

# Laos legislative drafting programme

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*"Downloaded from OpenBU. Boston University's institutional repository."*

introd parties -  
name, Min

~~Introduction~~ Seminar

January 10-11, 1995

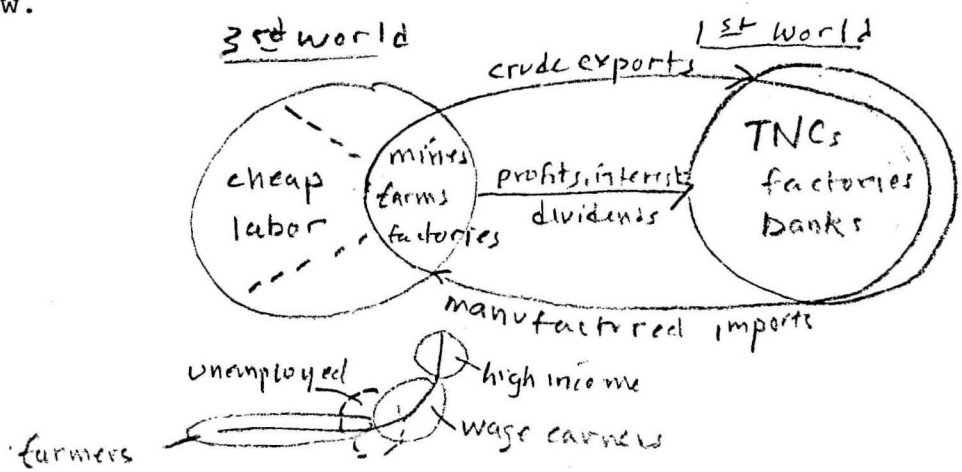
NOT A TREASURE CHEST, A TOOL BOX:

A summary outline of institutionalist legislative theory

-oOo-

Foot  
Ann  
Introduction

I. MODEL II: difficulties third world countries confront, perpetuated by existing institutions; to attain self-reliant development, government must restructure these through use of law.



A. Does model help to describe Lao circumstances?

Bob  
B. To implement the New Economic Mechanism, Lao needs legislation to transform its institutions

Example: Small Lao farmers' failure to produce enough crops for sale in the market reflects need for institutional change

II. An institution consists of interacting repetitive patterns of behaviour of relevant actors.

A. Governments can only change institutions by changing the laws that structure them.

1. A law can only aim to channel repetitive patterns of behaviour in desired ways.

2. The word 'law' here means all state-supported rules of behaviour, including statutes, regulations, decrees, ministerial rules, local ordinances, etc.

B. Lao cannot merely copy the law of some 'developed', market-oriented country:

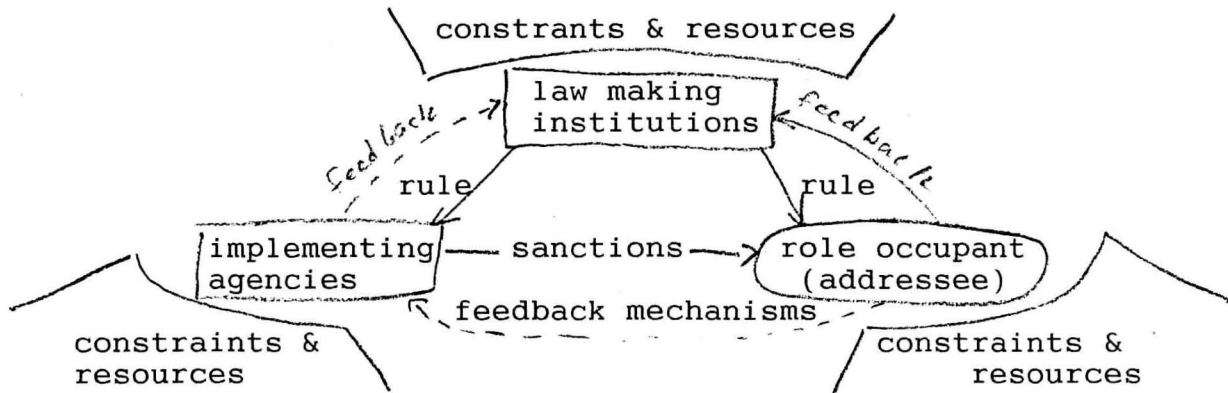
1. As 'role occupants', actors (eg farmers) choose how they will behave in the face of a rule of law within the range of constraints and resources in their

environment (see model II)

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MODEL II: RELATIONSHIP OF LAW TO ITS ADDRESSEES' BEHAVIOR

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2. In no two countries do the same non-legal constraints and resources influence the behaviors of role occupants (including implementing agencies) in the same way; therefore the same rule will inevitably lead to different behaviors in different countries.

*Ann* III. For government to change behaviours and institutions as desired requires a theory of how to use law to change behaviors.

A. Function of legislative theory: to guide research necessary to base a country's law on facts of that country's circumstances: *= basis of Research Report*

1. Tells researchers what is important and what is not important for purposes of drafting laws (eg; facts needed to understand causes of Lao farmers' behaviors).
2. Helps structure the Research Report required to justify a proposed bill.

*Ann* IV. Theory comprises 3 elements: methodology, grand theory (or perspective), and explanatory categories

A. Methodology: Assess 3 kinds available in terms of utility as guides for drafting Research Report as justification for proposed draft law:

1. Ends-means: authorities set ends; researchers gather facts as to means to achieve ends.
2. Incrementalism: cannot know all facts, so should only make incremental changes; too risky to make fundamental transformations

1. Law has a legal syst = insts, but = dysfunctional / slow  
in changing wld - '. need way to restructure  
it Thru trans st. pow  $\rightarrow$  chg. rules (legal  
structure)

Leg.  
2. Theory = guide to this on-going structuring  
process = 3 elem:

① P's in

② Grant Th. = whose prob? ? + leg. expl.

③ Cases (Bob began...)

3. ~~Prob~~ Diff: Whose, what behav.

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B. To generate hypotheses, legislative theory suggests a checklist (a research agenda) of categories of possible explanations for problematic role occupant behaviors.

1. What explanatory categories does Model II, showing how a legal system channels role occupants' behaviour, suggest as to possible causes of role occupants' behaviors?

*Ann*

2. The category 'constraints and resources' is too broad to help in formulating effective new law, so break that category into seven sub-categories = ROCCIPI research agenda

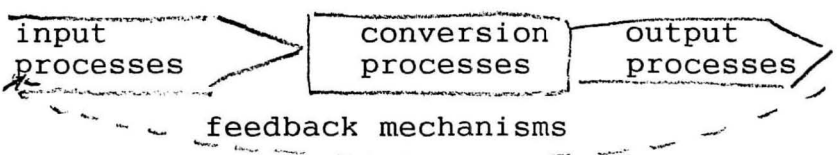
C. ROCCIPI provides checklist of categories of possible factors likely to cause role occupants' behaviors (example: to explain Lao farmers' failure to produce enough crops for the market)

**Explanation.....Solution (law)**

Rule	(existing law?)
Opportunity	(access to resources?)
Capacity	(skills, knowledge, etc?).
Communication	(knowledge of law?)
Interest	(expected benefits?)
Process	(inputs? openness?)
Ideology	(values? attitudes?)

*Bsh*

D. All explanations must consider 'behaviors' of implementing agencies. These comprise complex organizations. Model III suggests the factors likely to influence their decision-making processes:



*Ann*

VII. Solutions: based on detailed explanations, draft measures in the proposed law designed to overcome causes of existing problematic behavior. Reviewing ROCCIPI research agenda and Model III, consider:

- A. Alternative solutions: (foreign law, library sources, own invention);
- B. Solution chosen must address causes;
- C. Implementation issues;
- D. Social cost-benefit assessment of alternative solutions;
- E. Provision of monitoring and feedback mechanism.

3. Problem-solving requires facts at each of four steps

- a. Difficulty: whose (which role occupants) and what behaviour; support by facts.
- b. Explanations of causes of the behaviour; support by facts.
- c. Preferred solution (law) must effectively address causes; facts show its social costs and benefits compared to alternatives.
- d. Implementation of solution and evaluation of its social impact by analysing facts.

B. The methodology you use determines the facts you gather; **only the problem-solving methodology requires research into facts as a sound basis for sound draft bills.**

*Bob* V. In problem-solving research, need some guide in making value choices as to whose and what behaviour to examine? the range of explanations and solutions to consider?

A. Three types of perspectives: (i) 'values' or 'domain assumptions'; (ii) ideal types -- 'visions' of the future. (iii) Grand Theory; that is, large-scale explanations of the world such as given by Adam Smith or Karl Marx.

1. Of these, only Grand Theory rests on facts.

B. Grand Theory consists of large-scale explanations for the world (Marx's Capital sought to explain nineteenth century British capitalism; Adam Smith sought to explain eighteenth century British mercantilism).

1. Note: your Grand Theory helps determine the facts for which you will search.

2. Example: To explain Lao farmer's behavior, compare facts Marxist would likely look at with those considered by a neo-classical economist.

*Bob* VI. To formulate specific measures in a new law to induce role occupants to behave in more desirable ways, must explain in detail the causes of their behaviour, given existing rule of law.

A. Formulate explanatory 'hypotheses' (educated guesses) as to the causes of problematic behaviour; these guide research to facts to test them, to make sure they are consistent with evidence

Implementer

1. The uses + abuses of courts: Making sure compliance can
  2. ~~Bureaucracy~~ <sup>ROCCIP for imp. agency</sup> ~~→~~ Participation
  3. Public copy
  4. Old or new agency
  5. Proactive / reactive
- NO LAW W/O IMPLEMENTATION!

Implementer

1. Implementing agencies part of every explanation & every solution
2. The uses & abuses of courts

~~Agency access~~

2. ~~Must include~~
  - a. Must include bureaucracy, & public copy & even private implementation (eg build a road by a Public Works unit, or by a private contractor)
2. ~~→~~ ROCCIP + Implementer
  - a. No Safe Rational Actor
  - b. Can place implementing agency in position of RO
  - c. Ask ROCCIP questions about implementing agency
  - d. ~~→~~ →

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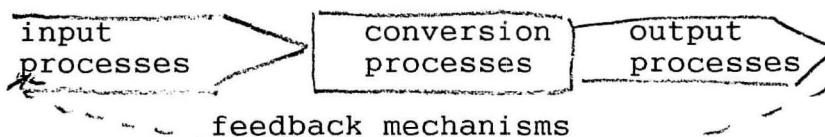
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