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**Liberal Legalism and the Challenge of Development in
Nigeria**

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Abstract

Use of law in development as advocated by international development institutions particularly the World Bank has been embraced by Nigeria as a country searching for means of development. There is evidence of this embrace in the country's adoption of the structural adjustment programme and the incorporation of the rule of law in recent development policies. This article argues that this approach is inadequate for Nigeria for two main interrelated reasons. First, the approach privileges the market at the expense of other socio-political concerns; and second, Nigeria's main challenge to development is the socio-political issue of public corruption. The article therefore calls for more emphasis on public accountability as another element of good governance which ensures protection of public property for development.

Keywords:

Corruption; Nigeria; Liberal Legalism; Development; Public accountability; governance.

Author's Note

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1. Introduction

Nigeria is one of the underdeveloped nations of the world. Over 70 per cent of its population lives below the poverty line (UNDP 2007), it has the second highest maternal mortality rate (WHO 2005; World Bank 2005), the highest number of children out of school and a high rate of adult illiteracy (UNESCO 2007; UNDP 2007). The state of underdevelopment cannot be attributed to lack of resources. Being one of the major oil producers in the world, Nigeria has earned enormous amount of wealth from its oil over the years. What is the possible remedy for this paradox of want in the midst of plenty? In development discourse, law is often invoked as a viable means of development. A good legal framework is expected to guarantee the calculability and predictability needed in order to achieve economic growth. This idea, tagged in development parlance as liberal legalism, is a common prescription by the World Bank to developing and transition countries. For instance, the World Bank reports that it has supported 330 'rule of law' projects and spent \$2.9 billion on the sector since 1990 (Trubek in Trubek & Santos 2006: 74).

On face value, liberal legalism offers an attractive recipe for development. However, it is not without a critique which questions its legitimacy. For example, it has been labelled ethnocentric and naïve, insensitive to the realities in developing countries. Nigeria being a developing country, these charges are relevant in its context. Even if the critique is glossed over, this article argues that liberal legalism is inadequate because its main focus is the market while Nigeria's major developmental problem is public corruption which causes loss of up to 70 per cent of public funds. It is therefore necessary to emphasise measures which tackle corruption in order for the country to meet its developmental challenges.

The liberal legalist idea came in three phases: the Law and Development Movement (LDM) of the 1970s, the legal reforms under the Structural Adjustment Programme (SAP) of the 1980s and the World Bank's rule of law project which started in 1990. The last phase was introduced as one of the four elements of good governance which the World Bank identified as relevant for development. The other three elements are public sector management, accountability and transparency and information. This article argues that for corruption-ridden countries like Nigeria, it is good governance which should be emphasised, particularly the issue of public accountability which deals directly with public corruption.

2. What Does Liberal Legalism Entail?

Liberal legalism has an instrumental conception of law. In its third phase, the World Bank identified rule of law as a necessary element for development. Rule of law, according to the Bank, constitutes the following five critical elements:

(a) *Rules known in advance*: Since economic policies are implemented partly through rules, governments need to ensure that the rules are known in advance. Rules here include legislation, decision of courts, guidelines and regulations. Having rules known in advance implies three sub-elements: the existence of a coherent set of rules, their communication with accuracy, clarity, and effectiveness and the non-retroactivity of laws. The Bank has been concerned with the communication and coherence aspects of the rules. For instance, it has observed that communicating rules through publication of official gazettes has ceased in many developing countries and it started to assist these countries to restart the process and to introduce other means of communication. The Bank states that "peoples' knowledge of their rights helps both to limit the arbitrary behaviour of government officials and to create the climate of predictability which is associated with the rule of law" (World Bank 1992: 32).

(b) *Rules actually in force*: Rules need to be applied actually. When laws are left in abeyance, an analysis of why they do not apply would be better instead of enacting new ones. Some aspects of enforcement of rules have a clear bearing on economic development and have received the Bank's attention over the years particularly in improving tax collection and changing security laws to enable lenders recover debts. For instance, in Sri Lanka, the Bank caused a change in the law which required lenders to obtain the leave of courts before they move against a mortgaged property. The law was based on historical concerns about the need to protect debtors from unscrupulous lenders. Now this leave is unnecessary because it does "not match the need of a modern economy" (ibid: 34, Box 9).

(c) *Rules applied consistently to all*: Laws are not made for private citizens only. The state too is expected to exercise power according to law; government officials too should be subject to law just as private individuals are, and that their actions should derive from and be limited by specific legal authority. Legality and legitimacy cannot be established without the proper and consistent application of rules by government and its officials. It is only then that a predictable atmosphere would be created. This does not divest government of discretion. But discretionary power in law is always not absolute. It must be exercised based on reasons that are applied consistently, fairly and impartially and be related to a framework of purposes, policies, principles and rules. These limitations to exercise of discretionary power need to be respected as well (ibid: 34-35).

(d) *An effective, independent mechanism for dispute resolution*: For a proper functioning of an economy and for conducting efficient private economic activities, it is necessary to have confidence in the enforceability of agreements in any legal system. This in turn requires an independent and credible judicial system that would ensure that private contractual arrangements are respected and that the law is applied uniformly. Without an independent, credible and efficient judiciary, the rule of law loses its conflict-resolving and confidence-inspiring function. “Unreasonable delays, uncertainty, and high costs in enforcing agreements between private parties all tax economic actors inequitably and damage economic efficiency. It is also evident that a strong judiciary is not only vital in enforcing contracts but is a shield against arbitrarily exercised executive power” (ibid: 35-37).

(e) *Clear rules and procedure for amendment of rules*: The needed climate of predictability and stability in a legal system would not be provided if rules are constantly or arbitrarily repealed, amended, or waived. Ad hoc decisions whereby laws are enacted, amended or invalidated without known and established procedure create a perception of arbitrariness and subjectivity. Laws of this nature invite disobedience and cause a general lack of credibility for the entire legal system. It is important therefore to have and to publicise procedures for amending or repealing laws. How this would be achieved is however outside the mandate of the Bank. It is the prerogative of the country concerned to decide how the legislative process is organized and how the legislature is constituted and by whom (ibid: 38).

As acknowledged by the Bank, two main dimensions emerge from the various definitions of rule of law. One is instrumental, which focuses on the formal elements necessary for a legal system to exist. The other is substantive, which refers to the content of the law and concepts such as justice, fairness and liberty (ibid: 30). The Bank’s version of the rule of law is instrumental. It takes the form of formal legality which simply requires law to be general and announced in advance, applied equally, and to be certain without necessarily bothering about its contents (Tamanaha 2004: 34-35; Santos in Trubek & Santos 2006: 258; Tamanaha 2006: 130). It is what Dworkin (1985: 11) refers to as the “rule-book conception”. In this sense, rule of law could be compatible with repression and totalitarianism as Raz (in Cunningham 1979: 4) argues:

A nondemocratic legal system, based on the denial of human rights, on extensive poverty, on racial segregation, sexual inequalities, and religious persecution may, in principle, conform to the requirements of the rule of law better than any of the legal systems of the more enlightened Western democracies. This does not mean that the nondemocratic system will be better than those Western democracies. It will be an immeasurably worse legal system, but it may excel in one respect: in its conformity to the rule of law.

From 1999 onward, the World Bank expanded its version of rule of law with the incorporation of socio-political concerns by introducing the Comprehensive Development Framework (Faundez 2000: 2-3; Rittich in Trubek & Santos 2006: 203; Santos in Trubek & Santos 2006: 266).¹ For instance, it recognised human rights as relevant to development (World Bank 1998, in Pahuja 2006: 3) and acknowledged that the causes of poverty are as much political and social as they are economic (World Bank 2000; Faundez 2000: 3; World Bank 2002). Its legal reform agenda now includes “judicial reform, decentralization, labour standards, equal opportunities, gender equality, land tenure systems, criminal law and the protection of the environment” (Faundez 2000a: 31).

The IMF also combines economic and political concerns in its content of law in development by invoking among others, “an aggregate governance index” which has six measures five of which relate directly to the rule of law. There is also an independent rule of law measure and it is defined as “the

protection of persons and property against violence or theft, independent and effective judges, [and] contract enforcement” (Pahuja 2006: 4). With the UNDP, rule of law has been more politically-oriented as it underscores constitutional reform, entrenched bill of rights, and strong protection of human rights as necessary preconditions for development (Daniels & Trebilcock 2004 in Pahuja 2006: 2).

The second phase of liberal legalism introduced legal reforms in developing and transition countries more specifically in the area of trade and investment laws and the civil justice system. The main purpose was to facilitate SAP. The first phase (i.e. the LDM era) sought to facilitate the development project launched by President Harry Truman of the United States in 1949. The central argument of liberal legalism is that with its predictability derived from uniform application and its protection of proprietary rights through laws of contract and property, Western law encourages economic activity and attracts foreign investment. It is also essential in checking the state’s use of arbitrary power through an independent judiciary and techniques like judicial review (Tamanaha 1995; Greenberg 1980). Thus early and later approaches are not fundamentally different from one another (Faundez 1997: 12; Rose 1998: 128; Perry 1999: 26; Faundez 2000a: 37-38; Tshuma 2000: 24; Trubek in Trubek & Santos 2006). The most important difference between the three phases lies in the role of the state. In the first phase, the state was the be-all and end-all of development. In the second phase, it was seen as an impediment to development and therefore it had to give way for the market. Later in the third phase however, the state was recognised as a necessary institution but to the extent of providing an enabling environment for economic development. As we shall see below, the whole idea was influenced by Max Weber’s theory explaining the success of capitalism in terms of Western law.

3. Critique of Liberal Legalism

Because it is a Western prescription to developing countries (where Nigeria falls), liberal legalism has been severely critiqued. For instance, it has been criticized as being ethnocentric: it was conceptualized in Western terms and it was a transmogrification of the ‘civilising mission’ of colonialism into the evangelism of modernisation (Adelman & Paliwala 1993: 11); it was “a parochial expression of the American legal style” (Merryman 1977: 479); and it “was inept, culturally unaware, and sociologically uninformed ... ethnocentric, perceiving and assisting the Third World in its own self-image” (Gardner 1980: 9). It believed in the superiority of the Euro-American legal tradition over Third World folk law cunningly representing the former as progressive in contrast to the branding of the latter as retrogressive. Fitzpatrick therefore argues that “the blithe advocacy of [liberal legalism] is flawed in its very foundation”, because law is seen as capable of turning against its origins and supporting the very people it once oppressed (1993: 27).

Greenberg (1980) shares Fitzpatrick’s arguments. He posits that not only could law not develop the Third World, it was in fact an instrument for depleting its resources to build Europe’s industrial revolution. European legal systems were effectively used to subject Third World countries “to exploitative trading relations, to land seizures, to discriminatory and even enslaving personal laws and to concepts of public order and administration which intended to be incapacitating” (Carty 1992: xiii). He likens liberal legalists with the 17th century profit-hunting legal merchants and warns that colonialism is not yet over.

Liberal legalism has also been criticised as being naïve. The reality in the Third World was a diametrical opposition to the model’s conception: instead of West’s socio-political pluralism and autonomous judicial system, Third World had social stratification, authoritarian governments, weak states, uninternalised legal rules, ineffective judiciary; and it was going to be counterproductive to export an instrumental view of law to authoritarian states (Trubek & Galanter 1974, Trubek 1972). Studies have cast doubt on the existence of a legal profession in some of the Third World societies; and particularly in Africa, informal sources of power (families, clans, villages, etc.) enjoy more loyalty than the ‘alien’ state law viewed with suspicion and hostility (Paul 2003; Chibundu 1997; Trubek and Galanter 1974).

The critique to liberal legalism has however been dismissed as baseless. For instance, Tamanaha (1995) recounts, in what resulted in a “state law bad,” “folk law good” attitude, how some scholars blamed ills of the Third World on Western imperialism, touted socialism over liberalism, and argued for the protection of local cultures against Western encroachment. He posits that this attitude however “sowed the seeds for a self-defeating tension that would bear its bitter fruit in the longer term”, for the scholars supported human rights which is “undeniably Western and liberal in origin and content” (cf. Baxi 2002:

24-27); while some after analyzing the position of women under folk law concluded begrudgingly that women were better off under the Western-oriented laws on property and other family matters (cf. Paliwala 1993).

Furthermore, the critics merely labelled the model ethnocentric and naïve without offering any alternative to it (Tamanaha 1995: 474).² In particular, Trubek and Galanter's proposal of an "eclectic critique" which retains liberal legalism's assumptions as guiding aspirations but detaches these aspirations from commitment to any institutions or policies is a negative approach and it makes them guilty of the same charge of ethnocentrism, as it bequeaths to the Third World "a critical attitude and methodology generated by a home-grown U.S. crisis³ with the rule of law" (ibid: 475).

Ethnocentrism, Tamanaha insists, is inevitable. It is part of human nature that we see things outside our own province within our own perspective shaped by our cultural, professional or intellectual orientation. But there are no ultimate standards from which to determine the superiority of one view over another. The way out is thus to see "which ideals and visions of the world should be adopted ... the only sources of support ... to be found in real-life consequences" (ibid: 483).

As we shall see below, Nigeria seems to have accepted the 'defence' offered by Tamanaha and has in fact adopted the Western 'ideals' and 'visions' of liberal legalism. However, I will argue that it cannot adequately address Nigeria's underdevelopment. This is because the underdevelopment is caused largely by public corruption and the approach does not focus on corruption. Where corruption is prevalent like Nigeria, there is need to explore other good governance elements such as public accountability. Before examining the limits of liberal legalism, I shall hereunder give an overview of corruption in Nigeria highlighting how development-impeding it has been.

4. Corruption and Development

Corruption is prevalent in Nigeria though it has always been an offence. Sections 98 and 104 of the Criminal Code and sections 115 and 116 of the Penal Code have respectively criminalized it. Again, the 1999 Constitution (section 15) makes it a fundamental objective and directive principle of state policy for the state to abolish all corrupt practices and abuse of power. More anti-corruption laws have been enacted recently. They are the Independent Corrupt Practices (and Other Related Offences) Commission Act, 2000; the Economic and Financial Crimes Commission Act 2004; and Money Laundering (Prohibition) Act 2004.

In assessing the level of corruption in Nigeria, I shall rely on the data of Transparency International (TI) between 1996 and 2009.⁴ The data indicate that Nigeria is perceived to be among the most corrupt nations in the world. In 1996 (the first time Nigeria was included in the assessment), 1997 and 2000, its level of corruption was the highest in the world. For five times within the period, it was the second nation with the highest level of corruption. It took a third position (sharing with Cote D'Ivoire and Equatorial Guinea) and fourth position (sharing with Tanzania) once each. Sharing with eight other countries, it occupied the fifth position once. Its position in 2007 was ninth which it shared with Angola and Guinea-Bissau. Its best score is 2.7 in 2008. Table 1 below gives details of Nigeria's TI Corruption Perception Index (CPI) between 1996 and 2009.

Table 1: Nigeria's TI CPI (1996-2009)⁵

Year	Rank	Total	Score	Surveys	Variance
1996	54	54	0.69	4	6.37
1997	52	52	1.76	4	0.16
1998	81	85	1.9	5	0.5
1999	98	99	1.6	5	0.8
2000	90	90	1.2	4	0.6
2001	90	91	1.0	4	0.9
2002	101	102	1.6	6	0.6
2003	132	133	1.4	9	0.4
2004	144	145	1.6	9	-
2005	152	158	1.9	9	-
2006	142	163	2.2	7	-
2007	147	179	2.2	8	-

2008	121	180	2.7	7	0.5
2009	130	180	2.5	7	-

Source: Compiled from TI Corruption Perception Indices 1996-2009

Nigeria's improvement in rank reflects its improvement in score. But this may not necessarily be evidence of decrease in level of corruption. The inclusion of more nations (e.g. war-torn countries like Angola, Afghanistan and Somalia) in the assessment would improve Nigeria's rank without a significant improvement in its score. For instance, between its first position in 2000 and its ninth position in 2007 is a difference of only one point. But while there were 90 countries involved in the 2000 assessment, countries assessed in 2007 were 179.

Nigeria's position is fortified by the fact that the surveys used by TI for its assessment in each year were multiple. Except in four occasions, they exceeded four in all the assessments. In some instances it was as high as nine. And except in 1996 when the degree of variance among the surveys was as high as 6.37, in all other years the number was below 1.0. This clearly shows that various surveying organisations agreed several times on Nigeria's level of corruption. Comparing Nigeria's scores for 1996 and 1997, TI (1997) declares as follows:

Comparing the scores for 1996 and 1997 it may ... appear that the perceived level of corruption is strongly decreasing. It should be noted however, that the 1997 is much more precise with a variance of only 0.16 points. This means that there is even a stronger agreement that Nigeria scores lowest among the 52 countries ranked.

Perhaps in defence, it may be argued that by the TI assessment, Nigeria is merely *perceived* to be highly corrupt and not *actually* so. Moreover, the assessment is carried out by a foreign organisation relying on surveys made by equally foreign organisations. However, such arguments collapse when viewed against the fact that Nigerians too share this perception. All military coups have been explained in terms of corruption of the previous administrations. There cannot be a better confession to corruption than what former President Obasanjo once said: "Corruption was not only rife, it had eaten so deeply into the marrow of our existence that looters and fraudsters had become our heroes" (Inaugural Speech 1999).

Recent Development Plans have also recognised the prevalence of corruption in Nigeria. For instance, Vision 2010 (1997: 9) laments that "corruption appears to have become a way of doing things, though it is resented by a significant number of people who are hopeless in the face of weak and selective application of sanctions". Similarly, National Economic Empowerment and Development Strategy (NEEDS) states that:

Nigeria's legacy of mismanagement and corrupt governance has encouraged many people to seek ways of sharing the national cake instead of helping bake it. By 1999 corruption was practically institutionalized. Government was widely regarded as provider of large contracts, distributed by officers in power to people wealthy enough to buy their influence (NEEDS 2003: xiv).

One of the consequences of public corruption is hampering development. It diverts public resources away from public purposes, jeopardises government's ability to achieve its agenda and directly affects priority sectors such as education and health (Dorotinsky & Pradhan in Campos & Pradhan 2007: 267). TI reiterates this point in the following words:

Corruption aggravates poverty. Surveys of the very poor in developing countries point to corruption as having a significant and detrimental impact on their lives... Corruption not only reduces the net income of the poor but also wrecks programmes related to their basic needs, from sanitation to education to healthcare. It results in the misallocation of resources to the detriment of poverty reduction programmes... The attainment of the Millennium Development Goals is put at risk unless corruption is tackled as an integral part of poverty reduction strategies... The growing global consensus on the importance of corruption as an impediment to development is reflected in the ratification of the UN Convention Against Corruption (UNCAC) (TI 2007).

Highly corrupt countries are generally underdeveloped. Conversely, less corrupt countries achieve relative development (Johnston 2002 in Smith 2007: 180). Comparative research has shown that “reducing corruption from Indonesia’s level to South Korea’s in 1997-8 would have produced between a twofold and a four-fold increase in per capita incomes and decrease in infant mortality, as well as improvement in literacy of between 15 and 25 percentage points” (Kaufmann *et al* 2000 in Smith 2007: 180). Borrowing from the law of demand and supply in economics, we could formulate the law of development in the following terms, corruption and development standing in place of price and demand respectively:⁶ the higher the corruption, the lower the development; the lower the corruption, the higher the development.

It has also been acknowledged that corruption has negatively impacted on Nigeria’s development. For instance, Vision 2010 (1997: 9, 58) accepts this as a fact. It is not known, and it may not be possible to know, exactly what quantity of public funds have so far leaked through corruption. Achebe suggested in 1984 “knowledgeable observers...estimated that as much as 60 percent of the wealth of [the] nation [was] regularly consumed by corruption” (Achebe 1984: 40). This percentage is believed to have risen to 70 by 2002. According to the former Economic and Financial Crimes Commission (EFCC) Chairman, Nuhu Ribadu, about 70 percent of the nation’s income used to go to waste and corruption until 2004 when it dropped to about 40 per cent (*The Boston Globe* 2004).⁷

To make matters worse, the bulk of the stolen money is stashed away in foreign banks. Recently, the Executive Director United Nations Office on Drugs and Crime, Dr Antonio Maria Costa, disclosed that before the return of democratic rule in 1999, past corrupt Nigerian leaders had stolen and stashed away in foreign banks about \$400 billion of the country’s wealth (*Leadership* 14/11/07)! The figure is not, nor does the source claim that it is, exhaustive. According to recent World Bank estimates, approximately 80 percent of Nigeria’s oil revenues are concentrated in the hands of 1 percent of the population, and some 70 percent of the country’s wealth is held abroad (Khakee 2008). It could be argued therefore that corruption has cost Nigeria about the equivalent of its total earnings from oil exports between 1970 and 2007 which is estimated at about \$572 billion (OPEC 2004, 2005, 2006, 2007).

Corruption not only depletes local public funds, it does not also spare funds provided by international development institutions. For instance, it has been reported that 258 billion Naira loans poured into Nigeria by the African Development Bank within about 18 years for various social service projects have nearly all gone down the drain (in Gbefwi in Ayua & Guobadia 2001: 640-641).

The lost resources could have financed development. For instance, it has been estimated that the yearly loss (N600 million) from a scam during the Second Republic at the Posts and Telegraphs Department of the Federal Ministry of Communications could build two additional international airports like the Murtala Mohammed Airport Lagos; or buy three refineries; or build a dual express motorway from Lagos to Kaduna;⁸ or pay the salary of 10,000 workers on grade level 01 for forty years (Achebe 1984: 39-40).

Similarly, public funds recovered from 28 public officers by military tribunals after the Second Republic was toppled (totalling N42, 499,413; \$5,985,654; and £532,000) represented more than what the Federal Government projected for secondary education per year;⁹ more than twice the amount it allocated for adult education for five years;¹⁰ and about 1/6 of what the whole states of the federation projected for the health sector in a year.¹¹

Corruption as antithetical to development could further be exemplified by the utilization of the repatriated alleged Abacha loot. The Obasanjo administration repatriated N65 billion from the accounts of late Head of State, Gen. Sani Abacha, in Switzerland and injected it into five target sectors of the Millennium Development Goals (MDG) in cooperation with the World Bank. The money was allocated to the power sector, works, health, basic and secondary education, and water. As a matter of fact, the money, which was about the cost of the 2003 MDG federal budget, was largely responsible for the huge increase in capital expenditure in the 2004 MDG budget (World Bank 2006).

An interesting analogy could be drawn on the amount involved in a recent scandal involving the former Speaker of the House of Representative, Mrs. Patricia Etteh, and her Deputy, Babangida Nguroje. The officers were indicted for complicity in an inflated contract, awarded unnecessarily and without due process, for the renovation of their official residencies to the tune of N628 million (*Leadership*

31/10/07). While N628 million was being wasted, a similar amount (N686 million [about Euro 3.9 million]) was being used by the European Union to provide water and sanitation to twelve towns and communities housing 410,000 people in Enugu and Jigawa States (*Thisday* 26/9/07).¹²

Considering the level of corruption, one would agree with Osoba (1996) when he stated that:

The fraudulent accumulation process has resulted, over time, in the progressive and phenomenal enrichment of Nigerian rulers (both civilian and military), the emptying of the national treasury and the indebtedness of the country almost to the point of bankruptcy: hence the critical dearth of resources for investment on the social, economic and overall cultural development of the masses of our people.

All the corruption referred to above is perpetrated in the public circles. And as we have seen, it is impeding development in no small measure. It could be argued that it is largely responsible for the underdevelopment of Nigeria. Unless if the challenge it poses is met squarely, development may not be achieved in the country. Law is a possible emancipatory force. But the way it is invoked under liberal legalism is so limited and weak that it cannot be of much help. It is to this point that I shall now turn.

5. The Limits of Liberal Legalism

As stated above, the rule of law is required in order to create the stability needed “for economic actors – entrepreneurs, farmers, and workers – to assess economic opportunities and risks, to make investments of capital and labour, to transact business with each other, and to have reasonable assurance or recourse against arbitrary interference or expropriation” (World Bank 1992: 4). The World Bank also stated that what an appropriate legal system does is to “provide stability and predictability, which are essential elements in creating an economic environment where business risks may be rationally assessed and the cost of transactions lowered” (World Bank 1994: 23). Thus rule of law is invoked as a means of protecting private proprietary interests and ensuring effective enforcement of private contracts. It is not for the protection of public property. This is not surprising because the World Bank works within its mandate and by its Articles of Agreement,¹³ its main concern is the market. Under Article I, the purposes of the Bank revolve around economic considerations and are stated in the following words:

- (i) To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.
- (ii) To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment by providing, on suitable conditions, finance for productive purposes out of its own capital, funds raised by it and its other resources.
- (iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories.
- (iv) To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.
- (v) To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members and, in the

immediate postwar years, to assist in bringing about a smooth transition from a wartime to a peacetime economy.

The Bank shall be guided in all its decisions by the purposes set forth above.

Specifically, Article IV section 10 of the Articles of Agreement restricts the Bank from interfering in the political affairs of member countries. It provides as follows:

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.

The Bank further states that it cannot be influenced by the political character of a member-country; it cannot interfere in the partisan politics of a member; it must not act on behalf of developed countries to influence a borrowing member's political orientation or behaviour; it cannot be influenced in its decisions by political factors that do not have a preponderant economic effect; and its staff must not build their judgements on the possible reactions of a particular Bank member or members (World Bank 1992: 5).

The market-oriented nature of liberal legalism should not be surprising. As mentioned to above, it drew from Max Weber's theory explaining the success of capitalism in the West. Weber's search for the reasons for this success led him to identify legal 'rationality' as the trump card. He constructs a typology of law on the basis of varying types of legal thought (reflected in their procedures rather than content). For instance, the lay magistrates and a tyrant are both irrational, their methods of arriving at a decision not being guided by a systematic form of general rules. He calls the former *formal irrationality*, and the latter *substantive irrationality*. A *formal rationality* on the other hand could be the English common law or continental codified legal systems, while *substantive rationality* is the canon law (Weber 1978: 62-63 in Hunt 1978: 105; Rheinstein 1954: xlviii-l; Trubek 1972a: 727-731; Anleu 2000: 23).

According to him, the highest form of legal rationality is achieving calculability and predictability spurred by the "integration of all analytically derived legal propositions in such a way as to constitute a logically clear, internally gapless system of rules, under which, it is implied, all conceivable fact situations must be capable of being logically subsumed" (Weber 1978: 62 in Hunt 1978: 106). He argues that logically *formal rational law* is peculiar to the West (Trubek 1972a: 723)¹⁴ and it transited from *substantive rational law*. Its counterpart is his purposive rationality of economic conduct which modern capitalism constitutes for its rational choice of means to achieve the end of profit (Rheinstein 1954: xlviii & lviii). Thus the relationship between law and capitalism lies in 'calculability' and 'predictability' which law provides and on which capitalism rests. His conception of law is therefore institutional and instrumental and it is what influenced the World Bank in its adoption of rule of law in development. In fact, it has been said that the Bank's architect of rule of law, Ibrahim Shihata, expressly refers to Weber's theory (Santos in Trubek & Santos 2006: 270, note 56).

The first phase of liberal legalism (i.e. LDM) also drew heavily on Weber's concepts, "as well as on his comparative historical studies of the role of law in the rise of capitalism" (Trubek 1972a: 721); and it emerged during the post-World War II communist/capitalist ideological conflicts (Trubek and Galanter 1974; Greenberg 1980; Carty 1992; Chibundu 1997). That is why its focus is capitalist growth. Tracing the origin of the Law and Development Movement, Trubek and Galanter (1974) for instance explain the circumstance under which it was thought to be useful for the development of the Third World:

Legal development assistance began in a period when Cold War rhetoric and Cold War policy were ascendant. The American elite and policy makers saw the "rule of law" as one of the major features that distinguished the United States from Communist nations. It was understandable that in this context United States development assistance was pictured as furthering the rule of law, and ... legal development

assistance as one way for the United States to fulfil its pledge to further “freedom” in the developing countries (1085-1086).¹⁵

The second phase of liberal legalism (i.e. legal reforms driven by the Washington Consensus) started when the world was still bi-polar so it could not have been divorced from the ideological conflict. It was the concern of foreign investors in the Third World which was upper most rather than local needs and the reforms were biased towards commercial and investment laws (Faundez 1997: 7; Perry 1999: 30). In retreating the state from the development arena and advancing the market,¹⁶ law was seen as a relevant instrument. The reforms were made condition for loans and they “were narrowly tailored to introduce fiscal reform, ending exchange-rate controls, liberalizing trade, securing property rights, ending subsidies, and privatizing state-owned enterprises” (Santos in Trubek & Santos 2006: 267). Everything was packaged under the Structural Adjustment Programme (SAP) introduced in the 1980s. Trubek & Santos (2006: 2) shed more light on this:

Rather than [being] an instrument for state policy, law was understood as the foundation for market relations and as a *limit* on the state. ... Attention shifted from the establishment of an administrative to the core institutions of private law, the role of the judiciary in protecting business against the intrusion of government, and the need to change local laws to facilitate integration into the world economy. ... Neoliberal law and development thought focused primarily on the law of the market: relatively little concern was shown for law as a guarantor of political and civil rights or as protector of the weak and disadvantaged.

In Nigeria, SAP was introduced during the Babangida administration in 1986 though no loans were taken from the Bretton Woods system. Legal reforms went underway to facilitate SAP. For instance, the Second-Tier Foreign Exchange Market Decree of 1986¹⁷ was promulgated to establish the Second-tier Foreign Exchange Market (SFEM). It was through SFEM that the Nigerian currency (Naira) was devalued. Foreign exchange rate was determined by the market and that was a SAP prescription (Faruqee in Husain & Faruqee 1994: 254). A privatisation and commercialisation exercise under four categories (full privatisation; partial privatisation; full commercialisation; and partial commercialisation) was also enabled by the Privatization and Commercialization Decree.¹⁸ Similarly, the Nigeria Enterprises Promotion (NEP) Decree of 1977 which restricted foreign ownership and control of enterprises (in favour of local entrepreneurs) was repealed and replaced with the NEP Act¹⁹ in 1989 in order to remove most of the restrictions.

The end of the Cold War and the consequent triumph of the free market economy; the rise of multinational corporations; and, to a lesser extent, the emergence of the human rights regime led to a renewed interest in the role of law in development (Trubek et al. 1994: 409; Lawrence 1994: 672; Miller 1996: 1 in Rose 1998: 94; Faundez 1997: 6). It has become necessary for the West to have influence over the legal systems of Third World countries in order to have access to their markets and natural resources (Trubek et al. 1994: 475 in Rose 1998: 94). This explains the legal reform programmes especially in the area of trade and investment laws in several developing countries (Rose 1998: 107). In Nigeria, these laws went under a review which produced the Laws of the Federation of Nigeria 1990. The civil justice sector was also reformed in order to ensure effective enforcement of contracts. The Federal High Court Civil Procedure Rules were reviewed in 1992. The High Court Civil Procedure Rules of the respective states of the federation were also reviewed in succession.

Of course the emergence of the rule of law in development (i.e. the last phase of liberal legalism) occurred within a different context. The Cold War was over when the good governance agenda was introduced by the World Bank. Yet, rule of law was invoked to serve the capitalist economy. Although the concept could be used for a more comprehensive purpose especially with the Bank’s inclusion of socio-political concerns, the Bank’s focus seems to be more on the protection of private property, such protection seen as a recipe for the needed growth of capitalism.

Nigeria started adopting the above rule of law approach in its development policies in 1997. Two policies since then adopted the liberal legalist nostrum with emphasis on the protection and promotion of the market. Vision 2010 Report (1997:54) underscores the role of the rule of law, transparency and accountability in the exercise of power as crucial to development. Similarly, it recognises independent judiciary; and improving access to timely and fair justice as necessary in order to achieve effective and

efficient judicial and law enforcement systems (ibid: 78). Interestingly, it declares early enough that its development process is “market-oriented”, “private sector-driven” leaving the state as an enabler (ibid: 30). The National Economic Empowerment and Development Strategy (NEEDS) announces that it is following the footsteps of Vision 2010 and it also makes rule of law and timely enforcement of contracts specific measures for promoting private enterprises (NEEDS 2003: 53, 55).

Corruption being breach of the law by public officers, it may be argued that it can be accommodated under element (c) of the rule of law mentioned above i.e. the requirement of having rules applicable consistently to all including public officials. A closer look at the provision would however show otherwise. Its purpose is clearly stated as protecting private property from abuse of official powers thereby ensuring the predictability and calculability which investors need. Moreover, the element should not be read in isolation and when read in conjunction with the other four elements, the market-oriented nature of liberal legalism becomes clearer. Thus we can conclude that both the original liberal legalist idea and its replicated version in Nigeria are so much pre-occupied by the market that they do not pay significant attention to corruption as a serious impediment to development.

6. Tackling the Corruption Menace

As stated above, the World Bank’s rule of law forms part of its governance agenda which was introduced in 1990. The Bank then realised that the failure of development particularly in most African countries could be linked to bad governance of the state which corruption is a symptom of (Shah 2007). Thus it concluded that a well-governed state is necessary for development. “Without it”, the Bank notes, “sustainable development, both economic and social, is impossible” (World Bank 1997a: 1). The Bank defines governance as “the manner in which power is exercised in the management of a country’s economic and social resources for development” (World Bank 1992: 3).²⁰ It exhorts transition economies and developing countries like Nigeria to embrace good governance as a recipe for development stressing that “good governance is central to creating and sustaining an environment which fosters strong and equitable development, and it is an essential complement to sound economic policies” (ibid: 1).

The Bank’s main purpose is to bring about economic development and it cannot interfere into political affairs of member countries. Yet it claims that since its general mandate is to promote sustainable economic and social development, its governance agenda may encompass good order and discipline in the management of a country’s resources (World Bank 1992: 5). This being the case, the Bank may be involved in tackling corruption in countries such as Nigeria where it impedes sustainable economic and social development. This is in line with the serious anti-corruption stance it has taken.²¹ It once stated as follows:

[T]he Bank Group will help any of our member countries to implement national programs that discourage corrupt practices ... The Bank Group cannot intervene in the political affairs of our member countries. But we can give advice, encouragement and support to governments that wish to fight corruption (quoted in Miller-Adams 1999: 123).

The Bank’s anticorruption strategy includes reducing opportunities for corruption through trade regime reforms; tax reform; regulation reform and privatisation. It also helps countries to strengthen institutions in order to improve controls and reduce incentives for corrupt behaviour. This it does through civil service reform; strengthening public procurement systems; and modernising public sector accounting (World Bank 1994: 16 Box 1.7). Recently in September 2007, the World Bank together with the United Nations Office on Drugs and Crime (UNODC) launched another strategy for tackling corruption in the form of the Stolen Assets Recovery (StAR) Initiative. It is meant to reduce barriers to stolen asset recovery and to encourage and facilitate more systematic and timely return of the assets. The initiative emphasises collaborative efforts between developed and developing nations in this regard. The Bank has also launched Governance and Anticorruption (GAC) in December 2007. It has developed a GAC Implementation Plan which sets out actions to mainstream GAC at country, sector, project and global levels.²²

Nigeria too has taken tough measures against corruption. For instance, Vision 2010 (1997: 69) and NEEDS (2003: 10-11) both decry corrupt practices and threaten punishment against corrupt officers. In fact, it was based on the anti-corruption stance of the policies that the Independent Corrupt Practices

Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) were established in 2000 and 2004 respectively to investigate and prosecute corruption. However, except perhaps the transparency measure under the policies, there is visibly no preventive measure against corruption (i.e. mechanisms for protecting public funds) as there are rule of law measures supporting the market. It is no wonder then that corruption continues unabated in Nigeria despite the existence of EFCC and ICPC. It is for this reason that public accountability as an element of good governance should be emphasised.

Public accountability is broad. But it simply means that public officials are held responsible for their actions and that certain organs of government are answerable to other organs. It includes congruence between policy and implementation and efficient budgetary allocation and use of resources. The Bank particularly emphasises financial accountability at the macro-level and this involves among others, a well-functioning public accounting system for effective expenditure control and fiscal management; and an audit system which ensures control of expenditure through the exposure and sanctioning of embezzlement and corruption. The Bank warns that “without a well-functioning system of financial accountability, government efficiency is poor, and the probability of corruption increases greatly” (World Bank 1992: 15). Macro-level accountability is reinforced by micro-level accountability when governments face competition from others contending for power and the citizens are active in the form of accountability demands. It is no wonder that from a recent country case studies conducted, the Bank found that drivers of corruption include situations where institutions of participation and accountability are inefficient (Shah 2007). It needs to be stressed however that micro-level accountability would in turn require other elements of good governance such as political pluralism and transparency and freedom of information.

The importance of the public accountability element can be illustrated by the case of Uganda where the Bank together with the government carried out a Public Expenditure Tracking Survey of primary education between 1991 and 1995. It was found that the percentage of allocated capital grants which reached schools in 1991 was not more than 2% rising only to 26% by 1995. By 1999, transparent budgetary allocations and strengthened financial procedures made it possible to ensure that 100% of capital grants reached the target schools (World Bank 2001 in Smith 2007: 205). Similarly, the World Bank has since 2001 provided assistance to Nigeria and other African countries in order to strengthen the capacity of legislatures to oversee the allocation and use of public funds. This has been done through its Institute’s programme of work on Government Accountability and Parliamentary Oversight (GAPO) (ibid: 18). The Bank underscores the relevance of institutions in tackling corruption in the following words:

The institutional design of the state can be an important mechanism in checking corruption. Of particular importance is the effective development of institutional restraints within the state which is most effectively achieved through some degree of separation of powers and establishment of cross-cutting oversight responsibilities among state institutions. Effective constraints by state institutions on each other can diminish opportunities for the abuse of power and penalize abuses if they occur (World Bank 2009).

The World Bank’s public accountability measures can find support under the Nigerian Constitution. Elaborate provisions have been made therein to ensure fiscal control and reduce opportunities for corruption. For instance, there is the requirement of periodic auditing of public accounts²³ and the need for public officers to conform to a laid down code of conduct.²⁴ On institutional check, the Constitution does not leave absolute control of public funds in one arm of government. Although it vests in the executive arm the powers to deal with and expend public resources by virtue of section 5 (1) (a) & (b); (2) (a) & (b) which imposes on it executive duty, the legislature at both federal and state levels is also vested with powers to control public expenditure i.e. ‘power of the purse’. This power is exercised directly in two ways: authorisation of withdrawal of monies and investigative powers into administrative action. The executive does not have direct access to public funds. It requires authorisation by the legislature in the form of an Appropriation Act or Law as the case may be.²⁵ Thus it cannot independently prepare a budget and withdraw monies for implementation. If monies withdrawn are not sufficient; or a need has arisen for expenditure for a purpose for which no monies were authorised to be withdrawn, the executive is required to lay a detailed supplementary estimate before the legislature.²⁶

The Constitution has also empowered the federal and state legislatures respectively to investigate the activities of the executive for purposes which include exposing corruption, inefficiency or waste in executive or administrative action and in the disbursement or administration of funds appropriated by them.²⁷ Either of the Houses in the National Assembly (or both Houses jointly) could exercise this power. The legislature is given certain procedural powers to facilitate this investigation. For instance, it can procure oral, written or circumstantial evidence; summon any person to give evidence or produce any document or thing in his possession; and issue a warrant to compel the attendance of a person who fails, refuses, or neglects to attend after being summoned.²⁸ These powers are in addition to the powers of impeachment where for instance a Governor or the President breaches constitutional provisions against corruption.

7. Conclusion

It goes without saying that Nigeria requires a solution to its development problem. Liberal legalism, notwithstanding its legitimacy problem, does not only appear to be an attractive solution to the country but it has been embraced as the adoption of SAP and the rule of law nostrum clearly indicates. As this article highlighted, public corruption is a major problem impeding development in the country. It has been described to be arguably “the most challenging obstacle to economic development” today (Campos & Bhargava in Campos & Pradhan 2007: 2). The liberal legalist idea, though important, focuses instead on the market. The article does not seek to denigrate the market as an engine of economic growth. But in a highly corrupt country like Nigeria, even when markets work well, corruption will deplete the gains such that government would be unable to provide basic needs for the majority of its people. In a situation like this, it is not impossible for poverty to exist in the midst of economic growth. A case in point is China where the economy is one of the fastest growing economies of the world. Yet its level of human development as measured by the UNDP is persistently unsatisfactory (it has been in the Medium Human Development Index category). This mismatch may not be unconnected to China’s high level of corruption as its Corruption Perception Indices show over the years (Transparency International 2006-2009).

Because of the aforementioned limit of liberal legalism, other good governance factors such as public accountability have to be resorted to for Nigeria to adequately face its developmental challenges. As acknowledged by the World Bank, rule of law is not a close-ended concept. It is so malleable that it could take different forms and could as well be invoked for various purposes. It is often described as an empty vessel that everyone can fill up with their own vision (Trebilcock and Daniels 2008: 13; Tamanaha 2006: 1, 130). The World Bank could have incorporated public property protection measures under its rule of law project especially that it had incorporated the social into the rule of law. Because this has not been done, emphasis on public accountability has become necessary in order to tackle Nigeria’s corruption menace. Major vulnerabilities that increase the risk of corruption have been identified to be weak internal controls and weak management control and oversight of public spending (Dorotinsky & Pradhan in Campos & Pradhan 2007: 275). Public accountability has addressed these issues and coincidentally, the Nigerian Constitution contains provisions consistent therewith.

Endonotes:

¹ The World Bank’s World Development Report 1999/2000 entitled “*Entering the 21st Century*” illustrates the expansion of the governance agenda and some of the implications of the new approach to development when it acknowledges “that the causes of poverty are as much political and social as they are economic” (Faundez 2000: 3).

² Trubek and Galanter seem to have admitted this shortcoming when they said that the “critical perspective is largely negative. It rejects liberal legalism, but does not provide any systematic map of legal and social relations that will permit scholars to relate empirical studies of and proposed changes in socio-legal arrangements to the moral values they espouse” (Trubek and Galanter 1974: 1085).

³ Their challenge of liberal legalism was entirely based on events within the U.S. because, of the four sources given for the challenge, only the first one was not entirely based upon in-house situation, even then it was ultimately linked to the political turmoil in the United States (Tamanaha 1995). The sources are: 1. “empirical knowledge of the third world”; 2. “loss of faith in liberal legalism as a picture of United States society”; 3. “doubts about the universality or desirability of the American experience”; and 4. “skepticism about policy motives [of the U.S. and Third World governments]” (Trubek & Galanter 1974, 1089-1093; also quoted in Tamanaha 1995, p. 475).

⁴ Transparency International is an anti-corruption non-governmental organisation established in 1993. It is based in Berlin, Germany and has offices across the world. Through its annual Corruption Perception Index (CPI) which it started in 1995, it assesses the level of official corruption in individual countries as perceived by international businessmen, financial journalists and the general public. Countries are scored between 0 and 10. 0 represents entirely corrupt while 10 means corrupt-free. Its work is a “poll of polls” because it uses existing surveys conducted by various organisations giving the extent of variation amongst them. Minimum number of surveys used for a country ranged from 2 to 4 and maximum ranged from 7 to 10. A high variance number indicates a high degree of disagreement among the surveys while a low number shows a high concordance. Nigeria was first assessed in 1996.

⁵ The first column indicates the year of the report. The data used by TI is normally for few previous years. The second column indicates the ranking of Nigeria among other countries. The third column indicates the total number of countries assessed in a particular year. The fourth column is Nigeria’s score out of a maximum of 10. The fifth column is for the number of survey used as working data. The final column reflects the degree of variance of opinion among the surveys. The higher the number, the more the disagreement, the lower the number, the more the agreement among the surveys on the countries level of corruption. Variance figures from 2004 to 2007 and in 2009 are not available.

⁶ The law of demand in economics states that “the higher the price, the lower the quantity demanded; the lower the price, the higher the quantity demanded”.

⁷ The claimed reduction may not however be correct because he based it on the wrong assumption that corruption during the tenure of President Obasanjo was only prevalent at the state and not federal level. Events which unfolded after the departure of Obasanjo indicate that corruption existed also at the centre (*The News*, 28/5/2007).

⁸ The distance between these two cities is 635 kilometres.

⁹ Under the Fourth National Development Plan (1981-1985), out of its total capital expenditure projection of N2.45b on education, the Federal Government allocated N202.680m for secondary education for the 5 year period (Fourth Plan: 259).

¹⁰ The Federal allocation to adult education for the whole 5 year period was N19m (Fourth Plan: 260).

¹¹ The whole 19 States projected a total of N1573.576m on the health sector for the 5 year period (Fourth Plan: 280).

¹² This analogy was contained in a piece titled “Compare N686m with N628m” by Kayode Komolafe on *Thisday*’s Back Page Extra of 26/9/07.

¹³ The Articles are available at <http://siteresources.worldbank.org/EXTABOUTUS/Resources/ibrd-articlesofagreement.pdf>

¹⁴ One of Weber’s problems was how to reconcile the rise of capitalism in England which had no legal system as formally rational as that of Germany, where capitalism emerged later. For a detailed discussion of the ‘England problem’ see Hunt (1978: 122-128).

¹⁵ Gardner (1980: 6) is of a similar view that liberal legalism was conditioned “by Cold War concerns” and “strident anticommunism.”

¹⁶ It was this market-friendly approach to economic policy reform in developing countries that is known as the ‘Washington Consensus’.

¹⁷ This Decree became the Second-Tier Foreign Exchange Market (SFEM) Act, Chapter 405, Volume XXII, Laws of the Federation of Nigeria 1990.

¹⁸ No. 25 of 1988. The Decree was incorporated into the revised laws of Nigeria as Privatization and Commercialization Act, Chapter 369, Volume XXI, Laws of the Federation of Nigeria 1990.

¹⁹ Originally a Decree, it became the NEP Act, Chapter 303, Volume XVIII, Laws of the Federation of Nigeria 1990.

²⁰ Other donors use the concept of ‘good government’ (which could touch on multi-party democracy, press freedom, etc.) instead. The Bank, unlike the other donors, is restricted under its Charter from introducing political reforms or even questioning the political regime of the recipient country” (Faundez 1997: 6).

²¹ This anticorruption stance can be seen at www.worldbank.org/publicsector/anticorruption/index last accessed 13 December 2009.

²² <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/EXTANTICORRUPTION> 14 December 2009.

²³ Sections 85 and 125 of the 1999 Constitution respectively.

²⁴ See the Fifth Schedule to the 1999 Constitution.

²⁵ Sections 80 (2) and 120 (2) of the Constitution.

²⁶ Sections 81 (4) (a) & (b) and 121 (4) (a) & (b) of the Constitution.

²⁷ Sections 88 (1) & (2) and 128 (1) & (2) of the Constitution.

²⁸ Section 89 (1) and 129 (1) of the Constitution.

References:

- Adelman, S. and Paliwala, A. (1993) 'Law and Development in Crisis', in Adelman, S. and Paliwala, A. (eds.) *Law and Crisis in the Third World* (London: Hans Zell Publishers).
- Achebe, C. (1984) *The Trouble with Nigeria* (Oxford: Heinemann Educational Publishers).
- Baxi, U. (2002) *The Future of Human Rights* (New Delhi: Oxford University Press).
- Boston Globe 'Corruption costs Nigeria 40 percent of oil wealth, official says; 100,000 barrels said to be stolen each day', 17 December 2004.
http://www.boston.com/news/world/articles/2004/12/17/corruption_costs_nigeria_40_percent_of_oil_wealth_official_says/ 5 December 2007
- Campos, J. E. and Pradhan, S. (eds.) (2007) *The Many Faces of Corruption: Tackling Vulnerabilities at the Sectoral Level* (Washington, D. C.: World Bank).
- Campos, J. E. and Bhargava, V. (2007) 'Introduction: Tackling a Social Pandemic', in Campos, J. E. and Pradhan, S. (eds.) *The Many Faces of Corruption: Tackling Vulnerabilities at the Sectoral Level* (Washington, D. C.: World Bank).
- Carty, A. (ed.) (1992) *Law and Development* (London: Dartmouth Publishing Co.).
- Chibundu, M. O. (1997) 'Law in Development: On Tapping, Gourding and Serving Palm–Wine', *Case Western Reserve Journal of International Law* 29(2), pp. 167-261.
- Dorotinsky, W. and Pradhan, S. (2007) 'Exploring Corruption in Public Financial Management', in Campos, J. E. and Pradhan, S. (eds.) *The Many Faces of Corruption: Tackling Vulnerabilities at the Sectoral Level* (Washington, D. C.: World Bank).
- Dworkin, R. (1985) *A Matter of Principle* Oxford: Oxford University Press).
- Faruqee, R. (1994) 'Nigeria: Ownership Abandoned', in Husain, I. & Faruqee, R. (eds.) *Adjustment in Africa: Lessons from Country Case Studies* (Washington D. C.:).
- Faundez, J. (ed.) (1997) *Good Government and Law: Legal and Institutional Reform in Developing Countries* (Houndmills: Macmillan Press).
- Faundez, J. et al. (eds.) (2000) *Governance, Development and Globalization* (London: Blackstone Press).
- Federal Ministry of Information (1980) *Fourth National Development Plan* (Lagos: Federal Ministry of Information Printing Division).
- Fitzpatrick, P. (1993) 'Law's Infamy', in Adelman, S. and Paliwala, A. (eds.) *Law and Crisis in the Third World* (London: Hans Zell Publishers).
- Gardner, J. A. (1980) *Legal Imperialism: American Lawyers and Foreign Aid in Latin America* (Wisconsin: University of Wisconsin Press).
- Gbefwi, M. Y. (2001) 'Perspectives on Corruption and its Control: The Nigerian Experience', in Ayua, I. A. & Guobadia, D. A. (eds.) *Political Reform and Economic Recovery in Nigeria* (Lagos: Nigerian Institute of Advanced Legal Studies).
- Greenberg, D. F. (1980) 'Law and Development in Light of Dependency Theory', in Carty, A. (ed.) (1992) *Law and Development* (London: Dartmouth Publishing Co.).

- Hunt, A. (1978) *The Sociological Movement in Law* (London: Macmillan Press).
- Khakee, A. (2008) 'Energy and Development: Lessons from Nigeria', http://edc2020.eu/fileadmin/Textdateien/EDC2020_PolicyBrief_no.1_web.pdf 20 July 08.
- Merryman, J. H. (1977) 'Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement', *The American Journal of Comparative Law* 25, pp. 457-483.
- Miller-Adams, M. (1999) *The World Bank: New Agendas in a Changing World* (London: Routledge).
- National Planning Commission (2004) *National Economic Empowerment and Development Strategy (NEEDS)* (Abuja: National Planning Commission).
- OPEC (2005) 'Annual Statistical Bulletin 2004', <http://www.opec.org/library/Annual%20Statistical%20Bulletin/pdf/ASB2004.pdf> August 2006.
- OPEC (2006) 'Annual Statistical Bulletin 2005', <http://www.opec.org/library/Annual%20Statistical%20Bulletin/pdf/ASB2005.pdf> 2 September 2008.
- OPEC (2007) 'Annual Statistical Bulletin 2006', <http://www.opec.org/library/Annual%20Statistical%20Bulletin/pdf/ASB2006.pdf> 2 September 2008.
- OPEC (2008) 'Annual Statistical Bulletin 2007', <http://www.opec.org/library/Annual%20Statistical%20Bulletin/pdf/ASB2007.pdf> 2 September 2008.
- Osoba, S. O. (1996) 'Corruption in Nigeria: Historical Perspectives', *Review of African Political Economy* 23, pp. 371-386.
- Pahuja, S. (2006) 'Operationalising the Universal: Development and the Rule of Law', Paper presented at the Human Rights and Global Justice Conference, 29-31 March 2006, University of Warwick.
- Paul, J. C. (2003) 'Forward: Law and Development and Peter Slinn', in Hatchard, J. & Perry-Kessaris, A. (eds.) *Law and Development: Facing Complexity in the 21st Century* (London: Cavendish Publishing).
- Perry, A. J. (1999) 'International Economic Organizations and the Modern Law and Development Movement', in Seidman, A. et al. (eds.) *Making Development Work: Legislative Reform for Institutional Transformation and Good Governance* (The Hague: Kluwer Law International).
- Raz, J. (1979) 'The Rule of Law and Its Virtue', in Cunningham, R. L. (ed.) *Liberty and the Rule of Law* (London: Texas A&M University Press).
- Rheinstein, M. (1954) 'Introduction', in *Max Weber on Law in Economy and Society*, (Cambridge: Harvard University Press).
- Rose, C. V. (1998) 'The 'New' Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study', *Law & Soc. Review* 32(1), pp. 93-139.
- Shah, A. (2007) 'Tailoring the Fight against Corruption to Country Circumstances', http://web.worldbank.org/WBSITE/EXTERNAL/WBI/EXTWBIGOV_ANTCOR 14 December 2009.
- Smith, B. C. (2007) *Good Governance and Development* (Hampshire and New York: Palgrave Macmillan).
- Tamanaha, B. Z. (1995) 'The Lessons of Law-and-Development Studies', *American Journal of International Law* 89, pp. 470-486.

- Tamanaha, B. Z. (2004) *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press).
- Tamanaha, B. Z. (2006) *Law as a Means to an End: Threat to the Rule of Law* (Cambridge: Cambridge University Press).
- Transparency International (1996) 'Corruption Perception Index 1996'
http://www.transparency.org/policy_research/surveys_indices/cpi/previous_cpi_1 4 April 2006.
- Transparency International (1997) 'Corruption Perception Index 1997',
http://www.transparency.org/policy_research/surveys_indices/cpi/previous_cpi_1 4 April 2006.
- Transparency International (1998) 'Corruption Perception Index 1998',
http://www.transparency.org/policy_research/surveys_indices/cpi/previous_cpi_1/1998, 4 April 2006.
- Transparency International (1999) 'Corruption Perception Index 1999',
http://www.transparency.org/policy_research/surveys_indices/cpi/previous_cpi_1/1999 4 April 2006.
- Transparency International (2000) 'Corruption Perception Index 2000',
http://www.transparency.org/policy_research/surveys_indices/cpi/previous_cpi_1/2000 4 April 2006.
- Transparency International (2001) 'Corruption Perception Index 2001',
http://www.transparency.org/policy_research/surveys_indices/cpi/2001 4 June 2006.
- Transparency International (2002) 'Corruption Perception Index 2002',
http://www.transparency.org/policy_research/surveys_indices/cpi/2002 14 July 2007.
- Transparency International (2003) 'Corruption Perception Index 2003',
http://www.transparency.org/policy_research/surveys_indices/cpi/2003 14 July 2007.
- Transparency International (2004) 'Corruption Perception Index 2004',
http://www.transparency.org/policy_research/surveys_indices/cpi/2004 14 July 2007.
- Transparency International (2005) 'Corruption Perception Index 2005',
http://www.transparency.org/policy_research/surveys_indices/cpi/2005 14 January 2008.
- Transparency International (2006) 'Corruption Perception Index 2006',
http://www.transparency.org/policy_research/surveys_indices/cpi/2006 14 January 2008.
- Transparency International (2007) 'Corruption Perception Index 2007',
http://www.transparency.org/policy_research/surveys_indices/cpi/2007 14 January 2008.
- Transparency International (2008) 'Corruption Perception Index 2008',
http://www.transparency.org/policy_research/surveys_indices/cpi/2008 10 October 2008.
- Transparency International (2009) 'Corruption Perception Index 2009',
http://www.transparency.org/policy_research/surveys_indices/cpi/2009 14 December 2009.
- Trebilcock, M. J. and Daniels, R. J. (2008) *Rule of Law Reform and Development: Charting the Fragile Path of Progress*, (Cheltenham: Edward Elgar Publishing).
- Trubek, D. M. (1972) 'Toward a Social Theory of Law: An Essay on the Study of Law and Development', *The Yale Law Journal* 2(1), pp. 1-49.
- Trubek, D. M. (1972a) 'Max Weber on Law and the Rise of Capitalism', *Wisconsin Law Review* 3, pp. 720-753.

Trubek, D. M. (2006) 'The 'Rule of Law' in Development Assistance: Past, Present and Future', in Trubek, D. M. and Santos, A. (eds.) *The New Law and Economic Development: A Critical Appraisal* (Cambridge: Cambridge University Press).

Trubek, D. M. and Galanter, M. (1974) 'Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States', *Wisconsin Law Review* 4, pp. 1062-1102.

Trubek, D. M. and Santos, A. (2006) 'Introduction: The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice', in Trubek, D. M. and Santos, A. (eds.) *The New Law and Economic Development: A Critical Appraisal* (Cambridge: Cambridge University Press).

Trubek, D. M. and Santos, A. (eds.) (2006) *The New Law and Economic Development: A Critical Appraisal* (Cambridge: Cambridge University Press).

Tshuma, L. (2000) 'The Political Economy of the World Bank's Legal Framework for Economic Development', in Faundez, J. et al. (eds.) *Governance, Development and Globalization* (London: Blackstone Press).

UNDP (2007) *Human Development Report 2007/2008: Fighting Climate Change: Human Solidarity in a Divided World* (New York: Palgrave Macmillan).

Vision 2010 Report <http://www.vision2010.org/vision-2010/> 14 February 2007.

Weber, M. (1954) *Economy and Society*. Translated by Shils, E. & Rheinstein, M. (Cambridge: Harvard University Press).

World Bank (1992) *Governance and Development* (Washington, D.C.: World Bank).

World Bank (1994) *Governance: The World Bank's Experience* (Washington, D.C.: World Bank).

World Bank (1997) *Helping Countries Combat Corruption: The Role of the World Bank* (Washington, D.C.: World Bank).

World Bank (1997a) *World Development Report 1997: The State in a Changing World* (New York: Oxford University Press).

World Bank (2005) 'Nigeria – Poverty in the Midst of Plenty: The Challenge of Growth with Inclusion: A World Bank Poverty Assessment', http://povlibrary.worldbank.org/library/view/8707_8_November_2007.

World Bank (2006) 'Utilization of Repatriated Abacha Loot: Results of the Field Monitoring Exercise', http://siteresources.worldbank.org/INTNIGERIA/Resources/Abacha_Funds_Monitoring_1221.pdf 13 February 2008.

World Bank (2009) 'Institutional Restraints on Power', <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/EXTANTICORRUPTION> 14 December 2009.

World Bank (n.d.) 'Public Sector Governance', www.worldbank.org/publicsector/anticorruption/index 13 December 2009.

World Health Organisation (n.d.) 'Core Health Indicators', <http://www.who.int/whosis/database/country/compare.cfm> 13 November 2007.

Newspapers:

Leadership, 31 October 2007

Leadership, 14 November 2007

The News, 28 May 2007

Thisday, 26 September 2007

Websites:

<http://stats.uis.unesco.org/unesco/TableViewer/document.aspx> 13 November 2007