

Formal Institutions and the IAD Framework: Bringing the Law Back In

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Contents

- The IAD Framework & Its Functions
 - The crucial role of rules
 - Insufficient focus on formal law in analyzing rules
- Exploring Relations Between Formal Legal Rules and “Working Rules” (or “Rules-in-Use”)
 - Some legal rules = working rules
 - Some legal rules + publicly known norms = working rules
 - Some legal rules bear little or no relation to working rules



The IAD Framework: “Standard” Version

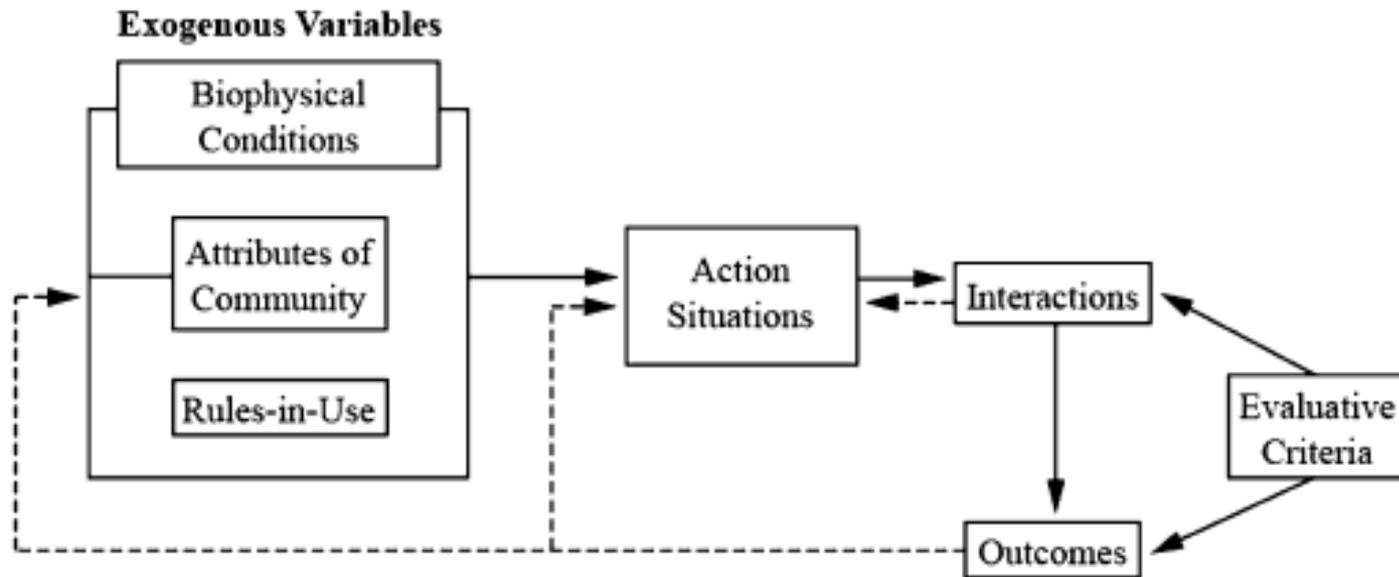
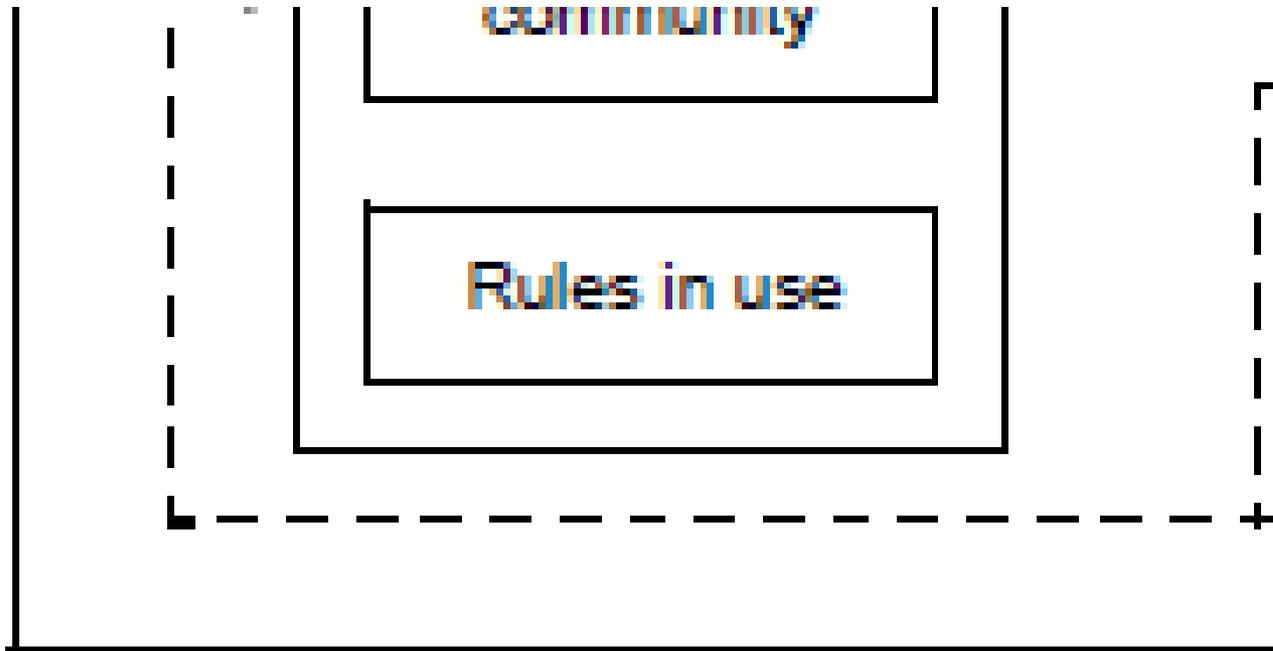


Figure 1. Basic Components of the IAD Framework.
Source: E. Ostrom (2010, p. 646).



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The Focus of This Project



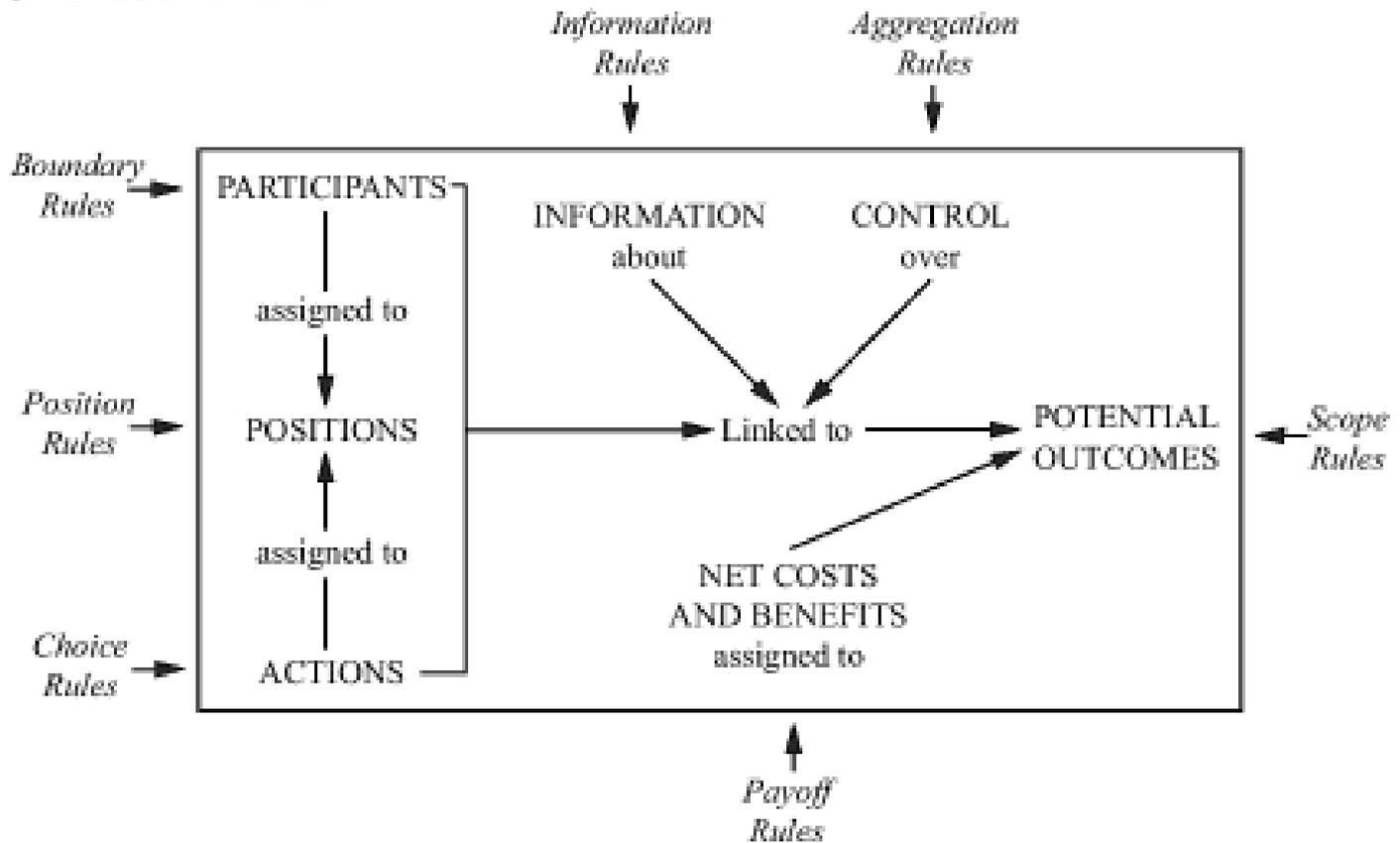


“Rules-in-use” v. “Rules-on-paper”

- Roscoe Pound (1910): Rules-in-form v. Rules-in-action
- Does category of “rules-in-use” imply that formal legal rules are irrelevant or insignificant?
 - Some social scientists consider formal law a “dead letter”
- Lin Ostrom wrote some about the law (not as much as Vincent), but generally not in her IAD applications



Lin Focused on Rule *Types*, Not *Sources*





<i>Type of Rule</i>	<i>Function of Rule</i>
Position rules	Creates positions that actors may hold
Boundary rules	Define (1) who is eligible to hold a certain position, (2) the process by which positions are assigned to actors (including rules of succession), and (3) how positions may be exited.
Choice rules	Prescribe actions actors in positions must, must not, or may take in various circumstances.
Aggregation rules	Determine how many, and which, players must participate in a given collective- or operational-choice decision.
Information rules	Authorize channels of information flows available to participants, including assignation of obligations, permissions, or prohibitions on communication.
Payoff rules	Assign rewards or sanctions to particular actions that have been taken or based on outcomes.
Scope rules	Delimit the range of possible outcomes. In the absence of a scope rule, actors can affect any physically possible outcomes.



Type of Rule	<i>Some of Lin's Formal Legal Examples (from Ostrom 2005)</i>
Position rules	Member of a jury
Boundary rules	Age restrictions for members of US Congress; voter eligibility; selective service ("the draft"); fixed terms of office; user or membership fees
Choice rules	Workers' compensation laws; authorization of food stamps; agenda control rules in legislative bodies (or corporate board meetings)
Aggregation rules	Voting rules; committee approval requirements for legislation
Information rules	Regulatory reporting requirements; judicial rules of evidence; corporate audit rules and procedures; official language requirements
Payoff rules	Corporate performance contracts; hourly wage contracts
Scope rules	Tenure rules; rules governing cable television services; regulatory performance standards v. command-and-control;



From Laws to Working Rules

- Three ways formal laws become “working rules” or “rules-in-use” (there may be others)
 - Laws = working rules
 - Laws + publicly known social norms = working rules
 - Laws \neq working rules



Examples of Laws = Working Rules

- Constitutional age limits for legislators, president, etc.
- Rules about driving on the right/left side of the road
- Standard weights and measures
- Rules of judicial procedure
- Rules of legislative procedure
- Rules against selling retail stores selling alcoholic beverages on Sundays



Examples of Laws + Publicly-known Social Norms = Working Rules

- Speed limits for motor vehicles
 - Enforced limit may be higher or lower than posted limit, depending on conditions
- When cars arrive at a stop sign at the same time, both are legally required to stop completely, but the one on the right proceeds first
- The “Mulligan” among recreational golfers
- Playing the ball out in fußball, when a player on the opposing team is injured, followed by a return of the ball to the team that played it out when play resumes



Some Legal Rules Seem Completely Unrelated to Working Rules

- Ellickson's (1994) cattle ranchers in Shasta County, California
- “Prohibition” in the US
 - After the constitutional amendment failed to change behavior, a new amendment conformed constitutional law to social behavior
- “Jim Crow” in the US
 - Promise of 14th Amendment not fulfilled until 1960s



Which Type of Relation Between Laws and Working Rules Is Most Common?

- Who knows? No one has done the empirical work
 - Laws, social norms, and working rules have been distinguished, but relations between them have been under-explored (to say the least)
- This is a job for legal sociologists (or sociologists of law) and other social scientists



Conclusion

- If all legal rules were of type 3 (bearing little or no relation to working rules), current treatment of rules-in-use under IAD framework would be sensible
- My guess (and it *is* just a guess) is that type 3 legal rules are pretty rare
 - Who's going to prove me wrong (or right)?