# *The interplay of legal capacity, convergence, and development in insolvency reform*



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# The Interplay of Legal Capacity, Convergence, and Development in Insolvency Reform

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**Abstract**

The wholesale transplantation of foreign insolvency laws with minimal contextual adaptation—rule convergence—can be inimical to development in African states because it displaces the legal capacity through which insolvency systems become institutionally responsive over time. Situated within a transnational reform order shaped by overlapping developmental and market-integration logics, insolvency reform is frequently promoted through global scripts, technical assistance, and benchmarking regimes that reward rule convergence. This order and the discourse that supports it often operate within an implicit economic-growth development paradigm that treats legal development as achievable through the external supply of 'best practice' rules supported by enforcement capacity. This paper challenges that view, advancing a systematic conceptualisation of state legal capacity as the evolving institutional ability to formulate, adapt, interpret, implement, enforce and legitimate legal rules in response to societal legal demand. Applying this framework to corporate and insolvency reform trajectories in East and West Africa, the paper shows how rule transplantation produces capacity displacement, undermining endogenous legal development and development more broadly. Insolvency reform must therefore be understood as a project of legal capacity-building rather than of rule importation, enabling African states to act as co-producers in the evolution of global insolvency norms and models.

**Keywords:** insolvency law reform; African insolvency law; state legal capacity; insolvency reform and development; insolvency reform in emerging economies

## 1. Introduction

The wholesale transplantation of foreign insolvency laws with minimal contextual adaptation—rule convergence—is inimical to development in African states where it displaces the legal capacity through which insolvency systems become institutionally responsive over time. Insolvency procedures and concepts have diffused regularly across borders, contributing to the emergence of transnational insolvency norms and the convergence of globally recognised insolvency models. Convergence is often framed as a mechanism for encouraging capital flows and market-supporting institutions that enable economic development (See: World Bank Group 2021). Yet the wholesale propagation of insolvency rules with minimal or no changes has been observed with particular frequency in Africa. This pattern is reinforced both by the supply of reform scripts by international actors and by benchmarking regimes whose indices carry real implications for states pursuing development.[1] The result is a growing set of questions in contemporary insolvency scholarship

[1] Discussed in Section 2.

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concerning the institutional fit, legitimacy, and effectiveness of transplanted insolvency laws within the economic, socio-political, and administrative conditions of recipient states.[2]

These debates unfold against an often-implicit premise that insolvency reform is undertaken in aid of development. However, the conception of development underwriting contemporary reform agendas is rarely articulated with precision by institutional actors, nor fully interrogated within insolvency scholarship.[3] This situation matters because the developmental implications of insolvency law depend on the paradigm of development through which reform is evaluated. Accordingly, this paper clarifies leading paradigms of development and their implications for law as an institution and for insolvency law reform in emerging economies, in particular. Methodologically, the paper applies a normative analysis of law approach, integrating insights from political sociology, development economics, institutional development practice and law and development scholarship into its analysis of insolvency law reform.

The paper's first contribution is to show that although international development actors have formally embraced broader approaches to development, such as the human development and capabilities-based approaches, insolvency reform discourse continues to operate implicitly within an economic-growth paradigm, in which insolvency law is valued primarily as a market-supporting technology.[4] Development, properly understood, is not constituted by growth alone but co-constituted by social, political, and legal development. Legal development, in this broader view, concerns the evolving ability of legal systems to respond to societal legal needs over time and is delivered by a state with the requisite legal capacity. Insolvency reform therefore cannot be assessed solely through the lens of economic performance metrics or formal institutional convergence.

This leads to the paper's second contribution and central conceptual intervention. If legal development is understood narrowly as the existence of a 'rule of law' template, then reform may plausibly be achieved through the external supply of rules delivered through rule-convergent transplantation.[5] In that context, state legal capacity would be limited to its enforcement capabilities. These conceptions of legal development and state legal capacity have underpinned much of the transnational reform practice. Yet the empirical record of transplant failure points towards the need for an alternative understanding of legal development as institutional responsiveness over time (Davis and Trebilcock 2008). Such responsiveness cannot be secured through exogenously supplied rules supported by enforcement alone. An alternative understanding of legal capacity is therefore also required. Accordingly, this paper proposes, instead, a systematic conceptualisation of legal capacity as the evolving institutional ability of the state to formulate, adapt, interpret, implement, enforce and legitimate legal rules such that they remain responsive to societal legal needs over time. Legal capacity, in this sense, enables legal development. Where any of its constituent domains are absent or displaced, reform produces formal rules without a change in practice, thereby undermining both legal development, specifically, and development, more broadly.

Deploying this framework as an evaluative tool, the paper examines insolvency law reform trajectories in East and West Africa.[6] It uncovers the usually hidden institutional architecture through which insolvency legislation has been produced, revealing fluctuating configurations of legal capacity over time. The reform cycles that generated Ghana's Companies Act 1963 and Nigeria's Companies and Allied Matters Act 1990, which have

[2] ibid.
[3] For a notable exception: (Gurrea-Martinez 2024).
[4] Section 3.
[5] Section 4.
[6] Section 5.

often been overlooked in transnational accounts, demonstrate the possibility of endogenous legal adaptation within normatively aligned legal frameworks. Their limited effectiveness in practice further illustrates the consequences of deficits in addressing all the elements of legal capacity.

The argument proceeds in seven sections. Section 2 situates insolvency reform within the transnational order. Section 3 clarifies paradigms of development, and the place of legal development and legal capacity within them. Section 4 develops the proposed framework of legal capacity. Section 5 applies the framework to African reform trajectories. Section 6 reintegrates the preceding arguments into a coherent case for normative convergence as the appropriate approach to insolvency reform in emerging economies. Section 7 concludes by arguing that insolvency reform is not primarily a problem of importing the right rule but of developing legal capacity through which law can become a living institutional infrastructure for development.

## 2. Insolvency Law Reform Within a Transnational Order

Since the nation-state emerged, lawmaking has formally been anchored in domestic institutions, with legislatures and courts responsible for formulating and implementing legal rules within broadly homogenous societies (Crettez et al. 2016). As the world has integrated economically, the diversity of national legal regimes has increasingly been treated as a barrier to cross-border predictability, financial stability and the flow of capital (Crettez et al. 2016, p. 31). Systemic crises with global economic implications have driven the rapid construction of a transnational legal order, particularly in corporate and insolvency law. This transnational order operates not only to coordinate legal expectations across jurisdictions, but also to modernise national legal systems through reform scripting, benchmarking and institutional guidance.[7]

In corporate and insolvency law, the development of the transnational legal order accelerated after the collapse of communism. The reconstruction of countries of the Soviet bloc as market economies was accompanied by changes to their corporate and insolvency frameworks (Halliday and Shaffer 2015). It was not until the East Asian financial crisis, however, that the universalisation of insolvency norms and models became more concerted (Halliday and Shaffer 2015, pp. xv–xvii). Reform became increasingly transmitted through coercion, persuasion, or modelling towards adoption of transnational norms and models.[8] Together, these dynamics have produced a reform environment in which emerging economies are encouraged, sometimes pressured, into aligning their insolvency regimes with externally articulated standards and institutional reforms (Odetola 2018).

Key instruments include UNCITRAL's *Legislative Guide on Insolvency Law* and most prominently, the World Bank's *Principles for Effective Insolvency and Creditor/Debtor Regimes*.[9] These frameworks operate alongside benchmarking technologies such as the World Bank's now-defunct *Doing Business* (DB) indicators and their successor, *Business Ready*, which assess domestic legal systems against global standards and incentivise convergence through reputational and investment signalling.[10] Insolvency reform is thus frequently framed as a developmental necessity, an infrastructure for legal and economic modernisation and market confidence.

[7] ibid., p. 13.

[8] ibid., pp. 21–28.

[9] UNCITRAL Legislative Guide on Insolvency Law. Available online: https://uncitral.un.org/en/texts/insolvency/legislativeguides/insolvency_law (accessed on 10 February 2026).

[10] Section 3 below. World Bank. World Bank Group to Discontinue Doing Business Report. 16 September 2021. Available online: https://www.worldbank.org/en/news/statement/2021/09/16/world-bank-group-to-discontinue-doing-business-report (accessed on 4 June 2023); World Bank Group. Business Ready. Available online: https://www.worldbank.org/en/businessready (accessed on 10 February 2026).

Contemporary insolvency scholarship has begun to interrogate the consequences of this transnational reform environment in emerging economies. Gurrea-Martinez argues that insolvency law contributes to economic growth but that it is ineffective in achieving that goal in emerging economies because their frameworks are poorly designed and unsuitable for local markets and institutional conditions (Gurrea-Martinez 2024, p. 50). He notes, briefly, that legal transplantation of insolvency models has contributed to this ineffectiveness.[11] McCormack, by contrast, critiques the law and finance assumptions embedded in the World Bank's benchmarking, warning that ranking-driven reform can generate formally modern insolvency laws that remain institutionally non-functional within their host contexts (McCormack 2019). Odetola provides the most granular African account, demonstrating how the World Bank and INSOL International,[12] particularly through the Africa Roundtable,[13] have shaped insolvency reform across the continent through technical assistance, elite networking, and normative scripting (Odetola 2018, p. 41). She raises the concern that reforms may be driven less by domestic developmental priorities than by the pressure to reform in accordance with global templates and indices.[14]

In Nigeria, for example, the Companies and Allied Matters Act 2020 ('CAMA 2020'), the main corporate and insolvency legislation, illustrates these dynamics.[15] Although the desire to modify the Nigerian insolvency system has existed since 1994, the proximate catalyst for the 2020 reforms was the desire to improve Nigeria's rankings on the World Bank's Ease of Doing Business Index. The resulting insolvency provisions largely reproduced the English Insolvency Act 1986 as it was in 2014. This trajectory reflects a broader pattern of rule convergence within common law Africa, where reform frequently proceeds through wholesale transplantation rather than through contextual formulation or the adaptation of externally supplied models.[16] Yet this outcome was not inevitable. Earlier West African reforms, most notably Ghana's Companies Act 1963 and Nigeria's CAMA 1990, exemplified a different pathway, encompassing alignment with global common law principles while developing contextually responsive legal concepts.[17]

This adaptive tradition has been obscured within both national and transnational accounts, and its displacement by revived transplantation cannot be explained simply by the need for reform. Rather, it reflects the ways in which the transnational reform order shapes the capacity of states to produce legal frameworks suited to domestic legal and developmental needs. Still, the shift between endogenous adaptation and rule transplantation in corporate and insolvency law reform in African states raises questions that extend beyond insolvency institutional design alone. It directs attention to the conception of development that underpins contemporary insolvency reform agendas, the role attributed to law within that conception, and the institutional capacities required to sustain development. Clarifying these foundational issues is necessary to understand the developmental implications of insolvency reform within a transnational order and to assess whether prevailing reform approaches enable or displace development in Africa.

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11 ibid., p. 151. (Gurrea-Martinez 2024)

12 A global federation of professional associations and practitioners specialised in turnaround and insolvency.

13 Africa Round Table. Available online: https://www.insol.org/focus-groups/african-initiatives/africa-round-table (accessed on 10 February 2026); Section 5.3 below.

14 ibid., p. 45.

15 Official Gazette: 2020 No. 3 Assented into law on 7th August 2020, as modified by Business Facilitation (Miscellaneous Provisions) Act 2022, A97–120.

16 Non-African common law countries also maintain this tradition (Seidman 1966).

17 Section 5.

## 3. Understanding Development

The prevailing case for insolvency reform in emerging economies remains implicitly grounded in an economic-growth conception of development. This is so even though actors such as the World Bank and the United Nations have formally embraced broader approaches to development. This disjunction matters for insolvency reform.

This section therefore examines the institutional foundations of development, the role of the state in development and the significance of state capacity in delivering institutional change. It then introduces two key concepts central to the paper's contribution: legal development, as distinct from the rule of law, and legal capacity, as a distinct but under-theorised dimension of state capacity that is indispensable to legal development.

### *3.1. The Concept of Development*

The concept of development has long been discussed in political and economic thinking (Ul Haq 1995). Two broad paradigms have, however, dominated its conceptualisation in the late-modern era.[18] One is the economic-growth paradigm that emerged in the period following the Second World War, and the other is the human-development paradigm that emerged in the late 1990s.[19] Both remain relevant to the debate on development and reform in emerging economies.

The economic-growth paradigm conceptualises development as improvements in national income, focusing solely on financial markers such as gross domestic product and national income accounts.[20] Implicit in this conceptualisation of development is the notion that improvements in economic growth result in improvements in human life and conditions. This paradigm dominated development economics and subsequently came to be associated also with the practice of agencies associated with improving development, such as the International Monetary Fund and the World Bank, in the mid-twentieth century, remaining relevant to date (Nussbaum 2011).

The economic-growth paradigm of development has experimented with various models of delivery, including the state-controlled model and the stateless model. The state-controlled development model holds that development is produced by the state. It was undergirded by modernisation theories from Parsons and Weber, with Rostow further providing a unilineal economic theory of growth that viewed modernisation as the movement of societies from the traditional stage to the modern stage of high mass consumption.[21] Modernisation is interchangeable with development, evolution, and progress (Sklair 1970). Thus, these were thought to be the stages that states would pass through to attain the end goal of development (Willis 2023). At the heart of the model was the transformative structure and role of the state in aid of development (Evans 1995).

In the period following the end of the Second World War, influenced by modernisation theory, international agencies looking to enable development in countries coming out of the control of Western imperial powers in Asia, the Middle East and Africa focused on the role of the state. They promoted policies involving centralised planning, corrective interventions in resource allocation, and a heavy state hand in infant-industry development (World Bank 1997). In time, it became clear that states were unable to deliver development, and modernisation theory itself came under considerable critique, leading to a loss in momentum (Trubek 2016).

Unlike the state-controlled development model, the stateless model posits that development is enabled by markets, not states. It therefore encourages a minimalist state

[18] For a broader review of other conceptualisations of development: (Trebilcock and Prado 2021).
[19] ibid., p. 16.
[20] ibid., p. 24.
[21] Parsons: (Parsons 1964, 1966); Weber: (Holton and Turner 2010; Rostow 1959).

undergirded by neoliberal economic theories. The minimalist state was particularly encouraged by the 'Washington Consensus', which encouraged the pursuit of macroeconomic discipline, a market economy, an openness to globalisation, privatisation and the promotion of property rights (Irwin and Ward 2021). This model dominated development practice in the period following the fall of the Soviet Union (Trubek 1996). In the same period, governments in other emerging economies found themselves unable to sustain their developmental activities as a debt crisis followed the plunge in oil prices (World Bank 1997, p. 22).

By the late 1990s, however, the notion that there could be stateless development was considered impossible (World Bank 1997, p. 17; Williamson 2002). It was argued that markets could run only where appropriate institutions existed and that the state was essential for creating those institutions (North 1971, 1992; Coase 1998). New Institutional Economics (NIE) led this argument, placing institutions at the centre of development in contrast to the neoclassical economics under-girding the stateless approach that treated them simply as background conditions (North 1986). NIE theorists asserted that transaction costs within institutional frameworks explained divergent development outcomes across countries.[22] The centrality of institutions was also accepted within development practice, where even Williamson, the progenitor of the Washington Consensus, rejected the notion that minimal states could deliver development (Wolfensohn 2000).

The notion that the economic-growth paradigm enables development has been challenged by the human development approach, interchangeably called the human capabilities approach (Nussbaum 2011, chap. 1). This approach finds its roots in Sen's argument that economic growth is not an end but a means to the end of enhancing human life (Sen 1999, p. 14). Sen argues that the link between economic growth and the improvement of human lives does not arise automatically. While the expansion of income can indeed improve human life, the link must be created consciously through deliberate public policy (Sen 1999, p. 14). Nussbaum, a leading proponent, argues that (human) rights are entitlements to capabilities (Nussbaum 2007). However, the material and social preconditions of rights—the production of human capabilities—require material and institutional support by the state (Nussbaum 2007, pp. 21–22). Thus, this conceptualisation of development adopts a state-enabled or state-facilitated model.

The human development conceptualisation with its state-enabled model is widely accepted internationally, including by the agencies at the forefront of insolvency reform. As Wolfensohn, erstwhile president of the World Bank Group, stated, development is about more than GDP growth or the balance of payments; it is about transforming whole countries (World Bank 1997, p. 17). He described development as a double-sided coin or a balance sheet comprising, on one side, financial matters relating to macroeconomics and, on the other, structural, social and human issues, both of which must be considered together (World Bank 1997, p. 17). This understanding of development has been further institutionalised through the United Nations' Development Programme's (UNDP) Human Development Reports, which look beyond economic metrics to the quality of human life.[23] On this account, development comprises political freedom, economic choice and protection from poverty and is understood as an integrated process of expanding the real freedoms that citizens enjoy. Both the World Bank and the UN thus formally accept that development is delivered through a state-enabled framework (World Bank 1997, p. 22).

Notwithstanding this formal embrace of institution-centred and human development accounts of development, the economic-growth paradigm continues to shape how development is interpreted and operationalised in practice. As the discussions in Section 2 suggest, it is the economic-growth paradigm that continues to dominate debates in in-

[22] For a fuller understanding: (North 1971, 2012).

[23] For the United Nation's Human Development Reports: https://hdr.undp.org/ (accessed on 12 February 2026).

solvency reform, both in academic scholarship and in the reform scripts advanced by international actors such as the World Bank. It is argued, nonetheless, that the variant of the economic-growth paradigm informing contemporary reform discussions differs from both the state-controlled and stateless models. The prevailing model may instead be characterised as a *state-enabled* economic-growth paradigm, in which the state is tasked with facilitating economic growth on the implicit assumption that growth will, in turn, yield development. While this paradigm accords the state a more prominent role than in the stateless variant but less centralisation than in the state-controlled variant, it does not, by itself, resolve questions concerning the process of institutional formation.

Accordingly, although development is now widely accepted as institutionally driven, a central question concerns how appropriate institutions are created: whether they can be supplied exogenously or must emerge endogenously through domestic processes of institutional construction. Both scholars and agencies increasingly acknowledge that this question directs attention to the capacity of the state itself (Evans 1995; World Bank 1997, p. 3). This question arises regardless of whether development is construed through the human-development paradigm or through the state-enabled economic-growth paradigm, though the development paradigm adopted shapes the range of solutions accepted as legitimate.

### *3.2. The Development and Institutions Nexus*

If development is institutionally driven, as both dominant development paradigms now accept, then the critical analytical question is not whether institutions matter but how they are formed, sustained and adapted over time (Rodrik et al. 2004). NIE argues that institutional change is path-dependent and that institutions cannot simply be assumed into existence but are created—a notion accepted subsequently in development practice.[24] This redirects attention from institutional outcomes to the capacities that enable institutional construction (Evans 2004, p. 30). Every society is constituted by various social orders, but the state has been identified as distinct in its capacity to shape the broader social order, regulating relationships and exchange, as well as deploying the forms of action necessary for creating institutions that deliver development (Clemens and Lu 2020). The state is the *key to all of the institutional structure of rational capitalism*.[25] Its ability to create institutions is an expression of its capacity.[26]

State capacity has been described in several ways and is made up of various elements depending on the discipline within which it is examined.[27] While these accounts are not competing, they typically offer only partial views of state capacity and institution building. Political scientists (Fukuyama 2013) and political sociologists (Midgal 1988) approach state capacity through a constitutive lens. For them, state capacity is a question of authority, legitimacy and institutional formation. Hence, they examine how the state itself, as an institution, emerges, as well as its ability to shape how its institutions are created, embedded and revised in response to social needs (Chang and Evans 2000). Political Economists and Development Economists, on the other hand, approach state capacity through an instrumental lens (Acemoglu et al. 2015). They operationalise state capacity by disaggregating it into functional components amenable to measurement and policy intervention (Savoia and Sen 2015). International agencies engaged in development practice such as the World Bank frame it as a matter of effectiveness; a state which is able to direct its capabilities to meet societal needs is an effective state (World Bank 1997, p. 3). It is only such a state that can deliver development. While these accounts operate at different

[24] North, *Institutional Change and Economics* (Sen 1999; Burki and Perry 1998).
[25] ibid., p. 443. (Clemens and Lu).
[26] State capacity is used interchangeably with state capability.
[27] For overview: (Cingolani 2013).

analytical levels, together, they reveal how states emerge and acquire the capacity to act and how that capacity is subsequently interpreted and deployed in enabling development and developing development policy.

Within political sociology, scholars typically draw on Weber's influence.[28] In contrast to its deployment by modernisation theorists, however, they draw on Weber descriptively rather than normatively.[29] Political sociologists use Weber's bureaucratic state model to explain how economic transformation evolves, rather than to prescribe the steps that states must pursue to attain modernity; see also (Ohnesorge 2007). The focus on the bureaucratic state, however, forms only one of the elements measured by the political and development economists, as noted by Savoia and Sen, who outline additional capacities including (i) Bureaucratic and administrative capacity, which is central to all areas of research on the state and development (ii) Fiscal capacity, which is closely linked to bureaucratic and administrative capacity, (iii) Legal capacity, which is important but not the focus of political sociology and political science (iv) Infrastructural capacity, which refers to the extent to which the state can exercise control over its geographical area of control, and (v) military capacity, which refers to the ability of the state to deter or repel challenges to its authority with force on matters of internal and external security (Savoia and Sen 2015, p. 455).

The World Bank, while echoing the importance of the capabilities approach, asserts that capacity encompasses the administrative or technical capacity of state officials, as well as the institutional mechanisms that provide the state with the flexibility, rules, and restraints to enable it act in the collective interest (World Bank 1997, p. 77). Weak states should focus on providing five fundamental tasks at the heart of development: (i) establishing a foundation of law and property rights, (ii) maintaining macroeconomic stability, (iii) investing in basic social services and infrastructure, (iv) protecting the vulnerable, and (v) protecting the environment.[30] When the state delivers these capabilities in the interest of society, it is effective (Midgal 1988).

Political sociology therefore appears unique in omitting legal capacity. However, it is merely that this account treats law as a background condition rather than as an object of analysis. Midgal, a leading political sociologist, in examining the formation of strong states, argues that the capacity of the state to exert social control, that is, to regulate relationships, coordinate economic activity and shape social order, is fundamental to its legitimacy.[31] One of the ways of exerting social control that has superseded other forms of social control in many states is through law and regulation.[32] Indeed, Weber's account of the rational-legal state argues that bureaucracy derives its legitimacy and effectiveness from calculable law, while markets depend on predictable legal ordering (Sterling and Moore 1987). This suggests that any account of development grounded in institutional formation must attend not only to the state's administrative capacity but also to its capacity for legal ordering.

Nevertheless, legal capacity remains a conceptual black box, invoked but not fully examined in existing literature. This is not unusual, as various elements of state capacity have been deemed black boxes by scholars in other fields, also. In fact, the state itself and the specific ways in which it contributes to development were historically deemed black boxes by political sociologists (Evans 1995, 2004, 2014) and political scientists (Huntington 1968; Fukuyama 2008). Having identified legal capacity as an important element of the broader state capacity, it is imperative now to explore the scholarship that has focused the most on the role of law in development.

[28] For example, essays in (Evans et al. 1985).
[29] Modernisation approach: (Trubek 1972).
[30] ibid., p. 3. (World Bank 1997).
[31] ibid., p. 262. (Midgal 1988)
[32] Legal Pluralists make the case for other forms of social control: (Tamanaha et al. 2012).

### *3.3. The Development and Law Nexus*

In the same way that development and state capacity are open to multiple interpretations, the notion of law is similarly contested (Tamanaha 2012). Within the law and development scholarship, law is commonly discussed as *the rule of law*, which is characterised by uncertainty (Trebilcock and Daniels 2008). In this literature, the term typically denotes the existence of formal law and state-backed legal institutions rather than a fully specified jurisprudential theory of legality.[33] It is this formal-institutional understanding of the rule of law, which is formal legislation and regulation backed by state authority and administered through public institutions, that this paper adopts.[34] This is not because alternative conceptions lack merit, but because it is formal law supported by state-backed legal institutions that is most directly implicated in insolvency reform with which the paper is concerned.

The differing conceptions of development closely track the evolution of law and development scholarship itself. As Trubek observes, law and development orient around the practices of those who seek to change legal systems in the name of development, drawing on development economics, institutional practice and law (Santos and Trubek 2006). The instrumental use of law within the state-controlled modernisation paradigm informed the first wave of law and development scholarship in the decades following the Second World War. The subsequent turn toward market-oriented reform and the rule of law underpinned its second wave from the late 1980s, particularly in the post-Cold War period. More recent work reflects a third wave that criticises formal transplantation and emphasises institutional context, adaptability and endogenous views of law, often aligning with themes associated with the human development approach.[35]

The state-controlled economic-growth paradigm did not treat law primarily as infrastructure for enabling economic growth. Rather, law was conceived as an instrument of social change.[36] The goal was to modernise the legal systems of emerging economies as the ultimate process of societal evolution (Ohnesorge 2007, pp. 234–35). It was assumed that United States (US) and European law presented modern forms of law and legal systems, whereas the legal systems of post-colonial and other developing countries exhibited traditional or non-modern characteristics.[37] In practice, development experts sought to shortcut modernisation by importing laws from modern states that were transplanted into the more traditional countries to jumpstart the natural evolutionary process, which was much slower (Trubek 2016, p. 305). The change in the law was combined with cultural reform through legal education and the creation of modern legal professions as means of progressing towards the rule of law.[38]

The stateless economic growth paradigm and the state-enabled paradigm expressly recognise the direct role that law plays in enabling economic growth (Ohnesorge 2007, p. 244). They acknowledge that legal institutions are not automatically produced by markets but must be constructed or reconstructed through planned interventions and conscious reform (Trubek 2016, p. 305). To function properly, markets require a complex set of legal institutions required to constrain undesirable state intervention in market activity and to facilitate market transactions.[39] In these paradigms, while the focus is still on the instrumentality of the law, the language is one of the centrality of the 'rule of law'.

[33] On the contested jurisprudential meanings of the rule of law, see: (Waldron 2023).
[34] For a fuller discussion: (Trebilcock and Daniels 2008).
[35] ibid., p. 3. (Santos and Trubek 2006).
[36] ibid., p. 2.
[37] ibid., p. 305.
[38] See Note 37.
[39] ibid., p. 311.

The goal is not simply to modernise the legal system but to achieve a well-functioning legal system that can serve a market economy. This requires a supply of market-friendly laws and institutions to implement and enforce them. Hence, the availability of qualified professionals and judges is central to this paradigm, with judicial reform occupying a prominent place (Ohnesorge 2007, p. 249).

In operationalising this paradigm, some financial economists interested in the effects of legal systems on financial performance have sought to identify, through empirical methods, the attributes of legal systems that contribute to economic performance.[40] One of their major claims is that the legal families or origins of the legal system determine development outcomes, with common law origins a better marker of attaining development than civil law origins (La Porta et al. 1998, 2008). They have generated lists of legal reforms required to facilitate market development, including strong property rights, contract law, administrative law, intellectual property law, securities law, corporate law, bankruptcy law, and competition law, amongst others. These propositions have been influential. Both the theories and theorists contributed to the World Bank's Doing Business reports produced annually between 2004 and September 2021, when it stopped due to methodological irregularities (Ohnesorge 2007, p. 253).

The Doing Business report, aided by this and similar scholarship, provided the basis for policy prescriptions that the World Bank rendered to emerging economies or influenced them to adopt. In discussing state capabilities, the World Bank noted that ineffective states suffer from two main challenges in establishing the rule of law: (i) inept legislatures deprived of adequate information and capability, and (ii) a compromised judiciary unable to compel the legislative and executive authorities to remain fully accountable under the law and enforce the law (World Bank 1997, pp. 7–8). It asserted that *writing laws is the easy part*; it was enforcement that enabled a country to enjoy the benefits of a credible rule of law.[41] Legal capacity was therefore implicitly equated with enforcement capacity, thereby obscuring the developmental significance of endogenous law-making capacity, while law-making itself was treated as an exogenous endeavour. This is understandable given that the supply side was provided by these scripts or nudges towards legal transplants undergirded by the desire to create neutral and lightly regulated systems (Trubek 2016, p. 313).

However, Trebilcock and Davis argue that developing countries should not focus exclusively on enacting or adopting substantive bodies of law designed to vindicate a preferred conception of development (Davis and Trebilcock 2001). Rather, they contend that the critical determinant of the rule of law lies in the capacity of the legal system to respond and adapt to the needs of a society over time.[42] Empirical evidence suggests that reform efforts are more effective when they enhance the quality of institutions responsible for enacting laws and regulations, as well as those charged with their subsequent administration and/or enforcement.[43] Relatedly, the assumption that law can be externally supplied and transplanted has also been contested. Berkowitz, Pistor and others demonstrate that transplanted laws, which are insufficiently adapted to local conditions, tend to be ineffective, neither producing improved legal systems nor meaningfully resolving the societal challenges faced by their recipients (Berkowitz et al. 2003).

Together, these critiques point towards a more nuanced understanding of the law's role in development, one that foregrounds institutional responsiveness and endogenous adaptation rather than formal enactment alone (Armour et al. 2009; Pistor 2009). Beyond this, they raise a deeper question of the capacity of states to formulate, adapt and sus-

[40] ibid., p. 252. (Ohnesorge 2007)
[41] ibid., p. 8. (World Bank 1997)
[42] ibid., p. 33.
[43] See Note 42.

tain legal rules that are responsive to domestic social, economic, and cultural conditions, even where the political will to reform exists. The paper returns to this question in the next section.

The human-development paradigm with its state-enabled model of development challenges the instrumentality of law in development (Anderson 2014). It argues that law is not a cause of economic development. It argues, instead, that it is co-constitutive of development, along with several other forms of development including the economic, social and political (Tamanaha 2012, p. 233). Both the UNDP's Human Development Report and the World Bank's Comprehensive Development framework increasingly treat legal development—interpreted as the rule of law—as integral components of development itself, rather than merely instruments of growth.[44] In effect, its emergence is evidence of ongoing development.

Tamanaha criticises this approach, however, as reminiscent of the modernisation approach.[45] He argues that the ideal should indeed be legal development, but that legal development should not be equated with the formal rule of law.[46] The rule of law is to provide legal constraint on the government but that this end can be achieved through any effective state legal system, which may not necessarily be formal rule of law. The effective legal system should manage and support the activities of government and act as a restraint, as may be necessary. Legal development is therefore about enabling legal institutions of varying kinds to deliver services that meet legal demand within the state.[47] For him, functional alternatives to the rule of law or even the monopoly of the state in making or implementing law may better serve the needs of some societies in ways that external interventions do not understand.

Ohnesorge agrees that the notion that 'legal development as the rule of law' is an end to strive for reflects Weberian modernisation thinking, which aims to establish formal legality in societies as a mark of development (Ohnesorge 2007, p. 257). He argues that the focus should instead be on Weber's substantive point, which was that the legal system should be deployed instrumentally to serve the development needs of society.[48] In contrast to Tamanaha, however, he centralises the state as the instrumental wielder of law in the service of the bureaucratic vision of development, as was done in the period of speedy growth of the Asian tigers.[49] Nonetheless, his focus on legal development as the construction of a legal infrastructure of whatever kind that serves society pragmatically is similar. Both reject the exogenous supply of legal scripts which do not reflect the endogenous needs of particular societies. Ohnesorge rejects the best practices approach, often presented as non-controversial, apolitical and scientifically verifiable solutions.[50] He argues that instead of transplants, development agencies could monitor whether the goals of particular areas of law are being met and, where they are not, facilitate the changes needed to meet them.[51]

This paper aligns with Tamanaha and Ohnesorge in treating legal development as the construction of legal institutions capable of meeting domestic legal demand, rather than as specific formulations of the rule of law. Yet even these accounts often assume that states possess the endogenous capacity to formulate, adapt, and legitimate law once reform is politically desired. The experience of insolvency reform in jurisdictions such as Nigeria

44 ibid., p. 233. (Tamanaha 2012)
45 See Note 44.
46 ibid., p. 244.
47 ibid., p. 245.
48 ibid., p. 257.
49 See Note 48.
50 ibid., p. 305. (Ohnesorge 2007)
51 See Note 50.

suggests that this assumption is unsupported. As such, the debate leaves unresolved the question of legal capacity, that is, the state's ability to create and sustain legal development.

## 4. Legal Capacity for Legal Development: A Proposal

The preceding section establishes three foundational points. First, that development is now widely understood in terms that extend beyond economic growth alone. The dominant human development or capabilities approach conceives development as the expansion of people's substantive freedoms and agency, requiring institutional conditions through which individuals can secure and exercise their capabilities. On this view, the emergence of the 'rule of law' is not merely instrumental to development but constitutes part of development. Second, scholarship across political sociology, political economics, and institutional development practice converges on the proposition that development is institutionally mediated and therefore depends on state capacity. States must possess the capabilities required to construct, sustain, and revise the institutional arrangements through which development is delivered. One such capability is legal capacity. Third, that contemporary law and development scholarship accepts this broader conception of development but increasingly rejects the tendency to treat the formal 'rule of law' as either a sufficient proxy for development or an indicator of its attainment. Instead, it argues for a broader conception of legal development, which requires that legal systems respond to the legal demands and needs of citizens over time through institutions that are effective, adaptable and contextually grounded.

This paper accepts these propositions but advances a further claim, namely, that legal development in this deeper sense is only possible where states possess and deploy legal capacity. Yet legal capacity remains under-conceptualised. When it appears in the social sciences, it is typically operationalised through enforcement proxies. Conversely, contemporary law and development has neither systematically integrated the state capacity scholarship nor fully engaged legal capacity as a distinct analytical object. This conceptual gap holds significant consequences for reform practice. This section therefore proposes a systematic conceptualisation of legal capacity as a distinct development capability and argues that it is indispensable to legal development.

### *4.1. Reconceptualising Legal Capacity*

Legal capacity is here described as the state's evolving institutional ability to formulate, adapt, interpret, implement, enforce, and legitimate legal rules such that they remain responsive to public and market needs over time. Conceived in this way, legal capacity is not a narrow enforcement function but a composite institutional capability through which law becomes a living infrastructure of governance rather than a static body of formal rules. Moreover, legal capacity need not be confined to direct state action; it may also be understood as the state's institutional ability to enable these functions through appropriate legal and administrative arrangements.

Formulation refers to the capacity for inclusive, problem-driven lawmaking that is administratively feasible considering domestic constraints such as ownership, sequencing, fiscal resources, and political legitimacy. Adaptation denotes the capacity of the state to sustain iterative learning over time through monitoring, revision, iterative reform and institutional responsiveness as social, economic and political conditions evolve, thereby contributing to endogenous legal development over time. Interpretation concerns the ability of legal institutions to apply rules coherently and predictably through specialised expertise, doctrinal guidance and the development of stable interpretive practices. Implementation refers to the institutional plumbing system comprising registries, notice systems, data infrastructure, case management and procedural routines through which legal text

translates into legal service. Enforcement involves credible compliance pathways that render legal orders effective rather than merely aspirational. Legitimacy undergirds the entire system, involving the capacity of legal institutions to command uptake because they are socially recognised as accessible, working and fair.

This conceptualisation of legal capacity departs from dominant operational treatments of legal capacity within development economics and institutional development practice. Political economists such as Besley, Persson and Dann describe legal capacity as the provision of regulation and legal services that support market building and constrain elite capture (Besley et al. 2021). Yet their models ultimately reduce legal capacity to the enforcement of private contracts and the measurement of enforcement-based institutions.[52] Similarly, the World Bank recognises legal capacity as foundational to effective states, defining it as encompassing both lawmaking and law enforcement (World Bank 1997, pp. 3, 77). In practice, however, it treats lawmaking capacity as given, or achievable through external supply, while positioning enforcement as the central component of legal capacity.

Legal capacity is therefore acknowledged in both fields but limited in scope: implementation and enforcement are emphasised, while the endogenous capacity to formulate, interpret, adapt and legitimate legal rules remains systematically underexamined. The result is a persistent asymmetry in reform practice, in which rules are treated as capable of external supply, while focusing institutional investment on downstream issues of implementation and enforcement. Yet if legal development, interpreted as contextual and institutional responsiveness and adaptation over time, is recognised as the goal, then an enforcement-centred conception of legal capacity is analytically and practically insufficient.

### *4.2. Legal Capacity as the Missing Object in Law and Development*

Law and development scholars have long cautioned against formalistic approaches to reform. Trebilcock and Davis, for example, find little conclusive evidence that reforms to the 'rule of law' or its constituent domains such as property rights, contract law, and political and civil rights reliably further development, however conceived (Davis and Trebilcock 2001). They argue instead that the principal challenge is institutional, that is, upgrading the quality of institutions responsible for enacting laws and for their subsequent administration and enforcement. They note that this task elides into public administration more generally.[53] Subsequent work by Trebilcock and other collaborators further emphasises that these institutional deficits are historically produced (Daniels et al. 2011). In many post-colonial jurisdictions, participatory lawmaking was largely absent during the colonial period, political legitimacy remained fragile at independence, and legal systems were insufficiently integrated with customary and informal orders. These conditions undermined the ability of legal institutions to respond to domestic social demands over time. Reform failure, on this view, reflects not merely deficient rules but deeper weaknesses in the institutional foundations of legality.

These arguments are compelling and have contributed considerably to understanding the relationship between law and development in post-colonial states. Yet they reveal an under-theorised object. Trebilcock and his various collaborators rightly shift attention from rules to institutions. Trebilcock and Daniels, for example, identify technical and resource-related impediments to law reform, such as shortfalls in specialised human capital, but theorise these as constraints on achieving the rule of law rather than as underlying elements of state capacity that are required to deliver the rule of law (Trebilcock and Daniels 2008, pp. 25–27, 37–39). Legal capacity is not an alternative formulation of the rule of law but its institutional precondition. In another example, Trebil-

[52] ibid., p. 165. (Besley and Persson 2011).
[53] ibid., p. 33. (Davis and Trebilcock 2001).

cock and Davis speak about the capacity of states more broadly but do not isolate legal capacity as a distinct development capability. Their analysis therefore risks collapsing legal capacity into bureaucratic capacity (Davis et al. 2026). Yet legal capacity constitutes a parallel and co-constitutive dimension of state capacity (World Bank 1997, p. 77; Savoia and Sen 2015, p. 455).

Ohnesorge's critique of orthodox 'best practices' approaches reinforces this point but from a different direction (Ohnesorge 2007, pp. 304–7). His Northeast Asian account shows that what matters is not the transplant of canonical legal forms but the capacity to monitor, learn and adjust legal arrangements in light of domestic development strategies. Yet even this valuable shift towards iterative learning and substantive rationality presupposes the existence of state capacities that can convert monitoring into revision, and revision into sustained institutional practice. In this sense, Ohnesorge treats law as an instrument available to the developmental state, without theorising the underlying institutional capabilities that make such instrumental deployment possible. Where those capacities are thin or displaced, the iterative adaptive process he advocates cannot occur, and reform defaults back to formal adoption rather than endogenous development.

This paper, therefore, argues that law and development scholarship would be strengthened by distinguishing systematically between legal development and legal capacity and by conceptualising the latter as an object of development analysis in its own right. Legal capacity is the state's evolving institutional ability to formulate, adapt, interpret, implement, enforce, and legitimate legal rules that can meet domestic legal demands over time. Failure of reform often reflects deficits in particular dimensions of legal capacity. In many development interventions, enforcement is treated as the central constraint, yet the more binding constraints frequently lie upstream: in the absence of doctrinal and professional resources for interpretation, the institutional plumbing required for implementation, the feedback systems required for adaptation, and the legitimacy conditions required for uptake.

Recasting law and development debates through the lens of legal capacity clarifies the practical implications of the insights offered by scholars such as Trebilcock, Daniels, Davis and Ohnesorge. If development agencies aim at legal development understood as the ability of the system to respond and adapt to societal legal demands over time, then they must invest in legal capacity as a dimension of state capacity. This requires support not merely for enforcement institutions and not merely for the supply of exogenous rules but for the endogenous ability to formulate and/or adapt rules, to operationalise them institutionally, and to legitimate them socially.

### *4.3. Legal Capacity and Private Ordering in a Transnational Reform Order*

These upstream dimensions become especially consequential once legal development is pursued through transnational reform practice. As Section 2 demonstrates, emerging economies are not only encouraged to reform their laws in aid of development but are also supplied reform scripts and pressed towards convergence with ostensibly universal norms generated by transnational actors such as the World Bank and the United Nations. While convergence may reduce transaction costs for capital and facilitate investment, its developmental implications depend on whether it enables endogenous legal development or displaces it.

Crucially, however, the transnational reform order is not constituted solely by public institutions. Comparative institutional analysis observes that how law emerges remains a 'black box' (Morgan and Quack 2010). Morgan and Quack emphasise that even in advanced jurisdictions, the state is not the sole locus of rule production.[54] Professional communities,

[54] ibid., p. 294. (Morgan and Quack 2010).

international law firms and market actors participate directly in shaping standards across jurisdictions, relocating rulemaking from the democratic-political arena into professional-legal ones.[55] These shifts reconfigure the values, distributive choices, and political priorities embedded in the reform scripts that circulate globally. In insolvency law, these distributive choices concern the allocation of loss, the hierarchy of claims, and the balance between forms of control, which have hitherto remained within national boundaries and, as such, are the subject of state legal capacity and development.

In parallel, within law and development scholarship, Pistor similarly observes that law is often produced through private actors with specialised expertise, backed by judicial legitimation and market adoption (Pistor 2019). Privately generated codes may thereby acquire binding force while remaining insulated from public scrutiny, even while depending on state institutions for ultimate enforcement and validation.[56] These dynamics underscore why legal capacity must include not only the ability to enforce rules but also the institutional ability to adapt, interpret, review, contest, legitimise, and mediate the rules that govern social and economic life. If such pressures complicate lawmaking even in advanced legal systems, they are intensified in emerging economies where the adaptive and interpretive infrastructure is thinner, feedback mechanisms are weaker, and reform incentives are shaped by external benchmarking regimes.

### *4.4. Legal Capacity, Convergence and the Overlapping Logics of the Transnational Reform Order*

The transnational reform order must therefore be understood as structured by overlapping and sometimes competing logics. On the one hand, some scholars and institutional development actors frame insolvency reform as a component of development, that is, as a means of building legal systems capable of supporting inclusive economic and social development through institutional responsiveness (Gurrea-Martínez 2025; World Bank Group 2021). On the other hand, global capital and its professional intermediaries value convergence as a mechanism of predictability, creditor confidence, and transaction-cost reduction (Pistor 2019, pp. 233–35). These projects are not necessarily aligned, even though they operate through the same channels of technical assistance, model laws, and benchmarking. Transnational insolvency scripts thus function simultaneously as instruments of developmental state-building and as technologies of market integration. Whether convergence enables endogenous legal development or instead produces capacity-displacing transplantation turns on the legal capacity of states to mediate between these logics. Where legal capacity is thin, the state cannot mediate convergence; it becomes, instead, a transmission belt for externally generated institutional reforms.

Both institutional development practice and private ordering meet within the transnational reform space, co-producing universalised norms and global reform scripts that encourage convergence through benchmarking indices. Convergence discourse often assumes that states possess the capacity to translate exogenously supplied norms into locally responsive rules. Yet forms of convergence differ. Normative convergence refers to minimum harmonisation around shared principles (Milhaupt 2001). It permits states to adapt norms and models to their national contexts, enabling them to become co-agents in the development of transnational models and norms. Conversely, rule convergence refers to formal, maximum unification through formal transplantation.[57] It often reflects the inability to adapt. Normative convergence may but need not lead to rule convergence.[58]

[55] ibid., p. 295.
[56] ibid., pp. 233–35. (Pistor 2019).
[57] ibid., pp. 2126–27. (Milhaupt 2001).
[58] ibid., p. 2127.

In African reform contexts, rule-convergent transplantation is prevalent, not merely as a doctrinal choice but as a symptom of weakened legal capacity. The ability of a legal system to adapt rules or norms presupposes domestic epistemic and professional communities, including legislators, jurists, practitioners and scholars who can translate social needs into legal form and revise frameworks over time. Where such communities are embedded within the reform process, adaptation is possible. However, where they are displaced by transactional reform coalitions, transplants are more likely, and legitimacy deficits follow. This is capacity displacement: reform that bypasses the very communities through which endogenous legal development would otherwise occur.

In insolvency law reform, international actors such as the World Bank often engage only senior government officials and practitioners on the assumption that they possess the doctrinal resources and institutional support necessary to interpret and adapt imported models (Odetola 2018, pp. 45–49). Yet the theoretical foundations of proposed insolvency rules are not widely internalised within these groups. Moreover, the supportive infrastructure required for endogenous revision such as data systems, monitoring capacity, and cross-sectional stakeholder engagement is weak or absent. In such settings, adaptation is structurally constrained. Thus, reform tends to proceed through formal adoption rather than through iterative development, and exogenous scripts remain untransformed. Section 5 applies these insights to the insolvency law challenge in Africa.

## 5. Legal Capacity for Insolvency Law Reform in Africa

While common law African countries largely retained the metropolitan legal frameworks inherited at independence, this section offers a rarely examined institutional account of subsequent company and insolvency law reform on the continent.[59] Empirical accounts of these reform processes remain exceptionally sparse, as many episodes unfolded through opaque professional and executive-driven channels that generated limited archival traces.

As insolvency reform in many common law African states has been embedded within broader cycles of company law reform, tracing insolvency reform requires attention to the trajectories of company lawmaking itself (Orojo 1992). The section illustrates distinct configurations of legal capacity and the dynamics of capacity-displacement faced by African states navigating company and insolvency lawmaking within a transnational legal order.

The discussion proceeds in four phases, organised around the Nigerian experience, though each phase also situates parallel developments in other African jurisdictions to the extent that the available records permit. The Nigerian experience is centralised because it is supported by comparatively rich documentary and institutional material derived from archival governmental reports, supplemented by interviews with key actors and the author's contemporaneous engagement with relevant reform processes. Additionally, Nigerian professionals played a pivotal role in connecting the transnational insolvency order to African professional and bureaucratic actors, particularly through the Africa Round Table.

### *5.1. Phase I: Rule Convergence Versus Endogenous Adaptation in Newly Independent States*

The colonial company law regime across common law African countries was structurally characterised by rule-convergent transplantation, not by endogenous legal development (Gower 1967). Prior to independence in 1960, Nigeria's company law, beginning with the first Companies Ordinance 1912 (applicable only to the colony of Lagos) and culminating in the 1922 Ordinance (amended in 1929, 1941 and 1954), largely comprised territorial enactments of successive UK Companies Acts (Akpotaire 1999).

[59] For the rare exceptions: (Adebola 2013) and (Odetola 2018).

After Nigeria's independence in 1960, scholars and practitioners widely expected post-independence reforms to respond to the economic, social, and legal needs of the new state (Orojo 1992, p. 20). In legal-capacity terms, this was the moment in which Nigeria might have shifted from inherited rules towards domestic formulation and adaptation, constructing a company law framework suited to national developmental priorities. Instead, the Companies Decree 1968 continued with the colonial pattern (Akanki 1992). English statutory rules were adopted wholesale, with only minimal modifications bolted on.[60] Akanki, a leading company law scholar, remarked that the 1968 Decree amounted to an '*uncritical, unedited, importation of English company law, lock, stock and barrel, baby and bath water*.'[61]

The reform process displayed several weaknesses. It was opaque, promulgated without meaningful consultation, and proceeded on the basis of limited diagnostic inquiry into the practical problems facing Nigerian corporate life.[62] Poor drafting contributed to technical errors, while the retention of the English statutory structure hindered accessibility due to the prominent role of case law supporting minimal codification and prevented the restatement of company law in a systematic form suited to local conditions (Akanki 1995). Moreover, the decree was out of date with the law in England, which had been updated following the Jenkins report of 1962.[63]

Nigeria's post-independence experience resembled those of several East African countries, including Uganda, Kenya, and Tanzania.[64] However, it can be contrasted with Ghana, with a similar colonial heritage and legal culture. Barely a year after independence in 1957, Ghana sought to transform its economy in support of commercial development while rendering it conducive to both African enterprise and foreign investment. It therefore embarked on the reform of its company law regime that was 'a century out of date'.[65]

The inquiry led by L.C.B. Gower ('Gower') began with a detailed diagnosis of the socio-economic state of Ghana, noting the political implications of any reforms, as well as any sub-regional and regional consequences for trade.[66] He considered three options:[67] (i) the adoption of company law from another African state, where suitable, (ii) wholesale importation of the (English) Companies Act 1948, and (iii) a new approach.[68] Gower chose the new approach as '*the only prospect of producing an Act really suited to Ghana's needs*'.[69] Ghana consequently became the first common law country to comprehensively codify its company law. This was done because the reformers recognised that Ghana had, in contrast to England, only a small cadre of legal and other professionals, and so it required a more accessible statutory framework.[70] Codification also supported Ghana's aspiration to expand intra-African trade, including with countries from the civil law family for whom the common-law case-based style of company law was less navigable.[71]

This reform marked the first major departure from rule-convergent transplantation of English company law in West Africa and illustrates early formulation and legitimacy

60 Companies Decree No. 51 of 1968 redesignated as A.I 1980, No. 13.
61 (Akanki 1992), Preface.
62 ibid., Preface.
63 *Report of the Company Law Committee* (Cmmd 1962, 1962).
64 (Gower 1961) Final Report of the Commission of Enquiry into the Working and Administration at the Present Company Law of Ghana. Government Printing Department, Accra, Ghana. (Gower's Report), p. 1.
65 ibid., p. 1.
66 ibid., pp. 1–2.
67 On the 3 options considered in Nigeria in 1988: (Adebola 2014b).
68 Gower's Report (see Note 67 above) pp. 5–6.
69 ibid., p. 6.
70 ibid., p. 4.
71 ibid., pp. 5–8.

capacity.[72] Importantly, the departure from inherited rules did not mean a departure from the common law model itself. Ghana retained the common law model given its familiarity to Ghanaian stakeholders and many of their foreign counterparts.[73] This episode therefore demonstrates that normative convergence need not entail rule convergence.[74] Gower noted that some of the changes made in the Ghanaian law would be recommended to the Jenkins Committee in England, of which he was a member. Akanki noted subsequently that the Ghanaian approach to *Minority Protection* influenced later developments in UK company law, which in turn diffused across the Commonwealth.[75]

Phase I therefore reveals an initial divergence between transplantation as default and a rare instance of endogenous adaptation, setting the stage for the capacity struggles that would shape later insolvency reform trajectories. Additionally, the Ghanaian experience illustrates the capacity of African jurisdictions not merely to receive but also to co-produce corporate law norms and models within the transnational order.

### *5.2. Phase II: The Spread of Endogenous Adaptation*

While Ghana's early experiment in endogenous adaptation was not recorded in the company laws of East African common law countries, a comparable turn emerged later in Nigeria. The next major episode of company law reform in Nigeria was undertaken by the Nigerian Law Reform Commission (Reform Commission 1988, p. 2). Led by Orojo, a prominent critic of the 1968 Decree, the Reform Commission rejected rule convergence, pursuing instead a contextually grounded statute that retained normative alignment with the common law model while enabling endogenous adaptation.[76]

Like Ghana's reform process, the Reform Commission was also attentive to the implications of reform for sub-regional, regional, and international trade.[77] It considered returning to indigenous concepts of business associations, but these were largely undocumented and untested, whereas the common law model was already well-developed and familiar to key stakeholders.[78] Accordingly, the Reform Commission retained the inherited framework but subjected each concept to contextual scrutiny, adapting them as required.[79]

The process commenced with painstaking examination of the challenges facing companies in Nigeria and the laws that regulated them. The Reform Commission committed to a transparent and inclusive process via a participatory method through which it undertook the widest possible consultations, including a National Workshop on Company Law, invited memoranda from the public, and extensive debate by interested persons and organisations (Akanki 1995, p. 3). As the Reform Commission was rejecting rule convergence, not normative convergence, it drew on the advances made in the company laws of other common law jurisdictions.[80] Various reports generated over its 2-year lifespan were published and are still available today.[81]

The feasibility of its recommendations was debated by a consultative assembly comprising key stakeholders, including legal and accounting practitioners, businesspersons, and associations such as the Manufacturers Association of Nigeria (MAN).[82] Three revised decrees and reports were considered by the Ministry of Justice, which combined all three

[72] Note that East Africa had continued to maintain rule convergence. Gower's Report (see Note 66 above), p. 5.
[73] ibid., p. 5.
[74] Section 4.4 above.
[75] Akanki, E. Protection of Minority in Companies, in (Akanki 1992, p. 276).
[76] ibid., p. 2.
[77] ibid., p. 6.
[78] ibid., p. 5.
[79] ibid., pp. 5–6.
[80] Commission Report (see Note 77 above) p. 6.
[81] In stark contrast to the reports around the reform that resulted in CAMA 2020.
[82] (Orojo 1992), Preface.

into one decree that was promulgated as the Companies and Allied Matters Decree No. 1 of 1990 that came into effect on 1 January 1990.[83] It was subsequently designated the Companies and Allied Matters Act (CAMA), 1990.[84]

Section 4 identifies legitimacy as the undergirding element of legal capacity (Gurrea-Martinez 2024) above. This was obvious in the reforms of both Ghana (1963) and Nigeria (1990). In Ghana, Gower stated:

> *'. . . the present Company Law of Ghana is English Law. . . To attempt now to uproot the past completely and start from some new source would cause endless difficulty. . .* ***This, however, does not mean that English law should be slavishly followed****. . . Though much of the attached Draft Code will be reasonably familiar to those trained in the English legal tradition or acquainted with the English Act,* ***it differs from the latter quite materially in both form and substance****.'*[85]

Similarly, in Nigeria, Akanki stated:

> *'Historically, those responsible for the formulation of the 1990 Companies and Allied Matters Act would be cited and remembered as the makers of* ***our tradition in progressive Company Law reform and development****. We have not seen it before in this country—law reform based on assiduous and painstaking research combined with enquiries spanning English-speaking jurisdictions.'*[86]

Legal capacity enables all countries to be co-producers of legal models and change. Accordingly, Ghana (1963) and Nigeria (1990) introduced a 'West African' approach to receivership (Adebola 2023). Rejecting the English approach in which the receiver appointed over the whole or substantially the whole of the company's assets did not concern themselves with other stakeholders, Ghana attributed the full duties of directors to receivers, whereas Nigeria required a stakeholder approach but stopped short of the Ghanaian approach.[87] This early move toward the preservation of the corporate entity itself and multi-stakeholder accountability did not become the focal point of corporate rescue in England and Wales until 2003.[88]

Nevertheless, CAMA 1990 and the Ghanaian Companies Act 1963 suffered interpretation, implementation and enforcement challenges (Gurrea-Martinez 2024) above. A sustained downturn in the global economy in the late 1980s also affected African economies, leading to a spike in insolvency appointments. While the lack of case law, scholarly or professional writing suggests that receivership did not pick up in Ghana, there was a surge of appointments in Nigeria, with the appointment of receivers in Nigeria considered responsible for aggravating the economic crisis.[89] Although the new statute sought to reorient receivership towards a more stakeholder-sensitive framework, the prevailing practice remained largely unchanged. Both practitioners and judges continued to draw heavily on English law in interpreting the new Nigerian receivership procedure, despite the reforms introduced by CAMA 1990.[90]

'*Receiver*' continued to be treated as interchangeable with '*liquidator*', and the appointment of a receiver was widely understood as reading the final rites over a company.[91] It was even suggested, for example, that receivership in Nigeria '*derives its force from Common*

[83] ibid., Preface.
[84] CAP 59 LFN 1990.
[85] Gower's Report (see Note 66 above), p. 7. Emphasis mine.
[86] (Akanki 1995, p. 62). Emphasis mine.
[87] ibid., pp. 584–85.
[88] Enterprise Act 2003.
[89] *UBA v Nigergrob Ceramic Ltd.* (1987) 3 NWLR (pt62) 601.
[90] For example, judicial error noted in: (Adebola 2014a).
[91] See discussions in Adebola (2013, p. 106).

*Law and the rules of equity, supplemented by the Companies and Allied Matters Act 1990'*.[92] Yet Nigerian jurisprudence is clear that when received law has been addressed by Nigerian legislation, the statute is the applicable law.[93] The result was dissonance: while there was a change in the formal law, there was no accompanying change in practice. Yet legal (and social) change requires both doctrinal reform and accompanying institutional and cultural realignment (Carruthers and Halliday 2003).

This weakness could also be attributed to the fact that no actor or professional group assumed responsibility for blending old practices with the new statutory norms, facilitating awareness or embedding the reformed procedure within professional and judicial culture (Halliday and Carruthers 2009). That lacuna can be traced in part to the Reform Commission's rejection of entry barriers to the insolvency practice that might have fostered a distinct insolvency professional group, leaving a professional vacuum at the heart of the reformed regime.[94]

Phase II reflects strong formulation, adaptation, and legitimacy capacity, even as interpretation, implementation and enforcement capacity remained weak. More broadly, it underscores the importance of distinguishing between different domains of legal capacity when assessing the prospects of meaningful legal reform.

### *5.3. Phase III: Professional Groups, Rule Convergence, and National Lawmaking*

Although CAMA 1990 underwent minor revision in 2004, its insolvency architecture remained largely untouched.[95] The first serious attempt to reform insolvency law emerged through the Insolvency Bill 2014.[96] The origins of that bill are rooted in the interpretation, implementation and enforcement challenges that followed CAMA 1990. Yet despite its analytical significance, its emergence remains largely under-documented. Accordingly, this account draws on semi-structured interviews with key protagonists, supplemented by the author's direct engagement with relevant reform processes.[97]

The episode commenced when two young Nigerian practitioners trained in England and returning from R3 conferences in England a decade apart sought to fill the professional gap that had persisted since CAMA 1990.[98] In parallel, each sought to establish a professional body that ultimately became known as the Business Recovery and Insolvency Practitioners' Association of Nigeria (BRIPAN). BRIPAN aims to build professional infrastructure, embed rescue-oriented norms within the Nigerian practice, and advocate law reform.[99]

BRIPAN leaders gave public lectures while seeking to close the considerable knowledge gap between Nigerian practitioners and the global insolvency community with whom they forged strong links.[100] This knowledge gap became particularly acute in the aftermath of the 2008 financial crisis when insolvency conferences featured presentations with a dizzying array of procedures and terminologies.[101] In response, a forum was created through which African countries could engage at a more appropriate pace: the Africa Roundtable

92 ibid., p. 106.
93 *Adesubokan v Yinusa* (1971) NNLR 77.
94 Commission Report (see Note 77 above), p. 302.
95 CAMA 2004, CAP 20, LFN 2004.
96 A Bill for An Act to Consolidate the Enactments Relating to Company, Individual and Cross Border Insolvency and to Make Provisions for Business Rescue and Other Related Matters. '*This Act may be cited as the Insolvency Act, 2014*': (s 514). A brief review of some of its rescue provisions can be found in: (Adebola 2015).
97 The author was invited to join BRIPAN's Legislative Committee, met with representatives of the Ministry of Justice in Abuja and received a copy of the Bill.
98 Interviews 1 and 2.
99 ibid.
100 Interviews 1 and 2; On INSOL International, see: https://www.insol.org/ (accessed on 18 January 2026).
101 Interview 2.

('ART').[102] The ART is a closed-door forum at which policymakers, practitioners, and key stakeholders meet annually to share experiences and develop strategies for insolvency law reform in Africa.[103] Convened under the aegis of INSOL International and supported by the World Bank, the ART has played a significant role in disseminating the English and US models across African countries.[104] As Odetola notes, the modelling and suasion of the ART trained African leaders in the preferred insolvency norms and models, which has contributed significantly to the adoption of these models (Odetola 2018, p. 47).

BRIPAN led the drafting of the Insolvency Bill 2014, which largely transplanted the insolvency framework of England and Wales as it stood in 2014.[105] The stated rationale was the perceived need to introduce reforms rapidly.[106] However, the process also reflected weakness in formulation and adaptation capacity, a pattern observable in other African reform efforts.[107] Contemporaneous engagement between the author and reviewing institutions such as the Ministry of Justice revealed that key doctrinal distinctions embedded in the English framework were not widely internalised. For example, it was not appreciated that the administrative receiver under English law corresponded functionally to the receiver and manager appointed over the whole or substantially the whole of the company's affairs under Nigerian law.[108]

Olusegun Aganga, erstwhile minister of trade, sponsored the Insolvency Bill 2014 as a federal executive bill at the National Assembly, but efforts lapsed when the Jonathan administration came to an end in May 2015.[109] Thus, the bill was 'orphaned', meaning that it lost its sponsored status and remained dormant within the legislative process.[110]

Similar dynamics were also observable in East Africa. Uganda enacted its insolvency legislation through a similarly rapid and opaque process.[111] The resulting framework was also characterised by formulation and adaptation weaknesses, including the transplantation of concepts such as administrative receivership at a time when the mechanism had already been significantly curtailed in England and Wales.[112] In practice, the regime has sparsely been utilised and has not produced a meaningful shift in insolvency practice, suggesting persistent deficiencies in implementation, enforcement and legitimacy capacity (Nsubuga 2021). Kenya provides further illustration.[113] As Gathii notes, an ongoing project of company and insolvency reform rooted in normative convergence and led by domestic experts

[102] Interview 2: The forum was actively pursued by the Nigerian professionals, hence the first roundtable was held in Abuja, Nigeria: First Africa Round Table: https://www.insol.org/Focus-Groups/Africa-Round-Table/Past-Africa-Round-Table-Events (accessed on 18 January 2026).

[103] On ART Background: https://www.insol.org/focus-groups/african-initiatives/africa-round-table (accessed on 7 April 2026).

[104] The author attended ART between 2014 and 2016.

[105] Interview 3.

[106] Author joined a few meetings of the BRIPAN legislative committee.

[107] (Odetola 2018, p. 47). Also, the author co-hosted the first Insolvency Law in Africa conference jointly with the Centre for Advanced Corporate and Insolvency Law, University of Pretoria (2014) themed *African Insolvency Law: Bridging the Gap to Modern Perspectives*.

[108] CAMA 1990, s390; this misunderstanding of the different types of receivers carried through to CAMA 2020: Bolanle Adebola and Okorie Kalu (Leads), 'Review of Insolvency Provisions under CAMA 2020' (2024) Commissioned by the Presidential Enabling Business Environment Council (PEBEC) and the Nigerian Bar Association-Section on Business Law (NBA-SBL).

[109] See Note 107.

[110] On orphaned bills, see: 'CLRNN in Conversation with Prof Paul Idornigie SAN II: Constitutional Aspects of Commercial Law Reform in Nigeria' (2021) https://aclrh.net/2021/09/17/clrnn-in-conversation-with-prof-paul-idornigie-san-ii/ (accessed on 18 January 2026).

[111] Insolvency Act, 2011, Act 14 of 2011, with the Insolvency Act, 2011 (Commencement) Instrument, 2013, Statutory Instrument 25 of 2013, and the Companies Act 2012, Act 1 of 2012, with the Companies Act, 2012 (Commencement) Instrument, 2013, Statutory Instrument 24 of 2013.

[112] Part VII, Insolvency Act 2011.

[113] Insolvency Act CAP. 53 published in Kenya Gazette Vol. CXVII—No. 101 on 18 September 2015; assented to on 11 September 2015.

was ultimately bypassed by a rapid and opaque reform process that instead produced a near-wholesale transplant of the Insolvency Act 1986 (Gathii Forthcoming).

The common thread across these reform exercises is the ART, through which the transnational order has engaged with African law reform in contexts of uneven legal capacity. This phase underscores how transnational reform trajectories may privilege rapid rule importation over endogenous adaptation, with significant implications for the subsequent legitimacy and the uptake of reformed regimes. More broadly, it illustrates how transnational ordering may simultaneously expand technical knowledge while displacing endogenous institutional capacity.

### *5.4. Phase IV: Transnational Scripting and Capacity Displacement*

In the case of Nigeria, the next major attempt to formulate insolvency reform was initiated by the 8th Assembly against the backdrop of Nigeria's low rankings in the World Bank's *Ease of Doing Business* Index.[114] A committee chaired by Prof. Idornigie[115] ('Idornigie Review') recommended urgent reform of CAMA 2004.[116] The Presidential Enabling Business Environment Council ('PEBEC') was subsequently established in July 2016 with a mandate to improve Nigeria's business environment and regulatory competitiveness.[117]

PEBEC's approach to insolvency law reform was markedly different from that of the earlier Reform Commission.[118] There is little evidence that PEBEC continued with the Reform Commission's participatory lawmaking tradition. Reports associated with this reform cycle remain largely unavailable in the public domain.[119] Nonetheless, PEBEC sought inputs from the Nigerian Bar Association—Section on Business Law (NBA-SBL), the National Assembly Business Environment Roundtable, the Corporate Affairs Commission (CAC), the Ministry of Trade and the World Bank, on which it relied for technical direction and benchmarking. The NBA-SBL submitted an independent report with novel recommendations to improve the rescue of troubled companies in Nigeria, the judiciary, and cross-border insolvency, for example: (Adebola and Idigbe 2020). The recommendations drew insights from England and Wales, the United States and South Africa.[120]

Although a public hearing was formally announced, consultation appears to have been limited in time and reach. CAMA 2018 was passed in May 2018 but did not receive presidential assent.[121] During this period, BRIPAN re-engaged with the National Assembly to remind them of the orphaned Insolvency Bill 2014.[122] The eventual outcome was CAMA 2020, which was assented to by the president and came into effect on 1 January 2021.[123]

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114 see: 'CLRNN in Conversation with Prof Paul Idornigie SAN I: Commercial Law Reform in Nigeria' (2021) https://aclrh.net/2021/09/10/clrnn-in-conversation-with-prof-paul-idornigie-san/ (accessed on 18 January 2026).

115 Commercial Law Research Network Nigeria (CLRNN) interviews Professor Paul Oboarenegbe Idornigie SAN, PhD, FCIArb https://aclrh.net/2021/09/03/commercial-law-research-network-nigeria-clrnn-interviews-professor-paul-oboarenegbe-idornigie-san-phd-c-arb/ (accessed on 18 January 2026).

116 Comprehensive Review of the Institutional, Regulatory, Legislative & Associated Instruments Affecting Businesses in Nigeria: Final Report (2016), 6. ('Idornigie Review') https://share.google/k0qdZz1SrvwVgdEva (accessed on 7 April 2026).

117 See: Presidential Enabling Business Environment Council, https://www.pebec.gov.ng/ (accessed on 18 January 2026).

118 Section 5.2 above.

119 The Idornigie Review was published after several appeals by the Commercial Law Research Network Nigeria (CLRNN). The appeal for the publication of the NBASBL report is still outstanding despite a renewed appeal in 2023.

120 See Note 107.

121 PEBEC Annual Report: 2018 Making Business Work Report—The Journey So Far (June 2018), 33. QE Iroanusi, Buhari writes Senate, seeks amendment of CAMA law (28 November 2019) Premium Times https://www.premiumtimesng.com/news/headlines/365624-buhari-writes-senate-seeks-amendment-of-cama-law.html%20accessed%2018/01/2023?tztc=1 (accessed on 18 January 2026).

122 See Note 107.

123 Senate commends Buhari for assenting to CAMA Bill, (8 August 2020) Vanguard https://www.vanguardngr.com/2020/08/senate-commends-buhari-for-assenting-to-cama-bill/ (accessed on 18 January 2026).

Unlike the 2018 Bill, the insolvency provisions of CAMA 2020 substantially reproduced the Insolvency Bill 2014, with limited and unsystematic incorporations of Chapter 11-style reorganisation also embedded.[124] CAMA 2020 has been supported by a reinvigorated CAC regulatory oversight component and a specialised Insolvency Unit in the Federal High Court (Adebola et al. 2025; Patrick-Okwoli 2025). Together with significant efforts of BRIPAN and additional input from other recognised professional bodies, legitimacy is promoted through considerable and sustained awareness activities.

Nonetheless, while the reforms such as the entry barrier for practitioners have been welcomed, several of the principal rescue mechanisms in CAMA 2020 have seen limited uptake in practice. The main law is outdated, undermined by technical errors and not responsive to the actual needs of society. Hence, improved interpretation and implementation, in isolation, are insufficient. Taken together, the 2014–2020 reform cycles illustrate how speed-oriented reform coalitions and external benchmarking pressures can displace endogenous formulation and adaptation, producing a return to rule convergence through transnational scripting. This reinforces the central claim of the paper that meaningful legal development requires the full spectrum of legal capacity.

## 6. The Importance of Legal Capacity for Insolvency Reform in a Transnational Order

The preceding sections suggest that insolvency reform in African states cannot be understood merely as a technical question of institutional design or even legislative reform alone. Rather, it must be situated within the transnational insolvency order in which reform scripts, benchmarking regimes, epistemic and professional communities, and international development agencies interact with domestic political and institutional structures. The central question is, therefore, not merely whether insolvency reform contributes to economic growth or whether insolvency rules should converge, or even whether African countries should engage with the transnational order. It is how African states and the international development institutions that seek to support them should approach insolvency reform within a global environment structured by competing and overlapping logics.

Section 2 demonstrates that contemporary insolvency reform unfolds within a transnational legal architecture shaped by various international actors and benchmarks, who supply legislative models and promote convergence around universalised insolvency norms, frequently framed as global 'best practice'.. Yet Section 4 demonstrates that the transnational order is not animated by a singular purpose. It is structured by at least two distinct projects, one oriented towards enabling development through institutional strengthening, and another oriented towards facilitating the flow of global capital through predictability, standardisation, and market-supporting legal forms.[125] Although these projects often operate through the same instruments—model laws, principles, technical assistance, and reform scripts—they are not necessarily equivalent in their implications for domestic legal development and development more broadly.

Section 3 shows that the prevailing insolvency reform discourse remains implicitly grounded in an economic-growth paradigm of development, notwithstanding the formal embrace of broader human development and capabilities-based approaches by institutions that supply reform scripts and transnational norms such as the World Bank and the United Nations (Crettez et al. 2016) above. This disjunction matters because insolvency reform evaluated primarily through external financial metrics and investment signalling may privilege speed, form, and rule convergence over institutional responsiveness, legitimacy

[124] (Adebola 2021) discussing rescue finance under CAMA 2020, s537 and s510.
[125] Sections 4.3 and 4.4.

and endogenous legal development. Development, properly understood, is co-constituted by social, political, and legal change, not merely by growth outcomes. The question then becomes: what determines whether transnational insolvency reform advances legal development or displaces it? The answer advanced in this paper is state legal capacity.[126]

Section 4 proposes that legal capacity must be conceptualised as distinct from enforcement capacity alone and distinguished from bureaucratic capacity.[127] The proposed conceptualisation shifts the reform question away from whether the correct insolvency template has been imported and towards whether the institutional conditions exist for law to function as a living developmental infrastructure. These dynamics have been historically important for Africa.

The African experience reveals neither inherent incapacity nor inevitable failure, but fluctuating configurations of legal capacity across reform cycles. Moments of endogenous adaptation, such as Ghana (1963) and Nigeria (1990), have demonstrated that African states can operate within normatively convergent frameworks while producing contextually responsive rule diversity through expert-led diagnosis, participatory lawmaking, and legitimacy-sensitive institutional design.[128] These episodes complicate prevailing narratives that portray African reform as uniformly transplant-driven or entirely path-dependent on transplantation within single nations.[129] African jurisdictions have not always been passive recipients of external norms but have periodically acted as contributors to the evolution of corporate and insolvency concepts within the common law tradition.

By contrast, more recent reform episodes culminating in Nigeria's 2020 insolvency reforms illustrate how transnational scripting, epistemic gaps, compressed timelines, and elite-driven professional coalitions can displace endogenous legal capacity, making transplantation the path of least resistance.[130] Under conditions of thin interpretive bureaucratic infrastructure and strong external benchmarking pressures, professional communities may press states towards rapid rule importation rather than institutional adaptation, producing law on the books without the accompanying capacities required for operation, revision, or legitimacy. This dynamic resonates with the insights from law and development scholarship and comparative institutionalist analysis that lawmaking is no longer monopolised by the state, even in advanced economies.[131]

Professional actors generate legal forms that acquire authority domestically and travel internationally through transnational norms and scripts. Professional actors within the African context create the appearance that African countries remain path-dependent on the reproduction of metropolitan legal forms across successive reform cycles. Instead, this pattern is better understood as a symptom of a legal capacity deficit. Its developmental consequences depend on whether states possess the legal capacity to mediate between domestic legal demand and the preferred institutional templates of global and domestic capital transmitted through professional communities and international development actors. Where institutional feedback mechanisms and interpretive infrastructure are thinner, the risk is not simply that rules travel but that their travel displaces the development of legal capacity itself, with inimical consequences for both legal development and development more broadly. The development of the legal capacity within such states offers the pathway through which this dynamic can be reversed and legal development enabled.[132]

[126] Section 4.1.
[127] see (McCormack 2019) and Note 9 above.
[128] Sections 5.1 and 5.2.
[129] On path dependency and law reform in emerging economies: (Trebilcock 2016).
[130] Section 5.3.
[131] Section 4.3.
[132] For alternative solutions: (Trebilcock 2016, p. 350).

The African experience also supports the legal heterodoxy argument of Davis and Pargendler, who define it as significant divergence from the laws of the Global North in ways that respond to the distinctive social, economic and political circumstances of the Global South (Davis and Pargendler 2025). It provides insights into the roots of the legal heterodoxy of corporate and insolvency in African countries such as Ghana and Nigeria.[133] Legal capacity, therefore, is the precondition for achieving legal heterodoxy in countries of the Global South. Where capacity is absent, heterodoxy gives way to transplantation.

The African experience therefore demonstrates the paper's central claim that insolvency reform in emerging economies is not primarily a problem of importing the right rules but of developing the legal capacity through which insolvency systems become institutionally responsive in service of societal needs over time. Reform strategies that prioritise enforcement investment alone, or accelerated transplantation of global 'best practice' scripts therefore risk eroding the upstream dimensions of legal capacity on which legal development and development more broadly depend. Accordingly, the appropriate approach must be normative convergence, not rule convergence, and operate within a framework that embraces the globally accepted interpretation of development. This is the orientation that strengthens all states as co-developers of insolvency norms and models rather than consigning some to the role of passive recipients of externally supplied templates and stunted development.

## 7. Conclusions

This paper argues that insolvency law reform in emerging economies must be appropriately situated. Reform is pursued within a transnational legal order in which states, epistemic and professional communities, development agencies, and benchmarking regimes interact against a backdrop of development and international capital infrastructure. In aid of development, international actors supply reform scripts and encourage convergence around universalised insolvency norms and models, promoted as global best practices and support uptake with technical assistance. Yet the developmental implications of these reforms are not neutral.

Insolvency reform agendas frequently operate within an implicit economic-growth paradigm that privileges external signalling, predictability, and speed, which may not necessarily enable institutional responsiveness, legitimacy and endogenous capacity. This is so, even where development institutions have formally embraced broader human development and capabilities-based frameworks. This disjunction matters because insolvency law reform should therefore not be evaluated solely through formal convergence or financial metrics, but through its contribution to legal development understood as institutional responsiveness over time.

The paper's first contribution has therefore been to clarify and challenge the development assumptions underwriting contemporary insolvency reform discourse and to show that legal development is not exhausted by the existence of formal rules. Rather, legal development concerns the evolving ability of legal systems to meet domestic legal demand, adapt to changing economic and social conditions, and command legitimacy in practice. Insolvency reform that contributes to development must therefore be assessed by its responsiveness to societal needs rather than by the adoption of globally recognised formal rules and models.

The central theoretical contribution of the paper has been to identify and systematically conceptualise state legal capacity as a distinct object of development analysis. While legal capacity is acknowledged in political economics and institutional development practice, it

[133] ibid., [1.5]. (Davis and Pargendler 2025).

is typically truncated to enforcement capacity. In parallel, law and development scholarship has persuasively shifted attention from rules to institutions but has not isolated legal capacity as a discrete dimension of state capacity, often eliding it with bureaucratic capability more generally. This paper argues that legal capacity comprises the evolving institutional ability of the state to formulate, adapt, interpret, implement, enforce and legitimate legal rules such that they remain responsive to societal needs over time. Where these constituent domains are absent or displaced, reform produces formal law that does not produce change in practice, undermining both legal development and development more broadly.

Empirically, the paper has contributed a rarely examined historical account of corporate and insolvency reform trajectories in West and East Africa. It reveals fluctuating configurations of legal capacity across reform cycles. The paper has situated these dynamics within the contemporary political economy of lawmaking. Even in advanced economies, lawmaking is increasingly mediated by professional communities and private actors whose legal forms acquire authority through judicial legitimation and internationally through transnational scripts. The developmental question is whether states possess the legal capacity to mediate between domestic legal demand and the preferred institutional templates transmitted through global and domestic capital.

The central lesson is therefore that insolvency reform in emerging economies is not primarily a problem of importing the right rules but of developing legal capacity through which insolvency systems become institutionally responsive to domestic needs over time. Transnational reform initiatives should accordingly be recalibrated away from accelerated transplantation and narrow enforcement metrics towards deliberate investment in upstream dimensions of legal capacity, including law-making expertise, interpretive and administrative infrastructure, mechanisms for adaptation, and legitimacy conditions for uptake. The objective should be to strengthen emerging economies as co-developers of insolvency norms and models rather than passive recipients of externally supplied templates. Insolvency reform, on this account, is a capacity-sensitive developmental project central to endogenous legal development.

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