the foundational principles of the rule of law and the social contract, offering a comprehensive assessment of its broader implications.

CHAPTER 6
EXECUTIVE INTERFERENCE AND UNDERMINING RULE OF LAW PRINCIPLES: A COMPARATIVE SYNTHESIS

6.1 Purpose: Synthesising Interference Impacts

Chapter 6 synthesises the findings from previous chapters to analyse how executive interference in official corruption prosecutions undermines the foundational principles of the rule of law in Nigeria, South Africa and the U.S. Drawing on the legal frameworks (Chapter 2), socio-cultural influences (Chapter 3), constitutional dynamics (Chapter 4), and mechanisms of interference (Chapter 5), this chapter evaluates the specific impacts on core rule of law principles, including legal supremacy, equality, certainty of laws and impartiality. Through a comparative lens, it assesses how Nigeria's ethnic-driven interference, South Africa's loyalty-based obstructions, and the U.S.'s partisan interventions erode these principles, contributing to distrust in governance and weakened democratic institutions.

Additionally, the chapter analyses how official corruption, concerning state resources, over which citizens have proprietary rights, affects these principles. It examines the basis of these proprietary rights through the lens of the social contract theory and how official corruption and executive interference in its prosecution erode the rule of law, which is fundamentally rooted in the compact between the state and its citizens.

The analysis continues by evaluating the resilience of the legal systems under examination against acts of executive interference. This analysis assesses the constitutional structures of each jurisdiction regarding their adherence to the rule of law. This chapter advances the thesis by providing a cohesive analysis of the cumulative effects of executive interference, setting the foundation for recommendations to mitigate these challenges.

6.2 Theoretical Framework: Fundamental Principles of the Rule of Law

6.2.1 Supremacy of the Law and Limitation of Arbitrariness

Circumscribing arbitrariness is a fundamental pillar of the rule of law. Failure in this regard is a key indicator of the erosion or absence of the rule of law within a

society. Government arbitrariness threatens and infringes upon citizens' rights, leaving them without the expectation of redress. It also fosters impunity among government officials, allowing them to engage in unlawful activities without fear of censure or sanction. This destabilises society, as individuals begin to emulate these activities in their private affairs. Thus, the rule of law cannot be said to truly exist in a society without mechanisms to restrain governmental excesses.

The mechanism of checks and balances within liberal democracies exemplifies these guardrails. For instance, in democratic societies, the judiciary serves as a crucial check by reviewing and interpreting laws passed by the legislature, determining their constitutionality, or declaring them otherwise.[614] Judiciaries play this role even in some autocratic states,[615] although they often face significant challenges due to the government's repressive and coercive measures to enforce its overreach.[616]

To evaluate the effectiveness of these checks and balances, one might assess controversial government actions against their adherence to the rule of law. Where actions fall outside the rule of law, it is essential to consider if mechanisms exist to restore compliance or prevent a recurrence. This approach helps to determine whether the rule of law is upheld and whether the checks and balances are functioning effectively to restrain governmental overreach.

Acts of executive interference are governmental actions that must be scrutinised against the rule of law to assess compliance. When governments take active measures to shield officials accused of corruption from investigations or prosecutions, such actions represent a display of arbitrariness contravening the rule of law. While it is accurate that some of these actions may technically fall within the formal powers of the executive, they can still be rooted in arbitrariness if their ultimate purpose is to protect corrupt officials from the fair and legitimate application of the law. This misuse

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[614] Guarnieri, C. 2003. Courts as an Instrument of Horizontal Accountability: The Case of Latin Europe. 223-41. In *Democracy and the Rule of Law*. Maravall, J.M & Przeworski, A. (Eds.). 2003.New York: Cambridge University Press.

[615] Barros, R. 2003. Dictatorship and the Rule of Law: Rules and Military Power in Pinochet's Chile. In *Democracy and the Rule of Law.* Maravall, J.M & Przeworski, A. (*supra*), at 188-219.

[616] Shen-Bayh, F. 2018. Strategies of Repression: Judicial and Extrajudicial Methods of Autocratic Survival. *World Politics*. 70 (3): 321-357.

of executive power undermines the principles of justice and accountability in the rule of law.

Within its case management powers, the Prosecution may choose not to pursue an indictment, opting for a plea deal or requiring the accused to restitute embezzled funds. This decision can be made at any stage, allowing the Prosecution to discontinue the case if the accused agrees to specific terms, particularly the surrender of ill-gotten gains. Such decision-making flexibility is valuable for optimising the Prosecution's limited resources, enabling the reallocation of efforts to more deserving cases as determined by the Prosecution.

However, this practice becomes difficult to justify when applied exclusively to official corruption cases, while other cases are handled differently. The selective use of such discretion raises concerns about fairness and equality before the law, giving the appearance of arbitrariness or preferential treatment, thereby undermining the integrity of the justice system. An example of potential arbitrariness arises when the executive exercises the power of pardon in cases of official corruption.

Pardon powers are inherently constitutional and subject to narrow restrictions in some cases. However, the exercise of this power may be perceived as arbitrary when it is used to achieve an improper outcome, such as shielding a public official from the legal consequences of an official corruption conviction. This highlights that arbitrariness in government actions can manifest through lawful acts and the legitimate exercise of governmental powers when such actions produce improper outcomes.

The use of executive powers, such as pardons, in the context of official corruption cases complicates the relationship between limiting arbitrariness and upholding the rule of law. It provides opponents of the rule of law with an argument that acts falling within the legal framework cannot be considered arbitrary, even when they result in outcomes that undermine justice and accountability. This tension underscores the need to scrutinise the exercise of governmental powers, particularly in cases involving the prosecution of official corruption offences.

However, such an argument can be undermined by the substantive aspect of the rule of law, which emphasises the element of justice. If the rule of law were concerned solely with the legitimate exercise of governmental power, without regard to fairness, it would fall short of the concept as the major proponents of the rule of law envisioned, who view fairness as a fundamental feature. The European Union noted, "*The rule of law covers how accountably laws are set, how fairly they are applied, and how effectively they work*."[617] This perspective highlights that the rule of law is not solely about legality but also about the just and equitable application of laws, ensuring that governmental actions are lawful and fair.

The broad scope of the rule of law demands that evaluations of governmental actions for compliance must extend beyond mere legality. Such assessments should probe beyond the legal facade to reveal the underlying motives and the consequences those actions produce. Moreover, an effective counter to the claim that legal governmental actions cannot result in arbitrariness in official corruption cases is to contrast these governmental actions with corrupt acts committed by individuals lacking political connections. This comparison underscores the arbitrariness of governmental influence on the outcomes of official corruption cases.

Executive interference introduces arbitrariness into the rule of law, undermining the certainty citizens expect from government actions to guide their behaviour. When government officials are confident that the state will shield them from legal consequences, they become emboldened in their corrupt practices. This behaviour sets an undesirable precedent, leading others to imitate such conduct in their private dealings, expecting to escape accountability as political officeholders do. These acts of interference fail to serve the common good, a fundamental outcome that the rule of law is meant to achieve.

[617] European Union. 2019. Strengthening the Rule of Law within the Union: A Blueprint for Action (*supra*), at 1.

6.2.2 Equality of the State and the Citizen

One of the defining features of the rule of law is the absence of preferential treatment.[618] This principle ensures that individuals, regardless of status or rank, are treated equally under the law in comparable situations. Preferential treatment of government officials represents a stain on the fabric of the rule of law, fostering a culture of impunity among officials. This impunity can also extend to citizens who seek to align themselves with powerful officials to shield themselves from legal consequences.

Evaluating this principle is straightforward through a practical lens: How frequently are government officials subjected to judicial processes for their corruption infractions, and do they receive the same level of punishment as ordinary citizens, if at all? This thesis examines several instances in Nigeria where government officials have repeatedly evaded penal consequences for official corruption. Similarly, in South Africa, the executive has been observed wielding its power to delay, avoid, or selectively apply prosecutorial processes in official corruption cases. The U.S. has also seen executive attempts to circumvent prosecutorial and judicial processes in official corruption cases.

Executive interference in the prosecutorial process fundamentally undermines the principle of equality before the law. This equality applies both in positive and negative terms: positively, the law must be beneficially applied to all without preference; negatively, any legal restrictions or penalties must be imposed impartially. To this end, Hayek observed that the law should be blind to individuals and their actions, applying the same treatment uniformly across the board.[619]

This is not a call for an unreasonably rigid adherence to the law, as the complexities of human existence and social interaction may sometimes necessitate justified deviations. However, such deviations must be explicitly prescribed within the legal framework and cannot be arbitrarily invented or applied. For example, the law

[618] See Chapter 3, 3.3.3 (*supra*).
[619] F. A. Hayek. 1955. *The Political Idea of the Rule of Law.* Cairo. National Bank of Egypt. 34. See Chapter 3, 3.3.3 (*supra*).

recognises the right to self-defence in life-threatening situations or the defence of provocation in similar contexts. A successful plea on these grounds can lead to an acquittal or a reduced sentence.

In contrast, executive interference in official corruption cases fails to align with any acceptable deviations from due process. While the rule of law aims to ensure equality, these acts of interference create a twofold inequality. First, they seek to elevate the executive above the reach of the law; second, they grant the political class a status of superiority over ordinary citizens. Both outcomes threaten the rule of law.

The rule of law seeks to confine individual liberties within legal boundaries to promote an equitable and just society. When these liberties exceed those boundaries, the law's punitive mechanisms are meant to provide both deterrence and redress. In official corruption cases, executive interference distorts this arrangement by allowing anti-social expressions of individual liberties to escape legal consequences. This undermines the rule of law and fosters an inherently unequal society which operates outside the binding legal framework.

6.2.3 Certainty of Laws

A salient feature of the rule of law is that laws must be publicly identifiable and devoid of ambiguity to enable citizens to orient their conduct accordingly. As seen previously,[620] the legal systems of Nigeria, South Africa and the U.S. criminalise acts of official corruption. Hence, there is no challenge in these jurisdictions regarding the position of the law in this respect.

However, sometimes and to varying degrees, the element of objective application and enforcement of the law is lacking. This application depends on government functionaries as custodians of the law. Acts of executive interference in prosecuting official corruption offences by these functionaries militate against this element that is integral to the functioning of the rule of law.

[620] See Chapter 3 (*supra*).

Through these acts of interference, the executive introduces uncertainty in the law. This is because while the laws in the statutes are settled, the subjectivity of their application by the executive creates inconsistent expectations within the citizenry. First, how to conduct their affairs in response to the law as it is settled in the statutes; second, how to anticipate governmental reaction to structure their behaviour in a manner that would survive any adverse government action or pass legal scrutiny.

However, this injection of uncertainty affords corrupt government officials impunity, enabling them to engage in official corruption without consequence. These acts of interference create a perverse expectation of certainty within such officials that they could participate in corrupt activities and be secure in the expectation of ascriptive executive actions in their favour. Hence, it is not sufficient that the text of the law is unambiguous; the application must not be facultative.

The foregoing analysis demonstrates the relevance of these principles to prosecuting official corruption, where the abuse of power by public officials directly challenges the integrity of the rule of law. Africanist scholars like Mamdani and Mutua highlight that post-colonial contexts,[621] such as Nigeria and South Africa, face unique challenges due to colonial legacies and socio-cultural fragmentation, which amplify the impact of executive interference.[622] In the U.S., a legalistic culture rooted in constitutional checks is tested by partisan dynamics, illustrating the universal vulnerability of these principles.[623] This framework, drawing on evidence from prior chapters, guides the analysis of how executive interference undermines the rule of law in each jurisdiction.

6.3 **Analysis: The Social Contract and Executive Interference**

The impact of executive interference on the principles of the rule of law may also be observed through an appreciation of the context of societal existence. This is the underlying compact upon which the rule of law rests and the concept of property, which is usually the

[621] Chapter 3, 3.2.4 (*supra*).
[622] *Ibid.*
[623] Chapter 3, 3.1.3 (*supra*).

subject matter of official corruption.[624] This property belongs to the citizens who possess the proprietary rights to it. The state then holds and manages the property for the people.

State resources and property form part of this property. Government positions must be used to further the common good. Any deliberate misuse of these resources and property and improper exploitation of government offices constitutes a breach of anti-official corruption legislation. Executive interference in prosecuting these breaches undermines the rule of law because it interferes with the ownership rights of the citizens in the commonwealth and unlawfully dispossesses them of these rights.

In modern societies, establishing states and the concept of citizenship imply that individuals who reside, work, and pay taxes within a geographical territory possess proprietary rights to the wealth collectively generated within that state. By its constitutional mandate, the government must manage this wealth and the collected taxes for the benefit of its citizens and residents. Through its constitutionally conferred authority, the government exercises control over the state's natural resources and the revenues derived from their exploitation.

Consequently, the government acts as a trustee of state resources, administering them for the beneficiaries—the citizens and residents within its jurisdiction. However, this represents an idealised scenario that is rarely achieved in practice. Where these resources are embezzled through acts of official corruption, it is incumbent on the trustee to take appropriate action to recover them and punish those involved. It is a breach of its duty as a trustee for the executive to actively facilitate the depletion of these communal resources and enable the evasion of the offenders from justice. Such acts constitute a deprivation of the citizens of their property rights, which cannot be done outside the provisions of the law. For the executive to deprive the citizens of their rights in this manner, it must find a legal basis. None exists in this respect.

When the executive intervenes in prosecuting official corruption offences, it violates fundamental principles of the rule of law and operates beyond its legitimate authority. The

[624] Chapter 1, 1.7.4 (*supra*).

executive is entrusted with the power to enforce and administer the law, and any extension of this power—whether through direct interference, such as halting investigations into corruption or through indirect means, such as exercising *nolle prosequi* or granting pardons to protect corrupt officials from the consequences of their unlawful conduct—constitutes an overreach of its constitutional mandate.

Under the social contract theory, individuals formed a society governed by a uniform legal system to safeguard their property and personal safety. They agreed to be subject to the rule of law. In exchange for their obedience, they received the protection of the law over their persons and property.[625] It is important to note that the Contractarians, the proponents of the social contract theory, do not claim that the theory provides a historical or empirical account of how political society or order was established.[626]

Instead, they employ it as a conceptual tool to clarify the rationale behind human societies, social formations and governance.[627] When considering the central tenet of the social contract theory—contractarianism, which holds that no contract can be validly formed without the consent of the parties—we identify these principles within the rule of law and the societies that are, arguably, based on it.

Two aspects of this theory are particularly relevant. The first is the role of property in these actions, and the second is the significance of contract in both the establishment of governments—and by extension, executive authority—and in assessing these acts of interference. To examine these aspects, it is necessary to briefly consider the origins of the theory and the fundamental principles espoused by its major proponents.

The social contract theory gained prominence in the seventeenth and eighteenth centuries, championed by eminent political philosophers such as Thomas Hobbes, John

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[625] See generally, Boucher, D. & Kelly, P. (Eds.). 1994. The Social Contract and Its Critics: An Overview. In *The Social Contract from Hobbes to Rawls*. Routledge. 1-265.

[626] The Social Contract Theory is not an explanation of how organised societies or states came to into being, but a theoretical analysis of the foundation of political societies. See the views of Immanuel Kant and Jean-Jacques Rousseau, who disagreed with Locke that the Social Contract theory was a historical account of political societies. Ritchie, D.G. 1891. Contributions to the History of the Social Contract Theory. *Political Science Quarterly*. 6(4):673.

[627] *Ibid*.

Locke, Jean-Jacques Rousseau, Immanuel Kant, and Georg Hegel.[628] While some contemporary scholars have attempted to trace the early origins of this theory to ancient Greek philosophers, there is no consensus on this point.[629]

The theory is distinguished by its flexibility and encompasses three major themes: civil, constitutional, and moral. According to Boucher and Kelly, this flexibility is the source of the theory's potency, as it offers a range of contractarian tools tailored to the specific goals of a society.[630] For instance, a group seeking to establish a religious society would adopt a religious contract. At the same time, those aiming to form a state might employ a constitutional or civil contract, depending on the desired outcome.[631]

Locke posited that individuals in the state of nature were endowed with certain inalienable rights, including freedom, equality, and independence. However, in this natural state, these rights were not optimal, particularly regarding preserving their property from encroachment. The threat to property, and by extension to life, was mitigated through the formation of an organised society via the social contract, wherein individuals deposited their rights into the collective reliquary of the state. This contract gave rise to legislative bodies empowered to create laws and an executive authority tasked with enforcing them.[632]

In contrast to other social contract theorists, Hobbes did not view the social contract as an agreement between the people and the sovereign. Instead, he believed that the people formed a society and entrusted their rights to the sovereign, who would exercise these rights on their behalf. In this view, the sovereign is a product of the social contract but not a party.[633] In democratic societies where the people create the executive through elections, they entrust their rights to the executive to protect their interests and preserve their rights and property. Therefore, the exercise of power by the executive must be directed toward the common good.

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[628] See generally, Keyt, D. 1974. The Social Contract as an Analytic, Justificatory, and Polemic Device. *Canadian Journal of Philosophy*. 4(2):241–252; McCormick, P. 1976. Social Contract: Interpretation and Misinterpretation. *Canadian Journal of Political Science*. 9(1): 63–76; Ritchie, D.G. 1891. Contributions to the History of the Social Contract Theory (*supra*), at 656–676.

[629] Boucher, D. & Kelly, P. (Eds.). 1994. The Social Contract and Its Critics: In *The Social Contract from Hobbes to Rawls* (*supra*), at 2.

[630] *Ibid*. 1.

[631] *Ibid*.

[632] *Ibid*. 5.

[633] Ritchie, D.G. 1891. Contributions to the History of the Social Contract Theory (*supra*), at 670.

As Locke asserts, "*voluntary agreement gives... political power to governors for the benefit of their subjects*."[634]

Whether viewed through a Lockean or a Hobbesian lens, executive interference in prosecuting official corruption offences challenges the social theory construct and makes the protection of the collective proprietary rights sub-optimal. This interference introduces the question of whether the citizens are getting better protection for their resources under their compact within the state. This is more acutely felt in the words of Rousseau:

> What man loses by the social contract is his natural liberty and the absolute right to anything that tempts him and that he can take: what he gains by the social contract is civil liberty and the legal right of property in what he possesses.[635]

This interference indirectly facilitates the unchecked freedom of select individuals to pursue their desires at the expense of others. It also undermines the fundamental exchange that the broader citizenry made when they surrendered their freedom for the protections promised by the state. Executive interference erodes the foundation of the social contract, as it weakens the "*maximum relative benefit*" that citizens anticipated under state governance, compared to what they could have secured independently outside of state protections.[636]

The Constitutions of democratic countries[637] enshrine the fundamental principles of the rule of law, including checks on arbitrariness, the subordination of all individuals and institutions to the law, equality before the law, and the prohibition of penal actions without clear statutory codifications. These Constitutions are the foundation of the relationship between the citizens and the institutions that maintain order. They also represent a benchmark for resolving controversies arising from the various dynamics of this relationship.

Such Constitutions could not have been established without individuals who agreed to be mutually bound and to define the parameters of their coexistence within a geographical space. Without this deliberate assembly and consensus to delineate the terms of their mutual

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[634] Riley, P. 1982. Will and Political Legitimacy: A Critical Exposition of Social Contract Theory in Hobbes, Locke, Rousseau, Kant, and Hegel. Cambridge. Harvard University Press. 61.
[635] Boucher, D. & Kelly, P. (Eds.). 1994. The Social Contract and Its Critics. In *The Social Contract from Hobbes to Rawls* (*supra*), at 120.
[636] *Ibid.*
[637] See Chapter 5, 5.6 (*supra*).

coexistence, the rule of law would lack a functional context, rendering it impossible to implement. Thus, the rule of law can be understood as the governance of laws mutually agreed upon by individuals, embodying certain features and expectations that those individuals have consented to and are subject to under this agreed-upon legal framework.

Democratic constitutional provisions transfer power from individuals to specific institutions and their designated representatives, thereby reinforcing the inadmissibility of self-help outside the bounds of this framework. In return, these Constitutions, recognising the potential for power to be abused, affirm the natural rights of citizens and delineate the limited circumstances under which those rights may be curtailed. These Constitutions require the empowered institutions and individuals to exercise their functions to maximise the interests and security of the inhabitants of the state.

In forming societies, individuals were likely driven by certain interests that made collective existence more appealing. These interests, though varied, could include the desire for the protection of personal property, the safeguarding of life, or the consolidation of individual strengths and rights to enhance their overall enjoyment and security. The formation of societies through a social contract can be seen as a rational response to these diverse but interconnected human interests.

The social contract theory thus provides a compelling foundation for understanding the underlying rationale behind the formation and the administration of a state and for evaluating the ongoing effectiveness of the original agreement. It raises the critical question: Are all parties receiving the promised value? In the context of official corruption, corrupt officials are short-changing the populace by misappropriating communal resources for personal gain and exploiting constitutionally endowed positions.

This behaviour constitutes a breach of constitutional order, and in legal theory, a right is meaningless without a remedy for its violation. Therefore, there is a reasonable expectation that such breaches will be addressed within the framework of constitutional redress, enforced by the appropriate constitutional agencies. The failure to address such breaches by authorised persons and institutions aggravates the situation, undermining the constitutional design against self-help and the self-preservation rationale behind state formation.

This failure further jeopardises the benefits the social contract was intended to secure. In this context, executive interference in prosecuting official corruption offences becomes an affront to the principles of contractarianism. By depriving the people of the security and protection of their resources, this interference undermines the fundamental expectations of asset preservation, erodes confidence in the proper functioning of state institutions and officials, and violates the principles of the rule of law.

The societies in the three countries under review have made collective decisions regarding their forms of state under varying constitutional sociologies.[638] In the case of the U.S., the choice was to form a union[639]; in Nigeria, to sustain a union initially imposed upon them;[640] and in South Africa, to reform the foundational basis of an existing union created by the apartheid state.[641] While the legitimacy of the Nigerian and South African unions may be debated—whether the original inhabitants of these geographical regions genuinely consented to form a union—the same question cannot be raised about the native populations of the U.S., who did not have any input in the formation of the country. However, such inquiry is outside the purview of this research.

Setting aside the constitutional sociology of these historical backgrounds and focusing on the opening words of their Constitutions, a common refrain emerges: "*We, the people*...".[642] These Constitutions then articulate the rationale behind their formation, along with the expectations and aspirations of "*We, the people*." These rationales, expectations, and aspirations consistently invoke principles of the rule of law, justice, human rights, and good governance, albeit in different ways.

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[638] See Chapter 2 (*supra*).
[639] See Chapter 2, 2.4.3.1(*supra*).
[640] See Chapter 2, 2.4.1.1 (*supra*).
[641] See Chapter 2, 2.4.2.1 (*supra*).
[642] See the Preambles to the 1999 Nigerian Constitution, the 1996 South African Constitution, and the U.S. Constitution.

6.4 Nigeria: Analysis—Executive Interference and the Erosion of the Rule of Law

Nigeria's executive interference in official corruption prosecutions, driven by centralised power and ethnic loyalties, significantly undermines the rule of law. The following analysis integrates the findings of Chapters 2–5 to evaluate their impact on legal supremacy, equality, and impartiality.

6.4.1 Context Recap (Chapters 2-5)

Legal Framework (Chapter 2): Nigeria's anti-official corruption framework is built on the twin pillars of several legislation and a multi-agency enforcement model.[643] However, the Attorney General's centralised control[644] over these agencies enables executive influence, as seen in the selective handling of official corruption cases. This centralised control is a product of Nigeria's constitutional sociology of colonialism and an extensive period of military rule.[645]

Socio-Cultural Influences (Chapter 3): Ethnic loyalties and affiliations influence how the citizens perceive acts of official corruption. This cultural politics fosters public tolerance for executive interference when it benefits certain ethnic groups, as in the case of Alamieyeseigha's pardon[646]. The "Two Publics" paradigm[647] further contribute to this situation where citizens and public office holders regard state resources as fair game.

Constitutional Dynamics (Chapter 4): The strong executive presidency of the Nigerian Constitution and weak separation of powers grant the executive unchecked authority over prosecutorial decisions. This authority is cemented by the compromising roles of the Attorney General as a political appointee of the executive and the chief prosecutor.[648]

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[643] See Chapter 2, 2.4.1 (*supra).*
[644] See Chapter 2, 2.4.1.1 *(supra*).
[645] See Chapter 2, 2.5. (*supra*).
[646] See Chapter 3, 3.1.1 (*supra).*
[647] *Ibid.*
[648] Chapter 4, 4.5.1 (*supra).*

However, Chapter II of the Nigerian Constitution imposes a duty on every government organ to heed, observe, and implement the principles enshrined in that Chapter.[649] The provision enumerates the fundamental objectives and principles that form the foundation of the country's governance. It asserts that the country is founded on democratic principles and social justice. These democratic principles include the rule of law and the separation of powers. When properly observed and implemented, these principles would ensure an independent Prosecution that exercises its prosecutorial functions without preferential treatment or bias.

Chapter II of the Nigerian Constitution further specifies that the state's primary purpose is to ensure its citizens' security and welfare.[650] This mandate inevitably includes preserving the collective interest in the nation's commonwealth and utilising government resources for the benefit of the people. Significantly, this chapter mandates that "*The State shall abolish all corrupt practices and abuse of power*."[651]

This provision deliberately couples corrupt practices with the abuse of power, reflecting the framers' recognition that the abuse of power is often a central element in state-sanctioned corruption. By linking these concepts, the Constitution underscores the inherent connection between the misuse of authority and corrupt activities, signalling a comprehensive approach to combating corruption in all its forms.

Mechanisms of Interference: In Nigeria, executive interference manifests through *nolle prosequi*, selective prosecutions, and pardons. Notable cases include the Alamieyeseigha and Dariye pardons.[652]

6.4.2 Impact on Rule of Law Principles

Legal Supremacy: The executive's ability to halt prosecutions or grant pardons subverts the authority of the Nigerian Constitution as the supreme law. For instance, Alamieyeseigha's pardon in 2013, despite convictions for embezzlement, prioritised political alliances over legal accountability, signalling that executive power overrides

[649] Chapter II Fundamental Objectives and Directive Principles of State Policy. s.13.
[650] *Ibid*. s.14 (2) (b).
[651] *Ibid*. s.15 (5).
[652] See Chapter 5, 5.3.5 (*supra*).

constitutional mandates. This undermines the principle that no one is above the law, weakening public confidence in governance institutions.

Equality: Ethnic-based selective enforcement ensures unequal application of the law. Politicians aligned with the ruling party or dominant ethnic groups, such as the Hausa, Igbo or Yoruba, often evade prosecution. At the same time, rivals face aggressive scrutiny, as seen in Tinubu's emergence as the president despite credible corruption allegations.[653] This violates the principle of equality, fostering perceptions that justice is contingent on ethnic affiliation rather than legal merit.

Impartiality: Partisan and ethnic-driven interventions erode objective enforcement. The Attorney General's discretion to withdraw cases, often influenced by partisan and ascriptive loyalties, as in Goje's case, reflects bias in prosecutorial decisions.[654] This lack of impartiality, compounded by public acceptance of such interference as a cultural norm,[655] erodes trust in the EFCC and ICPC, perpetuating a cycle of impunity.

The cases of Godswill Akpabio and Diepreye Alamieyeseigha illustrate Nigeria's erosion of the rule of law. Akpabio's case illustrates how partisan affiliations overwhelm legal processes in Nigeria. Alamieyeseigha's pardon, granted by President Jonathan, a fellow tribesman,[656] prioritised ethnic loyalty over justice, undermining equality and impartiality. These cases demonstrate how executive interference, enabled by constitutional and socio-cultural factors, erodes the foundational principles of the rule of law.

Acts of official corruption are antithetical to the spirit and letter of the Nigerian Constitution, and any actions that appear to aid or abet such corruption are equally opposed to it. Structurally, the Nigerian Constitution provides ample tools to confront official corruption and any undue executive interference in its prosecution. However,

[653] See Chapter 5 (*supra*).
[654] *Ibid.*
[655] See Chapter 5, 5.3.5 (*supra*).
[656] *Ibid.*

they have not effectively curbed indiscriminate acts of executive interference in prosecuting corruption offences for the aforementioned reasons.

6.5 South Africa: Analysis—Executive Interference and the Erosion of the Rule of Law

South Africa's executive interference, driven by ANC loyalty and state capture, compromises the rule of law by prioritising party interests over legal accountability. The following analysis evaluates its impact on legal supremacy, equality, and impartiality.

6.5.1 Context Recap (Chapters 2-5)

Legal Framework (Chapter 2): South Africa's anti-corruption framework is anchored in the PRECCA and other legislation that outlaws conduct of official corruption.[657] The NPA and other law enforcement agencies primarily support this framework.[658] The NPA Act contains robust provisions that substantially protect the independence of the NPA. This reflects the country's constitutional sociology of apartheid and the reconciliation process that birthed the new nation.[659] However, this is weakened by State Capture, particularly during Jacob Zuma's presidency (2009–2018).

Socio-Cultural Influences (Chapter 3): ANC loyalty, rooted in the liberation struggle, and racial divides foster tolerance for interference when it [protects] party leaders of the black racial majority. The Ubuntu philosophy and post-apartheid reconciliation efforts sometimes shield corrupt officials perceived as advancing black empowerment.[660]

Constitutional Dynamics (Chapter 4): Given some of the provisions of the South African Constitution, the drafters appear cognisant of the dangers of executive overreach. This awareness may have been informed by the country's peculiar history with apartheid. Thus, when presented with the opportunity to invent a more egalitarian

[657] See Chapter 2, 2.4.2 (*supra*).
[658] See Chapter 2, 2.4.2.1 (*supra*).
[659] *Ibid.*
[660] See Chapter 3, 3.1.2 (*supra*).

society, they felt obligated to create a document that substantially expressed the aspirations of the majority of the country.[661]

The South African Constitution avers that the country is founded on the twin pillars of the supremacy of the Constitution and the rule of law, *inter-alia*.[662] It declares that any conduct or law inconsistent with it is invalid. Additionally, it undergirds these provisions by creating a Bill of Rights which binds the three arms of the government.[663] This Bill of Rights provides for the equality of all before the law and the right to equal protection before and benefit and protection under the law.[664]

It also provides strong safeguards for judicial and prosecutorial independence. Notwithstanding these constitutional principles and protections, the country has witnessed acts of executive interference. As exemplified by Zuma's influence, executive pressure on the NPA undermines these checks. This pressure and overall inaction against official corruption continue under the incumbent, President Ramaphosa.[665]

Mechanisms (Chapter 5): Executive interference manifests in South Africa in various ways. These include weaponising the NPA against political foes[666] and politically pressuring the NPA into inaction regarding official corruption offences. Interference includes disbanding law enforcement agencies tasked with an anti-corruption mandate.[667] In some cases, the executive has displayed defiance against prosecutorial recommendations made regarding official corruption, such as Zuma's initial refusal to repay misappropriated public funds.[668]

6.5.2 Impact on Rule of Law Principles

Legal Supremacy: As seen in the Gupta family's influence over state institutions, state capture prioritises private and party interests over the constitutional mandates.

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[661] See generally The Preamble to the South African Constitution.
[662] *Ibid*. Chapter 1, s.1 (c).
[663] *Ibid*. Chapter 2, ss.7,8.
[664] *Ibid*. Chapter 2, s.9.
[665] See Chapter 2, 2.4.2.1 (*supra*).
[666] See Chapter 5, 5.4.3 (*supra*).
[667] *Ibid.*
[668] See Chapter 2, 2.4.2.1 (*supra*).

Zuma's refusal to comply with the Public Protector's directive to repay the misappropriated funds, which was rectified only after judicial intervention, challenged the law's supreme authority.[669] This defiance signals that executive power can override constitutional obligations, eroding public trust in governance.

Equality: Racial and political loyalties skew prosecutorial outcomes, violating the principle of equal treatment. ANC leaders, such as Zuma, have evaded timely prosecution due to party loyalty, while opposition figures face stricter scrutiny, as seen in the DA's criticisms of selective enforcement.[670] This unequal application fosters perceptions that justice serves ANC interests rather than the public.

Impartiality: Executive pressure on the NPA and the dissolution of the Scorpions reflect biased enforcement, undermining impartial adjudication. The ANC's "family" culture, where loyalty trumps accountability[671], enabled Zuma to manipulate prosecutorial processes, as evidenced by delays in his corruption trials. This lack of impartiality diminishes confidence in the NPA, perpetuating corruption.

The Zuma presidency and Gupta family scandals exemplify South Africa's rule of law erosion. Zuma's interference in NPA decisions, including the 2008 disbanding of the Scorpions, prioritised party loyalty over legal supremacy. The Gupta family's undue influence over state contracts and appointments, as documented in the 2016 "state capture" report,[672] undermined equality by favouring connected elites. These cases, enabled by ANC loyalty and racial divides, eroded impartiality, as public tolerance for Zuma's actions among Zulu communities reflected socio-cultural biases.

6.6 United States: Analysis—Executive Interference and the Erosion of the Rule of Law

Despite its robust legalistic culture, the U.S. faces executive interference through partisan interventions and political pressures that undermine the rule of law. The following analysis evaluates its impact on legal supremacy, equality, and impartiality.

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[669] *Ibid.*
[670] *Zuma v Democratic Alliance and Others*; *Acting National Director of Public Prosecutions and Another v Democratic Alliance and Another* (1170/2016), 2017 ZASCA 146.
[671] See Chapter 3, 3.1.2 (*supra*).
[672] See Chapter 2, 2.4.2 (*supra*).

6.6.1 Context Recap (Chapters 2-5)

Legal Framework (Chapter 2): Federal statutes[673] provide a strong anti-corruption framework. However, the executive's control over the DOJ creates vulnerabilities to interference. The constitutional sociology of the U.S. did not place the Prosecution under the executive from the outset of the U.S. Constitution.[674] This subordination is a product of the evolution of practice and consequential legislation in this respect.[675] The eventual allocation of prosecutorial powers to the executive did not envisage a potential misuse of these powers.

Socio-Cultural Influences (Chapter 3): Partisan divides have driven some of the acts of executive interference in the U.S., such as Nixon's intervention[676] and Bush's firing of certain U.S. Attorneys.[677] These divides have progressively worsened under Trump's administration. Executive interventions are viewed as either politically motivated or not based on the ideological cleavages between Conservatives and Liberals, fostering distrust in the government amongst a polarised public.

Constitutional Dynamics (Chapter 4): The separation of powers in the U.S. Constitution is rigid and designed to limit executive overreach. As already seen, the subsummation of the Prosecution under the executive was not contemplated at the outset. Hence, the framers did not consider any protective provisions for the Prosecution in the Constitution.

The U.S. courts have consistently acknowledged the executive's power over the Prosecution due to the separation of powers, as designed in the Constitution.[678] The country has had to rely on political norms, mores, and internal DOJ guidelines to prevent executive interference.[679] However, in his first term and now in his second

[673] Chapter 2, 2.4.3 (*supra*).
[674] *Ibid.*
[675] *Ibid.*
[676] See Chapter 5, 5.5.2 (*supra*).
[677] See Chapter 4, 4.5.3.3 (*supra*).
[678] See Chapter 5, 5.6.4 (*supra*).
[679] See Chapter 5, 5.5.2 (*supra*).

term, Donald Trump's presidency continues to threaten this delicate levee of prosecutorial protection with rupture.[680]

The U.S. has a long history of combatting official corruption through targeted investigations by special counsel or prosecutors.[681] After the establishment of the DOJ, President Ulysses Grant appointed the first special counsel to investigate corruption within the Internal Revenue Service and the Treasury Department. This investigation led to several indictments, convictions, and the recovery of looted funds.

Ironically, when the investigation implicated a close friend of Grant, he sought to shield him from its consequences. However, the special counsel resisted these efforts, ultimately leading to his dismissal by the President.[682] This case underscored the need for an independent mechanism to combat official corruption and highlighted the importance of protecting such mechanisms from political interference.

The use of special counsel in the U.S. is not without controversy. Critics argue that the structure is unconstitutional and undermines the president's powers.[683] However, critics and proponents agree that a mechanism must exist to hold members of the executive branch, including the President, accountable. The primary point of divergence lies in the structure of this mechanism, its appointment and dismissal procedures, and the remit of its powers.[684]

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[680] Stone, P. 2021. The Rogue Department: How the Trump DOJ Trashed Legal and Political Norms. *The Guardian*. Available: https://www.theguardian.com/us-news/2021/jun/21/trump-DOJ-bill-bar-attorney-general-justice-department. [2025, April 11].

[681] Lucas, F. 2017. *A Short History of Special Counsels and Presidents.* Daily Signal. Available at: A Short History of Special Counsels and Presidents (dailysignal.com). [2025, April 11]. Richardson, E.L. 1995. *Special Counsels, Petty Cases,* N.Y. TIMES. Available: https://www.nytimes.com/1995/06/05/opinion/special-counsels-petty-cases.html [2025, April 11]. Mokhiber, J. 1998. *A Brief History of the Independent Counsel Law*. Frontline. Available: https://www.pbs.org/wgbh/pages/frontline/shows/counsel/office/history.html. [2025, April 11].

[682] Blake, A.C. 2018. You're Fired! Special Counsel Removal Authority and the Separation of Powers. *University of Baltimore Law Review*. 48(1): 93-94.

[683] Calabresi, S.G. & Lawson, G. 2019. Why Robert Mueller's Appointment as Special Counsel was Unlawful. *Notre Dame Law Review*. 95(1):87-153. Cole, J. 2019. Special Counsel Investigations: History, Authority, Appointment and Removal. Congressional Research Service. Available: https://www.everycrsreport.com/files/20190313_R44857_763a3bf154f5a8de43bd210529cc7482887a4880.pdf. [2025, April 11].

[684] *Ibid*. 90; Kavanaugh, B. 1998. The President and the Independent Counsel (*supra*), at 2134-2135; Merrill, T. W. 1999. Beyond the Independent Counsel: Evaluating the Options. *Saint Louis University Law Journal*. 43(3): 1047–1082.

Apart from the criticisms of the independent counsel structure and its current special counsel incarnation, the U.S. has effectively utilised these systems and earlier iterations[685] in successfully prosecuting members of the executive for official corruption and other crimes. For instance, the first such investigation under President Grant "*resulted in the conviction of 110 of the 238 indicted conspirators and the recovery of more than $3 million in embezzled tax funds*."[686] The Robert Mueller investigation of the Trump White House yielded 37 convictions, seven guilty pleas and credible evidence that President Trump obstructed justice on several occasions.[687]

Mechanisms (Chapter 5): Executive interference in the U.S. assumes various forms. These include actively influencing the Prosecution to drop prosecutions, like in the case of Mayor Adams, and dismissing career prosecutors who prosecute the executive and their allies.[688] Pardons are also routinely employed to alter prosecutorial processes and to reshape judicial verdicts.[689]

6.6.2 Impact on Rule of Law Principles

Legal Supremacy: Presidential pardons, such as those for Manafort and Stone, challenge judicial authority by nullifying convictions, weakening the principle that the law binds all actors. Trump's public attacks on judges, labelling them as biased in cases involving his allies, further erode perceptions of the law's supremacy, as seen in his criticism of the Manafort and Blagojevich cases.[690] This signals that executive power can undermine painstaking and time-consuming prosecutorial efforts and override judicial outcomes, undermining constitutional checks.

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[685] As Ken Starr, a former independent counsel who investigated President Bill Clinton's Whitewater land affair, noted, "It has been essentially the same function, a special investigator working outside the Department of Justice… It's a variation of the same themes". See Lucas, F.2017. *A Short History of Special Counsels and Presidents.* (*supra*).

[686] Blake, A.C. 2018. You're Fired! Special Counsel Removal Authority and the Separation of Powers (*supra*), at 94; For a list of notable convictions and indictments from similar investigations, see Lucas, F.2017. *A Short History of Special Counsels and Presidents* (*supra*).

[687] See American Constitution Society. Available: https://www.acslaw.org/projects/the-presidential-investigation-education-project/other-resources/key-findings-of-the-mueller-report [2025, April 11]. See also, The Trump Lawyers' Confidential Memo to Mueller, Explained, 2018. *The New York Times*. Available at: https://www.nytimes.com/interactive/2018/06/02/us/politics/trump-legal-documents.html.

[688] See Chapter 5, 5.5.3 (*supra*).

[689] See Chapter 5, 5.5.4 (*supra*).

[690] *Ibid*.

Equality: Partisan interventions favour political allies, violating equal application of the law. The Attorney General's intervention in Stone's sentencing, reducing the recommended penalty after Trump's public objections, suggests preferential treatment for loyalists (Chapter 6). This undermines equality, fostering perceptions that justice depends on political affiliation rather than legal merit.

Impartiality: Political pressures on the DOJ, exemplified by Attorney General William Barr's actions in Trump-related cases, compromise objective enforcement. The framing of prosecutions as "witch hunts" by Trump and his base[691], coupled with pardons for politically aligned figures, erodes impartial adjudication by politicising judicial processes. This polarisation diminishes public trust in the DOJ, threatening the integrity of the rule of law.

The pardons of Paul Manafort, Roger Stone, and members of the Biden family highlight the erosion of the U.S. rule of law. These pardons undercut prosecutorial efforts, undermine judicial accountability, and prioritise partisan loyalty over legal supremacy. These cases, enabled by partisan divides and executive control over the DOJ, eroded impartiality. Public reactions against these events fell diametrically along partisan ideological lines, reflecting fractured cultural politics.

6.7 Synthesis: Comparative Patterns and Divergencies

The analysis of Nigeria, South Africa, and the U.S. reveals common patterns and divergences in how executive interference undermines the rule of law, providing insights into the universal and context-specific challenges of corruption prosecutions.

6.7.1 Common Patterns

Institutional Vulnerabilities: Executive interference exploits institutional weaknesses across all jurisdictions. The Attorney General's centralised control over the EFCC and ICPC in Nigeria enables case manipulation. In South Africa, the NPA's susceptibility to ANC pressure, as seen in the Scorpions' dissolution, reflects similar vulnerabilities. In the U.S., the DOJ's position within the executive branch allows

[691] *Ibid.*

partisan influence, as evidenced by pardons and prosecutorial interventions. These institutional flaws consistently erode legal supremacy by prioritising executive power over constitutional mandates.

Socio-Cultural Amplification: Socio-cultural factors amplify interference in each context. Nigeria's ethnic loyalties, South Africa's ANC-driven loyalty and racial divides, and the U.S.'s partisan polarisation create public tolerance for interference when it aligns with group interests. This undermines equality and impartiality, as prosecutions favour connected elites, fostering distrust in governance.

Erosion of Core Principles: Interference universally erodes legal supremacy, equality, and impartiality. Pardons, selective prosecutions, and institutional subversion demonstrate how the executives prioritise political interests, weakening the foundational principles of the rule of law.

6.7.2 Divergences

Nature of Interference: Nigeria's interference is driven by ethnic patronage and centralised power, reflecting a post-colonial, military-influenced constitutional sociology. South Africa's interference stems from ANC loyalty and state capture, rooted in post-apartheid reconciliation efforts. The U.S.'s interference is partisan-driven, leveraging a legalistic culture with robust but contested checks. These differences shape the mechanisms and public responses to interference.

Institutional Resilience: The U.S. benefits from stronger institutional checks, such as judicial review and congressional oversight, which mitigate interference compared to Nigeria's weak separation of powers and South Africa's compromised NPA. However, even the U.S.'s resilience is tested by partisan interventions, as seen in Trump's pardons.

Public Response: Public tolerance varies by context. In Nigeria, ethnic communities support executive interference that benefits their groups. In South Africa, ANC strongholds tolerate executive interference to protect liberation leaders. In the U.S., polarised publics view executive interference through partisan lenses, with

Trump's base endorsing pardons as resistance to perceived biases. These variations influence the extent of the erosion of the rule of law in these countries.

6.7.3 Implications

The common patterns highlight a universal threat: executive interference in prosecuting official corruption offences undermines the rule of law by exploiting institutional and socio-cultural vulnerabilities, eroding public trust and democratic governance. The divergences underscore the need for context-specific reforms that account for Nigeria's ethnic fragmentation, South Africa's post-apartheid dynamics, and the U.S.'s partisan polarisation. These findings emphasise the urgency of strengthening prosecutorial independence and countering socio-cultural biases to reinforce the rule of law, informing the recommendations in Chapter 7.

6.8 **Conclusion: Erosion Confirmed**

This chapter has synthesised findings from Chapters 2–5 to demonstrate how executive interference in official corruption prosecutions undermines the core principles of the rule of law. In Nigeria, ethnic patronage and centralised power enable pardons and selective prosecutions, eroding constitutional authority and impartial justice. In South Africa, ANC loyalty and state capture prioritise party interests, compromising equality and judicial mandates. In the U.S., partisan interventions, such as pardons and DOJ pressures, challenge judicial authority and polarise public trust.

The comparative synthesis reveals common patterns—institutional vulnerabilities, socio-cultural amplification, and universal erosion of rule of law principles—alongside divergences in interference mechanisms and institutional resilience. These insights highlight the urgent need to address executive interference to safeguard democratic governance. The next chapter builds on this analysis by proposing comparative recommendations to mitigate interference and strengthen the rule of law, offering tailored and generalised solutions for each jurisdiction's unique challenges.

CHAPTER 7
MITIGATING EXECUTIVE INTERFERENCE AND STRENGTHENING THE RULE OF LAW: CONCLUSIONS AND RECOMMENDATIONS

7.1 Purpose: Restoring the Integrity of the Rule of Law

This chapter concludes the thesis by proposing comprehensive recommendations to mitigate executive interference in official corruption prosecutions and strengthen the rule of law in Nigeria, South Africa, and the U.S. executive interference, as demonstrated in Chapters 2–6, undermines the core principles of the rule of law—legal supremacy, equality, and impartiality—through mechanisms such as centralised prosecutorial control, state capture, and partisan interventions. These actions erode public trust, weaken democratic institutions, and perpetuate corruption, necessitating targeted reforms to enhance prosecutorial independence and accountability.

Drawing on the legal frameworks (Chapter 2), socio-cultural influences (Chapter 3), constitutional dynamics (Chapter 4), mechanisms of interference (Chapter 5), and their impacts on the rule of law (Chapter 6), this chapter offers tailored strategies for each jurisdiction while identifying cross-jurisdictional lessons. Recommendations encompass institutional reforms, legal safeguards, civic engagement, and international cooperation, addressing the unique challenges of Nigeria's ethnic-driven centralisation, South Africa's loyalty-based obstructions, and the U.S.'s partisan challenges. This chapter contributes to the academic discourse on anti-corruption by translating analytical insights into actionable solutions. It provides practical guidance for policymakers, practitioners, and civil society, advancing the broader goal of upholding democratic governance.

7.2 Approach: Purpose, Focus, Objectives, Questions, and Methodology

This study aimed to analyse how executive interference undermines the prosecution of official corruption and the rule of law across three democratic jurisdictions, each with distinct constitutional frameworks. The analysis focuses on Nigeria's centralised presidential system, South Africa's hybrid system, and the U.S. federal structure. Three core objectives guided this research:

1. Examine the mechanisms of executive interference in prosecuting official corruption offences.
2. Assess the impact of this interference on the rule of law and democratic processes.
3. Evaluate the extent to which constitutional sociology, political economy, cultural politics and political culture contribute to this interference.

Corresponding research questions addressed how executive interference occurs, its implications, and how it can be mitigated. Employing a doctrinal methodology, the study utilised comparative constitutional analysis, drawing on legal texts, judicial decisions, and case studies. As his presidency unfolds, the influence of Donald Trump's second term in office is discussed but not thoroughly examined. However, his early conduct is consistent with that of his first administration, demonstrating a consistent attack on the U.S. criminal justice system.

7.3 Findings Synthesis: Interference and Erosion Patterns

The findings confirm the dynamic relationship between executive interference and the erosion of the rule of law, as outlined in Chapter 1. In Nigeria, executive control over the Attorney General's discretion showcases the centralisation of power, which severely undermines prosecutorial independence and equality before the law. In South Africa, state capture, exemplified by the Gupta family scandal, highlights how executive pressures erode access to justice, with a weakened NPA failing to hold high-ranking officials accountable.[692] In the U.S., presidential pardons directly interfere with accountability, bypassing DOJ prosecutions and challenging the legal system.

These mechanisms—discretionary powers, state capture, and pardons—illustrate how executive influence destabilises prosecutorial autonomy, fosters immunity for the elite, and creates a perception of impunity. The political economy of patronage and state resources, coupled with cultural politics (e.g., ethnic loyalty in Nigeria, post-apartheid loyalty in South Africa, partisan politics in the U.S.), exacerbates these issues.

[692] Civil Society Working Group on State Capture. 2022. Bad Cops, Bad Lawyers: *The Officials at the NPA and the Hawks Delaying Justice for State Capture*. https://www.opensecrets.org.za/investigation-bad-cops-bad-lawyers/ [2025, April 11].

7.4 Hypothesis Evaluation: Testing Predictions

The research hypotheses introduced in Chapter 1 were tested against these findings:

1. H1: In Nigeria, executive interference through centralised prosecutorial control significantly weakens prosecutorial independence and equality before the law due to ethnic patronage.
    - Supported: The Attorney General's discretion and executive interference in high-profile cases, such as Akpabio, Tinubu and Alamieyeseigha, confirm a weakened rule of law. This is exacerbated by ethnicity and Ekeh's "Two Publics",[693] shielding perpetrators.
2. H2: In South Africa, executive interference through political pressure undermines access to justice and weakens the limits of government power, moderated by post-apartheid reforms.
    - Supported: State capture during Zuma's tenure eroded the independence of the Prosecution. If the recommendations from the Zondo Commission are implemented, the outlook on corruption in South Africa would be significantly improved. However, as seen below,[694]the recommendations of the Zondo Commission are insufficient for an independent NPA.
3. H3: In the U.S., executive interference through pardon powers disrupts accountability and equality before the law. Acceptable norms, customs and the use of special counsel provide a measure of checks. However, these are insufficient, especially under President Trump's administration.
    - Supported: Trump's pardons disrupted DOJ outcomes. Biden's pardons reified the partisan use of the pardon power to protect politically affiliated persons from the consequences of their acts of official corruption. Trump's targeting of prosecution officers indicates a broader attempt to cow the DOJ.

These outcomes validate the study's comparative lens, demonstrating the centrality of constitutional and socio-cultural drivers in shaping executive interference.

[693] See Chapter 3, 3.1.1 (*supra*).
[694] See Chapter 7, 7.3.2 (*infra*).

7.5 Theoretical and Analytical Foundations for Recommendations

The recommendations presented in this chapter are grounded in the theoretical and analytical findings of the thesis, which highlight the systemic vulnerabilities enabling executive interference in official corruption prosecutions. As articulated by scholars like Dicey, Hayek, and Locke, the rule of law requires legal supremacy, equality, and impartiality to ensure accountability and prevent arbitrary power (Chapter 3). However, executive interference exploits legal, socio-cultural, and constitutional weaknesses to obstruct justice across Nigeria, South Africa, and the U.S. (Chapters 2–5). Chapter 6 synthesised these findings, demonstrating how Nigeria's ethnic patronage, South Africa's ANC-driven State Capture, and the U.S.'s partisan interventions undermine these principles, fostering distrust and governance failures.

Theoretically, effective anti-corruption strategies must align with the core principles of the rule of law, ensuring that laws are supreme, equally applied, and impartially enforced. Analytically, the thesis reveals that interference thrives where prosecutorial agencies lack autonomy, socio-cultural biases (e.g., ethnicity, party loyalty) shield perpetrators, and constitutional checks are inadequate. For instance, Nigeria's centralised Attorney General model (Chapter 4), South Africa's compromised NPA (Chapter 4), and the U.S.'s politically influenced DOJ (Chapter 4) illustrate how institutional design and socio-political dynamics enable interference. These findings inform the recommendations, which aim to insulate prosecutorial processes, counter socio-cultural barriers, and strengthen constitutional safeguards.

Moreover, Africanist perspectives (e.g., Mamdani, Mutua) emphasise the need for culturally sensitive reforms that account for post-colonial legacies and local governance challenges (Chapter 3). Recommendations must balance universal rule of law principles with context-specific strategies, ensuring applicability in Nigeria's ethnically fragmented society, South Africa's post-apartheid democracy, and the U.S.'s polarised legalistic system. This section sets the stage for the jurisdiction-specific and cross-jurisdictional recommendations, which address immediate and structural challenges to restoring the rule of law in corruption prosecutions.

7.6 Recommendations for Nigeria

The following recommendations address these challenges of executive interference in Nigeria, focusing on institutional, legal, and societal reforms.

7.6.1 Institutional Reforms

Nigeria must decentralise prosecutorial authority and insulate anti-corruption agencies from executive control to enhance prosecutorial independence. The 1999 Constitution should be amended to ensure that prosecutorial decisions are judicially reviewable. Additional amendments should be made to establish the EFCC and ICPC as independent bodies, reporting to an autonomous oversight board rather than the Attorney General. This board, comprising representatives from the judiciary, legislature, and civil society, would ensure accountability without executive interference.

Furthermore, statutory changes should be made to ensure that the executive appointments and dismissals of the heads of prosecutorial agencies must be ratified by the National Assembly, Nigeria's legislature. This will ensure that the appointment process is transparent and merit-based. Internal accountability mechanisms should also be strengthened by introducing mandatory public reporting of case progress to deter selective prosecutions.

7.6.2 Legal Safeguards

Legal reforms should limit the executive's discretionary powers in corruption cases. Amending the Corrupt Practices and Other Related Offences Act to restrict the Attorney General's *nolle prosequi* authority, requiring judicial approval for case withdrawals, would enhance legal supremacy. Furthermore, codifying stricter penalties for executive interference, such as obstruction of justice, would reinforce impartiality, ensuring that interventions face legal consequences.

7.6.3 Civic Engagement and Education

Addressing Nigeria's "Two Publics" cultural politics, where ethnic loyalty trumps legal accountability, requires robust civic education. Nationwide campaigns, led by civil society and media, should promote the rule of law as a universal principle, emphasising that corruption harms all communities, not just rival ethnic groups. Grassroots initiatives, particularly in rural areas, should leverage traditional leaders to debunk myths that equate patronage with cultural norms, countering the acceptance of figures like Alamieyeseigha. Establishing community-based anti-corruption watchdogs, supported by international Non-Governmental Organisations (NGOs), would empower citizens to report interference and demand accountability.

7.7 Recommendations for South Africa

The following recommendations address these challenges of executive interference in South Africa, focusing on institutional, legal, and societal reforms.

7.7.1 Institutional Reforms

After its State Capture investigation, the Zondo Commission made extensive recommendations addressing structural and legal reforms.[695] However, it did not make any recommendations regarding potential criminal justice system reforms[696] despite finding that institutions like the NPA were the subject of political manipulation in the process of State Capture.[697] Notwithstanding this oversight, South Africa must implement certain fundamental recommendations of the Zondo Commission, such as creating the Anti-State Capture and Corruption Commission.[698] A tracker set up by a civil society collective to monitor the implementation of the Zondo Commission's recommendations shows that, as of April 2025, only four out of 64 major recommendations had been implemented.[699]

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[695] Judicial Commission of Inquiry into State Capture Report: Part VI. Vol 4: All Recommendations.
[696] Civil Society Working Group on State Capture. 2024. A Collective Civil Society Response to the Zondo Commission and the State Capture Report. 20. https://www.opensecrets.org.za/a-collective-civil-society-response-to-the-zondo-commission-and-the-state-capture-report/ [2025, April 11].
[697] *Ibid*. 10.
[698] Judicial Commission of Inquiry into State Capture Report: Part VI. Vol 4 (*supra*), at 186.
[699] Civil Society Working Group on State Capture. Nd. Zondo Recommendations Tracker. https://www.opensecrets.org.za/zondo-recommendations-tracker/ [2025, April 11].

Restoring the NPA's independence is critical to mitigating executive interference. The 1996 Constitution should be amended to grant the NPA full autonomy, removing executive influence over dismissals and funding. This could be achieved by making the NPA a Chapter 9 status under the South African Constitution. Chapter 9 bodies do not report to the executive, and their closure would require a two-thirds majority of the Parliament.[700] Transparent case management systems requiring public disclosure of prosecutorial decisions should also be considered. This would further deter interference and rebuild trust eroded by State Capture.

7.7.2 Legal Safeguards

Legal reforms should strengthen anti-corruption enforcement and limit executive overreach. Amending the PRECCA to mandate judicial review of NPA decisions to drop corruption cases would ensure legal supremacy, addressing cases like Zuma's delayed prosecutions. Introducing whistleblower protection laws, with incentives for reporting executive interference, would encourage exposure of State Capture tactics. This is one of the recommendations of the Zondo Commission, and the whistleblower protection bill is set to be introduced in the South African Parliament in 2025,[701]following this recommendation. Laws should also be enacted to bar convicted officials from public office permanently. This would deter impunity and reinforce equality before the law.

7.7.3 Civic Engagement and Education

South Africa's post-apartheid racial and ANC loyalty dynamics require targeted civic engagement to foster a unified anti-corruption stance. Public education campaigns, supported by the media and civil society, should emphasise the role of the rule of law in achieving social justice, countering perceptions that corruption prosecutions target black leaders. Community dialogues, facilitated by organisations like the Public Protector, should address racial divides, promoting accountability over party loyalty. Youth-focused programs, leveraging social media, can cultivate a new

[700] Corruption Watch. 2024. IDAC Now a Permanent Anti-Corruption Unit in the NPA. Available: https://www.corruptionwatch.org.za/idac-now-a-permanent-anti-corruption-unit-in-the-npa/. [2025, April 11].
[701] Corruption Watch. 2025. Whistleblower Protection Bill Is on the Way. Available: https://www.corruptionwatch.org.za/whistleblower-protection-bill-is-on-the-way/. [2025, April 11].

generation committed to impartial governance, reducing tolerance for figures like Zuma who exploit cultural ties.

7.8 Recommendations for the United States

The following recommendations address these challenges of executive interference in the U.S., focusing on institutional, legal, and societal reforms.

7.8.1 Institutional Reforms

Enhancing DOJ independence is essential to counter partisan interference. Establishing an independent prosecutorial council, appointed through bipartisan congressional approval, would oversee high-profile corruption cases, reducing executive influence, as seen under Trump's administration. Limiting the Attorney General's authority to intervene in specific cases, particularly those involving political allies, would strengthen impartiality. Additionally, creating a permanent anti-corruption task force within the DOJ, insulated from presidential appointments, would ensure consistent enforcement, addressing vulnerabilities exposed in Stone's case.

Most of these reforms could be achieved through the Protecting Our Democracy Act (PODA). The PODA introduces transformative reforms to curb executive abuse and corruption. It reinforces safeguards to ensure presidential transparency, prioritises public interest over personal gain, and upholds that no president is above the law. It also protects the DOJ from executive interference and circumscribes the exercise of pardon powers.[702] The PODA passed the U.S. House of Representatives in 2021[703] and was received in the U.S. Senate in the same year. However, it has yet to be passed by the Senate. It is doubtful that the PODA will receive enough bipartisan support in the Senate, considering the polarised state of the U.S. political environment.

[702] Protect Democracy. 2021. *Protecting Our Democracy Act*. Available: https://protectdemocracy.org/project/protecting-our-democracy-act/ [2025, April 11].
[703] U.S. Congress. 2021. Protecting Our Democracy Act. Available: https://www.congress.gov/bill/117th-congress/house-bill/5314 [2025, April 11].

7.8.2 Legal Safeguards

Legal reforms should constrain executive discretion in official corruption prosecutions. Amending the Federal Bribery Statute to require judicial oversight of DOJ case dismissals would uphold legal supremacy, preventing partisan withdrawals such as in the case of Mayor Adams. Passing the PODA will be fundamental in this respect. Strengthening judicial protections against executive criticism, such as sanctions for undermining judicial authority, would reinforce impartiality and public trust.

7.8.3 Civic Engagement and Education

Countering partisan polarisation requires civic education to promote the rule of law as a non-partisan principle. National campaigns, led by NGOs and educational institutions, should emphasise the importance of impartial prosecutions, debunking narratives that frame them as "witch hunts". Bipartisan forums, facilitated by think tanks, can foster dialogue on anti-corruption, reducing polarisation seen in cases like Stone's. Media literacy programs, targeting misinformation about judicial processes, would empower citizens to demand accountability, strengthening public support for the rule of law.

7.9 Cross-Jurisdictional and International Strategies

While jurisdiction-specific recommendations address local challenges, cross-jurisdictional and international strategies can enhance their effectiveness by fostering shared learning and global cooperation. The following strategies draw on common patterns identified in Chapter 6, such as institutional vulnerabilities and socio-cultural biases, to promote universal rule of law principles.

7.9.1 Regional and International Cooperation

International frameworks like the UNCAC[704] should be leveraged to strengthen anti-corruption efforts. One such aspect is UNAC's unexplained wealth mechanism through which public officers are meant to account for the source of any wealth or

[704] Chapter 2, 2.2.2 (*supra*).

funds that exceed the bounds of their legitimate income. It is vital that Nigeria and South Africa incorporate this mechanism into their respective legal systems to have another tool in targeting illicit enrichment by public office holders.

The importance of this mechanism is best appreciated against the backdrop of the quantum of African resources that have been spirited away from the continent through corrupt practices. As of 2005, it was estimated that Africa loses $148 billion annually, which amounts to 25% of the continent's gross domestic product, through acts of official corruption.[705] Therefore, recovering and repatriating the continent's purloined resources to their rightful owners is crucial for its socio-economic growth and development.[706]

Nigeria and South Africa can benefit from the AU and SADC protocols[707], which promote judicial cooperation and asset recovery, addressing cross-border corruption. The developed economies can lead by sharing best practices through the OECD[708] anti-bribery initiatives, supporting capacity-building in Nigeria and South Africa. Establishing a tri-national anti-corruption task force, facilitated by UNCAC, would enable knowledge exchange on prosecutorial independence, drawing on the U.S.'s legalistic model to inform reforms in Nigeria and South Africa.

7.9.2 Technology and Transparency

Leveraging advanced technology and promoting transparency are pivotal strategies that could deter executive interference in official corruption prosecutions across Nigeria, South Africa, and the U.S. Digital innovations can enhance the integrity of prosecutorial processes by creating tamper-resistant systems and fostering public oversight, thereby reinforcing the rule of law's principles of legal supremacy, equality, and impartiality. In Nigeria, where centralised prosecutorial control enables

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[705] Corruption Costs Africa $140 Billion a Year, 2023. *Defence Web*. Available: https://www.defenceweb.co.za/security/national-security/corruption-costs-africa-140-billion-a-year/. [2025, April 11].

[706] Kofele-Kale, N. 2006. Change or The Illusion of Change: The War Against Official Corruption in Africa (*supra*) 728.

[707] Chapter 2, 2.2.2 (*supra*).

[708] The Organisation for Economic Co-operation and Development.

selective case handling, implementing blockchain-based case tracking systems can ensure immutable records of prosecutorial decisions, preventing unauthorised withdrawals or manipulations. Blockchain's decentralised ledger technology records every action—case initiation, evidence submission, or discontinuation—in a transparent, auditable format, reducing the Attorney General's ability to interfere without detection.

In South Africa, where State Capture compromised the NPA, public-facing digital dashboards can provide real-time updates on the progress of corruption cases, exposing executive pressures. These dashboards, accessible via government websites, would detail case statuses, court dates, and prosecutorial rationales, enabling civil society and media to monitor for irregularities. In the U.S., where partisan interventions undermine prosecutorial independence and judicial authority, secure online platforms for whistleblower reporting, protected by encryption, can encourage DOJ insiders to expose executive overreach anonymously, enhancing impartiality.

To operationalise these tools, governments should mandate their integration into anti-corruption frameworks, supported by legislation requiring public disclosure of prosecutorial actions. For instance, Nigeria could amend the Corrupt Practices Act[709] to enforce blockchain tracking, while South Africa's PRECCA could mandate digital dashboards. In the U.S., federal regulations could require encrypted whistleblower platforms within the DOJ. International organisations, such as TI and the UNODC,[710] can provide technical assistance and funding, ensuring compatibility with local legal systems. By increasing transparency and reducing opportunities for covert interference, these technological solutions empower citizens, deter executive manipulation, and strengthen public trust in official corruption prosecutions across all three jurisdictions.[711]

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[709] See Chapter 2, 2.4.1 (*supra*).
[710] See Chapter 4, 4.4.1 (*supra*).
[711] Transparency International. n.d. *Technological Innovations to Identify and Reduce Corruption*. Available: https://knowledgehub.transparency.org/assets/uploads/helpdesk/376_technological_innovations_to_identify_and_reduce_corruption.pdf. [2025 April 11].

7.9.3 Civil Society and Media Empowerment

Empowering civil society and the media is critical to sustaining anti-corruption efforts. In Nigeria, international funding for local NGOs can support community watchdogs, countering ethnic biases. In South Africa, media training on investigative journalism can expose cases like State Capture and similar corrupt practices. In the U.S., civil society coalitions can advocate for bipartisan anti-corruption reforms, reducing polarisation. Global platforms, such as the International Anti-Corruption Conference, can amplify these efforts, fostering cross-jurisdictional advocacy for the rule of law.

7.10 Challenges and Considerations for Implementation

Implementing these recommendations faces several challenges, requiring careful consideration to ensure effectiveness. In Nigeria, entrenched ethnic loyalties and political resistance to constitutional amendments may hinder institutional reforms. Engaging traditional leaders and leveraging public support through civic campaigns can mitigate resistance, ensuring reforms align with cultural realities. In South Africa, ANC dominance and racial divides pose obstacles to NPA autonomy. Building coalitions with opposition parties and civil society can create political pressure for change, while international support can bolster reform efforts. In the U.S., partisan gridlock in Congress may stall legal reforms.

Resource constraints also pose challenges, particularly in Nigeria and South Africa, where funding for anti-corruption agencies might be limited. International aid, channelled through UNCAC and AU frameworks, can address this, while public-private partnerships can support technological innovations. Ensuring political will is critical across all jurisdictions, requiring sustained advocacy from civil society and international actors to maintain momentum for reform. These considerations underscore the need for phased implementation, starting with pilot projects (e.g., transparency systems) and scaling up based on measurable outcomes.

7.11 Conclusion: Pathways to Restoration

Analytical evidence confirms that executive interference undermines the rule of law and breaches the social contract in all three countries. In Nigeria, a centralised executive

fosters impunity, weakening prosecutorial independence. State Capture via political influence in South Africa delays justice and undermines transitional reforms. In the U.S., presidential pardons weaken accountability despite robust checks and balances. The findings highlight that constitutional design, political will, and socio-cultural factors determine the scope and severity of interference.

These mechanisms—discretionary powers, State Capture, political pressures, and pardons—illustrate how executive interference undermines prosecutorial independence while emboldening the corrupt elite. The political economy of patronage and the cultural politics of ethnic loyalty in Nigeria, post-apartheid loyalty in South Africa, and partisan divides in the U.S. are significant drivers of this interference. These systems vary in vulnerability to interference, but executive influence consistently distorts legal accountability across all three jurisdictions.

The study affirms that executive interference represents a clear breach of the social contract and a threat to democratic values, as it compromises the integrity of the justice system. The conclusion underscores the urgent need for reforms across these jurisdictions to restore prosecutorial autonomy, strengthen institutional checks and balances, and rebuild public confidence in democratic institutions.

This chapter has proposed comprehensive recommendations to mitigate executive interference and strengthen the rule of law in official corruption prosecutions across Nigeria, South Africa, and the U.S. Nigeria’s recommendations focus on decentralising prosecutorial authority, limiting executive discretion, and countering ethnic biases through civic education, addressing the centralised power and patronage that erode legal supremacy and impartiality. South Africa’s strategies emphasise restoring NPA independence, strengthening legal safeguards, bridging racial divides, and tackling State Capture and ANC loyalty undermining equality and accountability. The U.S.’s reforms target DOJ autonomy, pardon restrictions, and bipartisan civic engagement, countering partisan interference that challenges judicial authority and impartiality.

Cross-jurisdictional strategies, including international cooperation, technological transparency, and civil society empowerment, complement these tailored recommendations,

fostering global learning and accountability. While political resistance and resource constraints persist, phased implementation and sustained advocacy can ensure success. This thesis has shown that the relationship between executive interference and the rule of law is not static. It is dynamic and rooted in each country's constitutional design, political economy, cultural politics, and political culture. The proposed reforms address the root causes of interference—structural flaws, political will, and cultural norms—offering tailored yet interconnected solutions. For Nigeria, this means a systemic overhaul; for South Africa, incremental strengthening of democratic institutions; and for the U.S, targeted checks on executive powers.

This thesis concludes by affirming the critical need to safeguard the rule of law from executive interference, offering a roadmap for future research and policy initiatives. By addressing the systemic vulnerabilities exposed in corruption prosecutions, these recommendations contribute to the global fight against corruption, reinforcing democratic governance and public trust in Nigeria, South Africa, the U.S., and beyond.

7.12 Limitations of the Study

This study faced several constraints. First, academic sources often reflect authors' subjective perspectives, leading to conflicting conclusions on key topics. While I synthesised these views to draw balanced conclusions, some subjectivity may persist, limiting absolute objectivity. Second, the availability of research materials varies across jurisdictions. The U.S., with its long democratic history, offers richer literature on the rule of law, the separation of powers, and prosecutorial independence compared to Nigeria and South Africa, potentially skewing conclusions toward U.S.-centric perspectives. Consequently, recommendations may require contextual adaptation to be generalisable to other jurisdictions with less developed scholarship. These limitations highlight the need for cautious interpretation and tailored application of findings.

7.13 Recommendations for Future Research

Several future research directions are suggested based on the findings and limitations outlined in this research. A natural extension of this study would involve investigating the proposed recommendations and evaluating their applicability within the jurisdictions

examined in this thesis and other contexts. Additional suggestions for future research include:

a. How may the Prosecution be made more independent within the executive without stripping the executive of its constitutional control?
b. How can the independence and discretion of the Prosecution be balanced with accountability to avoid a lawless Prosecution?
c. How can biases favouring public officials in corruption prosecutions be reduced in affected countries?
d. Can the social contract's property theme grant citizens legal standing to challenge decisions not to prosecute official corruption offences?
e. Is it feasible to eliminate executive interference without relocating the prosecution outside the executive function?
f. How can tensions between executive control and prosecutorial independence be resolved to advance criminal justice?
g. Is the traditional concept of the rule of law still relevant in addressing modern governance challenges?

Further research should address gaps in this study. For instance, establishing a universal definition of the rule of law, identifying leadership for this effort, and achieving global consensus remain unexplored. Similarly, including contemporary issues like human rights or reproductive rights in such a definition warrants investigation. Empirical measurement of compliance with the rule of law across countries, including baseline standards, also requires attention. Additionally, a comparative analysis of the impact of official corruption in Nigeria, South Africa, and the U.S. is needed, alongside examining the potential benefits of malicious executive interference, as seen in cases like Jacob Zuma's politically motivated prosecutions.[712] These inquiries will enhance strategies to strengthen the rule of law and combat official corruption.

[712] See Chapter 5, 5.4.3 (*supra*).

7.14 Final Reflections

This research process has been uneven and painstaking. Conducting this research while working full-time resulted in divided attention, and being physically distant from the academic environment limited the momentum that could have been gained from the camaraderie of fellow research students. Nevertheless, the experience has been rewarding.

I have been pleasantly surprised by my ability to produce over sixty thousand words, read numerous articles, and synthesise them effectively. This process has significantly contributed to my growth as a research student, and I am already applying these research skills in my work as a finance lawyer. My supervisor has been immensely supportive and encouraging, offering thoughtful guidance throughout this journey.

This research is of significant personal importance to me. I come from a country plagued by official corruption, misgovernance, and weak adherence to the rule of law. Having grown up in a deprived environment, I can now, in retrospect, attribute much of this deprivation to official corruption, the misuse of state resources, and the near absence of the rule of law.

This background motivated me to study law, believing that the legal framework could be a tool for societal improvement. As an undergraduate law student, I became fascinated with legal jurisprudence and concepts such as the rule of law. Although democracy was restored in my country during my undergraduate studies, I observed scant application of the rule of law principles.

Drawing from my indigent background and recognising how the misuse of state resources contributed to my deprivation, I developed a strong interest in anti-corruption legislation, initiatives, and measures, particularly within the public sector. This research is a direct outcome of that interest.

The findings of this research will enrich the dialogue on official corruption and entrench the rule of law in governance. They will also increase the scrutiny on the executive to ensure that it is more accountable and judicious in exercising constitutionally allocated prosecutorial powers.

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