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An interdisciplinary model for mapping the normative diffusion of fair and equitable benefit-sharing

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Abstract

Fair and equitable benefit-sharing is emerging in various areas of international environmental law (biodiversity, oceans, climate change, water, food and agriculture), as well as in international processes on human rights and corporate accountability. Benefit-sharing seeks to fairly and equitably allocate economic as well as socio-cultural and environmental advantages arising from the conservation and sustainable use of natural resources, or from their regulation, among different stakeholders. Notwithstanding mounting evidence that benefit-sharing is emerging in different areas of international law, varying understandings of the concept are articulated and no systematic study discusses its evolution and diffusion. This paper proposes norm diffusion as a lens for understanding how fair and equitable benefit-sharing is articulated in different sites, and discusses mechanisms, frames and actors in an interdisciplinary perspective by drawing on literature from sociology, international relations and law. A model for mapping norm diffusion in a dynamic way, considering whether actors, mechanisms and paths are active or passive, formal or informal, top-down, bottom-up or horizontal is proposed. Framing is discussed as crucial to understanding the content and embeddedness of a norm. The article uncovers underlying similarities in work on norm diffusion across the disciplines considered, and reflects on the value of an interdisciplinary approach that encourages legal scholars to consider the implications of power structures in the diffusion of law, while the nuances of legal knowledge may lead other social scientists to revisit accepted findings on norm diffusion. An in-depth understanding of how benefit-sharing is diffusing is argued to be an indispensable step before an informed assessment of its potential to promote the protection and sustainable use of natural resources in a fair and equitable manner in the face of power asymmetries.

Keywords

Norm diffusion, benefit-sharing, equity, inter-disciplinary, international relations, sociology.

An interdisciplinary model for mapping the normative diffusion of fair and equitable benefit-sharing¹

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Introduction

Attention to the idea of fair and equitable benefit-sharing has increased in recent years following its inclusion in various areas of international environmental law (biodiversity, oceans, climate change, water, food and agriculture), as well as in international processes on human rights and corporate accountability. However, no generally accepted definition of fair and equitable benefit-sharing exists, partly due to the fact that no systematic study discusses its evolution and diffusion in different sites of international law, nor its practical implementation in actual cases. Building on a conceptual framework that teases out inter-State, intra-State and transnational dimensions of benefit-sharing and takes international law as its starting point, this contribution proposes an interdisciplinary approach to the study of benefit-sharing in different normative and regulatory sites at different territorial levels by drawing on the literatures on norm diffusion in law, international relations and sociology. In so doing, the paper offers an original insight into the often-ignored points of contact among these disciplinary approaches, as well as arguing that only an interdisciplinary approach can provide a methodological solution to fill these gaps in the literature. We do not pretend to present an exhaustive review of all the literature in these fields, but highlight why the lens of norm diffusion allows a holistic interdisciplinary investigation of the legal norm of benefit-sharing. Nor do we aspire to any normative evaluation of the potential of benefit-sharing in the race to protect natural resources in a fair and equitable manner here. Indeed, we argue that no such evaluation is possible without an investigation mapping the different framings of the concept of benefit-sharing and their political motivations and implications.

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Before discussing norm diffusion in depth, some clarifications on what we understand by norms and the basic tenets of fair and equitable benefit-sharing. Across the social sciences, norms are essentially understood as notions that define appropriate behavior. Providing some guide as to behavior distinguishes a norm from a more general idea. In the disciplines of particular interest here, norms may inform individual or organizational behavior for sociologists and State behavior for scholars of international relations. In law, and particularly in international law, there have been debates as to what constitutes a legal norm, particularly when a norm is non legally binding. Clear-cut distinctions are notoriously difficult to draw as legally binding norms in international environmental law are often not attached to formal sanctions, while soft-law norms may be quite effectively attached to informal monitoring or even sanctioning systems and may evolve into hard norms over time (Shelton 2000). As benefit-sharing is found both in international treaties and increasingly in soft-law instruments, we will rely on Brunnée and Toope's explanation that binding legal norms 'emerge from patterns of expectation developed through coordinated discussions and actions of states in a given issue-areas' in the context of regimes that 'evolve along a continuum from dialogue and sharing of information to more defined frameworks for cooperation to binding norms in a more precisely legal sense (1997, 31). Our purpose is therefore to understand where benefit-sharing currently lies along that continuum in different fora, as a norm that has been argued is emerging as 'an imperative policy choice enforced by international law' (McCool 2012, 4).

Replying to that question implies, first of all, clarifying how fair and equitable benefit-sharing is defined. Though it has been subject to significant normative elaboration in different areas of international law and can in the most general sense be understood as the fair and equitable distribution of benefits arising from the use of natural resources among State and non-State actors, there is no single definition of benefit-sharing. The difficulty lies in identifying the basis on which benefits should be shared as well as differing understandings of what a benefit is and who the beneficiaries should be. Based on empirical studies, Wynberg and Hauck note that the term is may denote 'a new way of approaching natural resource management and spreading the costs and benefits of using and conserving ecosystems and their resources across actors' (2014, 6). Based on a preliminary study of international environmental law, the spirit of benefit-sharing as it appears in its most developed forms, notably in the Convention on Biological Diversity and its Nagoya Protocol on Access and Benefit-Sharing, concerns equity in ensuring environmental sustainability. Fair and equitable benefit-sharing refers not only to the act of

sharing benefits, but also to the processes leading to decisions about how to exploit natural resources and share benefits. Prior informed consent and participatory processes about what benefits should be shared and how are thereby encompassed in this understanding. In addition, we understand benefit-sharing as a norm that emphasizes the allocation of economic, as well as socio-cultural and environmental, *advantages* arising from the conservation and sustainable use of natural resources, or from their regulation, with a view to facilitating cooperation among different stakeholders (Morgera 2014).

The importance of investigating how benefit-sharing is evolving in current practice can thus be ascribed to its *promise*. To paraphrase Laurie, the norm holds the promise of fairness because - though vague in content and timeframe - it raises expectations that perceived injustices related to the use of natural resources can be directly addressed not only as objects of regulation and cooperation, but also as embodiments of community interests and rights, and as such can motivate participation by different stakeholders (2005). Its emphasis on benefits or advantages that derive from environmental protection, management and regulation offer a perspective for the potential reconciliation of competing State and community interests and as an attractive basis for cooperation and partnership. As it emerges in international environmental law, benefit-sharing appears to target beneficiaries that are vulnerable (developing countries, or indigenous peoples and local communities in all countries) and assume that benefits will ultimately impact human wellbeing positively (Morgera 2014). If fairness allows participation by a range of stakeholders, then equity should allow specific benefit-sharing scenarios to reflect 'different understandings of justice' (Simm 2005, 29-30). That said, benefit-sharing can be used as a semantic sticking plaster for harmful practices, as a superficial means to garner social acceptability for certain natural resource developments or regulations, and even to rubber-stamp inequitable and non-participatory outcomes that benefit 'stronger' parties (rich countries, powerful foreign investors) (e.g. Schwartz 2009, 438). An investigation of how benefit-sharing is working in practice, as well as its manifestations in international law, is thus also required in this perspective.

Reflecting on how to investigate conceptualizations of benefit-sharing in practice brings us to a consideration of scope. Though the clearest elaborations of the norm are found in international law, benefit-sharing is embodied and evolves in (for example) national law, private-law contracts, corporate codes of responsible conduct, protocols developed by

indigenous peoples or local communities, eligibility requirements for international funding, and project-specific guidelines. All of these may have and have had influence on the diffusion of benefit-sharing in international law, and some may also be considered forms of "informal" international law-making (Pauwelyn, Wessel, and Wouters, 2012). For this reason, we argue that only a dynamic interdisciplinary study investigating fair and equitable benefit-sharing along different paths ranging from top-down (definitions originating in international law) to bottom-up (definitions originating in, for example, community practices), alongside the varied actors and mechanisms (including the different instruments in which benefit-sharing is embodied and their politics) involved, can provide the comprehensive picture needed for any true evaluation.²

In order to investigate benefit-sharing, we propose an approach based in norm diffusion. The study of norm diffusion grew within the social sciences precisely in order to understand how norms travel across different sites and become embedded in various contexts (or not), as well as how norms are interpreted or framed, and the roles of different actors in both. The rest of the article discusses norm diffusion accordingly: the following section focuses on logics, mechanisms, paths and actors in diffusion, and presents a model allowing specific examples of benefit-sharing in international law to be described according to these. A section discussing the role of framing then reflects on how we may evaluate the embeddedness of norms. Rather than attempting any exhaustive review, we will present concepts and discussions from a range of social scientific disciplines focusing on law, sociology and international relations³ that together may form a coherent whole to guide an investigation of benefit-sharing. We order these reflections by considering benefit-sharing in its inter-State, intra-State and transnational dimensions. We also provide examples of how these discussions can be applied to explain benefit-sharing in different sites. Our conclusions will highlight the insights that can already be brought to bear from sociological and international relations approaches to norm diffusion

² This proposal may also contribute to the methodological elaboration of a global environmental law perspective. Defined by Yang and Percival as ‘the set of legal principles developed by national, international and transnational environmental regulatory systems to protect the environment and manage natural resources’ (2009, 36), global environmental law calls for an analysis that encompasses a range of both State non-State actors. The interdisciplinary approach we adopt, which draws on literature focusing on just such a range of actors and assumes this kind of complexity, also fits this research agenda. See Morgera (2014) for an in-depth discussion of all issues presented briefly in the introduction.

³ While other disciplines (such as anthropology, economics, cultural geography) may also bring useful insights to such an endeavor, we contend that important aspects in the diffusion of benefit-sharing are political (Nelson 2010, Wynberg and Hauck 2014).

on a legal study of benefit-sharing and vice versa, based on the preliminary research we introduce here. We also note an underlying convergence in the central paths in each of the disciplinary literatures discussed – a point that adds to ever more frequent calls for interdisciplinary research on the law.

Logics, Mechanisms, Paths and Actors in the Diffusion of Benefit-Sharing

A clear point of departure for a study of fair and equitable benefit-sharing is to reflect on *how* the norm has come to be taken up in such a variety of different locations – that is on mechanisms of diffusion. The following discussions of norm diffusion (on mechanisms, framing and actors) are shaped by three dimensions: the inter-State (benefit-sharing among States), intra-State (benefit-sharing within States), and transnational. A few words to expand on this are in order. Among States, benefit-sharing can be seen as a tool that contributes to reaching consensus between developed and developing countries by rewarding the latter's efforts in addressing environmental challenges and contributing to global public goods through inter-State exchanges such as payments, information-sharing, financial solidarity, technology transfer and capacity building. Within States, benefit-sharing can be seen as a tool to contribute to the respect by governments and by business operators of the human rights of indigenous peoples and local communities in the conservation, sustainable use and regulation of natural resources, by rewarding communities for their stewardship of their traditional lands and natural resources through payments for ecosystem services, profit-sharing, recognition of traditional tenure and practices, joint ventures and job creation (Morgera 2014). Examples of the transnational dimension of benefit-sharing include inter-State benefit-sharing systems established by international treaties that are operationalized through private-law contractual negotiations; or inter-State benefit-sharing arrangements that ultimately channel benefits directly to indigenous peoples or local communities through an international mechanism (Morgera 2014). Another transnational instance of benefit-sharing is represented by community protocols, which operate through the interaction of international law, national law and the customary law of indigenous peoples and local communities. These are written documents in which indigenous peoples and local communities articulate their values, traditional practices and customary law concerning environmental stewardship, based upon the protection afforded to them by international environmental and human rights law, including on benefit-sharing (Morgera and Tsioumani 2010). We return to reflect on examples of the diffusion of benefit-sharing through some of these practices at the end of this section.

These different dimensions serve to illustrate the range of potential paths along which the norm of benefit-sharing may travel – from the top down, the bottom up or indeed horizontally. The most familiar terrain in law is horizontal and top down scenarios, where the focus is how ‘one legal order influences another in some significant way’ (Twining 2005, 14). Following Twining (ibid), the concept of norm diffusion is considered particularly apt to better understand the relations and mutual interactions between different levels of legal ordering (which are not necessarily static or clearly defined) of human relations at different geographical levels. However, traditionally legal literature has relied on a ‘naïve’ or ‘country and western’ model focusing on the transplantation of law from developed to developing countries (ibid, 203-5). Recent scholarship has moved away from an exclusive focus on national laws towards an understanding of the infinite varieties of the legal expressions of human experience, (e.g. Menski 2006), notably by turning to the wider social sciences in a bid to capture how law is socially and politically rooted (e.g. Reinmann 2012). In other words, attention is turning to bottom up and horizontal paths of diffusion and the logics and mechanisms that underpin them. Where legal scholarship identifies the need to investigate other paths (and mechanisms) of diffusion, the tendency is to borrow concepts from other disciplines. Westbrook (2006), for instance, sketches four scenarios in terms of mechanisms of diffusion: *imperium*, that is authority imposed by a sovereign (reflecting a classic system of sovereign states as understood in realist theories of international relations); *fashion*, which denotes a legal system that changes according to what is perceived to be modern (this emerges as key in both sociological and constructivist international relations, see below): what is perceived as modern is not necessarily the most efficient rule or norm); *system*, where globalization is posited as an entirely new system that is slowly generating and creating a novel body of norms (recalling some core arguments of Hardt and Negri’s *Empire* (2000), as well as cosmopolitan discussions of international relations – the Westphalian State system is replaced in this scenario); and finally *tribe*, where law is deterritorialized and travels with people rather than being attached to any one State or other polity. The latter, as Westbrook observes, recalls literature on democracy as *by the people* (2006), that is emanating from people rather than a State.

It is the *fashion* scenario that comes to fore in discussions of norm diffusion in sociology and international relations. Both, it is interesting to note, have witnessed somewhat similar lines of development, moving away from research explaining diffusion through efficiency and

rationality (akin to the assumptions of superiority Twining (2004) finds implicit in the legal literature on transplantation). In the sociological literature, DiMaggio and Powell's classic work on institutional isomorphism (1983) demonstrates that organizational change is better explained with reference to a 'logic of appropriateness' (normative concerns) rather than a 'logic of consequences' (efficiency concerns). Similarly, in the international relations literature, Checkel (2005) observes that States' strategic calculations, rooted in a logic of consequences may, over time, become internalized, and a norm's reproduction will thus be rooted in a logic of appropriateness. In a second scenario, States or their agents adopt a role *seen* to be appropriate in order to simplify their tasks whether or not any internalization has taken place. Finally, in a scenario of normative suasion, State agents will 'actively and reflectively internalize new understandings of appropriateness' (Checkel 2005, 812). They are, in other words, *convinced* that the new norm is right. There is then some consensus over the logic of norm diffusion, which acknowledges the multiple paths along which norms may diffuse, as opposed to a clear top-down path.

How exactly may norms diffuse along other paths, in the intra-State, inter-State and transnational dimensions of benefit-sharing? Here we begin to overlap with the necessary discussion of *actors*. For the intra-State dimension, sociological literature provides useful discussions on social networks as links between micro and macro levels. Djelic (2004), for example, distinguishes between in-group and bridging networks. The first is dense, closely knit and potentially exclusive, while the second is looser and contains peripheral members from different networks. Peripheral in-group members and members of bridging networks facilitate diffusion, since they involve those with overlapping network memberships. Through these contacts, both communicate norms arising in one group to another: Guiraudon (2000), for example, shows that such processes are at work in the transnational diffusion of norms concerning foreigners' rights. These views help illuminate how norms may be diffused and adopted through overlapping social network memberships.

In his succinct literature overview, Gilardi (2012) notes that interdependence lies at the core of international relations, which focus on interactions between States (and thus is relevant for the inter-State dimension discussed above), making the study of norm diffusion implicit to the field. Explicit analyses, on the other hand, are a more recent development and concentrate on the logics behind mechanisms of diffusion rather than the shape of networks that might allow

diffusion. Some discussions can be identified in the English School's central concept of 'international society', which sees international society as 'a social contract among societies themselves each constituted by their own social contract' though subject to very different constraints and logics (Buzan 2014, 13). Norms are thus constitutive of how this society functions. Work in the English School stops short of discussing norms in a methodological view, however (ibid). Practical discussions of the channels through which diffusion takes place are found in international relations, and echo sociological work, for example in Keck and Sikkink's (1998) work on transnational advocacy networks. At this point in the discussion, we can identify significant points of contact among the selected disciplines: scenarios or logics of norm diffusion in line with Westbrook's imperium, fashion, globalization and tribe – with fashion forming the focus of substantive discussion in sociology and international relations, and thus perhaps a more likely candidate when examining the diffusion of benefit-sharing – while social networks at varying territorial levels form the channels for norm diffusion. It can thus be suggested that sociological literature may usefully inform explanations of diffusion in intra-State benefit-sharing, while international relations (and foreign policy analysis) literature adds to the understandings of inter-State benefit-sharing. Both may inform transnational diffusion.

Across the social scientific literature, the role of both laws and actors are recognized in processes of norm diffusion. In the majority of legal literature, the emphasis is clearly on the former: the law is seen as the agent of norm diffusion. As already mentioned, more recent works in comparative law have also included a reflection on the norm entrepreneurs active in such processes, thereby borrowing from other areas of the social sciences. Sarfaty, for example, offers an anthropological perspective on the study of the interplay between international, national, and local norms. In particular, her ethnographic study of how norms are translated at local level in the Pimicikamak Cree Nation in Canada into newly developed indigenous law serves to develop a model of *legal mediation* where 'a process of negotiation among multiple normative commitments and legal entities' takes place, and 'local actors play an important role in shaping how international norms become internalized within their communities' (2007, 444).

A range of actors are considered in sociological work on norm diffusion. Given that we understand the diffusion and definition of benefit-sharing (discussed below) as an inherently

political process however, the most useful work for our focus here is on political sociology. In this field, scholars refer to collective actors ranging from institutional bodies to NGOs or social movements, and indeed the networks that grow within and between these (Soule 2004), as well as key individuals. Institutional channels in political sociology refer to less formal routes than those considered in international relations, since the discipline focuses on societal power in relation to the State, and includes work on the influence of lobbying (by business and social groups alike) and protest (e.g. Giugni et al 1999), as well as via the media (Snow and Benford 2009), or indeed through theorization, which may drive diffusion by linking disparate actors and providing motivations for adoption (Strang and Meyer 1993). A similar story exists in constructivist international relations accounts, referring to norm entrepreneurs which may be individuals, NGOs, State actors, etc. (e.g. Finnemore and Sikkink 1998, Towns 2012, Zwingel 2012), and indeed in foreign policy analysis work (for example Mingst's linkage actors (e.g. 1995).

In line with this discussion, we consider the actors (NGOs, international organizations, key individuals etc.) and laws relevant to the diffusion of benefit-sharing to exist somewhere on a continuum between formal (either formal law such as an international treaty or a formal actor such as an international organization) and informal (either international soft law or even informal law,⁴ or an informal actor such as an NGO). The nuances brought to bear by legal scholars on the different legal instruments that influence norm diffusion are generally not systematically explored in social sciences and represent one of the reasons for pursuing the proposed interdisciplinary approach. This cross-cutting classification allows us to reflect on the scenarios outlined by Westbrook discussed above and based in different logics. To take an example, the most formal expressions of law, such as a treaty obligation can be placed within the imperium scenario, while more informal law, such as a corporate social responsibility agreement can be read within the fashion scenario).⁵

It is also important to consider that diffusion can occur actively or passively in terms of the efforts of actors or laws involved. Here the political sociology literature on social movements and diffusion is particularly instructive, noting that active diffusion may be sought by actors in

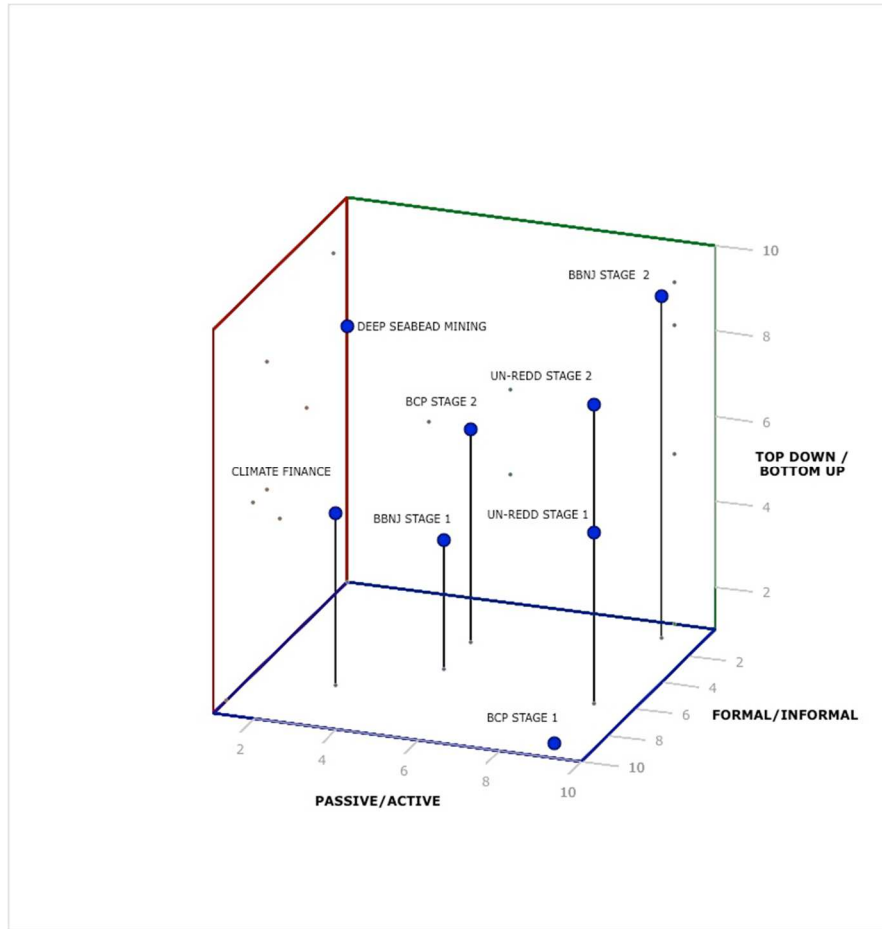
⁴ See discussion in the introduction.

⁵ Formal actors will generally be those with some formal official role – a mandate to negotiate on behalf of a State for example, while informal actors may be NGOs and the like.

movements, or may happen in a more passive – and occasionally undesirable – manner through external channels such as the media (Snow and Benford 2009). Active diffusion is seen to take place when a frame is considered useful to both parties involved, and follows either a hierarchical form (akin to the imperium scenario) or a proximal form (mimicry – akin to the fashion scenario) (Soule 2004). As to how actors proceed in active and passive diffusion, Snow and Benford (2009) propose that *reciprocation* occurs when both the transmitter and the adopter of norms actively take an interest in the process. Where only the adopter takes an active interest, *adaptation* takes place, whilst *accommodation* describes the opposite situation. *Contagion*, finally, describes diffusion between two passive actors. The latter is perhaps more accurately described in what Djelic (2008) labels a modernization approach, where similar norms are adopted as the result of common problems faced by actors in world, rather than as diffusion. Nevertheless, we take account of this possibility in order to avoid assuming that diffusion necessarily applies to any one example investigated in our account of benefit-sharing. Similarly, legal instruments may also work more actively (e.g. setting deadlines, providing funding, outlining sanctions for non-compliance) or passively (e.g. setting out examples of best practice).

To summarize once more before introducing some examples of different scenarios of the diffusion of benefit-sharing, actors and institutional channels ranging from formal to informal effect diffusion in manners that range from active to passive. In different combinations, these may fit with the different scenarios or logics of norm diffusion discussed above. Finally, we have described paths of diffusion as taking place on a continuum from top-down to bottom-up, including a mid-point describing horizontal diffusion (between international organizations, between States, or across different and simultaneous multilateral negotiations, for example). All of these combinations may occur at different times and locations in the story of the diffusion of benefit-sharing. In this vein it is worth noting that most studies of norm diffusion – regardless of discipline – are retrospective. Benefit-sharing, on the contrary, is a norm we see as currently diffusing in environmental law. While the norm is fixed and established in some areas of international law, it is much less so in other areas. A model that allows the consideration of different scenarios of norm diffusion in different instances where the norm is appearing is thus necessary, and is facilitated by classifying examples along the three criteria discussed. These examples can also be considered at different points in time, showing the evolution of diffusion along these different criteria and capturing the dynamic implicit in norm diffusion. Figure 1

shows the potential of this interdisciplinary understanding of diffusion, which integrates the nuances present in law with the political considerations tied to actors.



The cases of diffusion of benefit-sharing shown in figure 1 are assigned scores on each axis on the basis of the in-depth knowledge of each case held by experts, and their relative positions. The aim of the exercise here is to record preliminary impressions of how each example may be described in terms of the criteria outlined rather than to assign measurements intended for use in any formal method of comparison. At this early stage, the exercise nevertheless allows a demonstration of how a map of the diffusion of benefit-sharing could be built up.⁶ Each example is mapped according to the criteria, with three of the examples assigned different points for different stages – thus outlining the dynamic approach to diffusion. For our purposes, we define top down as emanating from the international level, horizontal as diffusion at the same level, and bottom up as emanating from the local level. Formal is characterized as formal law or a formal actor (with well recognized power), while informal is fixed as informal law or

⁶ Our strategy for assigning scores is in line with methods seeking to quantify qualitative material, namely fuzzy-set qualitative comparative analysis (e.g. Schneider and Wagemann 2012). The model built here could thus form the basis of both qualitative reflections and comparisons, or allow for a more formal analysis using the QCA method.

actors (without well recognized power). Active is defined as extensive and visible work to promote benefit-sharing, while passive is exemplified by theorization or take-up via media channels, as discussed above.⁷ While these characterizations are admittedly simplistic, as for instance the discussion of legally binding, soft and informal law is fraught with conceptual and technical difficulties that are not fully captured here, they are proposed as a starting point for a dialogue between lawyers and social scientists that may allow them to reflect more critically on their respective approaches to norm diffusion in the light of points of contact among, and different foci of, their respective disciplines.

The example provided of a case of informal, active and horizontal diffusion, where action has been taken to follow a norm within a logic of appropriateness, and thus the fashion scenario, is represented by the first stage of the UN-REDD Programme (UN-REDD) standards. These standards build on international human rights law, the Convention on Biological Diversity (CBD) and its relevant decisions in relation to environmental and social impact of REDD+ activities, which include references to benefit-sharing. In this first stage, which led to the adoption of the standards, the process was somewhat informal: it was done by an informal law-making body that is not an international organization, but a consortium of different international organizations (though it is more formal than, say, an NGO), the mandate of which provided for a human rights-based approach but did not contain an obligation to refer to the CBD specifically. It was on the active side of the scale since the actor concerned had to pick and choose the standards, and horizontal in that both the CBD (the transmitter) and the UN-REDD programme (the adopter) are international bodies. In its second stage, after the UN-REDD standards were adopted, while levels of activity and formality remain equal, we judge the path of diffusion as moving towards top down, since the new international standards are now affecting understandings and practices of benefit-sharing on the ground.

A case of increasingly formal, active and top-down diffusion, where actors pushed for the inclusion of benefit-sharing in the negotiation of a new agreement despite no legal mandate is that of the efforts by the Group of developing countries (G77) to initiate negotiations for a new implementing agreement under the UN Convention on the Law of the Sea (UNCLOS) to address benefit-sharing from the use of marine genetic resources in areas beyond national

⁷ This strategy is in line with methods seeking to quantify qualitative material along scales, such as fuzzy-set qualitative comparative analysis (e.g. Schneider and Wagemann 2012).

jurisdiction (BBNJ). During stage 1, we deem this case to be mid-way between formal and informal, since developing States acted within an international process of debate, but not of formal negotiations (namely, an "informal working group" under the aegis of the General Assembly that convened over 10 years). They are high on the active scale given their creative efforts to include benefit-sharing on the agenda and develop its content in that context, and horizontal as these States were active across parallel multilateral processes in developing benefit-sharing in relation to the deep seas. At stage 2, with negotiations launched, the score reflects this more formal process, with a higher level of activity as all parties seek to influence the outcome, and the path becoming top down as consensus has been reached on the legally binding nature of the future international instrument to be adopted.

The possibility of independent or entirely 'passive' adoption should not, as discussed, be dismissed out of hand. One instance reflecting more *passive* diffusion (through a formal, top-down process) can be identified in the future international regulations on benefit-sharing from mining in the deep seabed, to be adopted by the International Seabed Authority. No actors need to actively promote the further development of these norms, as this action is specifically mandated in a treaty - UNCLOS. This is an example of the imperium scenario, in a logic of consequences, but cannot be considered entirely passive in a dynamic view – since there was active will behind the original inclusion of such a mandate in the treaty. Another example of passive diffusion, this time informal and horizontal, is the case of the benefit-sharing requirements adopted in the context of international initiatives on climate finance. These requirements were not mandated by any international instrument, but appear instead to have been adopted because of the practices of similar actors.⁸ Some activity is thus present, but not at the levels seen in other examples.

The final example in figure 1 is the case of community biocultural protocols (BCPs, discussed above) as an embodiment of a specific community's views of culturally appropriate benefit-sharing. At the point labeled BCP stage 1, we see presentations on community protocols by grassroots actors on the sidelines of intergovernmental negotiations at the international level, and the work of local-level practitioners who succeeded in convincing regional groups to include them in official negotiating positions (Bavikatte 2014). Thus there is a high score for

⁸ Adaptation Fund Environmental and Social Policy, 2013: see Savaresi (2014).

the informal nature of the process (though NGOs are recognized by the international bodies involved, they are not equal to negotiators), a similarly high score for the active and multi-level nature of the work, and a bottom up path is assigned. At the point labeled BCP stage 2, community protocols were recognized in the text of a new international treaty, the Nagoya Protocol to the CBD. As a result, governments seeking to implement the treaty will likely push for the use of community protocols at local levels via a variety of actors and institutional channels. There is likely to be pressure from above on communities to both codify their understandings of benefit-sharing in community protocols, and to adapt local norms to international standards that may be exogenously interpreted by governments or outsiders (as Sarfaty (2007, 482) cautions). The scores thus move towards the formal end of the scale, with a reduction in the active score and a move towards the top down path. Though this is a speculative case, it is particularly useful as a demonstration of our call for the need to capture the dynamic nature of norm diffusion. No matter how detailed a picture we gain from this exercise, however, it does not inform us about two crucial elements: the content of the norm being diffused (and how similar that content is across cases) and the degree to which a norm is embedded.

The importance of framing in norm diffusion

The legal and (constructivist) international relations literatures have both begun to explore framing and its role in diffusion in recent years. Since the roots of framing may be argued to lie with sociology, we begin the discussion there and focus on political sociological studies of social movements, particularly rich in work on framing and diffusion.

Frames as a concept are often identified with Erving Goffman, and defined as keys used to emphasize certain aspects of situations: a frame or ‘a particular definition *is in charge* of a situation’ (Garnson 1985, 616). Thus, actors (and laws) frame issues in order to attach characteristics and definitions to them. Frames attribute blame, outline alternative paths and means of achieving goals, and thus interpret significance – whether of a person, event, symbol or norm. This is clearly a social constructionist explanation, implying that framing requires meaning work: ‘meanings do not automatically or naturally attach themselves to the objects, events, or experiences we encounter, but often arise, instead, through interactively based interpretive processes’ (Snow 2004, 384). As much is acknowledged in the legal literature dealing with diffusion briefly discussed earlier (Westbrook 2006 and Sarfaty 2007). Benford

and Snow (2000) provide useful categories for research on framing work: *articulation*, that is, ‘the connection and alignment of events and experiences so that they hang together in a relatively unified and compelling fashion’ (623); or *amplification*, stressing the importance of certain issues, events, or beliefs in order to increase salience. *Salience*, or *resonance*, is in turn what causes frames to be taken up by other actors. Frame qualities affecting resonance include frame makers (their credibility), frame receivers (their beliefs and values) and the frame itself (cultural compatibility, consistency and relevance) (Johnston and Noakes 2005, 12-16). Though the terminology varies, essentially similar reflections on framing are found in the other disciplines of interest here.

This meaning work (as scholars of frames term it) thus transfers well to international and transnational scenarios where international norms are negotiated and defined in a concrete local context (which may also be affected by power imbalances and strategic but empty uses of international norms). While frames have ‘distinct normative and regulatory implications’ according to international lawyers, it is fair to note that their role is ‘not always recognized’ (Nollkaemper 2014), underlining the importance of an interdisciplinary approach.

In constructionist international relations, attention to framing has also grown with particular reference to norm diffusion. Work by Towns (2012) focuses on how the framing of norms itself effects diffusion, thus bridging the gap to work on paths. Since norms are inherently constitutive of social hierarchies, States perceived as ‘lower down’ in a perceived hierarchy may introduce new norms in a bid to improve their standing. How a norm is framed is thus relevant to studies that seek to account for paths of diffusion. Also important is Acharya’s work on ‘how ideas spread’ (2004), focusing on how norms become embedded through their renegotiation into locally salient forms, labeled as ‘localization’. This also chimes with Sarfaty’s (2007) work combining legal and anthropological approaches, which emphasizes a similar role for framing:⁹

While advocating for the recognition of their customary practices, [the Pimicikamak Cree Nation] are negotiating the meaning and application of their local laws. As they *frame and re-frame* their claims for national and international audiences, groups find themselves looking within and engaging

⁹ As does Neil Walker’s (2014) work on global law.

in an intra-group dialogue over the meaning of their cultural norms (454, emphasis added.)

Attention to such processes is apt to bring politics and agency squarely into a study of diffusion, dictating an investigation of the choices made over which locally resonant norms a new norm is 'grafted' to. Nevertheless, it should be noted that such incremental change to norms diffusing is not a guaranteed scenario. Efforts to localize norms may fail, or an existing norm may become re-labelled with the same name leading to great diversity in understandings of a norm in different settings. Temporary as such situations may be, in a dynamic study of a norm as it diffuses such situations must be accounted for (in the same spirit within which we argued for the inclusion of possible 'passive' diffusion earlier). Including these possibilities also opens the study up to contentious framings, for example if the term benefit-sharing were applied to a locally relevant definition that clashed with understandings codified at the international level. In this vein, Krook and True (2012) highlight the tension between 'a relatively static depiction of norm content, juxtaposed against a comparatively dynamic account of norm creation' (104). A discursive approach, they argue, makes up for this methodological failure to study norms as constantly evolving instead of static 'things'. Again, this is in line with framing methodologies in political sociology (e.g. Parks 2015) and indeed with our model. Rather than weaken the study of norms, Krook and True (2012) argue that attention to this dynamism provides an explanation for the fact that the most easily adapted norms, quick to diffuse, are inefficient. Ease of diffusion is thus correlated with the vagueness of a norm. This observation sits well within Finnemore and Sikkink's (1998) work approaching embeddedness or the stages of diffusion, which also serves to show how our considerations of framing work link first and foremost with our understandings of active or passive diffusion and second with our dynamic mapping of diffusion through the latter as well as different paths and actors. In an initial stage of 'norm emergence,' norm entrepreneurs (which may be individuals, NGOs, State actors, etc.) propose a new norm. Given the novelty and thus the challenging nature of the new norm, unconventional methods of promotion or challenge (contentious framing work) such as protest are more likely at this stage, clearly linking framing with understandings of norm diffusion as active (to passive). Protesters (or other actors engaged in meaning work) may appeal to international norm framings, to local framings, or to national framings - thus linking with the comments on paths of diffusion. If and when a new norm is taken up by enough actors, a *tipping point* is reached and the *norm cascade* stage begins. At this point conforming to the new norm is rewarded and non-compliance punished – in line with a logic of appropriateness or the

fashion scenario. Finally, the *internalization* stage is reached when a norm is no longer questioned. This is not necessarily the destiny of all norms, however – norm diffusion is not inevitable and may well be a lengthy process (ibid, 887). Ultimately, a mapping of the diffusion of the norm of benefit-sharing as described with the examples included in figure 1, coupled with necessary attention to framing and thus embeddedness, should allow us to reflect on the stage at which benefit-sharing finds itself. Already, the complexity shown by combining sociological analysis with the in-depth knowledge of legal scholars as to the nuances of the content, legal weight and evolution of international law in the few examples presented here challenges such a sequential view of diffusion however. As already observed, benefit-sharing is well established in some areas (biodiversity) and could be considered at tipping point. Yet whether it is cascading into other areas effectively and in the same guise (such as climate change and water) remains to be seen. Perhaps different stages applied across the board mean we miss important detail in a contemporary account of norm diffusion that takes into account multiple processes that diffuse benefit-sharing at multiple scales.

Other reflections on the overall framing and stage of diffusion of benefit-sharing can also be made at this point. Benefit-sharing appears in effect both ‘framed’ in different ways in different law-making contexts, and as a way of ‘framing’ the search for equitable responses to environmental challenges, namely by emphasizing the need to focus on benefits as opposed to burdens (Morgera 2014). It has been noted that benefit-sharing provides a ‘social justice frame’ to address questions of environmental management (McCool 2012), seeking to reconcile competing State and community interests by focusing attention on the *advantages* that derive from environmental protection and regulation, thereby facilitating shared understandings of benefits and allowing cooperation (Sadoff and Grey 2005). In line with the above discussion, benefit-sharing can be seen as a frame for *articulation*, in that it connects ideas of equity and fairness in an arguably ‘unified and compelling fashion’ (Benford and Snow 2000, 623); but also for *amplification*, as it stresses the positive implications (rather than burdens and costs) of environmental cooperation in order to make them more salient. Interestingly, the literature on benefit-sharing already makes explicit reference to framing, but also points to a degree of confusion in the plethora of frames surrounding benefit-sharing and insufficient rigor in linking these frames to different notions of justice (McCool 2012).

Conclusions – The Value Added of an Interdisciplinary Approach

As Twining (2004) anticipates, in line with others who call for interdisciplinarity in law (e.g. Vick 2004, Bodansky 2015), the sociological and international relations literature on norm diffusion brings many advantages to legal research: it can help understand the role of the behavior, perceptions and interactions of different actors in particular contexts, as well as the paths through which a legal concept and legal practices may spread outside of the law. In that connection, Engelkamp et al (2014) point out the need to acknowledge the inherently political nature of studying norms as discourses (since discourses are necessarily displaced in these processes). The attention to actors implicit in an acknowledgement of politics may be particularly useful to avoid neglecting bottom-up perspectives in legal research. It may also foster awareness of bias, such as the assumption that all objects of diffusion are desirable, progressive or innovative, or the assumption that all examples of diffusion of law fit neatly into a means-end, problem-solving framework (Twining 2004).

The value of an interdisciplinary approach therefore lies in attention to both politics and law, with the former broadly (though not exclusively) attached to actors and the latter to legal instruments. Both may be inferred to play a crucial role in framing. Actors follow certain logics and choose paths (the direction of diffusion) and frames for norm diffusion (how a norm is or is not embedded in a context). The law, however, can act in a similar way. Though the negotiations of law is often considered in the sociological and international relations literature we discuss, once in place its nuances and interpretations tend to drop out of the account.¹⁰ This is where the explicit value of interdisciplinary research comes in – the knowledge of legal scholars brings an account of how the law actually works into accounts of diffusion that otherwise halt at the point of adoption and look to the next site to which a norm will diffuse. Instead, and as our figure demonstrates, diffusion takes on different shapes and continues to develop in different ways over time, also as a consequence of the adoption of legal instruments and their influence on other law-making processes at different levels or in different contexts. To recap on our proposed model for mapping norm diffusion, how different actors and institutional channels perform norm diffusion may fall at different points between continuums flowing from formal to informal mechanisms, active to passive legal instruments and actors, and paths of diffusion between either top-down and bottom-up (or indeed horizontal). We then

¹⁰ Thus, although we share with Wiener (2009) the position that individuals imbue norms with meaning through their expression, we also understand the law, including written expressions of understandings (such as bio-cultural community protocols), to have their own specific meanings that affect norm diffusion and may actually interact with actors in that respect.

argued that both actors and the law may *frame* benefit-sharing in seeking diffusion. Amplification is where actors or legal instruments (actively-passively, formally-informally) amplify certain aspects of a norm that fit with other norms or ideas already well embedded in a context (which could be anything from a village to an international organization) in order to secure the meaningfulness of the new norm. These efforts may fail, leaving room for the re-labelling of an existing local norm (and thus the diversification of meaning attached to the norm) or indeed diffusion in a different direction, for example from the local to the international level. The examples we have briefly presented here tend to reflect fair and equitable benefit-sharing as it is understood in international law, with bio-cultural community protocols offering a glimpse of how international law can be influenced from the bottom up. For this reason, our investigation will also include local-level case studies, providing examples of how benefit-sharing is framed on the ground.

The value added of the proposed interdisciplinary approach is, finally, demonstrated by the areas of convergence uncovered among the three literatures discussed. This is observed in a shared (though not contemporary) move away from assumptions of the superiority or efficiency of norms that diffuse towards a logic where norms spread because they are seen to be appropriate. This is an important consideration given how much is unknown about benefit-sharing - that is, the lack of understanding of the full range of its promises and pitfalls due to limited conceptualization and implementation. Empirical research, in effect, has revealed that benefit-sharing may in practice be a 'disingenuous win-win rhetoric' that may help avoid 'more fundamental negotiations over access which is the real justice requirement' (see Martin et al 2014, 84). Without more fully understanding the interaction between law and power in the diffusion of benefit-sharing, which appears to necessitate an integration of legal, sociological and international relations scholarship, an assessment of the full range of its potential and pitfalls to promote environmental sustainability in a fair and equitable manner can only be partial.

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