# RULE OF LAW IN NIGERIA: CHALLENGES AND PROSPECTS*

***Abstract***

*The term "rule of law refers to a situation in which rulers and citizens are equally subject to the law entitled to its protection. Many writers regard the rule of law as an ideal, and formulars such as 'government subject to law and 'government bounded by law' are sometimes used to describe a particularly valuable feature of that ideal. Joseph Raz observes that such formulars would be tautological and so empty expressions of a political ideal, if we were to stipulate that no governmental action, as a matter of definition, can be against the law. Appeals to the rule of law as a genuine ideal make sense only if the definition of "governmental action" does not exclude the possibility of unlawful governmental action. Consequently, rule of law is of cardinal importance in any democratic government. However there are many challenges to the realization of rule of law in Nigeria. The essence of this work therefore, is to discuss those challenges and recommend among other things that there be conferences and seminars at different levels of government and civil societies to conscientize the citizenry on the need and importance of the rule of Law. That the doctrine be made to form part of the school curriculum in Nigeria at all levels. When this is done, it will enhance democracy in Nigeria. Research methods for this research work will include, analytical, doctrinal, expository and historical.*

## 1.0 Introduction

Rule of law include but not restricted to the following, "liberty", equality before the law, "separation of powers, "Checks and balances", "Social Justice", Constitutional guarantee, and

"enforcement of human and civil right", "due process of law, independence of the judiciary, judicial review of executive and legislative actions [1] as provided in the Nigeria Presidential constitution [2]. Therefore, the concept of Rule of Law is all encompassing and basic for any democratic government. The rule of law imports that everyone both the government and the governed are kept under proper check or control. It maintains that by the process of the rule of law the excesses, the arbitrariness and capriciousness of the powerful are curbed and rights balanced against duties, power is limited and counter balanced with safeguards so that neither rights nor powers are exceeded or abused[3]. When the law defines and limits, exercises full sway over the rights, duties, obligations and relationship between government and its organs and government and the citizens and everyone lives under the dominion of the law and not under the pleasure of man, then we have the operation of the Rule of law[4]. Where the rule of law obtains, the government is properly limited and there is true application of the concept of constitutionalism in a national government. The fundamental objectives and directive principles of State policy which embody the ideology of Presidential constitution seek to actualize and practicalize these ideals.

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[1] N.C. Obiagba, ideological Bases of the Nigerian Presidential constitutions (edited by Obidimma, Oraegbunam and Izunwa) Great-m Prints and ideas, Onitsha, 2015) p. 135.

[2] 1999 constitution of Federal Republic of Nigeria (as amended)

[3] Oputa, C.A. The law and Twin Pillars of Justice, Government Prints, Owerri (1981) p. 73.

[4] Ibid.

A.V. Dicey expanded the nuances of the concept of the rule of law with the result that he is seen as the modern father of the concept[5]. It is therefore a notorious fact that the importance and need of the rule of law can never be over-emphasized in any progressive and democratic government with the well being of the citizens in focus. However, be that as it may, the stiff exposition and challenges encountered in Nigeria have continued to be a big problem in the realization of the application of rule of law in Nigeria. Consequently, the application and observation of the doctrine is strongly recommended in Nigeria for the proper enhancement of democracy.

Challenge means to object, to question formally the legality or legal qualification of something, to invite into competition[6]. It is to dare to contest or trial of superiority, to challenge to a dual, to call on question, dispute, object, to stop and make demands[7]. Challenge also mean contest, fight etc to prove who is better stronger or more able[8]. It is a new and difficult task that tests somebody's ability, skills, an invitation to somebody that they should enter a competition etc [9] . With challenges the implementation of the rule of law will be difficult if not impossible in Nigeria

[5] Dalhatu, M.B. What is constitutional law? The student Guide, Ahmadu Bellow University Press Ltd, Kaduna (2008) P. 13.
[6] Black, H.C. Blacks Law Dictionary, St. Paul Minn West Publisher Co. 1990) P. 230.
[7] The New International webster's comprehensive Dictionary of the English Language, Encyclopedia Edition, Standard International Media Holdings (2013 edition) U.S.A. p. 220
[8] A.S. Hornby Oxford Advanced Learners Dictionary of current English 4th Edition, Oxford University press, Oxford 1994) P. 185.
[9] Oxford Advanced Learner's Dictiionary, Intl Students Edition, Oxford University Press, Oxford 2005) P. 321.

## Rule of Law: Theoretical Perspective

The term "rule of law" refers to a situation in which rulers and citizens are equally subject to the law and entitled to its protection. Many writers regard the rule of law as an ideal, and formula such as "government subject to law" and "government bound by law" are sometimes used to describe a particularly valuable feature of that ideal. Joseph Raz observed that such formula would be tautological, and so empty expressions of a political ideal, if we were to stipulate that no governmental action, as a matter of definition, can be against the law. Appeals to the rule of law as a genuine ideal make sense only if the definition of "governmental action" does not exclude the possibility of unlawful governmental actions. Raz argues that "government by law and not by men is not a tautology if 'law' means general, open, and relatively stable law." Governmental actions would then conform to the rule of law just in case general, open, and stable legal rules authorize or require those actions[10]

On A. V. Dicey's classical account, the rule of law comprises three ideals: (a) law prevails over arbitrariness and discretionary power, (b) "every man … is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals," and (c) "the general principles of the constitution (as, for example, the right to liberty, or the right of public meeting) are … the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts," rather than the result of legislation. Dicey's discussion of these three ideals purports to show that they guarantee that everyone is subject to rules rather than persons[11].

[10] https://link.springer.com/referenceworkentry10.1007%21978-94-0876730-0-135-1. Accessed 20 Sept. 2020 by 4.30 pm
[11] Ibid.

Therefore, the rule of law is the same thing as the law conceived as a system of rules. Lon L. Fuller offers an influential characterization of the value inherent in such understanding of the law. He argues that law, being a system of rules, displays an "inner morality" conveyed by the requirements of generality, publicity, non-retroactivity, clarity, consistency, possibility of compliance, stability, and "congruence between official action and declared rule[12]." Retroactive laws, for example, cannot possibly guide behavior, and so they subvert the ideal of persons being governed by law, as opposed to being at the mercy of others. Similarly, John Rawls argues that the predictability of legal coercion, which is made possible by (meta)rules such as "there is no offense without a law," makes the rule of law a rational choice in a constitutional convention where impartial individuals try to secure for themselves the greatest equal liberty Thomas Christiano thinks, though, that Rawls's stability-of-expectation point does not fully explain the value of the rule of law; he argues that the rule of law also implements a "principle of public equality" that forbids treating citizens as "public inferiors" by subjecting them to case-by-case judgments instead of rules[13]

Some legal rules that apparently violate the rule of law actually conform to it. Fuller illustrates this point with the case of strict liability – i.e., the legal obligation to compensate victims of harm regardless of culpability. It would seem that in cases of harm caused by specified dangerous activities, strict liability commands the impossible, to wit, "never to cause any damage, however innocently"[14] and so fails to provide the guidance that,

[12] Ibid.
[13] Ibid.
[14] Ibid.

as we saw, is central to the rule of law. However, as Fuller points out, strict liability for the harms caused by blasting operations (say, in order to build a highway on a hillside) does not aim at guiding behavior away from blasting operations, any more than a sales tax aims at guiding persons away from selling goods[15]

In those cases, strict liability purports to give firms the right incentives, as something different from guiding their behavior: it induces firms to work out the expected social costs and benefits of blasting operations, with an eye to making those costs and benefits coincide with the firms' expected benefits and costs. When it comes to harms caused by dangerous activities, it is often difficult to determine what the appropriate standard of care is and when it has been violated, what counts as a breach of contract, and when the requisite causation obtains. For these reasons, intention- or negligence-based liability would be less efficient than strict liability. As economists would put it, strict liability provides incentives to "internalize externalities," thereby producing a more efficient allocation of resources. Moreover, usual regimes of strict liability do not retroactively penalize certain activities – something that would be inimical to the rule of law – but rather announce ex ante that certain kinds of activities will carry legal responsibility for results that were neither intended nor caused by negligence. As long as the law "define(s) as clearly as possible the kind of activity that carries a special surcharge of legal responsibility," the requirements of what Fuller calls "the inner morality of law" and others would call "the rule of law" are met.

[15] Ibid.

Legal rules that appear to conform to the inner morality of law – which, as we saw, consists of formal, content-independent requirements – may fail to meet reasonable substantive moral requirements. Such rules are arguably arbitrary, and to that extent symptomatic of persons being subject to the will of other persons, rather than to genuine rules. The threat that substantive inadequacies pose to the rule of law is particularly pressing in connection with the generality requirement. It is tempting to believe that legal generality can be analyzed by means of purely formal notions, such as the absence of proper names in the laws. However, as Fuller points out legal rules that are general under that analysis may not be suitably general. For example, a statute providing that it shall apply "to all cities in the state which according to the last census had a population of more than 165,000 and less than 166,000 inhabitants" is unduly particular (and not merely because of the proper name "the state"). Fuller is surely right in claiming that fairness, which is a value "external to the law," i.e., a substantive value, is compromised here. The upshot is that the rule of law, taken as a political ideal, cannot be a purely formal notion.

Fuller observes that infringements of the inner morality of law may occasionally be justified. For example, a legislature may justifiably keep secret the appropriations to fund research on a new military weapon, and so justifiably infringe the publicity requirement. This case suggests an interesting distinction between the inner morality of law and the rule of law: we may want to say that violations of the inner morality of law (here, publicity) conform to the rule of law as long as those violations do not stem from anyone's arbitrary will but are rather rule-governed decisions. For example, legislators may secretly pass such appropriations under conditions clearly defined by the

constitution, and those decisions may be subject to review by independent courts.

The concept of the rule of law is currently one of the most important political ideas. The notion of rule of law can be traced back to at least the time of Aristotle who observed that given the choice between a king who ruled by discretion and a king who ruled by law, the later was clearly superior to the former[16]

Therefore, rule of law is known as the framework for laws and institutions in which there are four universal principles including;

1. Accountability: The government as well as private actors are accountable under the law
2. Just laws: The laws are clear, publicized, stable, and just, are applied evenly, and protect fundamental rights, including the security of persons, contract and property rights, and certain core human rights
3. Open government in which laws are enacted, administered, and enforced are accessible, fair, and efficient
4. Accessible and impartial dispute resolution[30].

**Challenges facing the rule of law**

There are a lot of questions surrounding the rule of law in Nigeria. The system seems broken, and it is generally accepted that the level of injustice is quite high, even artist and musicians use their platform to speak on the degree of injustice in Nigeria. Before delving into discussion on the challenges facing the rule of law in Nigeria, it will be appropriate to understand and appreciate the meaning of the subject matter – to wit: Rule of Law

[16] Ibid.

The rule of law is a principle or system where a society or nation is governed by a set of rules or legislation instead of by an individual making the whole decision. Rule of law makes impossible for one person to have unrestrained power and puts a limit or check to the behavior of everyone including government officials. Under the rule of law, everyone is subjected to the law and no one is above the law. The rule of law is to protect citizens interests, lives and property against oppression[17]

Having discussed the doctrine of rule of law and acquiesce ourselves with the meaning, it will now be appropriate to study the challenges impeding the operation of the rule of law in Nigeria. These include but not restricted to the following;

**High level of corruption**:
This has facilitated in no small measure the abuse of rule of law in Nigeria. The people who are meant to enforce the rule of law keep undermining it by their actions. There is corruption among judges in the dispensation of justice. The rule of law demands accountability from both individual and the state. Until the people in governance are accountable and provide good leadership, the full potential of the rule of law and democracy might not be attained.

The principle of separation of powers is meant to enhance the operation of rule of law. There is no clear separation of powers in practice in Nigeria though the 1999 constitution of the Federal Republic of Nigeria provided for it namely; The Executive arm, the legislative arm and judiciary power. This is to make sure that power is not abused by individual, group or governments but

[17] https://www.legit.ng/1114491-challenges-facing-rule-law-nigeria.html. Accessed 19th October, 2020 by 5pm

reverse is the case. These three arms are designed to function independently but also in a coordinated fashion. But the government officials and some individuals do not adhere to this and this makes it difficult for the rule of law to be actualized. The problem of tribalism has eaten deep into the fabric of the Nigerian society, which offends the rule of law. Nigeria is now in a state of volatile. There are conflicts, tensions, which calls for separation and for restructuring.[18]

**Insecurity and insurgencies**

These have greatly affected the operation and implementation of the rule of law in a negative direction. Some of the insurgence groups are; Boko Haram, Fulani Herdsmen, military, wide spread kidnappings etc. Poverty, ignorance, and illiteracy are major hindrances to the operation and practice of rule of law in Nigeria. It is an established fact that most Nigerians do not know their right. A lot of them are too poor to fight for their rights and consequently, at the mercy of the wealthy and corrupt politicians.[19]

**Rigging Election:**

Rigging has become the order of the day in Nigeria. It is very difficult and almost impossible for an executive or a politician who rigged his way to a position to observe the rule of law. The political context in Nigeria makes it difficult to promote and defend the rule of law, which is the cardinal duty and responsibility of the Nigeria Bar Association as prescribed by the Rules of Professional Conduct.[20]

Another important challenge for the practice and promotion of rule of law in Nigeria is the

**Military Dictatorship**:
It must be borne in mind that Nigeria became independent in 1960 about 60 years ago. Since independence military dictatorship has gulled up almost half of the period. Also among the Civilian Presidents only one person namely Goodluck Jonathan who was a complete civilian others were ex-soldiers who do not know and or understand the need and importance of the rule of law. For instance Olusegun Obasanjo, Umaru Musa Yar'Adua, and presently Muhammadu Buhari who reigned and still reigning as military dictators. Consequently, democracy in Nigeria has no rule of law content[21].

**Special Privilege:**
Some people enjoy special privileges and exceptions under the rule of law in Nigeria. These people have immunity against the law. They are; President, Vice President, Governors, Members of the House of Assembly and some other top government officials. Also a judge is immuned from the law while presiding over a court session. The reason is for them to go about their duties without fear or favour.

**Diplomatic Immunity**:
Diplomats and Ambassadors have immunity against the rule of law in the country they are serving. They are above the legislation of that country, they have to be sent back to their own country if they violate the law.

**State of Emergency and War:**
In cases of conflict or situation which requires the government to declare a state of emergency the government enforces discretionary powers. When the government exercises these powers, it deprives people of their constitutional rights. People

are restricted from carrying out their normal duties and forced against their wish.

**Tribalism**

Presently Nigeria is in a volatile state. There are conflicts, tensions, calls for separation and restructuring. Though Nigeria, is made up of many tribes but only three major tribes are identified namely; Hausa, Igbo and Yoruba. Consequently, there are unresolved differences, and it is becoming increasingly difficult for the constitution to be fully effective[18]

There are many more challenges facing the practice of the rule of law in Nigeria but the ones mentioned are the major and the root of other problems in our country.

**The International Convention of the Jurists on the Rule of Law**

International Commission of Jurists (ICJ) is an international human rights non-governmental organization composed of eminent jurists [19] dedicated to ensuring respect for international human rights standards through the law[20]**.**

The rule of law as an essential ingredients of constitutional democracy is a bone and or framework encompassing the following; "Liberty, equality before the law", "Separation of Powers", "Checks and Balances", "Social justice", Constitutional guarantee and enforcement of human and civil rights", "due

[18] Ibid.

[19] Including senior judges attorneys and academic

[20] N.C. Obiagba Ideological basis of the Nigerian Presidential Constitutions great-M press and ideas Onitsha 2015. P. 136.

process of law", "independence of the legislative action", etc[21]. It is found in the constitution of every democratic government including Nigeria. Rule of law upholds that everyone both the government and the governed are kept under proper check or control. It is of the view that through supervision or check, the exercises, the arbitrariness and capriciousness of the powerful are curbed and rights balanced against duties, power is limited and counterbalanced with safeguards so that neither rights nor powers are exceeded or abused[22]. When the law defines and limits, exercises full sway over the rights, duties, obligations, and relationship between government and its organs and government and the citizens and everyone lives under the dominion of the law and not under the pleasure of man, then the rule of law is in operation[23]. Where the rule of law obtains, government is properly limited and there is true application of the concept of constitutionalism in a national government[24]. The invocation of the "Rule of Law" is a conscious crave for some sanction underlying the law, but which is above the law itself. It is an appeal to something higher than one's local laws and positive enactments to some higher standard to which the law properly so called should approximate[25]

[21] Obiagba, N.C. Ideological Basis of the Nigeria Presidential Constitutions (Edited by Obidimma, Oraegbunam and Izunolu) Great Print and Ideas publishing Company, Onitsha, 2015) p. 136

[22] Oputa C.A., The Law and Twin Pillars of Justice, Government Printer, Owerri) 1981 at p. 73.

[23] Ibid.

(including senior judges, attorneys and academics)

[24] Obiagba, N.C. Ideological Basis of the Nigeria Presidential Constitutions (Edited by Obidimma, Oraegbunam and Izunolu) Great Print and Ideas publishing Company, Onitsha, 2015) p. 136.

[25] Ibid.

The world as a whole is also concerned with abuse of the rule of law which is usually manifested with flagrant disregard and even direct and brazen violation of human freedom and rights in various parts of the world for the prevalence of constitutionalism. The need and importance of rule of law received a great boost and international sanction through the "Act" of the International Commission of Jurists (ICJ) which at various times held conventions in various parts of the world. These were the conventions held in Athens, Greece in June 1955, New Delhi, India-January 1959, Lagos, Nigeria in 1961, Rio Janeiro in December 1962. The most recent was held 2012 at Geneva, Switzerland. It was on "Access to Justice and Right systems[26]. Progressively, the International Commission of Jurists have in their various Acts, Declarations, laws [27], etc developed and articulated the basic principles fundamental to the realization of the reign of the Rule of Law among which they stated on Athens that:

a. The State is subject to the law (ie government is to be limited by law)
b. Government should respect the rights of the individual under the Rule of law and provide means for their encouragement.

At New Delhi it was emphasized that on independent judiciary and legal profession are essential to the maintenance of the Rule of law and to the proper administration of Justice[28].

[26] Obiagba, N.C. Ideological Basis of the Nigeria Presidential Constitutions (Edited by Obidimma, Oraegbunam and Izunolu) Great Print and Ideas publishing Company, Onitsha, 2015) p. 136.
[27] Nigerian Constitution (1999) Chapter IV S. 36(1)
[28] Ibid. S. 36 (8).

## The Importance of Rule of Law as Economic Development

The failure of development in Nigeria can easily be described as the failure of law as a transformation discourse and practice law and legal reform are central to economic development and social transformation. Divergent theories of economic development-from the modernist dependency theory to the neo-liberal market reform theory-all affirms the importance of law and legal reform to economic development[29] . The dispute is only about what nature law and legal reform should take. But, sadly the reformers in Nigeria have carried on as if law and legal reform are tangential and at the periphery of their reform. To understand how much law and legal reform matters for economic development let us note the story Professors Ann and Bolo Seidman tell us of the truncation of development and transformation in Africa[30]

In the early years of the post World War II anti-colonial struggle. Ghana's first President Kwame Nkrumah declared, "Seek ye first the Political Kingdom, and all else shall follow". By seizing and using power, he implied, Africa's former colonies could

[29] Douglos Webo, "Legal System Reform and Private Sector Development in Developing Countries in Economic Development Foreign investment and the Law. Hermando deSoto, the other path: The Invisible Revolution in the Third World 1989, Cheny W. Gay "Reforming Legal Systems in Developing and Transition Countries' France and Development, September 1997, Kevin E. Davis & Michael trebilcock. "Legal Reforms and Development" Third World Quartely Vol. 22 No. 1 and 36 2001.

[30] See Ann Seidman and Roberty Seidman, law and the crisis in Africa (paper-on file with the author) see also seidman and Robert Seidman. State and Law in Developing Process; Problem-solving and institutional Change in the Third World (London: Macmilian. 1994: Ann Seidman Robert B. Seidman and 1 Walde. Eds. Micking Development work- Legislative Reform for Institutional Transformation and Good Goverance (London: Kluwer Law Int'l, 1999 on consequences of failure to use law to transform African social and economic institutions.

transform themselves into modern and prosperous states. More than that he called on the new governments to join together into a continental union, utilizing their continental power. A half century later, as the new millennium dawned, colonial rule in Africa lay shattered. In many countries, newly written constitutions granted alone, more often in conjunction with an elected President. Throughout the continent, newly-elected post-colonial governments initially tried to introduce populist programs. Instead of achieving continental unity and prosperity, however, almost all had become enmeshed in a fetal race', too often, instead of using state power to improve their people's lot, the new governors adapted to the historically-imposed distorted institutions that perpetuate their divided nation's poverty and vulnerability". Why did poverty and vulnerability persist in Africa in spite of populist metoric and the good intentions of some of Africa's post-colonial leaders? The seidmans proffer a simple thesis"… too often, newly elected legislators failed to enact laws to change the institutions-shaped by decades of colonial rules-that blocked most Africans from fulfilling their basic needs". The thesis of the failure of African leaders to effectively use law to transform distorted and dysfunctional institutions and change socially problematic behaviours reoccurs in the writings of these insightful and deeply committed law and development scholars. Peruvian economist, Hemando Desoto is to provide a contemporary and market-oriented compliment of this thesis. In his classic, The Mystery of Capital, Desoto argues that the crisis of development in the Third World is that the inability of the governments in this underdeveloped part of the world to use legal regimes and institutions to capitalize the vast land and mineral resources which are looked away in rural communities and in the informal sector, beyond the administration of law and legal institutions, compounds pervasive poverty and misery of the vast

population[31]. Desoto calculates that if Third World countries embark on titling of lands in the hands of the poor and create a simple legal framework to make unregistered land-which he calls dead-capital-fungible, they can generate more income than the sum of international development and (IDA) from the rich world. The sum of Desoto's thesis is that it is law and legal institutions that created the economic and social order that classified land and land resources in the hands of the Third World poor as dead capital; and it is legal reform that will convert this dead capital into monetized assets that can be used to create more wealth in the financial market. Desoto titled chapter 6 of his book the *Mystery of Legal Failure* why is capital dead in developing countries? The reason is simple; although formal legal systems exist in these countries, yet most citizens cannot gain access to this transactions. They have run into "Fernand Braudel's bell jar, that invisible structure in the past of the west that reserved capitalism for a very small sector of society". Law process of declassification-titling, registration and accretions-that enables multiple transactions on a piece of land. The deeper insight in Desoto book is how law structures the market and capitalism.

It is important to quote in some detail the views of Desoto in other to properly underscore the role of law in economic development. Writing on how law creates properly, Desoto argues that 'property is not a physical thing that can be photographed or mapped. Property is not a primary quality of assets but the legal expression of an economically meaningful consensus about assets. Law is the instrument that fixes and realizes capital. In the west the law is less concerned with representing the physical reality of buildings or real estate than with providing a process or

[31] Hermando deSoto, The Mystery of Capital: Why Capitalism triumphs in the West and fails Everywhere Else (Basic book 2000)

rules that will allow society to extract potential surplus values from those assets… Assets are not intrinsically fungible-capable of being divided, combined or mobilized to suit any transaction. All of these quantities grow out of modern property law. It is law that detaches and fixes the economic potentials of assets as a value separate from the material assets themselves and allows humans to discover and realize that potential. It is law that connects assets into financial and investment circuits. And it is the representation of assets fixed in legal property documents that gives them the power to create surplus value[32] . Historical economists (even before Polany) and the law and development scholars have always known that there is no inherent form a markets or a market economy can take. Everywhere, markets and market economies are structured by law according to the knowledge of their creators, the ideological biases of the ruling elite and the path dependency and adaptive possibilities of the country at a given period.

Desoto and the Seidmans, come from different ideological perspectives of law and development, but both affirm the centrality of law and legal reform to economic development. But, this insight is not particularly new. Sociologists and economists as early as Karl Marx and Max Weber have observed that the social order of modern economy is constituted by law. Weber, in particular, equated rationality in the modern bureaucracy with legality. Today, there is a rediscovery of the importance of law and legal reform in sustaining economic development. In the earlier era of development economics when various theories of 'catch up' or 'stages of development' by leading economists like

[32] Amadi S. The Rule of Law and Economic Development: Fundamental insights and institutional Designs for Economic Development in Nigeria, Nigerian Bar Association, Lagos 2008) P. 60

Arthur Lewis and W.W. Rostow held sway, legal reform and legal transplantation were only grails of economic development[33]. In a famous phrase by Arthur Lewis development was described as a process by which a poor country can graduate from a 5% to 12% saver. There is one path to development. That path is the path of convergence of those institutions in the west that facilitated capital accumulation. To converge at growth producing institutions, economic planners in the Third World needed to transform the existing traditional mode of production and organization. Weberian notions of law as certain, predetermined and invariable rules of conduct became canon and lead to the development of property rights, commercials codes and administrative apparatuses in developing countries[34]

Later, development economics moved further in search of the 'silver bullet' of economic development and lighted on human capital and institution, and openness to international trade as the missing links of economic growth. Economists like Romer and Gary Becker called on developing countries to focus on generating higher quality human capital instead of physical capital[35]. Human capital became the 5th factor of production. Writing about the success of the East Asian economics, Gary

[33] W.W. Rostow. The Stages of Economic Growth: A Non-Communist Manifesto (Cambridge: Cambridge University Press) 1963

[34] Trubek, D.M., Toward a Social Theory of Law: an Easy on the Study of Law and Development.

[35] "According to Paul Romer "The creation of new knowledge to one firm is assumed to have a positive external effect on the production possibilities of other firms… (so that production of consumption goods as a function of the stock of knowledge exhibits increasing returns, more precisely, knowledge may have an increasing marginal product". Romer, 'Increasing Returns and Long-Run Growth. Journal of Political Economy 94 (5th October)1002-37 at apge 1003.

Becker pointed to heavy investment in education as the major cause of their economic miracle. Further down this historical process, with the collapse of many centrally planned economies, focus on economic policy reform centered on establishment of market structure and 'good' macroeconomic policies. These policies relate more to the withdrawal of the state from dominant market and economic operation. Gerald M. Meier sums it up thus; "For developing countries, the new growth theory implies a greater emphasis on human capital (including learning), even more than on physical capital, and recognition of benefits from international exchange of ideas that accompany an open economy integrated into the world economy" [36] Thereafter, economic orthodoxy settled on liberalization of domestic market, openness to international trade and privatization of public enterprises as the golden straitjacket of economic growth. No more the grand theories.

As faith in 'stages of development and grand theories of development wanted, greater focus of development economics began to rest on the primacy of institutions. The discovery of institution is a reaction to the neo-liberal economic growth theories which diminished the role of government and praised the allocative efficiency of the markets. The major event in this discovery was the publication of Douglas North's classic on institution and institutional change[37]. The book furthered the insights arising from the New Institution Economists. These

[36] Gerald M. Meier , "The Old Generation of Development Economists and the New'. In Gerald M. Meier and Joseph Stighitz (eds.,) frontiers of Development Economics The future in perspective (New York: Oxford University Press 2001) page 20.

[37] Douglas North. Institutions and Institutional change and Economic performance (Cambridge, Cambridge University Press, 1990.

economists elevate the discourse about transaction costs and argue that the quality of institutions that societies develop to deal with transaction costs determine the quality of economic development. These economists argue that 'getting institutions right is more important than 'getting prices right. North defines 'institutions' as "the rules of the game in the society or more formally… the humanly devised constraints that shape human interactions". Law- as statutes, decisions of courts, legal propositions and principles-is a part of institution. The legal system itself is an institution that can enable or hinder economic performance.

## Conclusion and Recommendation

From the discussion above the importance of Rule of Law can never be exaggerated. But with the challenges being confronted with or faced during its implementation in Nigeria, there is a clarion call for a change of attitude by all and sundry to recognize the need and importance of the Rule of Law in our nascent democracy. It is therefore recommended that the government and civil authorities organize conferences and workshop to conscientize people on the change of attitude towards the acceptance of the rule of law as an imperative for successful democracy in Nigeria.