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Coping with illegal fishing: An institutional account of success and failure in Namibia and South Africa

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ABSTRACT

Although previously sharing many ecological and institutional conditions, the fisheries reform processes undertaken in South Africa and Namibia in the early 1990s have produced highly different institutional trajectories. In Namibia, the institutional arrangements governing fisheries management have turned Namibia into a regional success case with relatively low degrees of illegal fishing and poaching, but in South Africa, the institutional arrangements are generally considered to be weak and characterized by noncompliance – and poaching is widespread. The overall objective of this article is to provide an institutional perspective on how to understand the dynamics of these different trajectories. In particular, the article concludes that the notion of path dependence, historical legacies, and distributional struggles provide important insights to the observed developments.

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1. Introduction

A growing consensus in the literature on natural resource management holds that noncompliance to regulations constitutes a severe obstacle for efficient conservation (Dietz et al., 2003; Gore, 2011; Kahler et al., 2013; Keane et al., 2008). Thus, effective enforcement of regulatory compliance is one of the necessary conditions to reach desired conservation, ecological, and socioeconomic outcomes. Noncompliance with formal regulations in the marine sector – or “blue water crime” (Kuperan and Sutinen, 1998) – for example, plays a crucial part in the growing attention given to illegal, unreported and unregulated (IUU) fishing.¹ Although the extent of illegal fishing is difficult to estimate, its consequences on the health of global fisheries – and on the livelihoods of poor people – are widely discussed in the scientific community (e.g. Agnew et al., 2009; Sumaila et al., 2006) and among international agencies (e.g. FAO, 2002; World Bank, 2008).

A range of studies have pinpointed that governments often fail in their “credible commitment to punish poaching” (Bulte et al., 2003: 1437) as well as in their efforts to induce compliance to natural resource regulations (Eliason, 2003; Gibson, 1999; Kremer and Morcom, 2000). In order to reduce such rule violations, research and policy have in recent decades converged around the importance of institutions. However, there is far less consensus on how to understand the manifested, contrasting institutional developments across countries in the last decades. Although standard economic theory would suggest institutional convergence across time and space – that is, less successful countries replicating the arrangements of more successful ones – we have in fact witnessed increased institutional divergence across countries and politics (North, 1990).

This article addresses such divergence by conducting a theoretically informed analysis of fisheries management in South Africa and Namibia. Although sharing several geographical, ecological, and institutional characteristics, the reform processes undertaken in each country since independence in the early 1990s have produced different trajectories. In Namibia, the institutional arrangements governing fisheries management have turned the country into a regional success case with relatively low degrees of illegal fishing, but in South Africa, the institutional arrangements are generally considered to be weak and characterized by noncompliance in fisheries, and poaching is widespread. The overall objective of this article is to provide an institutional perspective on how to understand these differences.

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¹ The designation of certain actions as “illegal” has value-laden implications. Within the concept of IUU fishing falls, for instance, unreported subsistence fishing – a practice that, from a normative standpoint, may be much less problematic than illegal operations of industrial vessels. Yet, we still find terms such as “poaching” and “illegal” fishing useful. They are widely used in the literature and denote behavior that – in the aggregate – often have severe ecological consequences.

2. Theoretical framework: institutions and institutional change

Following the institutional turn in political science, economics, and environmental science, there is now a general consensus holding that institutions are at the core of natural resource management (Ostrom, 1990; Agrawal and Gibson, 2001; Bardhan, 2005). Institutions are generally considered to lower levels of uncertainty in human exchange and to stabilize expectations of the behavior of other resource users. As such, institutions can facilitate successful collective action and hence help resource users avoid situations such as the “tragedy of the commons”, where the expectations on other resource appropriators make every individual overuse the resources (Hardin, 1968). Regarding noncompliance to regulations, strong institutions thus manage to curb poaching and instead provide an incentive structure where long-term interests trump the short-term rationality of each resource user. Yet, although institutions have become somewhat of a buzzword in natural resource management over the last decades, the academic literature has only more recently acknowledged institutional diversity, institutional change, and the general dynamics of institutional development (Ostrom, 2005; Greif and Laitin, 2004).

Although there are a number of different institutional perspectives, with contrasting assumptions regarding rationality and preference formation (see Hall and Taylor, 1996), they generally share an understanding of institutions as rules of the game that produce behavioral regularities (North, 1990; Hodgson, 2006). In addition, according to Ostrom (2005), these different perspectives on institutions also share a failure to systematically account for institutional diversity and the dynamics of institutional change. That is, until recently, each institutional school of thought has been preoccupied with explaining the behavioral regularities produced by institutions rather than exploring how and why institutions differ – and continue to incrementally diverge – across seemingly similar polities or communities. Yet, given the fact that highly divergent paths of institutional developments can be observed, the issue of institutional change has more recently moved to the forefront of the institutional research agenda (Kingston and Caballero, 2009; Mahoney and Thelen, 2010).

However, the literature is still ambiguous when it comes to conceptualizing institutional change. Many authors treat institutional change as a process in which purposefully designed institutions are subject to a collective choice process where actors bargain or compete to try to implement institutional changes beneficial to their immediate interests (Mahoney and Thelen, 2010; Ostrom, 2005). Others, however, conceptualize institutional change as an evolutionary process occurring spontaneously through an uncoordinated selection process involving many different agents (Williamson, 2000). Finally, some theories try to combine these two approaches in what can be labeled an ‘equilibrium view’ of institutions (Greif, 2006; Kingston and Caballero, 2009). The purpose of reviewing these existing theories of institutional change is not necessarily to decide which one that best can explain differences in development trajectories, but rather to show that the different perspectives combined can provide important insights that go beyond the understanding generated from focusing only on institutional design and diversity.

To start with, the first approach hence view institutions as the outcome of a centralized collective-choice process where actors lobby, bargain, vote, or compete in order to implement the changes most beneficial to themselves. Ostrom’s logic of institutional change, for example, emphasizes the process in which each actor weighs the expected costs of an institutional change against the benefits. If a minimum coalition necessary to effect change agrees to it, then institutional change can occur (Ostrom, 2005). Similarly,

Mahoney and Thelen (2010) see institutional change patterns as being determined by distributional struggles occurring when problems of rule interpretation and enforcement open up space for actors to implement existing rules in new ways. Institutions, in this account, are conceptualized as being fraught with tensions. Since any given institution has implications for resource allocation – some are even designed with the purpose of distributing resources to particular groups of resource users – institutions can thus be described as “distributional instruments laden with power implications” (Mahoney and Thelen, 2010: 8). Accordingly, institutions are not changed only in response to exogenous shocks but rather through ongoing struggles of meaning, application, and enforcement of institutionalized rules. These struggles in turn imply that “where we expect change to emerge is precisely in the ‘gaps’ or ‘soft spots’ between the rule and its interpretation or the rule and its enforcement” (p. 14). As such, this conceptualization “emphasizes the interaction between features of the political context and properties of the institutions themselves as crucially important for explaining institutional change” (p. 31). More specifically, Mahoney and Thelen discuss the concepts of *displacement* and *layering*. While displacement is defined as the removal of existing rules and the introduction of new ones, layering is a process characterized by the introduction of new rules on top or alongside existing ones.

The collective-choice approach can hence help us understand why apparently similar transactions are governed by very different institutional arrangements. The evolutionary perspective, however, relies on the notion that institutions undergo a decentralized selection process in which some successful institutions spread, while others die out. Yet, empirical realities – such as the differing trajectories under consideration in this article – seem to fly in the face of such theoretical predictions (Kingston and Caballero, 2009). The equilibrium view of institutions in turn argues that institutions are to be understood as equilibrium patterns of behavior rather than as rules. Calvert (1995: 22–23) argues: “There is strictly speaking no separate animal that we can identify as an institution. There is only rational behavior conditioned on expectations about the behavior and reactions of others.” In this account, institutional change is hence not about changing rules, but about changing expectations (see Greif, 2006; Greif and Laitin, 2004).

Although substantial differences exist in how to conceptualize institutional change, all perspectives accounted for here share an emphasis on the importance of path dependence. In a nutshell, path dependence emphasizes that choices made during so-called critical junctures or formative moments determine much of the future development trajectories. Such junctures are often associated with historical change points such as political independence or political revolutions. Under these circumstances “new conditions disrupt or overwhelm the specific mechanisms that previously reproduced the existing behavior” (Hall and Taylor, 1998: 266). According to this logic, particular paths embarked upon during such times can be extraordinarily difficult to reverse. Although starting from similar conditions, a range of outcomes is often possible and large consequences can result from small or contingent events (Pierson, 2004: 18). Consequently, as argued by Levi (1997: 28): “once a country or region has started down a track, the costs of reversal are very high. There will be other choice points, but the entrenchments of certain institutional arrangements obstruct an easy reversal of the initial choice.”

Path dependence thus describes a process where feedback makes every step taken in a particular direction increase the cost of reversal. The relative benefits of the chosen development path hence increase over time compared with once-possible options (Mahoney, 2000). As argued in the seminal work of Pierson, this can be understood in terms of the idea that “new institutions

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