

Constructing Commons in the Cultural Environment

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Outline of presentation

Status

Forthcoming in special issue of Cornell Law Review

Lots of planning ahead about how to proceed with project

Motivations

Inadequacies in IP theory

Inadequacies in case study analyses / methods

Demand for research framework and systematic study

Note on Framework – Theory – Model

What are constructed commons? Our framework

Framework – Theory – Model

We offer: A framework for a more systematic approach to studying commons in the cultural environment.

Such a framework can:

1. Support interdisciplinary research
2. Promote collaboration within and across fields
3. Enable learning over time

Framework – meta / general

1. “organizes inquiry by specifying the general sets of variables of interest”
2. “specifies classes of variables and their relationships to each other, providing a kind of intellectual scaffolding that give a coherent structure to inquiry”
3. Helps identify “which theories are relevant to a particular research question”
4. “allows the integration of several theories of action across domains that would otherwise be examined in isolation from each other”

Theory – more specific

1. “causally link observed or modeled phenomena, providing interpretive structure”
2. “describe patterns for interpreting data and understanding their larger significance”
3. “link and explain phenomena in a way that is generalizable beyond a given event”

Model – most specific

1. “With precise assumptions about a limited set of parameters and variables, models have deductive, internal logic suited for testing hypotheses and predicting outcomes”
2. Often tied to specific theories

[Quotes from Tomas M. Koontz, “An Introduction to the Institutional Analysis and Development (IAD) Framework for Forest Management Research” (2003)]

What are commons?

Commons are

1. governance / management regimes for
2. socially constructed institutions that involve
3. sharing resources within defined community and are
4. not limited to the natural environment

Choosing a baseline

#1: “Natural” cultural environment. E.g., the public domain.

#2: IP or other rights systems as *macro-departures* from baseline #1.

Beyond the baseline

Constructed commons as micro-level (nested) institutions that involve:

Institutionalized **sharing of resources**

among members of a **community**

which **vary considerably by context** in terms of organizational and institutional details, and

can be studied as **departures from either baseline.**

Some examples ...

Patent pools. E.g., sewing machines, movie projectors, aircraft parts, radio, video, DVD, biotech, software, research tools.

Copyright pools. E.g., GPL (broadly), GPL in various software contexts (e.g., Linux), open publishing / repositories, Flickr (photo sharing via Creative Commons licenses).

Standard setting organizations (SSOs). E.g., specifications (electric plug specs, computer memory chips – *Rambus*); interoperability (hardware interconnection, game console – apps) ; Internet protocols (e.g., HTML, XML, TCP/IP).

Academia. E.g., workshops, colloquia, conferences, open access archives, various other university contexts.

Peer-production systems . E.g., open source software, Wikipedia, Slashdot.

Soccer // Soccer game // Season(s)/tournaments

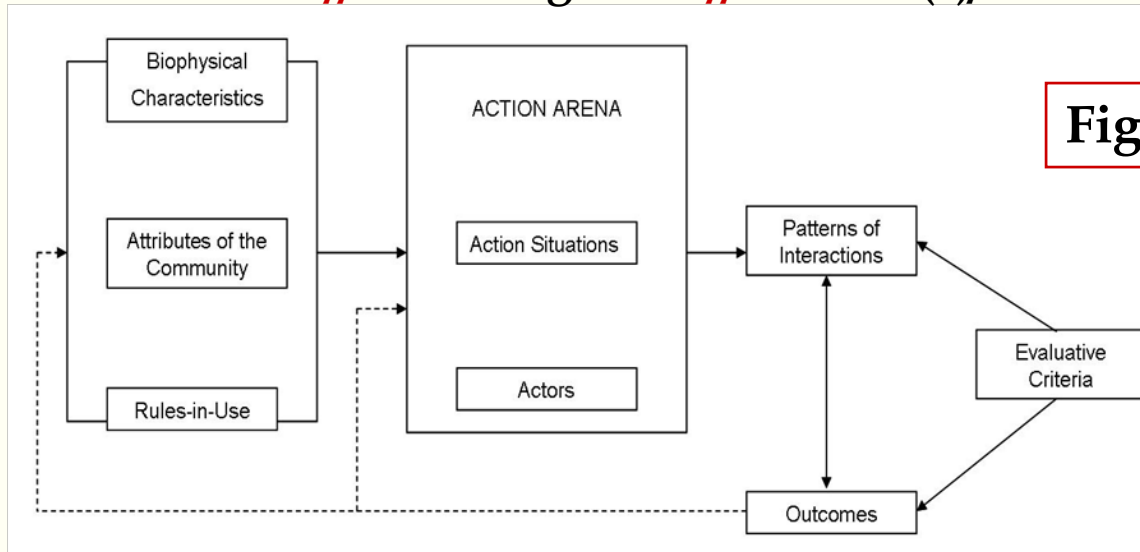


Figure 1 - IAD framework

Academic research // Publication, collection, and distribution // Universities

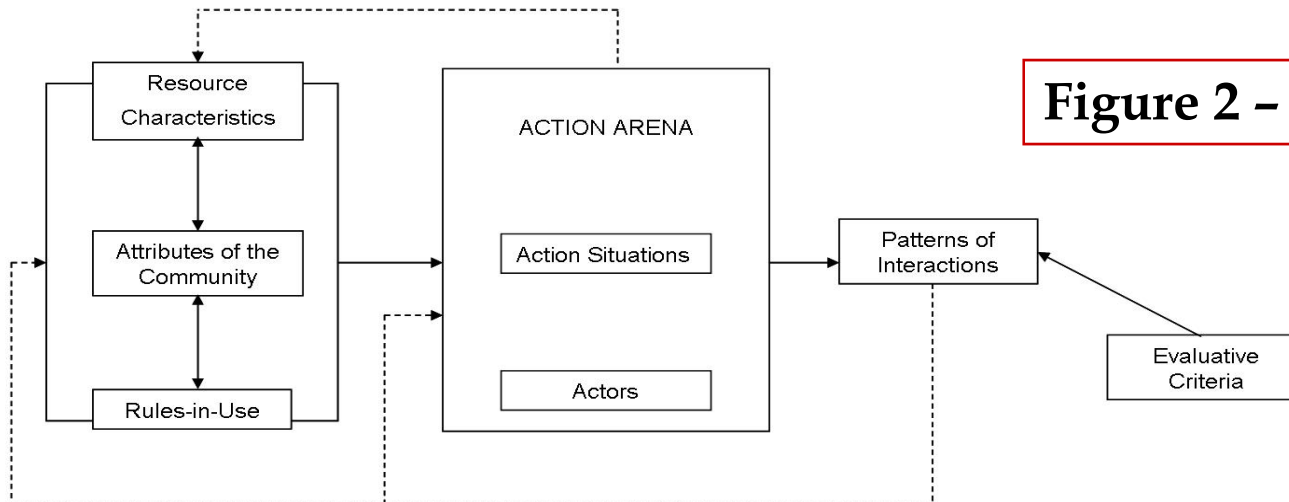


Figure 2 - Our adaptation

Initial framing inquiries

Subject matter; resources pooled

Community of actors; activities undertaken

Goals and objectives

Degree of “openness”

Governance or “Rules in Use”

Governance or “Rules in Use”

History and narrative: Where did the commons come from, and how is it changing over time?

Entitlement structures and resource provisions: What things comprise the commons? How are they constructed?

What is the **institutional setting**, and what kinds of institutional nesting is present?

Are any **legal regimes** addressed to privileging or disciplining the commons (including intellectual property rules, subsidies, contract and licensing law, antitrust)?

What are the **governance mechanisms** of the commons (including membership rules, resource contribution or extraction standards and requirements, conflict resolution mechanisms, sanctions)?

Inquiries aimed at evaluation

Costs and benefits of commons

To participants:

1. Solve collective action problem?
2. Efficiency considerations
3. Equitable sharing of resources, benefits and costs

To society:

1. Competition concerns
2. Information flow outside of commons community
3. Intersection with other concerns or systems

Complicating factors

Nonrivalrousness of information resources.

Constructed character of information resources.

Dynamic, changing and moving nature of cultural resources.

All contribute to difficulties in identifying and managing boundaries, contributions and extractions, and commons members.

Major objections

Ostrom's IAD framework is subject to various criticisms:

1. Institutional rationalism
 - a) Assumptions about individuals (*maybe in the very early work*)
 - b) Assumptions about rational design - minimizes power and politics
 - c) Problem driven; functionalist
 - d) Not normative
2. Small subset of relevant cases
 - a) Just not that important; not worth the effort
 - b) Selection bias?

Constructing Commons and deviating from the IAD framework.

Conclusion

Long term research project:

1. Currently: Getting the project underway and trying to solve our own collective action problem
2. For the future: How to encourage participation, systematic study, descriptive work

The framework itself likely will evolve.