Institutions and the Effectiveness of Competition Policy and Regulatory Regime in Kenya

Abstract

My primary concern in this paper is, to examine how conditions prevailing in Kenya may impact on the institutional arrangements for regulation, and how these might be taken into account in designing regulatory regimes.

As the globalisation of markets has grown apace, so Western ideas of regulation and deregulation have had a growing influence on governments in developing or "transitional" countries, Indeed, donor institutions, such as the World Bank and the International Monetary Fund, have applied pressure for Western models to be adopted. The assumption, sometimes explicit, sometimes implicit, is that these models serve to improve economic performance. Yet actual or attempted applications of Western models have often, it seems, been insensitive to the key question, to what extent the recipient country is able successfully to integrate the models, particularly with reference to the their institutional implications. This paper highlights the effectiveness of regulatory regimes and their experiences in the Kenyan businesses environment. In particular the relatively more stable post-price control era has secured a firm basis for the fast business development process and the development of institutional infrastructure supportive of good governance. Therefore, despite monopoly firms still evident in Kenya and the rest of the East Africa region, Kenya has generally been more successful in forestalling anti-competitive behaviour than in the case of their fellow East African economies. In this respect a critical role has been played by competition policy supporting the view of the prominence of legislative endowments in informing regulatory governance. My primary concern in this paper is, therefore, to examine how institutional set up has taken place in Kenya, and how these might be taken into account in designing regulatory regimes.

By way of critical commentary on such views, I identify some characteristics of Kenyan regulatory institutions which may inhibit the effectiveness of such models of regulation. I then relate those characteristics to some key features in general strategies for regulatory

design and reform. In particular, I will sample three regulatory institutions that are well established in Kenya – the Communications Commission of Kenya (CCK) and the Electricity Regulatory Board (ERB) to add to the mother of them all, Monopolies and Prices Commission. I then relate those characteristics to some key features in general strategies for regulatory design and reform.

1. BACKGROUND

(i) Monopolies and Prices Commission (MPC)

Kenya's economy began to change from price control regime into a market economy in the 1980s with the government recognizing the need to introduce competition law. This gave creation to the Restrictive Trade Practices, Monopolies and Price Control Act passed in parliament in 1989. At that particular time, the Act was intended to be a short term measure.

The Monopolies and Prices Control Act as it is commonly known in Kenya, provides for the control of restrictive trade practices, collusive tendering, monopolies and concentrations of economic power and for the control of mergers and takeovers (it used to take care of price controls but have since been phased out). The monopolies Act does not talk about abuse of dominant position. There is a wide ranging exemption which excludes regulated sectors of the economy from the scope of the competition law. The investigation of possible contraventions of the Act is the responsibility of the Monopolies and Prices Commission which is a department in the Ministry of Finance.

(ii) **Electricity Regulatory Board (ERB)**

ERB was established by the Electric Power Act, 1997, which also stipulated the composition of the membership of the decision-making body, the Board. In addition, the Act also provided details about the establishment and staffing of a secretariat as well as the funding of ERB. In accordance with the Act, ERB is an industry-specific regulatory body and therefore has potential to provide industry-specific expertise and focus. The Board was appointed in January 1998 while key secretariat staff was appointed in June/July 1999.

The Board however depends on the Ministry of Energy for policy guidance with respect to the power sub-sector. As a safeguard against abuse of the trust reposed in it, parties aggrieved by the Board's decisions may seek recourse from the Minister for Energy, with the High Court of Kenya being the final arbiter. In addition members of the Board may be removed from office for reasons such as misconduct, insolvency, conviction of criminal offence involving dishonesty, fraud or moral turpitude and incapacity.

Schedule 10 of the Act vests on the Board the power to make regulations for the better carrying out of its functions under the Act. Rules define the boundaries of permissible conduct and the consequences for non-compliance. In the case of the power sub-sector, these will usually comprise relatively detailed and specific rules governing tariffs, quality of service standards, obligations to supply, etc.

These rules would normally be contained in licences and concession agreements, which are the instruments with the real powers to control the utilities. The consequences of non-compliance with these rules may include fines, requirements to compensate injured parties, cancellation of licenses or concessions, even imprisonment of corporate officers.

The setting of rules is yet to be finalised although the necessary arrangements are being put in place.

Under present institutional arrangements the companies engaged in the business of generation, transmission or distribution of electric power are KenGen which a wholly owned government company, KPLC in which the government owns just over 50% shareholding and independent power producers. These entities are all regulated under the broad framework created by the Electric Power Act, 1997, with the boundaries of permissible conduct and the consequences for non-compliance defined by specific licence conditions. The licences include those validly issued before the commencement of the Act.

(iii) **Communications Commission of Kenya (CCK)**

The Communications Commission of Kenya (CCK) was established in February 1999 by the Kenya Communications Act, 1998, to license and regulate telecommunications, radio communication and postal services in Kenya.

This responsibility translates to the following functions:

- Licensing (telecoms and postal/courier) operators
- Regulating tariffs for monopoly areas
- Establishing interconnection principles
- Type-approving communications equipment
- Managing the radio frequency spectrum
- Formulating telecommunication numbering schemes and assigning them to network operators; and
- Implementing Universal Service Obligation for both postal and telecommunication services.

The Communications Commission of Kenya (CCK) plays a critical role in the liberalization of Kenya's postal and telecommunication sectors. CCK is the Gateway that encourages private investment in the sector and provides for the rights and obligations of both operators and consumers. The licensing of new players has given the consumer greater choice.

As the link, CCK liaises with consumers, operators and service providers to ensure a level playing field in the sector. CCK also assigns frequencies to all licensed telecommunications operators as well as broadcasters utilizing wireless technologies in the provision of their services.

CCK is the watchdog of the consumer; making sure that standards of quality are maintained in both service and equipment provided. It ensures public service obligations are carried out while, at the same time, guaranteeing the protection of both consumer and investor interest.

2. LITERATURE REVIEW

(a) **Law and Economic Growth**

Economic regulation involves making decisions on politically sensitive matters and also decisions that have important implications on regulated utilities and their competitors, customers, investors and shareholders. Often the interests by the stakeholders would be conflicting. These conflicting interests would need to be evaluated and balanced in an impartial and objective way, meaning that the regulatory entity must be, and must be seen to be, a neutral and disinterested party. The Acts in the above discussed bodies anticipate a fairly independent institution and tacitly bestows on it independence from political authorities and regulated firms. In practice, such bodies are expected to have institutional autonomy.

In Kenya regulation is generally undertaken by an industry regulator and/or competition policy. In the case of the former, the industry regulator may have a multi-sector or single sector focus. Cost driven constraints may dictate a multi-sector focus, although interestingly Kenya has opted for the more costly single focus, possibly because such a steep learning curve is presented. Moreover, expertise utilised from industrialised countries is based largely on single-sector experience. The industry regulator generally has a fairly narrow remit in that its primary objective is to encourage competition and protect consumer interest within the industry that falls under its jurisdiction. Firms operating within a regulated sector do so in keeping with stipulated license guidelines prescribed by the regulator. By contrast competition policy orchestrated by the Monopolies and Prices Commission of Kenya aspires towards fair competition throughout the national economy, and has been described as having a three dimensional approach;
i) Structural policies which aim to re-structure industries into a competitive profile;
ii) Liberalisation policies focusing on removing legal barriers; and
iii) Conducting regulation that prohibits monopoly behaviour

Surveys of empirical studies undertaken on the relationship between legal and institutional variables and economic growth in developing countries reveal very mixed results (Messick, 1999; Davis and Trebilcock, 2001; Djankov et al 2002; Shleifer et al, 2003). Perhaps surprisingly, the evidence that higher levels of democracy lead to higher growth rates appears not to be conclusive (Barro, 1997). Nevertheless, studies of the rule of law and the quality of legal institutions (e.g. Keefer and Knack, 1997) do report positive correlations, the evidence suggesting that effective protection of the property rights of investors and officials operating within a framework of known legal rules are conducive to stronger economic development (World Bank, 1997, Beck et al, 2001). A

key variable is the perceived vulnerability or invulnerability of institutions to subversion by powerful citizens (Glaeser et al, 2003).

Despite objectives couched in the language of fairness and equity considerations, the regulatory role is perceived as having evolved to embrace redistribution functions that are less transparent (see Crew and Kleindorfer, 1996). The government can always be said to be using regulation as an alternative to subsidizing consumer spending through extracting a greater proportion of monopoly rent than might be justified under strict application of regulatory economics. This raises questions regarding the correct and appropriate relationship between public/private interfaces (Veljanovski, 1991). In this context independence from the government is a critical component enabling effective regulation. Stern and Holder (1999) suggest relative independence can be gauged through the extent of its powers; the clarity of roles described in regulatory legislation and the extent to which there is government accountability through the publication and justification of its decision making. Independence in itself, however, while representing an essential condition for effective regulation, is not a sufficient condition. There is the wider issue of regulatory governance defined as "… the mechanisms that societies use to constrain regulatory discretion and to resolve conflicts that arise in relation to these constraints" (Levy and Spiller, 1994, p. 205). On this basis three additional factors can be identified: the long-term credibility of legislation, the scope for flexibility in the regulatory process and the level of administrative competence.

The quality of the judicial process is assumed to be related to economic performance, and attempts have been made to derive reliable quantitative data on key variables and their impact on costs (Sherwood et al, 1994). Attempts have also been made to relate particular aspects of legal systems to economic development. Commercial law should lend itself well to analysis of this kind, but there has been a paucity of empirical work in the area. It has been shown that growth occurs in countries where secured creditors are guaranteed repayment of their loans (Levine, 1999) and where corporate shareholders are adequately protected (La Porta et al, 1998). However, these and other studies (e.g. Fafchamps and Minton, 2001; Kamarul and Tomasic, 1999) show that, in the absence of effective formal mechanisms for resolving disputes, there will often be resort to informal systems which in the context may be equally, if not more, effective.

The importance of effective, informal processes of disputes resolution might also provide a convincing explanation for the economic success in the People's Republic of China, notwithstanding perceived weaknesses there of the court system and the formal enforcement of legal rights (Clarke, 2003). So also, with the so-called "East Asian miracle" which has occurred notwithstanding the failure of many legal reforms, based on Western models, to penetrate commercial life (Pistor and Wellons, 1999; Lindsey, 2004).

Resort has been had, instead, to arrangements made between business elites and the governments and sometimes by discretionary executive rulings, disputes being dealt with usually by informal negotiation aided by mediators. "Formal law was used to the extent it complemented or supported this arrangement, but was ignored by economic and government agents alike and substituted with alternative rules, if it ran counter to it"

(Pistor, 1999).

At the risk of over-simplification of all this evidence, we can accept the generalisation that legal infrastructure is connected to economic growth, but it is not necessarily the legal infrastructure that emerges from Western models. The "rule of law" is important, particular where it implies the stability of rulemaking, respect for basic property and contract rights and an independent judiciary with some ability to command compliance from government and politicians. At the same time, informal systems of dispute settlement and enforcement may prove sufficiently effective.

(b) **Institutional theory**

According to North (1992) an institutional theory is one theory that seeks an understanding of the relationships between institutions, behavior, and outcomes. Institutional theories often elicit a somewhat misguided criticism for assuming that institutional features cannot be altered by the actors. The criticism is not empirically misguided because, often, decision-makers can and do change the structural arrangements under which they operate. However, the criticism is theoretically misguided inasmuch as it loses sight of the limited aim of institutional theories: structural features must be exogenous when the aim is to learn how and why contextual features affect choice processes.

A political institution is a set of contextual features in a collective choice setting that defines constraints on, and opportunities for, individual behavior in the setting. In the context of legislative models, for example, such features include, but are not restricted to, the following. Who may and may not initiate proposals? In what order are proposals considered? Under what conditions can proposals be amended? Who has veto rights? Can vetoes be overridden? By what fraction of votes? By stipulating that contextual features proscribe as well as prescribe individual behavior during processes of collective choice, this definition clearly allows for the possibility that "institutions matter." However, analysis of institutions does not (or should not) presuppose that different contextual features have different consequences for outcomes.

The crucial link between institutions (as contextual constraints) and outcomes (as consequences of collective choice) is behavior. While the line between institutions and behavior is not always easy to draw, it is well worth the effort to draw this line as sharply as possible to preserve the methodological distinction between the institution and the behavior that transpires within it. A rule of thumb, therefore, is to regard as an institution only contextual features that, in a given decision situation, are believed to constrain individual choices. Having done that and only that, notice that open but well-defined questions remain. Generally, the questions take the form: What are the consequences, if any, of the individual constraints on individual behavior and, in turn, on collective choices? This proposed rule of thumb should not be construed as advocacy that the term institution should refer only to rigid, well-defined, constraining, immutable, formal, or structural features of collective choice. Rather, I suggest only that the line be drawn comfortably on the firm side of mere patterns of behavior. If it is not, institutions and behavior become conceptually and analytically muddled, thereby making it exceedingly

difficult to sort through what is assumed and what is derived in the ensuing formal argument.

This leeway in drawing the line between institutions and behavioral regularities becomes troubling only if one insists on an ontological distinction between institutions and behavior. The argument is that this distinction is better understood as a methodological one. For instance, depending on the research perspective, a congressional committee's gate-keeping authority may be interpreted as a constraint (e.g. if we want to study the likelihood that a certain bill will be passed) or as a behavioral regularity (e.g. if we want to understand how legislative majorities decide on the internal organization of legislatures)
In the Kenyan context, drawing the line between institutions and behavior seems easier in the study of elections than in the study of legislatures. Examples of the relevant institutions include the ballot structure, the rules for translating votes into seats, and district size etc. In a given campaign, these rules can defensibly be assumed to be exogenous. This, in turn, allows the researcher to focus on the behavior of voters and candidates. The distinction is less clear in the context of legislative models, however. Should rights of recognition or of bill introduction be considered an institution? And what about seniority norms? Does it matter whether a norm has never been violated?
Institutions have the distinguishing feature of characterizing incentives for certain types of behavior as well as imposing constraints on such behavior. It cannot be stressed enough that, in this sense, behavior within the institution—not just the institution in isolation - determines whether institutions are outcome-consequential, or, as is more often uttered, whether institutions matter.

In Kenya's context, the Restrictive Trade Practices, Monopolies and Price Control Act is the principle legislative centre piece enacting competition law, falling under the Ministry of Finance. This type of institutional arrangement has attracted substantial comments from stakeholders with respect to the need to have an independent competition authority. The stakeholders appear to be questioning whether the decisions of the competition authority should be binding or remain recommendations subject to the approval of another authority, which could be a Minister in yet another ministry apart from Finance. This brings to the fore the question of how much the government should interfere in the workings of this very powerful commission.

Institutional autonomy, freedom from political interference in the Commission's activities and the ability to exert influence on the Commission's decisions are sometimes seen to be interrelated. The implication is that, a highly autonomous competition authority is seen to be free from political interference on decisions and initiatives. However, a authority seen to be too close to the government, thus towing the political line, will be positioned to have a stronger influence and input in government programmes which might for sure benefit the competition authority. This is the situation in Kenya since the Monopolies and Prices Commission is a department of the Ministry of Finance and hence a direct line tow of the political arm.

Although the Minister is expected to seek technical advice of the Commissioner in

enforcing competition law, this has in certain circumstances created regulatory uncertainty. For instance, the Minister has on certain occasions disregarded the advice or not consulted the Commissioner. The Act does not make it mandatory for the Minister to seek the advice of the Commissioner.

According to Douglas (1992) institutional environments are not monolithic, but often varied and conflicted. Authoritative bodies may diverge—indeed, in liberal states, they are often designed to do so, providing "checks and balances"—and schemas and models may compete. The elements of institutions—regulative, normative, cultural-cognitive—may not be aligned, and one may undermine the effects of the other. The boundaries of organizational fields are often vague or weak, allowing alternative logics to penetrate and support divergent models of behavior. Suppressed groups and interests may mobilize and successfully promote new models of structure and repertories of acting. Some of the most interesting work of the past two decades has helped to unpack the multiplicity of institutional arrangements, both between and within a given field, examining the intersection of structures, and documenting the transposability of schemas, as actors and ideas flow across field boundaries (Friedland and Alford 1991; Sewell 1992)

Clearly, competing rules or schema open up possibilities for choice and bargaining among subordinate actors. Second, while recognizing that actors are institutionally constructed, it is essential to affirm their (varying) potential for reconstructing the rules, norms and beliefs that guide—but do not determine—their actions. Barley's (1986) influential study of the variable response of actors in hospitals to the introduction of (presumably determinant) technologies, helped to open the door for the consideration of power exercised by "subjects", and was reinforced by DiMaggio's (1988) essay calling for the reintroduction of "agency"—the capacity to "make a difference" in one's situation—into institutional theorizing. Gradually, the language began to shift from discussions of institutional "effects" to institutional "processes"; and theorists began to craft recursive models, recognizing "bottom-up" modes of influence, to supplement or replace prevailing top-down models (Scott 1995; 2001).

It is a fact that technical forces primarily shape the "core" functions, including work units and coordinative arrangements, while institutional forces shape the more "peripheral" structures, such as managerial and governance systems.

In the light of these conclusions, I have observed that while organizations can and do decouple work activities from accounting, control, and other review systems, the extent to which this occurs varies greatly, both over time and among organizations. Some institutional requirements are strongly backed by authoritative agents or by effective surveillance systems and sanctions.

Some of the possible reforms to regulatory structures correlate well with developments and tendencies occurring in industrialised countries (Vogel, 1996); others point in the opposite direction. Some remain ambiguous. For a good example of the latter, take the much debated, though largely unresolved, question is whether a policy of decentralisation, associated with Western regulatory thinking, facilitates or hinders corruption. On the one

hand, it is argued that decentralised decision-making must by its nature be more transparent than when carried out at a distance from the subjects affected – local information flows being more rapid – and therefore corruption is, in such circumstances, more difficult to conceal (Lederman, Loyaza and Soares, 2001). On the other hand, if law enforcement is largely in the hands of a centralised authority, the very distance of the formal audit systems from the subject of investigation may limit its effectiveness: in remoter areas the authority of the law may simply not be recognised (Green, 1997, 67).

Moreover, the "once-for-all" payment necessary to secure the cooperation of the central official may distort the economy less than the variety of payments at other levels: the bribee can control deviations from agreed patterns of corruption and render its effects less uncertain (Shleifer and Vishny, 1993). Bardhan (1997, 1325) uses this argument to explain why Indonesia (where corruption has been centralised) has, in terms of economic development, been more successful than India (where bribery has been more fragmented) even though the perceived level of corruption in the two countries is not dissimilar (in the latest Transparency International (2004) rankings India is 90th and Indonesia 133rd).

Related to the question of decentralisation is that of competition between regulatory offices and officials. Promoting some such form of competition would seem to offer a plausible, and not too costly, means of combating corruption or at least reducing the levels of bribes to be paid (Rose-Ackerman, 1978). There is some empirical evidence to support this: the overlap in the power of local, state and federal authorities to control illegal drugs has been thought to reduce police corruption in the U.S.A. (Bardhan, 1997, 1337); and a statistical study of corruption among the judiciary in Latin America suggests that this is less prevalent where there are viable alternative procedures for settling disputes (Buscaglia, 1997). However care must be taken as to how competition is introduced: a series of alternative individuals or offices providing the same service, or perhaps overlapping services, would meet the objective (Bowles, 2000) but adding further layers of bureaucratic decision-making would simply exacerbate the problem (Lederman, Loyaza and Soares, 2001). Also a lack of clarity in the demarcation of public services can increase bureaucratic discretion, leading to more corruption (Wescott, 2003, 261). Suggestions linked to the competition argument include using committees instead of single decision-makers; and regularly moving bureaucrats between various offices (Klitgaard, 1988, chap.3).

3. KENYA REGUALTORY INSTITUTIONAL AND INDEPENDENCE

(i) **Monopolies and Prices Commission**

The Restrictive Trade Practices Act gives the overall powers to administer and enforce competition law and policy to the Minister of Finance. Section 3(2) of the Act subjects the Commissioner for Monopolies and Prices to the absolute control of the Minister. The Office of the Minister of Finance is the supreme organ in the administration of competition law. The Minister possesses absolute power to make orders in all aspects of restrictive trade practices, control of concentrations of economic power, as well as orders relating to mergers and takeovers. Although the Minister is expected to seek

technical advice of the Commissioner in enforcing competition law, this has in certain circumstances created regulatory uncertainty. For instance, the Minister has on certain occasions disregarded the advice or not consulted the Commissioner. The Act does not make it mandatory for the Minister to seek the advice of the Commissioner.

There are specific provisions in the Act which bestow certain powers on the Minister. Under section 17 of the Act, the Commissioner is required to submit his recommendations to the Minister after his investigation in an allegation of a restrictive trade practice. Such a recommendation shall also include the record of the hearing. The Minister upon receipt of such a recommendation may under section 18 make an order through a notice in the Gazette, prohibiting a restrictive trade practice or order certain steps to be taken to address the competition concerns.

Further, the Minister under section 23 of the Act is required to keep the structure of production and distribution of goods and services in Kenya under review to determine where concentrations of economic power exists whose detrimental impact on the economy outweighs the efficiency advantages. In carrying out this function, the Minister may under section 24(1) of the Act make an order directing any person whom he deems to hold an unwarranted concentration of economic power in any sector to dispose of such portion of his interests in production or distribution or the supply of services as he deems necessary to remove the unwarranted concentration.

The Minister has also been given powers to approve mergers and takeovers. Section 27 of the Act requires prior merger notification to the Minister for any intended merger or takeover. The Commissioner is required under section 30 of the Act to evaluate an application of a merger and submit the same and his recommendation to the Minister for approval, pursuant to section 28 of the Act.

The elaborate powers given by the Act to the Minister have raised concerns to many stakeholders. It has been felt that this has weakened the effectiveness of the law and had led to wrong perceptions. The current debate is as to whether the Commission should be independent or autonomous. It is accepted that the design of a competition authority is linked to the traditions and institutional structure of the country, and could not, or only with difficulty, be set up in a different way than is customary for comparable public administrative bodies in the country. Building this institutional apparatus will require that the competition authority's position within the government be reestablished. First of all, the competition authority would have to be delegated the power to implement competition policies at the national level. The competition authority would need institutional support to implement and enforce competition policy effectively. Secondly, those government policies that have the potential to maximise competition policy effects when combined, such as consumer protection, should be integrated with competition policy. Thirdly, the relationship between the competition authority and regulatory bodies in the various sectors should be redefined.

It is important that the competition authority is functionally and operationally independent from government. If this independence is not achieved, both in fact and in

the perception of the community, the competition authority will be, or be seen to be, influenced by the politics of the government of the day, and therefore subject to other political agendas. Such a situation need not necessarily be in the interest of competition and achieving competitive market outcomes. Without independence, the agency may lack credibility and the community will not have the requisite degree of faith that their complaint or problem will be dealt with in a fair and reasonable manner. Without this element of trust, the result may be a skeptical public and an ineffective regulator.

Kenya competition policy generally focus on two main types of anti-competitive conduct, the abuse of a dominant position as evidenced through predatory pricing and tying contracts, and the use of anti-competitive agreements, such as price fixing/market sharing agreements. These forms of anti-competitive conduct account for the greater proportion of infringements that distort competition and decrease industry contestability. Additionally, competition policies also focus on the conduct of regional governments, which through the provision of subsidies/state aid effectively distort competition by enabling domestic firms the ability to sell at lower prices than foreign concerns, Kenya's competition policy has been blamed for trying to overprotect the COMESA firms when entering the Kenyan market much to the detriment of the local business sector. There is likely to also be a provision for merger policies that enable the emergence of dominant sellers. Such was the case once when Kenya sanctioned the worldwide merger of major accounting firms and later on the pharmaceutical firms on the pretext that there was nothing it could to a global giant who was ready to take her trade away id Kenya did not comply.

Access to justice is at the heart of policy considerations that aim to safeguard the public interest. "Access to justice" embraces issues of equity, equality, access and participation that foster inclusion, widening participation and the safeguard of human rights. Ideally, public policy should convey an awareness of cost and information implications in order not to limit accessibility, hence participation. Placing information in the public domain, serves to raise public awareness and prompt response from incumbent firms, government and other stakeholders. Global competition policy has been criticised for an over-reliance on the western adversarial approach to conflict resolution that is an expensive and time-consuming system as against other more inclusive less hierarchical systems. The legal framework should therefore seek to incorporate the best aspects of alternative approaches in keeping with the socio-economic context in which policy operates.

(ii) ERB

Prior to the commencement of the Act KPLC through its successor company the East African Power & Lighting Co. Ltd. was the holder of validly issued power distribution licenses . These licences covered major load centres and surrounding areas. In generation KenGen, through its successor companies, KPC and TRDC, is the owner of two generating licenses. In accordance with the Act, these licenses are still valid, although it is expected that the licensees will apply for renewal of the respective licenses when and as the dates of their expiration draw near.

The existing distribution licences, although valid would have to be redrafted to bring them in line with modern distribution practice. Accordingly, ERB is in the process of developing a contemporary distribution licence. In addition, the Board has asked KPLC to submit a Customer Charter for consideration and adoption. The Board considers that attributes in such a charter would constitute invaluable performance measures.

With respect to setting of tariffs, the Board approves power purchase contracts between KenGen and KPLC and also approves and sets the retail tariffs between KPLC and consumers. In this regard, the Board in July 1999 approved a two year interim power purchase agreement between the two companies, pending the establishment of more comprehensive and longer-term PPA . The Board also approved and set, after an extensive public hearing exercise, retail tariffs and rates which became effective on 1 August 1999.

A key objective of the power sub-sector restructuring is to create an enabling environment for private sector participation in the sub-sector. The fact that 31 international firms expressed interest to build, own and operate the proposed Nakuru and Eldoret generating plants implies that the investment environment in the power sub-sector is perceived as sufficiently attractive. Still, considering that the contribution by IPPs to the interconnected generation capacity will increase from the current 10% to about 25% by 2002/3, it is imperative that the environment be made more attractive by establishing a regulatory environment that is fair, transparent and predictable.

The Act provides the broad framework for regulating IPPs. However, it is envisaged that regulating of IPPs will be achieved through inter alia,

- ensuring that the bidding and award processes for projects earmarked for development by the private sector are fair and transparent, thereby resulting in the lowest cost of supply. In this instance the ERB would draw on the powers conferred by Section 121(1)(e) and (f) of the Act.
- enforcing conditions of the licences which should ensure compliance with 121(1)(c)
- any regulations formulated by the Board for the better carrying out of its functions under the Act.

To date the Board has:

- approved a Power Purchase Agreement (PPA) between KPLC and Tsavo Power Company (TPC) Ltd., the developer of a 75 MW diesel plant at Kipevu.
- recommended to the Minister for Energy that TPC be issued with a power production licence. The details of the licence were formulated by the Board, and are perceived to meet the requirements of the Board (and by extension the public), the Government and the developer.

Ideally the regulatory systems should be established before the introduction of private investment in any sector. That this was not the case when the first two IPPs were licensed,

and the fact that further IPPs are likely to be licensed before the promulgation of rules and regulations will pose a number of challenges, including:

- How can licences already issued by the Ministry of Energy be amended to bring them in line with those under the regulatory regime? It is important that licence conditions are reasonably standard in order to ensure consistency in the application of licence conditions.
- Could any regulations formulated by ERB impact on already signed PPAs and which were not subject to approval by the Board? In particular, how would the issue of a PPA clause conflicting with a regulation formulated after the signing of the PPA be resolved?
- Since energy charge is a pass through element, i.e. payments have been set to actual costs incurred for fossil fuel based projects developed by IPPs, how can incentives be introduced to encourage more efficient generation?

These points are particularly pertinent considering that PPAs are in most cases held harmless of change in law.

(iii) The CCK

The communications sector has been undergoing a dynamic transition since full liberalization in 2004. Consequently, the CCK has moved towards a more open licensing structure, which has translated into more licenses in the previously restricted sub-sectors of the industry. The increase of players in the various licence categories has led to increased competition, which has resulted in a transition towards less intrusive regulation through increased self-regulation by the industry players. With the enhancement of competition, prices of various services have continued to decrease significantly, particularly in the segments hitherto reserved for Telkom Kenya such as National long-distance and International fixed services, Internet access and satellite connectivity. The Commission has also introduced two new categories of service providers known as Document Exchange and Call Centre operators respectively, to keep up with industry trends and developments.

The Commission, being aware of the changes within the sector, also recognises that the law needs to keep in step. In this respect, the Commission has made proposals for amendments of both the Kenya Communications Act (KCA), 1998, and the Kenya Communications Regulations (KCR), 2001, which have already been forwarded to the Ministry of Information and Communications for consideration. Included in the proposals are issues of licensing and enforcement, interconnection and price regulation, numbering, consumer affairs, universal access, and postal services.

In the light of this background, I will now focus on the independence of these institutional structures relevant to regulatory systems and explain how they may affect general strategies for regulatory reform.

(a) Monopolies and Prices Commission

(i) **Restrictive Trade Practices Tribunal** Apart from the Minister and the Commissioner, the Act provides for a Restrictive Trade Practices Tribunal. The Tribunal is a judicial body appointed under section
64(1) of the Act. It is appointed every five years; the first appointment was made on February 1991. The Tribunal consists of the Chairman (who must be an advocate of the High Court of Kenya of not less than seven years' standing) and four other members. The Tribunal's main function is to hear appeals from ministerial orders, which in practice arise from the recommendations of the Commissioner. The Tribunal has the power to overturn, modify, confirm and/or refer back to the Minister orders appealed against by aggrieved parties. The decisions of the Tribunal can be appealed to the High Court. The Kenyan tribunal is however not in place having functioned as a one man office sometimes briefly in the 1990s.
(ii) High Court of Kenya. Parties not satisfied with the Tribunal's rulings are referred to Section 25(2) of the Act which provides that a party who is dissatisfied with the decision of the Tribunal can appeal to the High Court against that decision within 30 days after the date on which a notice of that decision has been served on that party, and that the decision of the High Court shall be final.

The Commissioner, subject to the control of the Minister, is responsible for the control and management of the competition authority. The Commission is the regulatory authority with primary responsibility for enforcing the provisions of the Act. Its broad authority includes oversight of both the competition and price control provisions of the legislation (the price control function is now discarded).

The Act clearly states under section 3(2) that the Competition Authority is a Department of the Treasury. The Competition Authority's independence or autonomy is therefore not assured as it falls under the authority of the government. The actual appointment of the Commissioner is not provided for under the Act. It can be assumed that the Commissioner is appointed under the general civil service conditions which govern any other government employees. In fact, all the previous Commissioners and the current one were recruited through the civil service procedure.

Similarly the other staff and officers of the Competition Authority are appointed under the government civil service system. They regard themselves as government employees working for the Ministry of Finance. They perceive the Commissioner as an institutional head, as they can still refer any personnel matter affecting them to the Ministry for remedy. Consequently, the situation exists whereby the administrative function of the Commissioner is shared with the Ministry whereas the law enforcement function is shared with the Minister of Finance. In practice, the Commissioner's powers are neither independent nor absolute. The Commissioner is placed under the general supervision of the Permanent Secretary in the Ministry of Finance. What is important is that the Commissioner's decision-making process should be free of political influence and be based on sound competition principles.

The powers of the Commissioner as spelt out in the Act consist of receiving complaints

from aggrieved parties, investigating complaints, hosting of public hearings, evaluation of cases and making recommendations to the Minister of Finance for the final determination. Section 14 of the Act provides for the powers of the Commissioner to investigate any complaint from any person who considers his or herself aggrieved as a result of a restrictive trade practice. The Commissioner may also in this instance initiate investigations. In carrying out his investigative duties, the Commissioner may authorize any person in writing to have access to documents or enter premises.

The Ministry of Finance plays a very important policy and legislative role, and also plays a role in staff appointments. The Treasury is also responsible for the budget of the Competition Authority.

(b) The CCK

The CCK has a similar predicament as the Monopolies and Prices Commission in which the ministry of Information and Telecommunications Technology has sweeping powers to overrule decisions arrived upon by the CCK.

The CCK has more independence though as compared to the MPC. They are able to make their own budgetary plans and involved in recruitment of staff. More clearly, they are housed at their own premises and with complete facilities in terms of vehicles, maintenance and staff. The recruitment of CCK is not done under the civil service system and their salary structure is quite different form the main civil service one.

Staffing at the CCK is still controlled by the state and this has led to pending cases of applications. There is also an element of political influence with a recent case of the minister for ICT sacking the entire board of CCK following a tender gone wrong. The Communications Commission of Kenya (CCK) is one of the most professional outfits in government and has been doing a tremendous job of trying to open up the telecommunications sector under difficult circumstances. According to the Communications Act of 1998, the Chair and the board of the CCK have security of tenure. This however did not stop the minister from sacking the board. Political independence will thus remain elusive at many stages unless cabinet ministers are made to be non-politicians.

(C) The ERB

The reforms of the power sub-sector have resulted in the separation of commercial, policy setting and regulatory functions, with the Electricity Regulatory Board (ERB) responsible for regulating the generation, transmission and distribution of electric power in Kenya. In the new arrangements, regulation therefore becomes the new border between the state and the power industry.

In general the principal requirements for effective regulation are statutes or permitting legislation, regulatory institutions and rules. Economic regulation involves making decisions on politically sensitive matters and also decisions that have important

implications on regulated utilities and their competitors, customers, investors and shareholders. Often the interests by the stakeholders would be conflicting. These conflicting interests would need to be evaluated and balanced in an impartial and objective way, meaning that the regulatory entity must be, and must be seen to be, a neutral and disinterested party. The Act anticipates a fairly independent Board and tacitly bestows on it independence from political authorities and regulated firms. The Board also has institutional autonomy.

The ERB however depends on the Ministry of Energy for policy guidance with respect to the power sub-sector. As a safeguard against abuse of the trust reposed in it, parties aggrieved by the Board's decisions may seek recourse from the Minister for Energy, with the High Court of Kenya being the final arbiter. In addition members of the Board may be removed from office for reasons such as misconduct, insolvency, conviction of criminal offence involving dishonesty, fraud or moral turpitude and incapacity.

3. EFFECTIVENEES OF KENYAN REGULATORY INSTITUTIONS

(a) Obtaining information, documents and evidence

A major tool that the Commissioner has access to is the use of section 14(2), which confers power on the Commissioner or any other person authorized in writing by the Commissioner to obtain information, documents and evidence when investigating possible restrictive trade practices, and to make copies of those documents. Section 14(3) empowers the Commissioner or any person authorized by the Commissioner in writing to enter any premises and to inspect any documents in the possession or under the control of a person who the Commissioner has reason to believe is in charge of the premises.

Under section 23(3), the Commissioner may require any person possessing records relating to investigations of unwarranted concentrations of economic power to give the Commissioner copies of the records or alternatively to submit the records to the Commissioner for copying. Section 29(1) empowers the Commissioner, when investigating a merger, to require any participant in any economic sector within which a merger or takeover is proposed to take place to grant the Commissioner or any person authorized in writing by the Commissioner access to records and make copies of those records.

(b)Penalties and offences

The Restrictive Trade Practices Act provides for both civil and criminal sanctions for the contravention of the Act. Sections 21 and 26 of the Act makes it an offence for any person, whether as principal or as agent, to contravene or fail to comply with an order made by the Minister in respect of a restrictive trade practice, or in respect of unwarranted concentrations of economic power. As regards a merger, section 27(3) makes it an offence to carry out a merger or takeover without an authorization order from the Minister. In all the above three instances, the Act provides for jail sentences and fines.

The Monopolies Commission, being a government department, is solely dependent on government budgetary allocations. Unlike other autonomous Competition Authorities in the region, the Commission has no power to raise alternative funds (for example, through borrowing or by charging fees for the service it renders). This contrasts with ERB and CCK who were created under different Acts that permit them more independence and far much more muscle in their operations than the Monopolies Commission.

All the regulatory institutions are charecterised by lack of sufficient skilled staff to carry out research on a regular basis and do analysis in all the sectors they operate.

Under the present structure KPLC which is currently the sole public electricity supplier, purchases power from electric power producers under long-term Power Purchase Agreements (PPAs). This power is then dispatched, distributed and ultimately supplied to eligible customers.

In the case of ERB capacity constraint means generation of electric power almost matches demand and there is no competition per se. This situation is likely to persist for some time due to the size of the market which makes competition inherently limited. Instead the electricity generation plant is, and will continue to be dispatched to meet demand, subject to some merit order.

The CCK spells more of the same situation in which the sole responsibility of issuing communications licences is vested into their hands and yet they do not have adequate staff on ground for this demanding duty.

(c) Inter-relation between the various regulatory bodies

Section 5 of the Restrictive Trade Practices Act has been interpreted as a wide exemption from the competition law. The exemption relates to trade practices that are directly and necessarily associated with the exercise of exclusive or preferential trading privileges conferred by an Act of Parliament, and those associated with the licensing of participants in certain trades and professions by Government agencies acting in accordance with an Act of Parliament. Regulated enterprises consider themselves to be exempt from the competition law by virtue of this section. This then gives leeway for CCK and ERB to act independently of Monopolies and Prices Commission.

(d) Revenue raising

Revenue-raising by conventional taxation methods is difficult, costly and prone to corruption. Entry controls also create opportunities for corruption, the relatively simple process of receiving information, particularly in relation to registration systems, does not confer much power on officials over traders, because little or no decision-making takes place. No doubt, too, traders are less resistant to paying taxes if they are disguised as fees. There are, nevertheless, some disadvantages in using entry controls for fiscal purposes.

First, the higher the fee levied for registration or a licence, the larger the number who will

avoid complying with the requirement and rather participate in the informal economy. If the entry control is imposed only as a fiscal device, that is simply equivalent to tax evasion, but if it has other, public interest, purposes then those purposes will be jeopardised. Secondly, to achieve the advantages claimed over conventional tax methods, the registration or licence fee will generally have to be flat-rate and that might not be easily compatible with fiscal policy. The latter might, for example, require that the amounts levied should vary according to the number of employees or the turnover of the firm. This has been the case with CCK with its wireless communications business and ERB with the independent power generators.

4. CORRUPTION IN REGULATORY REGIMES

Conventional strategies to constrain corruption are likely to be less effective in jurisdictions where corruption significantly infiltrates the criminal justice and law enforcement systems, where the resources available for monitoring the conduct of officials are relatively modest, or where the political will to adopt a "macro" approach to the corruption problem does not exist. An alternative strategy explores how institutional arrangements may be designed so as to limit the opportunities for corruption, or to render such opportunities less profitable. Now, of course, the problems that were identified in the last section do not become irrelevant; in particular there must be the political willingness to accept some reorganisation of regulatory arrangements. But that is very different from what is required to effect major cultural changes and actively to pursue and punish culprits.

Deregulation is, of course, a major theme in Western regulatory developments and the first and most obvious, though not necessarily most significant, point is that, since many opportunities for corrupt transactions arise from regulation, a reduction in the amount or intensity of regulation should reduce the level of corruption (Lederman, Loyaza and Soares, 19 2001, 6). The legalisation of off-course betting in Hong Kong is a well-known instance of a simple deregulatory measure leading to a significant fall in police corruption (Klitgaard,1988, 116). But that very example should alert us to the risk of reaching superficial conclusions on deregulation. The control of gambling is a relatively peripheral form of social regulation and, as such, should not be the basis of too broad generalisations about the undesirability of large areas of health and safety, and environmental, protection in developing countries.

Given also that in many jurisdictions private law is ineffective to deal with many types of market failure, there is a strong prima facie case for regulatory intervention. It is, then, a question of exploring how an excess of regulatory opportunities for corruption may be dismantled (Platteau 1996).

A prime example is, as we have seen, licensing systems. A second possibility arises from the use of the criminal law to enforce regulatory regimes (Australian Law Reform Commission, 2002). In industrialised countries, the heavy cost of securing a conviction in the criminal courts may reduce its effectiveness as a deterrent; and for this reason administrative sanctions may be preferable (Ogus and Abbot, 2002). In developing

countries, use of the criminal process has the added disadvantage that it creates a further opportunity for corruption. Evidence suggests that the level of bribes increases significantly when courts are involved in law enforcement (Green, 1997, 66-67).
In other respects, the need to constrain corruption suggests regulatory strategies which are incompatible with reforms taking place in industrialised countries. Regulatory discretion creates more opportunities for corruption than where regulatory requirements are the subject of clear and precise rules (Seidman and Seidman 1994: 178) and we have already suggested that, contrary to prevailing Western thinking, in many African countries rules may be preferable to discretion. A similar argument applies to the choice between formal and informal rules. In industrialised countries, there has been a perception that the traditional command-and-control sets of formal rules are often too prescriptive and too rigid, firms often knowing better than regulators what can best meet the regulatory goal at lowest cost.

There has therefore been a movement to replace formal rules by guidelines (Baldwin 1995). The experience with informal rules in African countries (e.g. Zimbabwe: Goredema 2000) has not been a happy one. Individuals have often been faced with a multitude of highly specific regulatory rules and procedures, knowing that in practice these may not be adhered to, and that informal rules, built into informal relationships with those who are to be favoured, and will prevail. Those unwilling to submit to the conditions of the informal rules, and their financial implications, can still be subjected to the, often unreasonable, exigencies of the formal rules.

The policy implication seems to be fewer and simpler formal rules, but not informal rules. Finally, and perhaps more controversially, there is the question of consultation processes. Within the Western tradition there has been an increasing emphasis on regulatees and third parties contributing to, and participating in, regulatory policy- and rule-making. The potential benefits, in terms of improved information flows, better transparency and greater accountability are substantial, but direct access to regulatory officials does of course increase the opportunity for corrupt transactions. In the USA, efforts to maximize consultation and, at the same time, to limit the opportunities of private manipulation of the policy-making processes have led to principles that private meetings and private communications between and officials and third parties are to be placed on the official record (Breyer and Stewart, 1985, 663-671). However, adequately defining and policing the requirement of a “private” meeting, and maintaining in an accessible and transparent form the official record, may not in practice be achievable in many jurisdictions. If that is the case, then some compromising on the ideals of consultation may be the price to be paid for reducing corruption.

5 CONCLUSIONS

The foregoing shows that Kenya has already made significant progress towards the creation of a fair, transparent and predictable regulatory environment in the business environment. The government hopes to hasten this progress in order to realise the objectives of the free and non-restrictive trade practices sooner for the ultimate benefit of service and product consumers in Kenya, and perhaps in the region as well. In order to

achieve this government is expected to undertake a number of challenging tasks including development of model transmission and distribution licences, harmonisation of licence conditions in order to ensure parity for similar licensees and the development of a customer charter specifying acceptable performance standards. In addition the government is expected to overcome challenges associated with transition to new market structures

Institutional theories often elicit a somewhat misguided criticism for assuming that institutional features cannot be altered by the actors. The criticism is not empirically misguided because, often, decision-makers can and do change the structural arrangements under which they operate. However, the criticism is theoretically misguided inasmuch as it loses sight of the limited aim of institutional theories: structural features must be exogenous when the aim is to learn how and why contextual features affect choice processes. If the researcher wants to identify the institutional factors that explain a particular pattern of behavior, the institutional features simply cannot be modeled simultaneously as causes and consequences of that behavior.

The defining characteristic of a theory of institutions is that some of the essential contextual features that were assumed to be constraining in the foundational institutional theory become objects of choice within a somewhat more general theory of institutions. This necessarily partial endogenization of institutional features is what distinguishes an institutional theory from a theory of institutions.
It should be obvious that a theory of institutions cannot exist without institutional theories. More precisely, in order to know why a certain institution exists, it is essential to know, with reasonable confidence, not only the consequences of the focal institution but also the consequences of alternative institutional arrangements that could have instead been crafted.

My conclusions on licensing are different. I am skeptical of the argument that conditions in African countries justify the much greater use of this regulatory instrument, compared with industrialised countries, but reference to those conditions, particularly the opportunities which they systems create for private exploitation and corruption, helps to explain why licensing proliferates in African countries and why reform in this area might be difficult to achieve.

REFERENCES

Ables, A.C. (2001) Making Philippine Customs Services E-Ready. Paper presented at the First Workshop of the APEC-OECD Cooperative Initiative on Regulatory Reform, Beijing, available at http://www.oecd.org/dataoecd/46/19/2506438.pdf.

Australian Law Reform Commission (2002) Principled Regulation: Civil and Administrative Penalties in Australian Federal Regulation, Report No 95.

Baldwin, R. (1995) Rules and Government. Oxford: Clarendon Press.
Bardhan, P. (1997) Corruption and Development: A Review of Issues, Journal of Economic Literature 35: 1320-1346

Barro, R.J. (1997) Determinants of Economic Growth; a Cross-Country Empirical Study, Cambridge MA: MIT Press.

Beck, T, Clarke, G., Groff, A, Keefer, P. and Walsh, P. (2001) New Tools in Comparative Political Economy: The Database of Political Institutions. World Bank Economic Review. 15: 165-176.

Becker, G.S. (1968) Crime and Punishment: An Economic Approach, Journal of Political Economy 76: 169-217.
Benda-Beckmann, F. Von, (1992), Symbiosis of indigenous and Western Law in Africa and Asia: An Essay in Legal Pluralism, in W.J. Mommsen and J.A. De Moor, (eds.),

European Expansion and Law: The Encounter of European and Indigenous Law in 19th- and 20th-Century Africa and Asia, Oxford: Beck., chap.14.
Bowles, R. (2000) Corruption. In Bouckaert, B. and De Geest, G. (eds), Encyclopedia of Law and Economics, Cheltenham: Edward Elgar.

Braithwaite, J. (1989) Crime, Shame and Reintegration, Cambridge: Cambridge University Press.

Breyer, S. & Stewart, R. (1985) Administrative Law and Regulatory Policy. 2nd edn. Boston:Little, Brown.

Buscaglia, E. (1997) Corruption and Judicial Reform in Latin America, Policy Studies Journal 17: 273-295.

Carothers, T. (1998) The Rule of Law Revival, Foreign Affairs, 77: 95-106.

Chanock, M. (1985) Law, Custom and Social Order - The Colonial Experience in Malawi and Zambia. Cambridge: Cambridge University Press.

Clarke, D.C. (2003) Economic development and the rights hypothesis: The China problem American Journal of Comparative Law, 51: 89-111.

Cooter, R.D. (1994) Structural Adjudication and the New Law Merchant: A Model of Decentralized Law, International Review of Law and Economics, 14: 215-231.

Cooter, R.D. and Garoupa, N. (2000) The Virtuous Circle of Distrust: A Mechanism to Deter Bribes and Other Cooperative Crimes, Berkeley Olin Program in Law and Economics, Working Paper 32

Davis, K.E. and Trebilcock, M.J. (2001) Legal reforms and development, Third World Quarterly, 22: 21-36.

Devas, N. and Kelly, R. (2001) Regulation or Revenue? Implementing Local Government Business Licence Reform in Kenya, Public Administration and Development, 21: 381-391.

Djankov, S., La Porta, R., Lopez-de-Silanes, F. and Shleifer, A. (2002), Appropriate Institutions, World Bank.

Doig, A. (1995) Good Government and Sustainable Anti-Corruption Strategies: A Role for Independent Anti-Corruption Agencies? Public Administration and Development 15: 151-165.

Fafchamps, M. &Minten, B. (2001) Property Rights in a Flea Market Economy, Economic Development and Cultural Change, 49: 229-267.

Fafchamps, M. and Moser, C. (2003) Crime, Isolation, and Law Enforcement, J journal of African Economies, 12: 625-671.

Faundez, J. (2000) Legal Reform in Developing and Transition Countries: Making Haste Slowly, in J.Faundez, M.Footer and J.J.Norton (eds), Governance, Development and Globalization, Oxford: Blackstone.

Frischtak, L. (1997) Political Mandate, Institutional Change and Economic Reform, in J.Faundez (ed), Good Government and Law: Legal and Institutional Reform in Developing Countries, London: Macmillan, chap.4.

Ghai, Y. (1986) The Rule of Law, legitimacy and Governance, International Journal of the Sociology of Law, 14: 179-208.

Ghai, Y. (1993) Constitutions and Governance: A Prolegomenon, in S. Adelman and A. Paliwala (eds.), Crisis in Law and Development, Oxford: Hans Zell, 51-74.

Glaeser, E.L., Scheinkman, J. and Shleifer, A. (2003) The Injustice of Inequality, Journal of Monetary Economics, 50: 199-222.

Goredema, C. T. (2000) Policy Reforms Needed to Combat Corruption in Zimbabwe. Public Lecture, available at http://www.kubatana.net/tiz/docs/reform000229.pdf.

Goudie, A.W and Stasavage, D. (1998) A Framework for the Analysis of Corruption, Crime Law and Social Change 29: 113-159.

Green, R.H. (1997) Bureaucracy and Law and Order, in Faundez, J. (ed), Good Government and Law: Legal and Institutional Reform in Developing Countries, London: Macmillan.
Grote, R. (1999) Rule of Law, Rechtsstaat, and Etat de Droit, in C. Starck (ed), Constitutionalism, Universalism and Democracy, Baden-Baden: Nomos, 269-306.

http://www.transparency.org/cpi/2004/cpi2004.en.html#cpi2004

Klitgaard, R. (1988) Controlling Corruption. Berkeley CA: University of California Press.

Kraakman, R. (1986) Gatekeepers: The Anatomy of a Third-Party Enforcement Strategy, Journal of Law, Economics and Organization 2: 53-104.

La Porta, R., Lopez-de-Silanes, F., Shleifer, A. and Vishny, R.W. (1998) Law and Finance, Journal of Political Economy, 106: 1113-1155.

Lederman, D., Loayza N. and Soares, R.R. (2001) Accountability and Corruption: Political Institutions Matter, World Bank Working Paper 2708.

Levine, R. (1999), Law, Finance and Economic Growth, Journal of Financial Intermediaries, 8: 8-35.

Lindsey, T. (2002) History Always Repeats? Corruption, Culture and 'Asian Values', in Lindsey, T. and Dick, H. (eds), Corruption in Asia: Rethinking the Governance Paradigm, Sydney: Federation Press.

Lindsey, T. (2004) Legal Infrastructure and Governance Reform in Post-Crisis Asia: The Case of Indonesia. Asian-Pacific Economic Literature, 18: 12-40.

Manion, M. (1996) Corruption by Design: Bribery in Chinese Enterprise Licensing, Journal of Law, Economics and Organization 12: 167-196.

Mattei, U. (1997) Three Patterns of Law: Taxonomy and Change in the World's Legal Systems, American Journal of Comparative Law, 45: 5-44.

Merryman, J. H. (1977) Comparative Law and Social Change: On the Origins, Style, Decline and Revival of the Law and Development Movement, American Journal of Comparative Law, 25: 457-491.

Messick, R.E. (1999) Judicial Reform and Economic Development: A Survey of the Issues, World Bank Research Observer, 14: 117-136.

Nelson, P. (1970) Information and Consumer Behaviour, Journal of Political Economy, 78: 311-329.

Ogus A. & Zhang, Q. (2005) Licensing East and West" International Review of Law and Economics (forthcoming)

Ogus, A. (1992) Regulatory Law: Some Lessons from the Past, Legal Studies, 12, 1-19.

Ogus, A. (2000) New Techniques for Social Regulation: Decentralisation and Diversity, in Collins, H., Davies, P. and Rideout, R. (eds), Legal Regulation of the Employment Relation, Dordrecht: Kluwer, pp.83-98.

Ogus, A. (2003) The Importance of Law-and-Economics for Regulation in Transitional Economies, CRC Working Paper No 27.

Ogus, A. (2004a) Corruption and Regulatory Structures, Law and Policy, 26: 329-346.

Ogus, A. (2004b) Regulation: Legal Form and Economic Theory, Oxford: Hart Publishing.

Ogus, A. (2005) Regulatory Paternalism: When Is It Justified? in Hopf, K. and Baum, H. (eds), Changes of Governance in Europe, Japan and the U.S., Oxford: Oxford University Press.

Ogus, A. and Abbot, C. (2002) Pollution and Penalties, Research in Law and Economics 20: 493-512.

Perry, A. (2001) Legal Systems as a Determinant of FDI: Lessons from Sri Lanka, The Hague: Kluwer Law International.

Pistor, K. (1999) The Evolution of Legal Institutions and Economic Regime Change, in J. Stiglitz and P.A. Muet (eds.) Governance, Equity, and Global Markets -, Oxford: Oxford University Press, chap.6.

Pistor, K. & Wellons, P (1999) The Rule of Law and Legal Institutions in Asian Economic Development, Hong Kong: Oxford University Press.

Platteau, J.-P. (1996) The Evolutionary Theory of Land Rights as applied in Sub-Saharan Africa, Development and Change 27: 29-86.

Polinsky, A.M. & Shavell S. (2001) Corruption and Optimal Law Enforcement, Journal of Public Economics 81: 1-24.

Polinsky, A.M. & Shavell, S. (1992) Enforcement Costs and the Optimal Magnitude and Probability of Fines, Journal of Law and Economics, 35: 133-148.

Posner, R.A. (1998) Creating a Legal Framework for Economic Development, World Bank Research Observer, 13: 1-11.

Quah, J.S.T. (2001) Combating Corruption in Singapore: What Can Be Learned, Journal of Contingencies and Crisis Management 9: 29-35.

Ramseyer, J.M. & Rasmusen, E.B. (2003) Measuring Judicial Independence: The Political Economy of Judging in Japan, Chicago: University of Chicago Press.

Read, J.S. (2000) Law in Africa: Back to the Future, in I. Edge (ed.), Comparative Law in Global Perspective, Ardsley, N.Y.: Transnational, chap.7.

Rondinelli, D. (1993) Development Projects as Policy Experiments; An adaptive approach to development administration. London, Routledge.

Rose-Ackerman, S. (1978) Corruption: A Study in Political Economy. New York: Academic Press.

Rose-Ackerman, S. (1999) Corruption and Government: Causes, Consequences and Reform. Cambridge: Cambridge University Press.

Schaefer, H.B. (2002) Legal Rules and Standards, German Working Papers in Law and Economics Paper 2.

Seidman, A. and Seidman, R. (1994) State and Law in the Development Process: Problem solving and Institutional Change in the Third World, Basingstoke: Macmillan.
Seoul Metropolitan Government (2001) Seoul Anti-Corruption Symposium 2001: The Role of On-line Procedures in Promoting Good Governance, available at http://unpan1.un.org/intradoc/groups/public/documents/un/unpan001019.pdf.

Sherwood, R.M., Shepherd, G. and De Souza, C.M. (1994) Judicial Systems and Economic Performance, Quarterly Review of Economics and Finance, 34 (Special issue): 101-116.

Shleifer, A. & Vishny, R.W. (1993) Corruption, Quarterly Journal of Economics 108: 599-617.

Snyder, G.G. (1980) Law and Development in the Light of Dependency Theory, Law and Society Review, 14: 723.

Stephenson, M. C. (2000) A Trojan Horse Behind Chinese Walls? Problems and Prospects of U.S.-Sponsored 'Rule of Law' Reform Projects in the People's Republic of China,UCLA Pacific Basin Law Journal, 18:. 64-97.

Suhir, E. & Kovach, Z. (2003) Administrative Barriers to Entrepreneurship in Central Asia , Center for International Private Enterprise.

Sykes, A.O. (1984) The Economics of Vicarious Liability, Yale Law Journal, 93: 1231-1280.
Transparency International (2004) 4, available at:

Trubeck, D.M. (1972) Max Weber on Law and the Rise of Capitalism, Wisconsin Law Review, 720-753.

Trubeck, D.M. & Galanter, M. (1974) Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development, Wisconsin Law Review, 1062-1101.

Tshuma, L. (1999) The Political Economy of the World Bank's Legal Framework for Economic development, Social and Legal Studies, 8: 75-96.

Vogel, S.K. (1996) Freer Markets, More Rules: Regulatory Reform in Advanced Industrialised Countries, Ithaca and London: Cornell University Press.

Wade, R. (1982) The System of Administrative and Political Corruption: Canal Irrigation in South India , Journal of Development Studies, 18: 287-328.

Wescott, C. (2003) Combating Corruption in South East Asia, in Kidd, J.B. & Richter, F.J (eds.), Fighting Corruption in Asia: Causes, Effects and Remedies, edited. Singapore: World Scientific Press.
World Bank (1992) Governance and Development, Washington DC: World Bank.

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

World Bank (2002) Initiatives in Legal and Judicial Reform, Washington DC: World Bank.

World Bank (2003) Combating Corruption in Indonesia: Enhancing Accountability for Development, available at http://wbln0018.worldbank.org/.