Promoting Legislative Objectives Throughout Diverse Sub-National Jurisdictions

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Abstract

This article outlines an approach, derived from Ann and Robert Seidman's Institutionalist Legislative Drafting Theory and Methodology (ILTAM), for drafting laws and developing implementing policies and programmes to realize legislative objectives and promote necessary behavioural change throughout a jurisdiction despite significant sub-jurisdictional socio-economic differences. ILTAM can serve as a powerful tool for catalysing the development of situationally appropriate programmes to initiate and sustain behavioural change in furtherance of legislative objectives. The article begins by discussing the movement towards legislative standardization, and its benefits and failings. It then introduces the concept of informal jurisdictions, and highlights modifications to ILTAM that improve the methodology's efficacy in devising solutions that work in those jurisdictions. The article then describes the power of intransitive law as a mechanism for catalysing progress towards shared objectives in a manner that allows for localized approaches, promotes governmental responsiveness, brings innovation, and maximizes participatory governance. Lastly, it describes the importance that Ann and Robert Seidman placed on institutionalizing on-going monitoring, evaluation and learning processes; and describes how intransitive drafting techniques can focus implementation on motivating behavioural change while systematically identifying needed policy and law reforms in response to suboptimal legislative outcomes.

Keywords: devolution, informal jurisdiction, rule of law, disparate impacts, participatory problem-solving, intransitive law, legislative standardization.

A Introduction

Nationally standardized approaches to resolving societal problems predictably fail to achieve their intended objectives within sub-national population groups that

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face different challenges and have different resources and constraints than did the group whose aggregated experiences informed the development of the standardized approach. The enactment of legislation and programmes that are logically unsuitable for addressing the causes of problems faced among identifiable sub-national communities increases socio-economic inequities, because it channels state resources to the gradual resolution of problems faced by politically stronger communities while failing to address the nature and causes of problems faced in politically weaker communities. Two types of sub-national communities frequently see the nature and causes of the problems that they face overlooked by law makers: (1) members of geographically integrated, but historically low-status groups (e.g. women, minorities, the poor, new/emerging business interests) and (2) individuals living in geographically distinctive communities, wherein the state has a low presence and communities enforce traditional norms with greater predictability than the state enforces its laws (henceforth referred to as *'informal jurisdictions'*). Due to space constraints, this article focuses on strategies for realizing legislative objectives in informal jurisdictions.

This article outlines an approach, derived from Ann and Robert Seidman's Institutionalist Legislative Theory and Methodology (ILTAM), for drafting laws and developing implementing policies and programmes to realize legislative objectives and promote necessary behavioural change throughout a jurisdiction, despite significant sub-jurisdictional socio-economic differences.

Differences between sub-national jurisdictions render seemingly neutral laws suboptimal, wholly ineffective or even harmful within regions and among populations that experience different challenges, resources and constraints than are addressed by the national law. This article stresses the importance of drafting intransitive laws establishing systematic approaches to progressively realizing legislative objectives by catalysing the development of a diverse array of programmes and policies by means of distributive problem-solving.

Stakeholder-driven[1] problem-solving increases the likelihood that the intended beneficiaries, implementers and addressees of a law, policy or programme appreciate the nature, scope and urgency of the problem; consider addressing it as a high priority; are vested in developing and implementing an effective solution; and have a sufficiently detailed understanding of the resultant approach's details to increase the likelihood of success. The importance of obtaining buy-in for change among those whose behaviours must change, and among those who must continuously exert pressure for change (and acknowledge/celebrate progress), cannot be overstated.

The article begins by discussing the benefits and failings of the movement towards legislative standardization. It then describes the unique characteristics of informal jurisdictions, and recommends modifications to ILTAM that increase the likelihood that a solution devised in accordance with the methodology will prove effective within an informal jurisdiction. The article then describes the

1 This article defines stakeholders broadly, to include those responsible for implementing a solution, those whose problematic behaviours the law seeks to change, the law's intended beneficiaries, and those likely adversely impacted by the law's implementation.

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power of intransitive laws as a mechanism for catalysing progress towards shared objectives in a manner that allows for localized approaches, systematizes the identification of policy and law reform needs, motivates behavioural change, brings innovation, and maximizes participatory governance.

B Legislative Standardization and Its Discontents

> We have good laws, but they are poorly implemented[2]

Legislative standardization is promoted on the assumption that jurisdictions suffer from similar problems, and can benefit from similar solutions. It offers the promise of saving time, helping law and policy makers avoid reinventing the wheel, guiding law-developers towards interventions that work (somewhere), and improving the predictability of laws between jurisdictions – thereby reducing barriers to movement and trade and increasing equity and equality before the law of a nation's citizens. However, legislative standardization gives rise to a significant risk of extending 'good law'[3] to a jurisdiction where it is unresponsive to the nature and causes of the local problem and where implementation, if it occurs at all, is unlikely to prove effective.

The Seidmans developed ILTAM as a tool for developing effectively implementable, behaviourally transformative, laws. It rests on the recognition that law will only prove effective if it changes behaviours, and behaviours flow from a wide variety of social, economic and ideological causes. Addressing the causes of the problem produces sustainable behavioural change. Laws that fail to respond to the localized cause of problems are, according to ILTAM, logically unsuitable for significantly and sustainably addressing those problems.

ILTAM's key steps:

1 Identify a harm, and describe its scope and severity.
2 Describe the problematic behaviours an effective law must change.

2 The unending refrain within jurisdictions that copy well-drafted but situationally unsuitable foreign laws or that attempt to implement a single policy or programme throughout a highly diverse population without thinking about how differences in local circumstances will impact implementation.

3 A 'good law' is defined herein as a law that is effective somewhere and is well-drafted from a technical perspective.

3 Explain the legal, informational, environmental, economic, political, sociocultural, psychological and ideological causes of the role occupants' problematic behaviours.[4]
4 Develop a solution that addresses the causes of the problem.
5 Monitor and evaluate the solution to identify and address implementation problems, insufficient outcomes and unintended impacts in a timely manner.

Legislative standardization risks running afoul of ILTAM at nearly every step. All too often, jurisdictions are exhorted to enact legislation addressing a problem they don't have, effectively diverting scarce state resources away from local priorities.[5] Standardization also runs afoul of ILTAM's second step – even if a jurisdiction does exhibit the superficial manifestations of a common problem, the local problem may consist of a unique set of problematic behaviours.[6] Since law operates by changing behaviours, a law that targets the wrong set of problematic behaviours won't work. Third, ILTAM suggests that transformative, cost-effective

4 Ann and Robert Seidman introduced the ROCCIPI agenda as a tool for focusing a drafter's attention on the ways that the *rule* of law, *opportunity* to act in accordance with the law, stakeholder's *capacity* to act in the legally envisaged manner, stakeholder's awareness of the law's provisions (*communication*), stakeholder's subjective and objective *interests* (largely described in terms of the stakeholder's subjective assessment of his/her socio-economic interests), *process* within a complex organization, and stakeholder's *ideology* informed his/her actions in the face of the law. With the approval of Robert Seidman, the author has included the *psychology* factor in ILTAM trainings since 2013. The psychology factor guides the drafter to consider which factors a role occupant is likely to pay attention to, and how he/she is likely to assess the those factors, in the face of different decision-making processes. While Ann and Robert Seidman liked to view their methodology as a rational problem-solving methodology existing beyond politics, those using ILTAM have long found it useful to consider a role occupants' *political* constraints under either the interest or the opportunity factor. Lastly, this article recommends adding a new factor to the ROCCIPI agenda when it is being utilized in informal jurisdictions: *identity/survival with identity*. This new factor is introduced and explored in this article's fourth section.

5 One country received funding from an international donor agency to enact a law to prevent acid throwing and improve the quality of care received by victims of this horrific crime. Each province was expected to independently enact the law. Law reform advocates were aware of only one acid attack having occurred within the past year: the perpetrator of the act was a woman, and her victim received prompt and appropriate medical care. Data shows that the province averages ~1 attack/year. In the province there was not the type of pattern of problematic behaviour, or unmet need, that typically gives rise to legislative action. Yet, the proposed law reforms envisaged the diversion of large amounts of health funding to finance burn centres to support the victims of acid attacks. In this case, the idea that every province should enact the same law placed pressure on at least one province to redistribute health funding from issues of serious local concern towards addressing a problem that did not exist.

6 Many nations struggle to decrease school dropout rates. In one nation where student is dropped from school if he/she is late to school more than three days of school during a year, the causes of dropouts include: (1) there is only one road, and only one bus that students can take to get to school on time. If the bus is full and the traffic is largely stopped, the student is unable to make it to school in a timely manner. (2) The school does not notify a student when a teacher is absent, and does not provide a substitute teacher. Thus, a student must continue showing up to school, on time, without fail, for weeks in case his/her teacher returns. (3) The students believe there is no point in attending school because neither they nor their teachers can read the textbooks. A proposal to end dropouts by providing free uniforms and tuition might work somewhere, but it would not address the key causes of dropouts in this jurisdiction.

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and sustainable laws work by addressing the causes, rather than the superficial manifestations, of problems. Whether a country is seeking to import an extra-jurisdictional law[7] or to adopt a standard legislative approach across a highly diverse jurisdiction, it runs a high risk of applying a law to a sub-jurisdiction wherein the causes of problematic behaviours differ from the causes of problematic behaviours experienced within the law's parent jurisdiction.

I A Reverse-ROCCIPI analysis reveals probable implementation problems for standardized approaches in diverse sub-national jurisdictions

Ann and Robert Seidman developed the reverse ROCCIPI tool to facilitate the assessment of how people are likely to act in the face of a proposed solution. The reverse ROCCIPI tool could be utilized to enable a drafter to quickly predict probable implementation problems in sub-national jurisdictions where the localized facts differ from the fact pattern that serves as the basis for the national performance standards or behavioural change approach.

ILTAM's ROCCIPI categories[8] reveal some of the ways in which standardized legislation envisions norm addressees engaging in behaviours that they lack the *capacity* or *opportunity* to comply with in some sub-national jurisdictions.

Examples:

- A national law requiring instruction in a uniform national language calls for the closure of schools that fall short of the national standard. The logical result: schools will be closed in communities lacking linguistically adept teachers, and incapable of recruiting them.
- Immunization procedures outlined at the national level required health workers to immunize children during home visitations. In some communities, male health workers were not allowed into the homes for cultural reasons. The logical/predicted result: children living in these culturally distinctive communities will experience lower immunization rates and an increased incidence of preventable diseases, due to this facially neutral implementation procedure.
- Imported goods frequently cost different amounts at different ports of entry. The utilization of a single cost-basis for calculating the value of goods entering through different ports distorts the market, causing those purchasing less expensive goods (frequently because a higher percentage of the cost of transit is borne in the importing country than the exporting country from those ports) to pay duty exceeding the value of the goods they are importing. The utilization of a uniform, or regionally incorrect, cost-basis for goods can price importers with high in-country transit costs out of the legal market and can, thereby, lead to increased smuggling (and corruption among customs officers and border agents willing to overlook it).

7 In violation of the Seidmans' "Doctrine of the Non-Transferability of Law".
8 Rule, Opportunity, Capacity, Communication, Interest, Process, Ideology.

As ROCCIPI reveals, *ideological* differences also give rise to predictable implementation differences. Examples:

National laws frequently prohibit rape, kidnapping, assault, and battery. However, in some jurisdictions people have long forced women to enter into marriages without their consent, and viewed domestic violence and marital rape as problems best handled within the family. In these jurisdictions, police, prosecutors and judges project their own beliefs about marriage onto the law, thereby modifying universally applicable laws so they no longer protect women from the most common forms of gender-based violence (GBV). A national law drafted with a blindness to implementing agency personnel's attitudes regarding gender roles would not have the intended impacts in sub-national communities with marked gender-bias.

- Despite Constitutional guarantees of equal treatment before the law and racially equivalent rates of drug usage, African Americans are three times more likely than white Americans to be stopped by the police, have a car searched upon a traffic stop[9] and to receive jail time if convicted.[10] Until racial biases at the policing, prosecutorial and judicial levels are addressed, facially neutral criminal justice law will predictably impact African Americans more than white Americans.[11]
- A law that envisions that the victims of crime will approach the police for assistance and relief may prove ineffective in a community where the police are more feared than trusted.

1 Disparate and Cumulative Impacts

Disparate implementation of laws to the detriment of some groups and the benefit of others is a sign of a state systematically prioritizing meeting the needs, and protecting the rights, of some groups over others and is a sign of a breach of the social contract with regard to disadvantaged groups.

Where we see governments exclude some groups[12] from the protections afforded by social contract, thereby exposing group members to the state's burdens, but not its benefits:

9 W.J. Sabol, H. Couture & P. Harrison, *Prisoners in 2006*. Washington, DC, Bureau of Justice Statistics, 2007.

10 W. Rhodes, R. Kling, J. Luallen & C. Dyous, *Federal Sentencing Disparity: 2005-2012*, Washington, DC, Bureau of Justice Statistics, 2015.

11 Racial biases are unlikely to disappear in response to a sensitization campaign. This is especially true in the policing context, because officers must react quickly to stimuli, and may lack the time to consciously check their biases and deliberate upon their responses. Rather, it is critical to address the causes of biases, to ensure officers have clear incentives to engage in racially neutral policing practices, and, when possible, to recognize that since response time constraints will continue to result in racially disparate policing even among officers who lack conscious biases, it is critical to reduce the quantity of high-tension engagement between police officers with either conscious or *unconscious* biases and community members of different races.

12 Identity groups can form around linguistic, religious, racial, ethnic, nationality, class, caste, family and regional divides.

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- Disparate policing in poor, immigrant, minority neighbourhoods, wherein criminal violence against community members receives a weak response from the police but minor nonviolent infractions by members of the community are aggressively sanctioned (reflecting a policing emphasis on controlling, not protecting or serving, the local population).
- The failure of police to investigate, or prosecutors to prosecute, cases of violence against women when similar acts of violence against men would catalyse an immediate and significant governmental response[13] (reflecting a sense that the perpetrators are entitled to treat their female victims in a manner generally proscribed by law).
- Development of state infrastructure in a manner that exclusively benefits one discernible identity group.

When a state provides a highly disparate quality of essential services (e.g. policing, justice, sanitation, water, energy, education, health care, etc.) to different identity groups, the state is, in essence, breaking its social contract with the underserved groups. When the state responds differently to the needs of identity groups and discriminatorily includes/excludes groups from decision-making processes, and provides some groups with less professional, efficient and effective state services than other groups, rifts can open between the groups with the privileged groups feeling increasingly entitled to preferential treatment, while underserved groups, of necessity, develop alternative means of needs fulfilment and question the legitimacy of state institutions.[14]

2 *Why Disparate Legislative Impacts Matter*

Disparate implementation undermines national cohesion and gives rise to competition between identity-based groups for preferential treatment by the state. Thus, poor or corrupt resource allocation leads to increased inter-group conflict, and a decreased sense of governmental legitimacy.

When an identity group views the state's responsiveness, policy making, dispute resolution, regulatory enforcement, and taxation apparatus as systems for extracting wealth for the benefit of corrupt actors or members of other identity groups, members of the unserved group may greet renewed governmental interest and enforcement efforts with suspicion and may resist governmental efforts to assume a more active role in dispute resolution or localized control out of fear that increased governmental involvement will not benefit the group's members.

13 For example, in some countries women are taken from their homes, forced to marry against their will, confined and forced into sexual relationships and servitude – and rather than applying gender-neutral kidnapping, false imprisonment, rape and anti-slavery laws against the perpetrators of these abuses, the police refuse to register cases against the perpetrators and judges encourage the victims to 'reconcile' with their perpetrators. If a rich, heterosexual businessman were kidnapped, locked in a basement and repeatedly raped, police in these jurisdictions would typically investigate the case and the judiciary would impose severe penal sanctions.

14 The Fund for Peace's Fragile States Index utilizes demographic, economic and political pressures; disparate state services; and rule of law to calculate state fragility. (*see*: <http://fundforpeace.org/fsi/>)

When the state has failed members of a group to the extent that group-members must provide their own security, establish their own systems for dispute resolution and develop organizations to promote social welfare, it can be difficult for the state to function effectively in the region. This can give rise to a zone wherein the perpetrators of illegal acts control the distribution of resources (e.g. who receives benefit from government and NGO contracts), law enforcement (e.g. which laws will be enforced, where and to whose benefit), and the administration of justice.

Much governmental and donor aid spent for the benefit of the community will, in fact, exclusively benefit, and enhance the disparate power of, the local elite. Within such an area, government officials cede control to such a high degree that they hesitate (or refuse) to enforce laws without the express approval of local leaders. When confronted by such situations, even major INGOS become so convinced of the impossibility of implementing programmes giving a voice to the people or engaging in truly inclusive processes that they either partner exclusively with the individuals/groups that benefit from the perpetuation of localized power dynamics or they partner with activist groups whose stated objectives directly challenge the status quo, and whose priorities mirror the donor's values. In implementing their projects directly through local power brokers, donor-funded and governmental projects further limit the population's opportunities to those provided to them by local power brokers. In partnering exclusively with groups claiming to share the donor's or government's priorities and ideological stance, a donor risks enhancing the public's perception that its project attacks local identity and values.[15]

Exclusion of groups from policy/programme development processes reduces the likelihood that an intervention will work in the community, thus further reducing the legitimacy of state institutions (or development initiatives) to members of that community. The widespread adoption of laws which address the nature and causes of a problem as manifest in one sub-national unit, but which remain unresponsive to the nature and causes of the problem as manifest in other sub-national units, produces widespread regional or group-based disparities in the efficacy of laws, undermines the state's legitimacy amongst members of the underserved group, and increases state fragility.

The state's enactment of laws that address common problems, but do so in a manner that is situationally unsuitable for addressing the causes of some sub-national jurisdictions, results in the progressive resolution of some sub-national jurisdictions' problems accompanied by a chronic failure to effectively address

15 Projects to end violence against women frequently partner with women's advocacy groups and fail to reach out to religious leaders or men. As a result, women's rights movements are frequently interpreted as man-hating and anti-religious, and the proposals set forth to protect women elicit identity-defending opposition. Men and religious groups can serve as powerful advocates for ending violence against women when they are invited to help develop strategies for ending specific problematic behaviours.

Seitz, *Reducing Opposition to Women's Rights Through Legislative Problem-Solving Dialogues*, Women PeaceMakers Conference: Defying Extremism, University of San Diego (November 2014).

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other sub-national jurisdictions' problems. As a result, some sub-national jurisdictions' problems abate, while others' continue or even intensify in response to the imposition of common, facially neutral, laws.

C Informal Jurisdiction

I The Triangle Diagram as a Tool for Mapping Institutional Dynamics

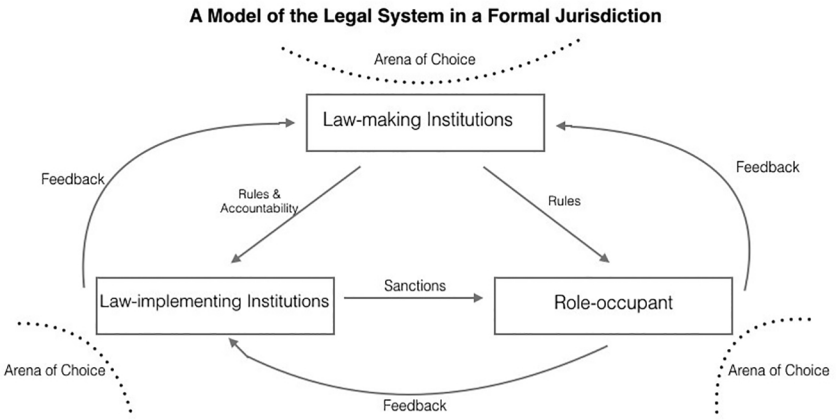
In their *Manual for Drafters*, Seidman, Seidman and Abeyesekere introduced a Model of the Legal System.[16] This model has been widely referred to as the 'triangle diagram' through the years, and has provided a visual framework to guide drafters in identifying different types of role occupants whose behaviours contribute to a given social problem, and to think about the resources and constraints that lead those role occupants to engage in problematic actions.

Since the Manual was developed for use by legislative drafters, individuals who are primary authors of the rules of a formal jurisdiction, the Model of the Legal System has served as a useful, though somewhat idealized, framework for thinking about the relationship between different types of role occupants. However, this model utterly fails to reflect the relationship between role occupants in an informal jurisdiction. This is important to consider. In this section of the article, we introduce both Seidmans' original model (for a formal jurisdiction), and a new model that depicts the flow of legitimacy, enforcement actions, information and voice within an informal jurisdiction. The stark differences between the ideal "Rule of Law" state and jurisdictions frequently observed in reality highlights the value of beginning a drafting project by developing a jurisdiction-specific legal system model in order to map the flow of power and information between role occupants.

II A Model of the Legal System in a Formal Jurisdiction

In this diagram Ann and Robert Seidman outlined the legal system as they saw it functioning. The law-making institutions dictated rules to both the law-implementing institutions and to those individuals whose behaviour constituted the social problem, and needed to change in order to address the problem. According to the diagram, the law-implementing institutions impose conformity-inducing measures on the role-occupants. (In the diagram, as it appears in the Manual, Ann and Robert Seidman refer to "conformity-inducing measures" as "sanctions." I have updated the diagram's terminology to highlight that these measures can include positive measures such as providing the role occupants with access to credit or educational services, and are not limited to penalties imposed upon violators of the law.) Within this diagram, role occupants provide feedback on their needs, and ability to act in the legally envisaged manner to both the law-implementing and law-making institutions, and those in the law-implementing institution provide feedback on implementation challenges and outcomes to members

16 A. Seidman, R. Seidman & N. Abeyesekere, *Legislative Drafting for Democratic Social Change: A Manual for Drafters*. Boston: Kluwer Law International, 2001, p. 17.



of the law-making institution. The members of the law-making institutions, law-implementing institutions and citizenry at large all act in the face of resources and constraints (herein referred to as their 'arena of choice').

This model is a bit idealistic. For example, whereas members of law-implementing institutions do provide law makers with feedback on implementation and impacts in conjunction with legislatively established reporting requirements and in the context of parliamentary hearings/inquiries, in some jurisdictions ethics rules prohibit civil servants from recommending law reforms to law makers unless they are specifically asked to do so.

III A Model of the Legal System in an Informal Jurisdiction

While the state's formal law-making institutions pass laws that technically apply to the residents of formal and informal jurisdictions alike, they frequently do so without the intent, budgetary support or oversight required for law-implementing institutions to rigorously implement those laws in informal jurisdictions. When the state's laws are not implemented in an informal jurisdiction, those laws may seem irrelevant to residents of that area – certainly less relevant than community-devised and enforced norms. Given a conflict between a state norm and a local norm, the local norm – the one that is enforced and that either reflects local cultural values or was derived pursuant to localized inputs – bears more perceived legitimacy.

As the following diagram reveals, sanctions in an informal jurisdiction originate from local power brokers and community members, and are imposed against community members, power brokers and members of law-implementing institutions. These sanctions can consist of violence exacted upon those who act out of line with the local power brokers' wishes, reduced access to jobs and other resources, and reduced social standing.

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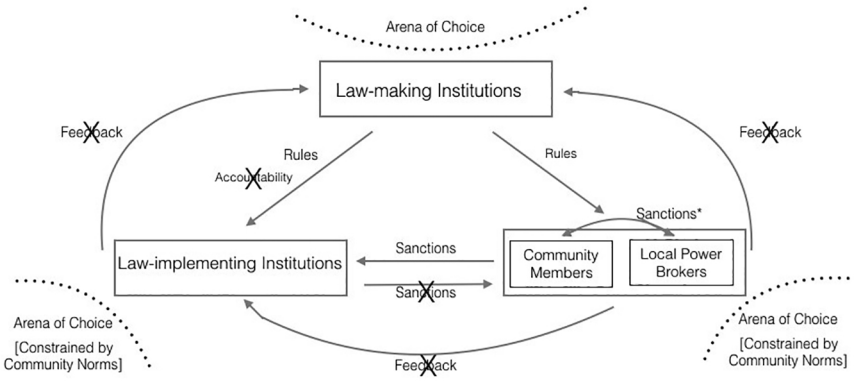
A Model of the Legal System in an Informal Jurisdiction



* In jurisdictions where local power brokers /traditional leaders care about their reputation in the community, the community has the ability to sanction local power brokers for behavior contrary to community norms. In areas where local power brokers' self valuation derives from control over others and they equate fear with respect, the community lacks the ability to sanction the power brokers via non-violent means.

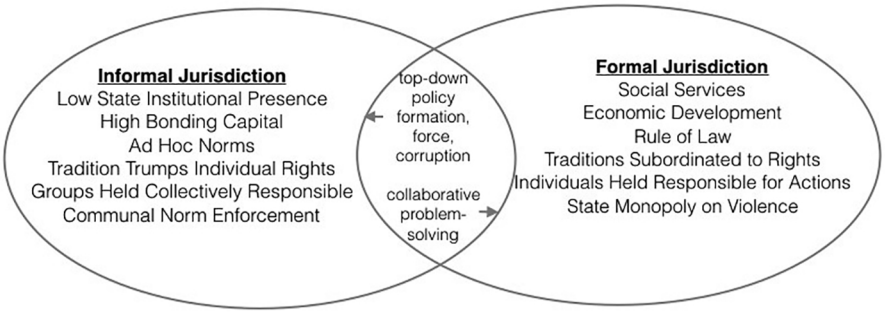
In an informal jurisdiction, the community is the arena within which grievances are addressed, standards articulated, norms applied and sanctions imposed. Further, the feedback loops in the informal jurisdiction are largely severed. Due to the lack of bottom-up communication, law makers and law implementers have poor knowledge of the problems faced within the informal jurisdiction, of how existing laws are implemented there, of what challenges the residents of informal jurisdiction face taking advantage of the benefits offered by state institutions, or of the reasons why residents of the informal jurisdiction fail to comply with (or actively resist compliance with) existing laws.

In an archetypal informal jurisdiction, the institutions of the nation-state are largely absent, the state lacks a monopoly on violence, and community members value following the community's customs and traditions more highly than abiding by the state's laws. Communities that develop and enforce their norms largely independently of the state are unlikely to voluntarily follow a new law enacted at the state level.

Informal jurisdictions exist around the world, both within developing and developed countries. These jurisdictions primarily exist in communities subjected to numerous territorial conflicts; historically underserved by the police; and ethnically, religiously or racially distinct from the state's politically dominant groups.

IV The State's Laws and Institutions Are Perceived as Biased and Irrelevant due to Discriminatory Implementation and/or Efficacy

When a discernible identity group is discriminated against in a regionally bounded/concentrated manner, members of the local community may fill the gap by creating local institutions for security-provision, basic needs fulfilment and dispute resolution.



A lack of economic opportunity and upward mobility frequently elicits a fight-or-flight response; with some people turning to criminal activities and violence as a means of gaining a sense of power and control, while others respond to the lack of predictable avenues towards success by reducing their efforts to improve their situation. Members of criminal gangs oppose efforts to enforce laws and promote peace and stability. Those who have learnt that they will likely face adverse consequences for attempting to protect their rights or improve their communities fail to demand or actively promote rights-realization.

V How an Informal Jurisdiction Differs from a Formal Jurisdiction

An informal jurisdiction differs from the well-functioning parts of a state in many significant ways. In an informal jurisdiction:

- The community's norms are enforced more consistently, and with more significant sanctions, than are the state's norms.
- The state fails to protect members of the community from violence.
- Individuals cannot obtain redress through state institutions – in order to have any sway over government officials or politicians, the community must speak with one voice.
- The state is unwilling to expend resources for the jurisdiction's benefit.
- Un-codified norms are applied via informal dispute resolution proceedings.
- Long-term planning for economic development and collective benefit does not occur (or plans are not implemented).

Accordingly, a law or programme that assumes the existence of a well-functioning judiciary, reliable policing and basic social services may work in many parts of a country, but fail within the parts of the country where the institutions of state remain largely absent.

VI The Origins of Informal Jurisdictions

This article focuses on informal jurisdictions originating from community abandonment or extreme reductions in access to the benefits associated with citizen-

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ship. The abdication of duties to specific identity groups creates societal divisions, and normalizes inferior treatment of, and socio-economic and sometimes police violence against, some identity groups. The normalization of disparate treatment on the basis of group identity reduces the state's ability to fully leverage the potential of members of disadvantaged groups and paves the way to extremism, societal instability and revolutions. If rights mean something, they need to be universally applied; otherwise, they are goods that can be granted pursuant to the discretion of those in positions of power. The superficial appearance of implementation problems in informal jurisdictions include ongoing disparities in service delivery, regional security and rights realization in comparison to other national regions.

D Modifying ILTAM for Use in Informal Jurisdictions

The Legislative Standardization section of this article introduced the ROCCIPI tool for analysing the causes of problematic behaviours. This section examines each of the ROCCIPI factors, in turn, to identify revisions required to render the ROCCIPI agenda a more comprehensive tool for explaining the causes of problematic behaviours in an informal jurisdiction. Please note, each of the ROCCIPI categories, as originally formulated, remains essential to evaluating the causes of problematic behaviours in all jurisdictions. This section of the article proposes to expand the interpretation of the original ROCCIPI factors, not to replace one interpretation of those factors with a new interpretation.

I Rule

As originally construed, the *rule* factor asked researchers and drafters to consider the ways in which the provisions of existing law might cause a role occupant to engage in a problematic behaviour. This analysis focused attention upon the law's discretion-conferring language. The standard analysis of ILTAM's *rule* factor remains at least as important when assessing the causes of implementing agency officials' problematic behaviours in the context of an informal jurisdiction. However, local and customary rules also apply in informal jurisdictions, and these

rules sometimes conflict with state law. Expanding the *rule* factor to include the different types of rules that govern behaviour in an informal jurisdiction enables researchers, policy/programme developers and drafters to better explain and predict role occupants' behaviours.

A law frequently derives its legitimacy from the fact that it reflects the will and values of the governed, serves a public purpose, and is equitably implemented. In an informal jurisdiction, state laws frequently lack these legitimizing conditions. In contrast, community norms are seen as reflecting the local will and values and as furthering a public purpose. In a case of a conflict between state law and community norms, community members frequently attempt to assess which law really reflects societal norms. Unenforced laws are frequently dismissed as reflecting external values and lacking local legitimacy and relevance.

In an informal jurisdiction, community norms are frequently enforced with greater consistency and rigor than laws. In such a community, individuals and families[17] may face extraordinary reprisals, even death, should they attempt to avail themselves of legal protections or should they support other community members' rights to access those protections. If lawmakers ignore the role that community norms, and norm enforcement, plays in some communities, they run the risk of drafting a law with which members of an informal jurisdiction cannot comply without risking their social status and/or lives.[18] For these reasons, when a law appears to violate traditional practices and community norms, members of a traditional community will rarely alter their behaviour in accordance with the law's commands, and public servants will be hesitant to enforce the law.

II Opportunity

As originally formulated, the *opportunity* factor asked researchers and drafters to consider how shortcomings in state infrastructure might cause people to engage in problematic behaviours. While the analysis of the *opportunity* factor remains consistent between formal and informal jurisdictions, a researcher may face extraordinary challenges obtaining reliable data regarding the presence and functioning of state infrastructure and institutions within an informal jurisdiction.

Researchers often assume that if a law mandates the existence of a state programme, the programme exists in the stipulated locations. A researcher should always check the degree to which reality reflects the legal mandate, but informal jurisdictions pose unique data verification challenges. Misappropriated resources can create an illusion that state resources and services are present, when they are

17 Families in informal jurisdictions are frequently held collectively responsible for the actions of individual members. A family, for the purposes of this analysis, could include a tribe, gang or other group seen as responsible for ensuring that its members adhere to common norms.

18 In many parts of the world, marriage is viewed as a contract between the parents of the bride and either the groom or the parents of the group, and bride's family demands a bride price. In one community, a wealthy man explained that he did not want to ask for a bride price when marrying off his daughter (who had a master's degree and a job), but that if he had not asked for a bride price, he would have been seen as rejecting local traditions and would have lost the community's confidence and support. Tradition also required a person with high social standing to command a high bride price… restricting his daughter's range of potential husbands to a group of older men.

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not present in fact.[19] Further, biases among implementing agency personnel may deny community members access to (or equitable treatment by) state institutions – effectively render those institutions inaccessible for members of that community. Consider: If the police refuse to record cases of GBV in a community, does the existence of a police station afford a GBV victim access to justice?[20]

Human rights abuses frequently constitute manifestations of the government's relative lack of commitment to meeting the needs and protecting the rights of members of a specific social group. Where implementing agency officials have long failed to render legally mandated services to members of a social group, a member of that group becomes less likely to approach the government for assistance in resolving his/her problems. If governmental agents are mandated to render assistance to members of these groups by means of a law that grants them significant discretion, we can predict that, barring some radical political, societal or institutional change, they will continue to exercise that discretion to the group's detriment. Thus, an analysis of how implementing agency officials are likely to implement a law in an informal jurisdiction requires a particularly careful consideration of the circumstances under which state actors act in accordance with the law.

III Capacity

The analysis of the capacity is the same as one would undertake when conducting a regular ROCCIPI analysis; namely, the drafter or policy/programme developer should explore whether the role occupant has the skills and resources required to act in the envisaged manner. However, a researcher's analysis may be unusually likely to suffer from bad data in an informal jurisdiction – particularly when it comes to assessing the secondary role occupant's (or implementing agency's) capacity.

In addition to skewing a researcher's understanding of a community's access to basic infrastructure and resources (e.g. ROCCIPI's *opportunity* factor), misappropriated funds and false reporting may lead a researcher to a distorted perception of a primary role occupant's skills and resources (e.g. ROCCIPI's *capacity* factor). For example, if a local power broker has been paid to build a school in a community, but has failed to build the school (or has built it, but subsequently appropriated the building for personal use), the local power broker may still issue diplomas to students in order to maintain the illusion that the school exists and func-

19 The World Bank financed projects for building of schools in an area. One of the prerequisites for qualifying to get a school was that the local community provides free land. Local power brokers provided land. Once constructed these schools served as private guest houses and even stables. Donated land had a negligible value compared to the cost of construction. This led to a situation wherein thousands of school children were deprived of education.

20 A police officer from an area with a population of more than 500,000 reported that he had not registered a single case of GBV for almost a decade (though GBV is prevalent at a quite high rate in that area). He further elaborated that if any women ever approached him for registration of a case, he would send her back to her family (e.g. he would send her back to her alleged abusers). He stated that he'd further investigate whether she has violated a communal norm and, hence, was deserving of familial abuse. Needless to say, no woman had risked her life to report an abuse case to him.

tions as a school, and to keep the relevant funding pouring in. High 'graduation' rates might lead a researcher to falsely conclude not only that a community's members have educational access, but that they were well educated.

Where resources, like jobs, exist within a community, a researcher might conclude that the primary role occupant has access to these resources. However, in a community with high bonding and low bridging capital,[21] a community member's access to resources may prove contingent on the individual acting in accordance with communal norms; and someone who acts in the legally envisaged manner may lose access to communal resources for so doing. Ironically, in some communities an individual's capacity to access the resources needed to accomplish the law's objectives may be contingent upon that individual failing to act in the legally envisaged manner.

IV Communication, and the Revision of Subjective Interests

Ann and Robert Seidman proposed ROCCIPI's *communication* factor as a means of guiding drafters to question whether a law's addressees were aware of the law's permissions, prescriptions and prohibitions. They stressed the importance of communicating about the contents of a law in a language that the norm addressees understood. However, the purpose of communicating a law is not merely to comply with a legal requirement to place a notice in the *Federal Registrar/Gazette*, but is to inform norm addressees of new legal expectations in a way that persuades them to act in the legally envisaged manner. A law that appears to unquestionably serve the public interest to individuals with one background might appear to further a nefarious agenda to people from another background,[22] and a law that appears just to one group may appear as no more than a vehicle for tar-

21 The concepts of bonding and bridging capital are as defined in: R. Putnam, *Bowling Alone*, New York: Simon & Schuster, 2000.

22 For example, the Gates Foundation sent a representative to Quetta, Pakistan, to educate local community leaders about the importance of receiving polio vaccinations. The Gates representative introduced the science, and made a compelling case – from the perspective of someone who trusts that those involved in the Polio-eradication campaign are honestly focused on addressing a public health problem. However, the local community leaders smiled politely, but largely remained silent. In discussions, it became apparent that they thought the Gates representative was lying to them, and that the real purpose of the polio vaccine was to reduce the population's fertility and trick them into consuming a *haram* substance. The community leaders were only able to accept the vaccination programme's legitimacy after these misconceptions were addressed on the basis of information already known to, and accepted by, the local community leaders. For example, they were reminded that the vaccination is used in India, and they continue to have high fertility rates. They were also invited to test the vaccine in a lab of their choices to ascertain whether or not *haram* substances were present. (This illustrates the well-known principle that it is easier to persuade someone to change their views on the basis of information that they already know and accept, than it is to convince them that they should simply abandon their own perceptions and beliefs upon the introduction of contradictory assertions of fact from an outside source.)

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geted oppression and abuse to another.[23] It is generally important to communicate a law in a manner that increases the likelihood that regulated persons and beneficiaries view the law as valuable and legitimate. Due to the above-mentioned conflict that frequently exists between community norms and state law, it is especially important for communities in informal jurisdictions to understand a rule's urgency and value.

V Interests

ROCCIPI's *interest* factor guides users to identify situations wherein a norm addressee's subjective assessment of his or her self-interest leads the individual to act in a problematic manner or to fail to act in the legally envisaged manner, to violate social norms or laws, to obtain a personal advantage or to protect personal interests. When someone violates the rights of others due to self-interest, punishments are a logical consequence because the presence of punishments should logically alter the role occupant's subjective assessment of how it is in his/her best interests to behave. Self-serving violations of the law are, in fact, the only circumstances within which the vastly overly relied upon conformity-inducing measures of incarceration and financial penalties constitute logically suitable means for rectifying problematic behaviours.

A survey of interventions devised around the world reveals numerous examples of cases within which individuals with high bonding/low bridging capital have been placed in a position in which they could only claim their rights, or protect the rights of others, at the cost of their economic, political, social and security framework and, occasionally, their religious identity. People are, understandably, hesitant to pay such a high price to protect those of others – or even to realize their own rights.

Logically, that looks like the *interest* factor at work. However, in the above scenario the problematic actor is not violating community norms due to self-interest, the individual is complying with community norms due to duress. When someone faces the highest possible penalty for acting in the legally envisaged manner, exacting penalties upon him/her for failing to do so seems like an unlikely means of promoting behavioural change.

This article recommends reviewing the expectations imposed by law upon community members from a *reasonable person standard*, which recognizes that a member of a community with high bonding/low bridging capital may act in a problematic manner because they are trying their best to act in the socially desired manner, and because acting in the legally envisaged manner may impair their capacity to survive and continue to receive recognition as a community member.

23 In some communities laws are implemented in a seemingly predictable, uniform manner. In other communities, laws are primarily implemented in a manner that targets the poor or vulnerable. Members of the second type of community might well view a newly enacted law as little more than a vehicle for oppressing, or extracting bribes from, community members.

VI Process

ILTAM is premised on the notion that rules are entered into pursuant to discourse, not merely handed down. Though this validly characterizes the development of formal rules, it often provides an inaccurate portrayal of how rules are developed and communicated in informal jurisdictions and at the societal level generally. Thus, it both constitutes a valid expectation for how a formal rule-making process should proceed, and an inaccurate ethnographic characterization of how rules are made and transmitted in some communities and types of organizations.

ILTAM is fundamentally rooted in individualistic rationality. The Seidmans overtly rejected the idea of a group mind,[24] and embraced rulemaking as the primary means for organizing society's resources in the public interest. In an informal jurisdiction, conformity with rules result from behaviours learned at a young age (not agreed upon by mature deliberations) via mirroring, reward and punishment. In some cases, the learned behaviours become reflexive, so are not rightly categorized as individualized assessments of subjective interests or unconscious ideology.

VII Psychology

The author originally added the *psychology* factor to the ROCCIPI agenda to focus the drafter's attention on how a drafter can utilize cognitive and social psychology to predict how a person will process and act upon information introduced in accordance with a formal decision-making process or capacity-building programme. Within an informal jurisdiction, psychological factors play a key role in how community members interpret, process and react to, state actions. Psychological factors such as attention, bias and integration also impact the likelihood that an implementing agency official will exercise discretion for or against a member of a traditionally marginalized group.

1 Trust Deficits

In an informal jurisdiction, a trust deficit likely exists between implementing agency personnel and community members, impairing their ability to effectively communicate and coordinate with one another. Where a community has repeatedly experienced unfulfilled promises, rights violations or outright deception from government officials (or donor agencies), members of that community are likely to greet new representations of fact and promises with suspicion. Where mutual trust and respect exist, communications can proceed with great efficiency – with one party informing the other of research findings and plans, and having the other party accept the veracity of the proffered evidence and of the plan's stated objectives. Where mutual trust is weak, or tensions are high, deep listening gains extraordinary importance in building trust. When developing a policy or programme, or establishing communication protocols and decision-making pro-

24 Seidman et al., 2001, p. 128.

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cesses, with regard to an informal jurisdiction, trust-building elements (such as listening to a community's experiences, perceptions and concerns) are essential.[25]

2 Threatened Identity and Cognitive Dissonance

In many countries, human rights violations are common despite clear legal and religious prohibitions. Yet, at some point in time someone believed such abuses in his/her/their interests, and those behaviours became normalized and accepted. At some point, the perpetrators (and frequently victims) of human rights abuses modified their understanding of legal and religious law to reconcile abusive behaviour with widespread practices. They frequently downplay the significance of such abuses, or try to accept them. Living with cognitive dissonance is difficult. Such a society might now accept repressive, abusive behaviours (whether originating from the state or occurring between citizens) as religiously acceptable cultural norms. The police and members of dispute resolution bodies might disregard or diminish the significance/severity of claimed rights abuses, and view the claims of abuse, rather than the act of abuse, as posing a threat to community stability and morality.

3 Motivation

Despite the adoption of laws prohibiting human rights abuses, the abuses continue. Abuses persist in donors' and experts' countries. All of this supports the conclusion that human rights violations are intractable. As the human resources literature shows, people are motivated by the belief that their actions will make a difference. It is hard to generate either political will or enthusiasm among civil servants for pursuing apparently futile objectives. The need to demonstrate an intervention's probable efficacy is consistent whether implementing a programme in a formal or informal jurisdiction. However, the evidence required to convince stakeholders that an intervention has a high likelihood of working, and to generate enthusiasm and pressure for implementation, is heightened in a jurisdiction that has suffered repeated implementation failures.

4 Anchor Biases and Congruence Bias

People tend to discount the veracity of information that conflicts with their personal biases and experiences. If a problem is widespread in society, people have probably seen it. They may not have focused attention on it, and they may not have perceived the causes of the problem, but engaging them in thinking through the information that they already accept, and its implications, can be far more

25 For example, many parties to human rights accords engage in at least a few prohibited forms of human rights abuses. When those same nations exert pressure upon a developing or transitional nation to enact laws, or adopt public awareness campaigns, to promote and protect human rights, the developed country's motives are questioned. In many cases, the promotion of human rights is seen as an attempt to weaken an economy, to break down traditional institutions, or to undermine the influence of a particular religious group. Those who distrust a donor's motives will likely oppose their proposed interventions as reflecting ulterior motives, even in cases where the proposed interventions otherwise align with their values and interests.

persuasive than trying to get them to accept the truth of facts that conflict with their personal experiences and worldview.

The *psychology* factor is most frequently addressed through changes in the approaches for communicating with regard to the law's objectives and provisions; designing clear, transparent and participatory criteria and procedures to govern the exercise of discretion and developing capacity-building and change management programmes.

VIII Ideology

ILTAM's *ideology* category draws the drafter's attention to how conscious ideology (e.g. belief or religion), unconscious ideology (e.g. racism, sexism, etc.), and habits of mind cause people to engage in problematic behaviours. An ideological cause of a problematic behaviour is most frequently countered by an educational programme and/or a radical realignment of the societal incentives structure.[26]

When explaining ideological causes of problematic behaviours in an informal jurisdiction, a researcher may wish to consider whether a highly communal, rather than individualistic, formulation of identity causes people to react differently to the law's provisions than is common in other jurisdictions. An individual's sense of identity may derive from community membership to the degree that the thought of becoming exiled from the community seems a punishment worse than incarceration, death or ongoing rights-deprivation. A person with a strongly communal sense of identity may also place an unusually high value upon defending his/her group against outside challenges. This natural human tendency to protect and defend one's family or community can reach heightened levels in a community that has received unfair treatment from external actors.

When seeking to expand state policies and programmes to a previously neglected community or sub-population, mindfulness is recommended regarding the community's potentially heightened sensitivity to threats and slights coming from external actors. This results in an enhanced need for open communication and inclusive processes. Further, someone working with a community that has been collectively abused by the state should anticipate that community members will treat attempted interventions with suspicion. Those whose concerns are obvious to anyone in the community, but have long been ignored, may communicate the urgency and severity of their concerns in a highly emotional and experiential manner. This should be expected, and procedures developed to allow parties to share their experiences and to receive feedback indicating that they have been heard and that their concerns are valid. Above all, these individuals should not be dismissed and excluded from problem-solving processes because they aren't behaving in a rational manner. If someone is deeply impacted by injustice, chances are that person is upset. That person is the primary stakeholder.

26 A strategy that proves highly effective when a significant number of actors that claim to hold a problematic ideology are more motivated by self-interest than by their ideological convictions.

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IX Identity[27]

> Who would have thought…that after 22 years the question of identity would still be at the root of most of the world's problems.[28]

This factor explores the circumstances under which identity constitutes a key cause of a role occupant's problematic behaviour, and strategies for predicting identity-based obstacles to legislation and policy implementation, and strategies for drafting legislation, and for structuring policy and programme development processes to either address or work in the face of identity concerns.

There are four circumstances under which a role occupant's identity assumes relevance in the law, policy and programme development process.

- A role occupant opposes the enactment or resists the implementation of a beneficial or neutral law or programme because he/she wrongly believes that the law, policy or programme threatens his/her identity group's core tenants, values or continued existence.[29]
- A bill, policy or programme unintentionally poses a real threat to a role occupant's or group's identity.[30]
- A bill, policy or programme intentionally attacks a role occupant's or group's identity, or imposes identity-based restrictions on group members in an

27 Examples of state initiatives producing adverse consequences, or failing, due to the policy or programme developer's failure to consider ideology abound. The mutiny against the British in Indo-Pak in 1857 was based on rumours that cartridges that the British supplied to the Indian soldiers contained pig fat. Family planning is viewed by Muslims in Asia as a campaign by foreign nations to reduce Muslim populations. Due to this perception, religiously motivated groups strongly resist family planning programmes. Recent opposition to migration of refugees from Syria to Europe, and of Mexicans to the United States, are partially driven by a fear of dilution of the local population, and attendant racial, cultural and religious changes. Some Americans view protests against racial injustice and police brutality (occurring at American football games) as threatening to their identity and values. Rohingya Muslims in Myanmar, Jews in World War II Europe, Muslims in Srebrenica and Tutsis in Rwanda have all faced genocide due to identity.

28 Bill Clinton to Christiane Amanpour in reference to the anniversary of the Srebrenica genocide. (Amanpour episode aired November 22, 2017 on CNN.)

29 In some areas, the polio vaccine was suspected to contain ingredients that are 'haram' (intake of substances that are prohibited in Islam) or having anti-fertility effects. This rendered the polio vaccine unacceptable to those for whom consuming a haram ingredient violates religious commands, while the vaccine's purported anti-fertility properties seemed an attack on the group's continued propagation and existence.

30 Communal relationships are important. When the state introduces a programme that dismantles or threatens a community, without valuing the role that community relationships play in the lives of community members, that may threaten the survival not only of the group, but of its individual members as well. The levelling of low-income communities and forced relocation in order to make way for new developments fall into this category. (Example: Levelling of the slums in anticipation of India's Commonwealth Games.) Communities displaced from ancestral lands face additional threats to group identity, such as the loss of ancestral graves and, possibly, the traditional way of life.

effort to force them to conform to the policymakers' ideas about that group's proper place in society.[31]

– A bill, policy or programme requires a member of an identity group to conform to a behaviour that places the individual at risk of losing his/her association with the identity group.[32]

The *identity* factor can assist a drafter in predicting probable compliance with, or opposition to, a law's enactment or a law, policy or programme's implementation; assessing a proposal to identify its potential to inadvertently disrupt communities, critical relationships, heritage and meaningful traditions; and systematizing the prediction and documentation of identity-based legislative impacts.

ILTAM utilizes the ROCCIPI agenda twice: once to explain the causes of problematic behaviours, and a second time to predict how a role occupant will act in the face of a new law. This article introduces the *identity* factor as an important consideration when (1) explaining a person's failure to avail him/herself of protections and services only accessible to those who adopt an adversarial stance vis-a-vis close family and community members, and (2) predicting how a role occupant or community will react to change. Identity should be considered when predicting responses to a new project, law reform proposal, behavioural change campaign or impending socio-economic dislocation.

An advocacy or behavioural change approach that threatens an individual's core sense of self or sense of personal dignity is likely to trigger opposition. This opposition can frequently be avoided by reframing an issue in a manner that recognizes the inherent dignity and worth of the individuals whose behaviours the advocates seek to transform, by adopting legislative and policy development processes to promote mutual understanding and by building positive working relationships.[33] Participatory processes constitute a highly valuable strategy for ensuring laws and policies do not unwittingly or unintentionally attack the values, customs and institutions that endow individuals' and groups' lives with meaning and that confer a sense of belonging and access to a social support system.

Actual threats to identity, arising from decision-makers' stereotypes regarding the interests of members of out-groups and their prejudices regarding the

31 Literacy restrictions imposed on African Americans, prohibitions on women owning property or signing business agreements, and race-based residential zoning constitute intentional efforts to keep an identity group 'in its place'. Acts of ethnic cleansing also fit within this category.

32 See the discussion of 'survival with identity.'

33 An outline of such an approach can be found in: Seitz, *Standard Operating Procedures: Alternative Dispute Resolution Committees to Resolve GBV Issues*, ARC Pakistan, 2016. This article's Section VI elaborates on this.

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limited capabilities of out-group members,[34] can be addressed through evidence-based and participatory needs assessment, prioritization, and problem-solving processes. Mandatory differential impacts analysis (as are required to identify and mitigate the potential adverse gender impacts of a proposed law, policy or programme) can also help reduce the likelihood that state action will jeopardize the fabric of a community, and can help ensure that the state provides equitable access to services and opportunities. Increasing transparency regarding a law, policy or programme's predicted impacts on different groups, will facilitate holding policy makers and implementing agency personnel for actions with a predicted discriminatory impact.

X Communitarian Identity

'Ishrat-e-qatra hai dar'ya men fana ho jaana
Dard ka had se guzarna hai dawa ho jaana'

A minute droplet is filled with joy when it is merges with the river (transforming its identity from single tiny droplet, that could easily evaporate and disappear into the river which is the droplet's origin, and is seemingly without end). Endless pain brings the relief (bound together for fear of destruction, the droplets gain immortality). (Ghalib)

The identity of a person in an informal jurisdiction is frequently more communitarian, and less individualistic, in nature than the identity of a person in a formal jurisdiction. Thus, a challenge to the dignity of the community as a whole may elicit a viscerally (e.g. not necessarily rationally) defensive response. Similarly, if an intervention threatens to sever an individual's continued relationship with his/her community, the individual may interpret the intervention as costing him or her something more precious than life. Those with a communitarian sense of identity can derive a sense of having a purpose in life, and of being part of some-

34 Assumptions regarding the interests and potential of members of a given identity group can limit the future prospects of identity-group members by defining a narrow range of 'appropriate' activities, requiring group members to obtain additional permissions or to meet extraordinary requirements in order to engage in activities or access state services, and failing to invest equitably in providing those capacity-building services (such as schools) to communities assumed to have low interest in receiving those services or potential to benefit from them. In a society where leaving a community breaks important cultural bonds, undermines a personal support or security network, or entails exposure to extreme forms of prejudice, the cost of relocating in order to access equitable services should not be underestimated. Limiting access to equitable capacity-building resources further undermines group members' ability to extend their influence to external power structures. Also problematic: Forcing externally prioritized programmes upon a community, rather than addressing the issues of highest local concern, essentially places pressure upon group members to adopt the external values and identity formulation over their own… because that is where the resources and opportunities are. This attempted (or inadvertent) cultural homogenization can result from ignorance about the nature of different groups' values and societal institutions, and can exacerbate the perceived tension between national laws, policies and programmes and sub-group identity.

thing greater than themselves, from filling the social role prescribed to them by their community and by tradition.

When seeking to explain the problematic behaviour of a member of a highly bonded community, a researcher should ask whether the role occupant has the opportunity to act in the legally envisaged manner and both survive and retain his/her sense of identity and self-worth. Certain types of relationships typically receive legal protections due to the perceived societal value in maintaining those interpersonal bonds. For example, family members are exempt from testifying against one another, due to the recognized benefits of maintaining familial bonds and the excessive burden inherent in being forced to testify against a family member. This article recommends that legislative drafters avoid drafting law in a manner that forces individuals to make an impossible choice. A drafter should avoid imposing penal sanctions and extreme financial burdens upon an individual who lacks the opportunity to comply with the law without severing communal ties, violating religious tenets or undermining his/her sense of self-worth.

A drafter who identifies *identity* as a cause of problematic behaviours or a legislative intervention as a threat to identity can devise measures guiding traditional societies and informal jurisdictions through the processes of understanding the commonalities between their objectives and those undergirding national laws, identifying the nature and causes of behaviours thwarting mutual communal/national objectives-attainment, and devising approaches for achieving mutual objectives that (1) address the localized causes of the behavioural problem; (2) are situationally viable, or able to work in the face of local customs and relational dynamics; and (3) do not violate other precepts of protections afforded by national law.

Solution: Where *survival with identity* constitutes a significant impediment to realizing national objectives within, and protecting the basic rights of members of an informal jurisdiction, an effective solution must reduce the community's opposition to the law. An effective solution will also, ideally, include measures strengthening community members' access to state institutions and the larger national socio-economic system. This will provide community members with a viable alternative to acting in the locally prescribed manner.

A transitive (or directly implementable) law might exacerbate community opposition to state action due to its externally imposed nature and the lack of dialogue processes suitable for undoing local biases in a manner likely to promote ideological change. Where a population rejects a law's legitimacy and/or a community's opposition to a law is likely to derail the law's implementation or efficacy, simply communicating the law's objectives may fail to generate acceptance of the law's legitimacy or value. In contrast, engaging a community in problem identification, prioritization and solution-formulation processes may prove essential in aligning local values with national values and in promoting communal understanding of the need for programmes to realize national objectives.

What are needed are institutionalized, ongoing processes for engaging governmental and community actors in developing localized programmes to achieve joint objectives in informal jurisdictions. Such processes could be automatically

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initiated, shaped, funded, supported and monitored by means of an intransitive law that contains clear goals and performance targets and that:

- Tasks implementing agency officials with systematically identifying implementation problems and initiating joint government–community problem-solving processes, structured according to ILTAM, to resolve identified implementation problems.
- Contains clear criteria and procedures to guide the local community and government through the processes of identifying and prioritizing local needs, identifying and analysing the causes of problematic behaviours, and develop situationally implementable solutions responsive to the localized causes of problematic behaviours.
- Includes criteria and procedures for evaluating alternative logically suitable strategies for achieving joint objectives, and for selecting an approach acceptable to both governmental and community representatives.
- Requires the implementing agency to develop, in collaboration with the stakeholders, a relevant and reliable system for monitoring and evaluating implementation, and for collaboratively identifying and select means to address the causes of implementation problems.

XI Towards a Context-Specific Expansion of the ROCCIPI Agenda?

ILTAM constitutes a powerful problem-solving tool in large part due to its simplicity and broad applicability. While the proposed additions to the ROCCIPI agenda appear essential in unlocking the causes of behaviours in informal jurisdictions, these categories could prove useful in helping predict how people will respond to societal disruptions attendant with increasing automation and shifts in the balance of power within, and between, nations. The author welcomes collaboration in thinking through these issues.

XII Highly Recommended in Informal Jurisdictions: Inclusive Solution-Formation and Monitoring and Evaluation Processes

In informal jurisdictions, it is usually helpful to include a range of community members in the solution-formation and monitoring and evaluation processes. Since different types of behaviours are likely to prove problematic in an informal jurisdiction than are problematic in formal jurisdictions, the deployment of systems ensuring the monitoring and meaningful consideration of the behaviours likely to prove problematic in informal jurisdictions can greatly facilitate the detection of problems in informal jurisdictions. Monitoring the nexus between the causes of problematic behaviours and the conformity inducing measures imposed by regulators, and utilizing discrepancies between the causes of, and measures adopted to address, role occupants' problematic behaviours and to drive ongoing bias detection and law-reform, can also prove highly useful strategies for reducing implementation biases that adversely impact informal jurisdictions. The article's remaining sections address these issues in detail.

E Intransitive Legislation as a Catalyst for Innovative, Responsive Governance

An intransitive law can provide an implementing agency with authorization to examine an issue, develop experimental approaches to addressing problems and to develop new rules. Intransitive laws are justified by a need to experiment with different approaches, to see what works, where. It is important to ask to what extent experimentation occurs within informal jurisdictions, and how the resultant data is assessed.

Historically, intransitive laws have constituted a means of pushing detailed decision-making from the legislative branch to the executive branch for reasons including an inability to attain political consensus and the belief that the executive branch can leverage greater issue-specific expertise. Unfortunately, the timing constraints frequently imposed on the executive to rapidly develop subordinate legislation effectively deny the executive the capacity to engage in robust, situationally differentiated research and experimentation.

In rapid-drafting scenarios, drafters frequently attempt to cure substantive knowledge gaps by drawing upon localized contacts and resources to gain a better understanding of the problem. However, national-level drafters are typically located in one of the nation's better run, better resourced cities. They almost certainly benefit from high bridging capital, as do most of their contacts. Thus, drafters, and those they consult with during a rapid-drafting initiative, are likely to view the nature and scope of a problem through the lens of educated, comparatively wealthy, urban-dwellers whose employment prospects and very survival are not inextricably tethered to their compliance with communal norms potentially at odds with state law. They are less likely to regularly experience state institutions (schools, courts, public utilities) that perform below legislatively mandated performance thresholds than are people living outside a major city. Members of marginalized groups, and those coming from Informal Jurisdictions, are underrepresented within the law-making and governance community, and temporally compressed problem-solving processes reduce the likelihood that their experiences will inform the law makers' understanding of the nature and causes of a social problem.

One common intransitive strategy is to form a commission, assign duties, leave it to the commissions to clarify their own operational criteria and procedures. These bills rarely require ongoing problem-solving processes, or mandate the periodic evaluation/reconsideration of regulations. Unfortunately, in most cases, there is already some law on the books. Law reform initiatives frequently amount to replacing one failed intransitive law with another similarly drafted intransitive law. In many of these cases, government officials had discretion to address the problem at hand prior to the law reform process, and they either failed to exercise their discretion or failed to exercise it in a way that effectively resolved the social problem. Providing a new set of government officials, or the same set of officials, under the auspices of a new 'commission', with discretion to solve the same old problem is unlikely to produce better outcomes.

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The Seidmans prescribed intransitive law to address complex problems (requiring experimentation), situations wherein multiple role occupants were engaged in problematic behaviours (requiring research to identify and adequately explain problematic behaviours), and problems occurring in widely differing circumstances. Since an intransitive law essentially transfers some of the legislature's law-making power to the executive branch, Ann and Robert Seidman argued that it was important to include criteria and procedures within an intransitive law to limit the implementing agency's rule-making power, and to limit the range of remedies it could consider. Robert Seidman stressed the importance of drafting an intransitive law to clearly communicate the legislature's intent, guide the implementing agency's actions, and enable oversight bodies to hold the implementing agency accountable for acting in furtherance of the law's objectives.

Since laws already authorize implementing agencies to address most problems, the challenge in writing an intransitive law that works primarily revolves around identifying the past problematic behaviours of implementing agency officials to understand why they haven't managed to solve the problem yet. Accordingly, the bulk of an intransitive law should generally be dedicated to addressing the implementing agency officials' ROCCIPI factors. As Robert Seidman noted, decision-making processes within an implementing agency typically constitute a leading cause of implementation failures. The dualism between allowing an implementing agency sufficient discretion to experiment with new programmes and develop new rules, and providing sufficient guidelines to hold the agency accountable for developing new programmes and regulations and to prevent the agency from excessively expanding its authority, lies at the heart of an intransitive law.

The ideal system for rights realization might flow from the enactment of an intransitive law establishing clear indicators of the level of rights realization, and prioritization and problem-solving processes that could take place within subnational units to explore and address localized violations of human rights. Conducting such projects on a bottom-up or donor-driven basis, outside of a legislative mandate, risks creating rights realization structures that run parallel to governmental systems, potentially challenging the legitimacy of those systems. The potential of bottom-up requests for joint/cooperative society/governmental action to begin the process of normalizing relationships between the community and government relies upon the government's readiness to extend state institutions into the community upon the community's request. However, if the problem-solving initiative begins with community members, and government officials are not prepared to extend to the community the same infrastructure/access to services, afforded to other areas, then the localized problem-solving process itself may intensify the localized consciousness of the degree to their community's devaluation by state officials, thereby further transforming an opportunity for the state to forge closer ties with an informal jurisdiction into a situation that further de-legitimizes the state to community members.

A belief on the part of some legislators that the only reason that problems have not been resolved to date is due to a lack of political will to solve them, leads legislators to conclude that their job is merely to tell civil servants to create uto-

pia. This results in the enactment of intransitive laws that lack clear triggers for implementing agency action and that lack guidance regarding the processes that implementing agency personnel should employ to develop, pilot and evaluate new policies and programmes. Joint problem-solving process, conducted pursuant to an intransitive law that mandates working with communities to achieve national standards, avoids this problem because it creates a scenario wherein the government officials are prepared to meet the community's expectations and are prepared to communicate their constraints and limitations to the community members.

Contents of an Intransitive Law

An intransitive law should clearly specify the actions different role occupants may, shall and shall not undertake in order to implement the law. When drafting an intransitive bill, ROCCIPI's *rule* factor prompts drafters to ensure the bill establishes clear *criteria* and *procedures* that implementing agency personnel should follow when:

- developing subordinate rules, regulations, and programmes;
- predicting probable implementation problems;
- developing programmes to reduce the likelihood of implementation problems;
- prioritizing the allocation of resources to different implementation-strengthening programmes;
- monitoring and evaluating implementation of reforms; and
- monitoring and evaluating the impacts of reforms on objectives realization.

Members of informal jurisdictions and other marginalized communities are typically (almost definitionally) under-represented at the policy-making level, both in the legislative branch and within the executive branch. Thus, without institutionalized policy-making processes mandating the consideration of a policy's applicability within, and predictable impacts upon, informal jurisdictions, a rule's probable impact on an informal jurisdiction is likely to be ignored during the law-making and rule-making processes.

The fact pattern within an informal jurisdiction differs significantly from the default fact pattern considered by law developers sitting in a capital and/or developing laws for the capital. If any sub-population does not have its experiences captured by the generalized/aggregated data that lies at the basis of most evidence-based law reform processes – it is a marginalized community (whether women, minorities or members of an informal jurisdiction). If any jurisdiction requires a unique (or experimental) approach, it is an informal jurisdiction.

The institutionalization of an ongoing needs assessment and problem-solving process (as exemplified by ILTAM and ISO) provides for the systematic collection and assessment of information to identify and address performance obstacles. An intransitive bill should institutionalize ongoing needs assessment, problem-solving and *monitoring, evaluation and learning* (MEL) processes, and should ensure

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that implementing agencies have the capacity to adapt their approaches in response to implementation problems.

F Participatory Problem-Solving Approaches as a Driver of Institutional Transformation

While it is possible to utilize ILTAM when conducting top-down drafting projects, Ann and Robert Seidman recognized that the failure to include stakeholders in these processes reduced the likelihood that the stakeholders would willingly conform to the new law's detailed provisions. This article argues that in informal jurisdictions, where the community's role in norm-enforcement supersedes the state's, top-down legislative drafting processes offer one of two possible options:

1 Utilize state power to "drag a resistant mass…kicking and screaming into a world they never made nor wanted".[35]
2 Abandon all but the vaguest pretext that national laws extend to the informal jurisdictions.

In contrast, participatory problem-solving processes, organized according to ILTAM, offer communities a framework within which they can explore the alignment between their objectives and values and national objectives.

This section of the article argues that, it is critically important to include members of informal jurisdictions in all stages of the problem-solving and local project development processes. The section begins by explaining why adopting participatory policy and programme development processes is particularly important within informal jurisdictions. The section then provides some examples of the unique power of ILTAM in overcoming the trust gaps that frequently exists between a community and the government, a gap that can reach such extreme heights as to generate anti-state violence and investigatory obstructionism in informal jurisdictions. Drawing upon public administration literature, the article then discusses how participatory processes are likely to bolster implementing agency officials' motivation to act in the agreed-to manner. Lastly, this section notes the similarities between a participatory usage of ILTAM and leading thinking in the areas of change management and public administration reform to highlight the (seemingly universal) value of participatory problem-solving processes as a driver of change in complex organizations and as a primary motivator of long-term behavioural change among process participants and those whose behaviours they influence.[36]

35 Seidman et al., 2001, p. 172.
36 This likely reflects the "IKEA effect," or the placement of an excessive value on things one participates in making.

I *The Benefits of State-Supported Problem-Solving Processes, Convened Pursuant to Intransitive Law*

Ann and Robert Seidman developed ILTAM to support the development of evidence-based, effectively implementable, behaviourally transformative legislation. However, this methodology proves valuable in guiding policy developers through a wide range of systemic reform processes, whether restructuring corporations, developing regulations or for identifying the steps that communities can take to resolve their problems through direct action. In informal jurisdictions communities are accustomed to attempting to solve their problems through direct action because the state has proven unresponsive to their needs and/or incapable of devising and implementing transformative, sustainable solutions. However, while ILTAM can facilitate community-based problem-solving without reference to the government institutions, it also provides a tool the state can employ to improve society–government relations, by fostering collaborative problem-solving between these groups.

Broadly formulated but clear objectives at the international or national level (such as the sustainable development goals), procedures to guide local consideration of the nature and causes of the obstacles to attaining those objectives, and community-engagement in the process of prioritizing the order in which they wish to tackle locally pressing problems, constitutes an invaluable approach to engaging communities in thinking about how the steps they could take to improve their communities in furtherance of national objectives. Involving community members in discussions of the principles behind the sustainable development goals, constitutionally protected rights, and intransitive legislation, and how the objectives behind those documents relate to their localized values and needs, promotes alignment between local needs and national and international objectives, and increases the likelihood that community members will welcome problem-solving action in concert with the state.

Failure to involve the state in the solution can widen the chasm between the state and informal institutions and can further strengthen the power of informal institutions over community members' lives, increasing the likelihood that an informal jurisdiction will become a zone of impunity or a hotbed for anti-state extremism. An intransitive law provides a mechanism for the state to proactively identify community problems and to activate localized problem-solving processes to engage communities in devising ways to address the causes of those problems. Grounding community–government problem-solving processes in a legislative framework that clearly specifies input–conversion–output and feedback pro-

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cesses[37] reduces the likelihood of process capture by self-interested elites,[38] reduces the chances that the government will arbitrarily refuse the community's recommendations, and increases the chances that government officials will communicate their implementation constraints to community members in a way that community members understand and accept.[39]

The state's optimal role in a problem-solving process in an informal jurisdiction

1 Initiates the problem-solving process pursuant to the procedures outlined in an intransitive law.
2 Clearly communicates their objectives, intervention-constraints and problem-solving framework to the public.
3 Engages the community in needs prioritization. If the government (or a donor) has already prioritized a specific intervention, explains the basis for that prioritization.

Redrawing the interaction between the state and community to increase bi-directional communication between community members within the informal jurisdiction and members of law-making and law-implementing institutions can significantly improve trust, law addressees' motivations to act in the legally envisaged manner, and outcomes. Rather than allowing local power brokers to dictate which laws the state enforces in an informal jurisdiction, or whose rights the state protects, the state needs to actively engage a more diverse range of local actors in prioritizing needs and in developing situationally responsive conformity-inducing measures to increase the likelihood that community members will follow the law and respect individual rights. In short, efforts need to be made to bring the informal legal system into closer proximity to the formal legal system.

II Participatory Problem-Solving's Importance in an Informal Jurisdiction

Involving local stakeholders in developing results frameworks and locally responsive theories of change, can enable national governments and donor agencies

37 Seidman et al., 2001, p. 131.

38 In many informal jurisdictions, a quid pro quo relationship develops between local power brokers and local law-implementing agents, and this relationship is supported by the credible threat of force from the community against the law implementing agent should that agent implement an unpopular law or programme. This points out the importance of developing programmes in conjunction with the local community, rather than either transferring the resources required to run the programme to the local power brokers (thereby increasing their disparate power over other community members, with no guarantees the desired programme will be effectively implemented) or, in the alternative, developing programmes at the state level only to have the community oppose those programmes by initiating anti-state hostilities.

39 In one jurisdiction, state social development programmes were dependent upon local power brokers' cooperation and the government provided resources directly to local power brokers. Power brokers utilized social development funds to increase their power over the community and the state. This left the communities with a very low level of socio-economic development. The transfer of significant state resources (and control thereof) to power brokers, resulted in the socio-economic deprivation of communities and led to their increased involvement in anti-state extremism.

increase the chances that their programmes align with local priorities and achieve long-term sustainability and progressive objectives realization.

People tend to discount the veracity of information that conflicts with their personal biases and experiences. If a problem is widespread in society, people have probably seen it. They may not have focused attention on it, and they may not have perceived the causes of the problem, but engaging them in thinking through the information that they already accept, and its implications, can be far more persuasive than trying to get them to accept the truth of facts that conflict with their personal experiences and worldview.

Popular recognition of the existence, severity, causation and addressability of a harm catalyses localized action to reduce the incidence/severity of problematic behaviours, and can result in localized advocacy for increased state actions to increase victims' avenues for redress and recovery from harms suffered.

III ILTAM's Power to Overcome the Trust Gap

The virtual exclusion of members of an informal jurisdiction from the processes of defining local problems and developing solutions to those problems undermines the situational suitability of the resultant solutions and the community members' perceptions of the government's respect for community members and its commitment to meaningfully addressing local problems.

By promoting pathways for joint problem-solving action, the usage of ILTAM at the local level can reduce tensions between informal jurisdictions and the nation-states within which they reside, addressing some of the factors that give rise to violent extremism. Structuring public hearings, town-halls and consultative processes according to ILTAM overcomes trust deficits by:

- Engaging the community in defining the problem to solve, and either addressing a community priority or helping the community understand the importance of addressing the state/donor-selected issue.
- Transparently communicating the state's limitations and constraints (or the parameters within which the problem-solving process takes place), thus promoting collaborative problem-solving and reducing the likelihood that the community and government will fall into a cycle wherein the community makes a demand and the government, inexplicably, rejects it.
- Focuses attention on what people think they know about the nature, scope and potential solutions to the problem, and engages the community in participatory processes to fill knowledge gaps and to propose alternative solutions that address the causes of problematic behaviours.

IV Motivation of Law Addressees

In informal jurisdictions, communal norms are rigorously enforced, and state norms are rarely enforced at all. Thus, when deciding how to act in the face of conflicting norms, a self-interested/rational actor would weigh the community's norms more heavily than the state norms. Accordingly, the relevance of a national law depends on the degree to which that law is perceived as consistent with community norms.

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When the failure to realize rights flows from a failure to view an activity as harmful or a failure to recognize the existence of a causal connection between an action and a harm, then people fail to honour and promote human rights because the moral legitimacy and pragmatic value of those rights are unclear to the norm addressees. This reveals either (1) a failure to reach out to the norm addressees during the law/policy development process, or (2) an outreach approach that failed to respect the central role that religion and culture play in shaping values and identity, and (3) attempts to passively 'educate' norm addressees about the harms resulting from a behaviour, rather than actively engaging norm addressees in thinking about how the harms that they have seen result from rights violations and discussing the severity of those harms.

V Motivation of IA Personnel Increased through Process

The failure to involve communities in informal jurisdictions in policy-development processes constitutes a significant barrier to the development of locally responsive programmes and to implementing agency officials' motivations to actively implement governmental policies and programmes, while increasing the likelihood of public opposition to proposed state actions.

VI Participatory Processes as a Driver of Change in Any Complex Organization (or Interconnected Society)

While Ann and Robert Seidman firmly believed in multi-stakeholder policy-making processes, they also designed ILTAM for efficient usage by a single drafter with a tight deadline. However, there are benefits to adopting a multi-stakeholder policy-making process that extend far beyond gathering the information essential to rational decision-making (or meeting a legal obligation to reach decisions in an open, transparent, participatory manner). Participatory problem-solving processes constitute a uniquely effective means of increasing a problem's perceived urgency, reducing resistance to change, building a coalition for reform, and injecting a sense of ownership of the solution among those who must implement it or much alter their behaviours in accordance with it.

The participatory usage of ILTAM resembles the Change Management processes frequently adopted by Fortune 500 companies,[40] and the recommendations of Public Administration experts regarding the optimal means for devising and instituting reforms that civil servants will energetically implement.[41] These approaches illustrate the importance of the policy-making process itself in moving from a policy that can be implemented to one that is implemented.

40 *See*: J. Kotter, *Leading Change*, Boston, MA: Harvard Business Review Press; 2012. *See also*: *On Change Management*, Harvard Business Review, Boston, MA: Harvard Business School Publishing Corporation; 2011.

41 *See*: R. Lavigna, *Engaging Government Employees: Motivate and Inspire Your People to Achieve Superior Performance*, New York, NY: American Management Association; 2013.

G Monitoring, Evaluation and Ongoing Learning and Problem-Solving Processes

Ann and Robert Seidman stressed the importance of establishing monitoring, evaluation and ongoing learning and problem-solving processes by legal means.

Localized, monitoring and problem-solving processes[42] are particularly well suited for use in Informal Jurisdictions. When it comes to either devising policies or exchanging information related to informal jurisdictions, ministerial or agency heads may have a poor, or inaccurate, understanding of localized facts. In jurisdictions that impose sanctions upon field offices for failing to achieve performance objectives, an individual working in the field offices has a strong incentive to file false performance reports. This problem is exacerbated in informal jurisdictions, where the combination of low political will to resolve jurisdictional problems and the inconveniences, or security concerns, associated with site visits reduce the likelihood that high-level ministry officials and programme managers possess direct or verified knowledge of jurisdictional facts.[43]

The reasons to include community members in monitoring, evaluation and learning processes in informal jurisdictions include:

- Improved knowledge of problematic behaviours.
- Community ownership of priorities.
- Sense of empowerment in finding a solution and driving change.
- Developing a mechanism to address implementation problems arising from obstacles imposed by community members.
- Participants in the monitoring and problem-solving programme can work with others in the community to remove real and imagined barriers to implementation.
- Addresses motivational problems among local implementing agency personnel.

In contrast, top-down approaches to MEL will be unlikely to benefit from accurate and sufficient local reporting, and can convey the sense that programmes further state and donor interests, rather than addressing the community's priority concerns. Institutionalizing participatory monitoring, evaluation and learning approaches in informal jurisdictions is well suited for overcoming local ideological resistance and engaging the community in actively seeking means to support implementing agency officials in addressing community-based causes of implementation problems.

42 Currently referred to as Monitoring, Evaluation and Learning processes.

43 Monitoring the implementation of policies and laws in informal jurisdictions and zones of impunity poses a challenge for donor agencies, governments and NGOs alike. Stories of inaccurate performance reporting abound: from claims of operational schools (where buildings intended to house classes were immediately converted into guest houses or barns upon the donor's departure) to claims that medical care is offered (where the clinic is only open for 30 minutes a week).

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H Conclusion

Historically, the benefits of citizenship have not been extended to all equally – members of marginalized groups and those living within informal jurisdictions have been left behind. Donor initiatives designed to promote inclusive governance have, in some cases, further concentrated political and economic power in the hands of local power brokers. In many cases, rights realization campaigns have led to increasing societal polarization rather than problem solving and the development and effective implementation of laws, policies and programmes.

This article has attempted to demonstrate that intransitive laws, drafted to require participatory problem-solving processes within communities underserved by existing legal and regulatory approaches, constitute logically suitable means for aligning local values with national objectives, developing situationally suitable programmes for legislative objectives attainment and behavioural change, generating localized demand for programme implementation, and removing community-imposed barriers to programme implementation and rights-realization.

The Institutionalist Legislative Theory and Methodology offers a powerful tool for structuring locally based problem-solving processes in a manner that will improve trust and cooperation between members of historically underserved subnational jurisdictions and will develop situationally customized means for achieving shared objectives.

While the article recognizes the need to apply ILTAM in the originally envisaged manner, it recommends ways to expand the interpretation of the Seidman ROCCIPI agenda to improve its explanatory power within the context of informal jurisdictions, and introduces two new factors to the ROCCIPI agenda (*psychology* and *identity*), which should add significantly to ROCCIPI's explanatory power in a wide range of situations. Lastly, this article recommends expanding the interpretation of ROCCIPI's *communication* factor to more overtly prompt researchers, drafters and policy makers to consider how to communicate about the law in a manner that promotes not only an awareness of the law's existence but also a broad-based desire to contribute to legislative objectives attainment through personal behavioural change and through contributing to ongoing monitoring, evaluation and adaptation processes.