



Covenants with broken swords: Corruption and law enforcement in governance of the commons



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ABSTRACT

Insights into how corruption hampers law enforcement in the governance of common-pool resources are currently limited. This article develops our understanding of this process through confidential interviews with enforcement officials in South African fisheries. First, it outlines how inspectors become “blind and corrupt”: They receive bribes from fishermen in the form of finance, food, or friendship, which they pay back through inadequate enforcement, information sharing, or involvement. Second, it shows that widespread bribery increases the costs of remaining honest: Inspectors face corruption in the judiciary, which makes the writing of fines useless because these disappear from bribery among clerks and judges in the enforcement chain. Moreover, they face corruption in their organization, where substation managers and actors in top management are engaged in bribery, sending signals that corruption has small consequences. The article concludes by discussing how corruption distorts regulations and the implications for governing the commons.

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1. Introduction

How to achieve cooperation that entails welfare for the collective, yet requires restrictions on the behavior of individuals, is a puzzle that continues to engage political theorists. Hobbes posited that covenants – promises to follow agreements of engaging in certain behavior – require an external agent to enforce such pledges with the threat of force ([1651]). Yet, research on governance of the commons has found numerous examples of when individuals manage to limit their use of resources without relying on enforcement by an outside agent (e.g. Ostrom, 1990). An illustration of self-organized institutions enforcing rules on common-pool resources (CPRs) – resources that are under rivalry and where exclusion is difficult, such as irrigation schemes or fisheries – are for instance herders on pasture lands who monitor each other’s behavior and successfully impose sanctions on those who break their pledges. The literature has therefore described the two situations of externally governed or self-governed enforcement of commitments as “covenants with or without swords” (Ostrom et al., 1992). Recently, however, political theorists have urged scholars to remember the often-important role of the state in the governance of CPRs (Mansbridge, 2014). There are numerous

instances where government authorities function as enforcers “with swords” to coordinate group efforts in CPRs. The public park guards employed to protect wildlife from illegal hunting on a savannah is one such example. Nevertheless, in a majority of the world’s countries today, government authorities face the problem of bureaucracy infested with corruption. This article argues that when state agents enforce regulations in a corrupt context, a situation of “covenants with broken swords” could arise. In this condition widespread bribery distorts law enforcement and few sanctions are imposed on CPR users’ noncompliance to regulations. So far, scholars studying governance of the commons have not addressed the implications of this reality in detail.

The question of who guards the guards is a pertinent issue in political thought and refers to corruption risks in enforcement authorities, a problem discussed in Plato’s *The Republic*. The literature provides anecdotal evidence as well as formal models for why corruption tends to bring suboptimal law enforcement (Becker and Stigler, 1974; Polinsky and Shavell, 2000). Yet, the precise way corruption risks hampering the effectiveness of regulations have not been thoroughly explored. While some studies have focused on how corruption affects citizens’ compliance to regulations (e.g. Levi et al., 2009), few studies have analyzed how the choice of government agents to enforce regulations, or not, is affected by corruption. In fact, while corrupt officers are anecdotally mentioned as the cause for implementation failures – be it rangers responsible for rhino

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protection or traffic officers in urban areas – these “sleeping policemen” (Keane et al., 2008) have seldom been at the center of analysis. Previous research shows that enforcement agents active in a local community meet social disapproval when ensuring that appropriators comply with state regulations (Akpalu et al., 2009). Zealous enforcement could mean that they limit the income of their neighbors who, for instance, may gain their livelihood from the CPR regime in question. de la Torre-Castro (2006) has called this the “loyalty dilemma,” where such agents find it difficult to enforce regulations in the community in which they live. However, it is unclear how the presence of widespread bribery affects the already difficult choice to enforce regulations in local communities and in what way corruption may be a further “enforcement dilemma”—that is, an obstacle for public officers to enforce the law.

When corruption is present in CPR regimes with government-imposed regulations, bribery may distort management. However, current literature lacks knowledge on how the presence of corruption affects public officials' choice to enforce or not enforce regulations. The aim here is to contribute theoretically and empirically by exploring the mechanisms in which this process takes place. In order to do so, the article poses two questions for research: First, *in what way does corruption corrode enforcement of state-imposed CPR regulations?* Second, *in what way does corruption pose a further enforcement dilemma for inspectors in government authorities responsible for imposing CPR regulations?* Guided by these questions this study reports a qualitative exploration of these enforcement agents' perceptions. The focus is on the enforcement of CPR regulations in a corrupt context, the fisheries law enforcement in South Africa. Confidential interviews were performed with public inspectors at the Compliance Directorate, of the Department of Agriculture, Forestry and Fisheries (DAFF). Also former inspectors – no longer facing risks for speaking openly – are interviewed, as well as former senior managers of this directorate and key stakeholders.

The study offers a contrasting perspective to the literature on corruption and environmental outcomes where most studies use countries as the unit of analysis (for an overview, see Halkos et al., 2013). Such a focus risks simplifying this relationship since single indicators hardly capture variation in levels of corruption and environmental health within countries and across sectors (Barrett et al., 2006). This study follows the research vein of existing but scarce interest on the role of bribery in the governance of natural resources on the local level (Wade, 1982; Robbins, 2000; Pellegrini, 2011; Gore et al., 2013; Sundström, 2013).

2. Theory

Effective governance of CPRs is dependent on appropriators making commitments regarding resource usage and adhering to these limitations. As Ostrom et al. (1999) have stated, “participants or external authorities must deliberately devise (and then monitor and enforce) rules that limit who can use a CPR, specify how much and when that use will be allowed, create and finance formal monitoring arrangements, and establish sanctions for nonconformance” (p. 279). In line with this conviction, it has been stated that “effective governance requires that the rules of resource use are generally followed” (Dietz et al., 2003, p. 1909). It has also been said that the design of such regulations “must include efficient enforcement strategies to counteract harvesters' incentives to violate a regulation” (Velez et al., 2012, p. 185). This implies that effective enforcement of regulations is a necessary condition – although perhaps not a sufficient one – for the sustainable governance of CPRs.

Mansbridge (2014) discusses how the commons literature to some extent forgotten the often-important role of the state in managing the commons. The most important role of the state, she

writes, is “to help in the necessary activities of monitoring compliance and sanctioning defection from compliance in the implementing phase” (p. 9). As such, the state is often present in CPR governance as an external authority to enforce regulations as to coordinate group efforts (Mansbridge, 2010). When government personnel make up these authorities, its agents are responsible for enforcing existing regulations and ensuring that subjects abide by these laws. In a CPRs context, noncompliance is when appropriators – for example, hunters or fishermen – exceed harvesting limits, harvest with prohibited means, or with no entitled right at all. Much of this behavior is understandable. For instance, fishing in an overexploited fishery could mean that a family gets food on the table. However, the assumption is that compliance is a relevant concept in understanding success in managing commons.

The relationship between appropriators of CPRs affected by formal regulations and government officers responsible for enforcing these rules have been described as an idealized two-agent game. Gibson (1999) models the relationship between poachers and government inspectors. In this game the government inspector faces two choices: to enforce or not enforce wildlife regulations. Depending on the choice of the poacher – and the resulting outcome of the game – this renders different payoffs to the inspector. Sjöstedt (2014) develops this reasoning and models a relationship between two agents: the government and the resource users. Accordingly, both actors would benefit the most from an enforce-comply situation: “[The resource users would] benefit from the fact that the government makes sure that other fishermen follow the fishery regulation, and the common pool resources would be sustainably managed for everyone's long-term benefit. The government would in turn benefit from citizens' compliance by not being forced to employ too much resources into chasing non-compliers” (p. 11). A suboptimal equilibrium of this game, “where the government does not enforce institutional arrangements and where resource users do not comply” (p. 13), will increase the likelihood of overharvesting CPRs.

In this paper I use a similar model to illustrate the focus of this study. In the model visualized below (Fig. 1) the state actor is the individual inspector (c.f. Gibson, 1999). The two important points of departure are that I focus on the role of the government inspectors in this stylized model and their choice has been described as one between “enforce” or “not enforce” when interacting with resource appropriators. Moreover, as the next section will highlight, an important aspect is that the literature has not theorized sufficiently on how this choice is affected by the presence of corruption.

2.1. Corruption in governing the commons

As Mansbridge (2010, 2014) has argued, the commons literature, in its focus on examples of successful self-governance, has neglected the often-important role of the state as the enforcer

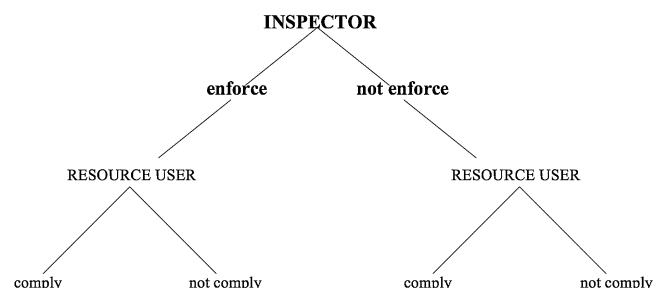


Fig. 1. The inspector's choice to enforce formal regulations.

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