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COVENANTS WITH BROKEN SWORDS:

Corruption and law enforcement in governance of the commons

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ABSTRACT

Insights of how corruption hampers law enforcement in governance of common-pool resources are currently limited. This article develops our understanding of this process through 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 corruption increases the costs of remaining honest: Inspectors face a dilemma related to corruption in the judiciary, making the writing of fines useless because these disappear from bribery among clerks and judges in the enforcement chain. Moreover, they face a dilemma of 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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Introduction

How to achieve cooperation that entails welfare for the collective yet require 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 – required an external agent to enforce such pledges with the threat of force (Hobbes 1960 [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 for rule enforcement in 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 others' 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).¹ Recently however, political theorists have urged scholars to remember the often-important role of the state in governance of CPRs (Mansbridge 2014). There are numerous instances where government authorities function as enforcers “with swords” as 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 risks of corruption in enforcement authorities, a problem discussed in Plato’s *The Republic* (Besley & Robinson 2010). The literature provides anecdotal evidence as well as formal models for why corruption tends to bring suboptimal law enforcement (Becker &

¹ Referring to that “covenants, without the sword, are but words and of no strength” (Hobbes 1960 [1651]).

Stigler 1974; Polinsky & Shavell 2000). Yet, the precise way that corruption risks hampering the effectiveness of regulations has 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 protection or traffic officers in urban areas – these “sleeping policemen” (Keane et al. 2008) has 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 is here 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 the insights gained from a qualitative exploration of perceptions of such enforcement agents. The focus is on the enforcement of regulations in a CPR 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 for Agriculture, Forestry and Fisheries (DAFF). Also former inspectors – no longer facing risks for speak-

ing 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 (e.g. Lopez and Mitra 2000; Damania et al. 2004 (for an overview of such studies, see Halkos et al. 2013)). Such 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 governance of natural resources on the local level (Wade 1982; Robbins 2000; Pellegrini 2011; Gore et al. 2013; Sundström 2013).

Theory

Effective governance of CPRs is dependent on appropriators making commitments regarding their usage and adhering to these limitations. As Ostrom and colleagues (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 – although perhaps not a sufficient one – is a necessary condition for the sustainable governance of CPRs.²

Mansbridge (2014) discusses how the literature on the commons has 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

² Not all laws result in larger welfare if implemented efficiently. This paper will not venture to evaluate existing regulations from a normative standpoint, but is limited to study how corruption distorts their enforcement.

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 context of CPRs, noncompliance is, for instance, when appropriators – be it hunters or fishermen – exceed harvesting limits, harvest with prohibited means, or with no entitled right at all.³

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 relation between poachers and government inspectors.⁴ In this game the government inspector faces two choices: to enforce or not to 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 under such circumstances 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 sub-optimal 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 of CPRs.

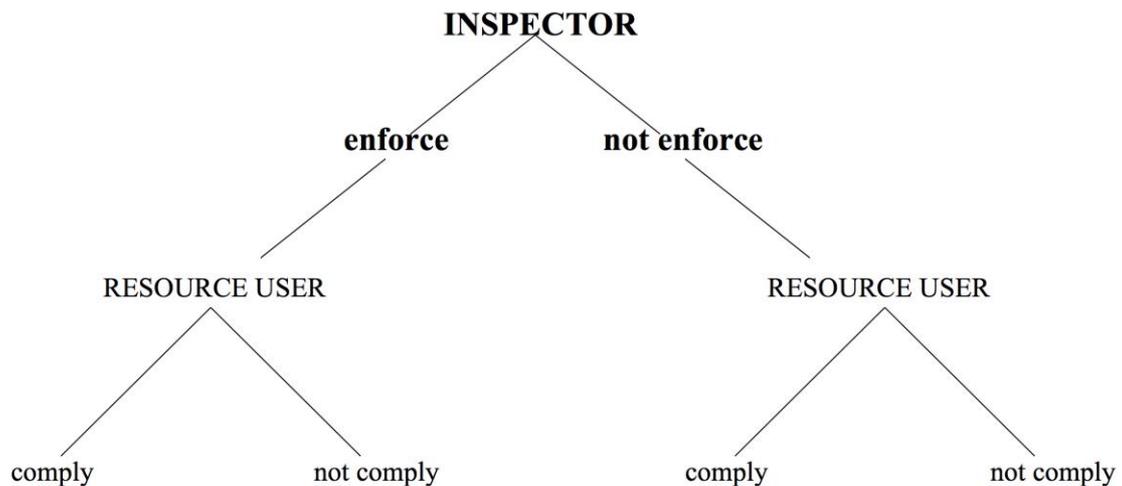
In this paper I use a similar model to illustrate the focus of this study. In the model visualized below (Figure 1) the state actor is not “government” as in Sjöstedt (2014), but rather the individual inspector (c.f. Gibson 1999). The two important points of depar-

³ 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 regulatory compliance is a relevant concept in order to understand success in managing commons.

⁴ Assuming a noncooperative, one-shot game, with complete information, this relationship is surely simplified.

ture is that I focus on the role of the government inspectors in this stylized model and that 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.

FIGURE 1. THE INSPECTORS’ CHOICE TO ENFORCE FORMAL REGULATIONS



Corruption in governing the commons

As Mansbridge (2010, 2014) has argued, the literature on the commons has in its focus on studying the examples of successful self-governance not been very attentive to the often-important role of the state as the enforcer of existing regulations. However, I will argue that yet another blind spot of this literature is the lack of attention towards the fact that many of these government authorities are permeated by bribery. Corruption – most often defined as “the abuse of public power for private gain” (Treisman 2000, p. 399) – has started to become emphasized by some scholars from this tradition. When Ostrom (2005) summarized two decades of research on CPRs she formulated five threats to small-scale resources governance that she had come in contact with, one of them being “corruption and rent-seeking” (p. 275). Yet, these issues have seldom been investigated empirically or sufficiently theorized in previous research. For instance, Agrawal (2007) highlights that the

literature on the commons needs to analyze the extent to which corruption may undermine the sustainability of resource governance (p. 130). While corruption is invoked anecdotally, the current literature lacks an understanding of how bribery corrodes enforcement of CPR regulations.

The scarce but existing scholarly attention on the mechanisms causing corruption to hamper enforcement of regulations has focused foremost on the actors presented in the lower part of Figure 1, or more specifically, how compliance decisions are affected by corruption (e.g. Levi et al. 2009; Sundström 2012). For instance, the reasoning outlined in Polinsky and Shavell's (2000) formal model focuses on citizens and their choice to abide by or violate laws. Their argument suggests that “bribery dilutes deterrence because it results in a lower payment by an offender than the sanction for the offense” (p. 2). While the literature has shown generally that corruption results in suboptimal law enforcement (e.g. Damania et al. 2004), little work has focused on how the enforcement agents’ choice to enforce or not enforce regulations is affected by corruption. Thus, this article contrasts much of this literature by turning the spotlight onto public inspectors.

Becker and Stigler (1974) noted that the quality of law enforcement – that is, the extent to which bribery distorts enforcement – depends on the temporal interaction between law officials and violators: “transaction costs of ascertaining that the other party is reliable become manageable for both violators and enforcers” (p. 4). This implies that the nature of the situation in which law officers work and live close to their regulatory subjects (thus they face each other more frequently and for a longer time) should be qualitatively different from more anonymous and unreliable interactions. In the local governance of natural resources this type of interaction often characterizes the relationship between regulatory agents and subjects. The local enforcement officer may very well be a part of the local community that earns its livelihood on the resource that this agent monitors.⁵ On this topic previous research shows that enforcing agents active in a local community meet social disapproval when enforcing environmental regulations (Akpalu et al. 2009). De la Torre-

⁵ There is a literature within environmental governance on front-line bureaucrats as well as regulatory capture (see e.g. Pautz 2010). For studies dealing with the relationship between “regulators” and “the regulated”, see the literature review in Pautz (2009).

Castro (2006) has called this the “loyalty dilemma”, where inspectors find it difficult to enforce regulations in the community in which they live. For instance the article mentions how local Tanzanian village-based enforcing agents would abstain from reporting illegal species caught by fishermen in the village. An enforcement dilemma is here understood as factors hindering public officers to enforce the law. So far it has not been analyzed whether corruption can function as an obstacle for inspectors active in a local community.

To date, the existing studies provide little knowledge – besides the general statement of “inefficient” or “hampered” law enforcement – of how corruption in detail distorts the choice of enforcing regulations among government inspectors in such local governance. The general purpose here is to deepen our understanding of the mechanisms in which this process takes place by investigating the two questions posed in the introduction.

The study

The enforcement of fisheries regulations in South Africa is particularly well suited for investigating these queries. First, fisheries are a typical example of a CPR where we find the challenges of monitoring the harvest behavior of resource appropriators. Second, in this resource regime the state acts as the enforcer of formal regulations. Third, the institutional setting is that of a high-corruption context. These features make this case ideal if one aims to explore how corruption hampers enforcement of state-imposed regulations in a CPR.

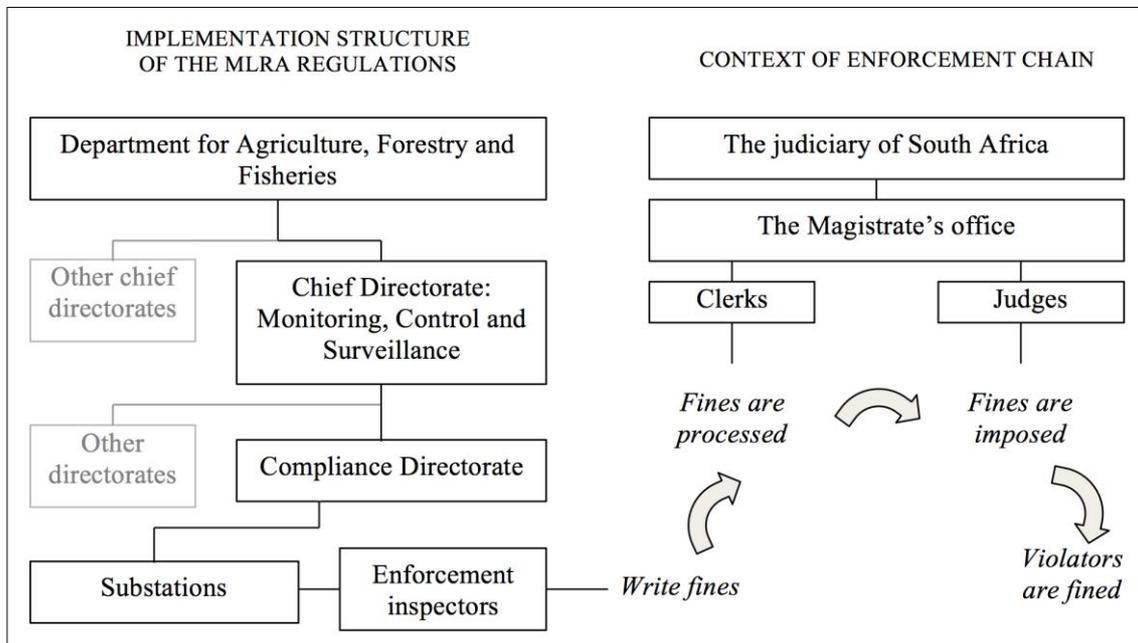
Governance structure and regulation of the South African marine fisheries

The marine fisheries of South Africa offer large export earnings and are in some areas a major source of local employment. Historically, the fisheries were mismanaged during the Apartheid era and the democratic country faced large reformation challenges upon independence in 1994. By and large, the fisheries in South Africa are governed through a top-down approach (Hauck and Kroese 2006). The Marine Living Resources Act (MLRA) has regulated the fisheries since 1998, outlining rules on fishing effort and catches, such as

minimum sizes of the catch, the prohibition of certain gears, and the specific conditions for licenses. The responsible agency for enforcement activities is the Compliance Directorate of the DAFF.⁶ The organization is led by a Directorate General and its main task – to ensure that fishermen abide to the MLRA – is carried out through land-based activities such as the work of enforcement officers on substations along the coast. The directorate occasionally works with other government bodies, such as the South African Police Service, when conducting coordinated operations. There are approximately 400 inspectors currently working as enforcers along the part of the western and southern coast that this study focuses on, located in roughly 30 substations. These local offices are often situated in the harbor where fishermen offload catches. Whereas the substations are placed in small localities where small-scale fishing is one of the livelihoods, the main office is situated in Cape Town and targets the large-scale fisheries. A violation of the MLRA is treated as a criminal offense (Republic of South Africa 1998, p. 28) and noncompliance may result in sanctions such as the revoking of fishing rights. Most commonly, noncompliance results in economic fines that are handed out at landing sites (i.e. a small harbor) by an enforcement officer of the DAFF. These fines are then managed in the judiciary system. At the Magistrate's office – the lowest level of courts that exists in each of the country's districts and mostly deal with minor offences – clerks first process these fines and judges then impose them on the violator (see Figure 2).

⁶ The responsibility for enforcing compliance was formerly held by Marine and Coastal Management at the Department of Environmental Affairs and Tourism (Hauck & Kroese 2006, p. 75). This agency was reformed into the current department.

FIGURE 2. THE STRUCTURE OF THE COMPLIANCE DIRECTORATE IN THE CONTEXT OF LAW ENFORCEMENT



Regulatory compliance and corruption in this sector

There is plenty of evidence suggesting that noncompliance to the above described regulations is widespread across different fisheries and regions along the coast. In general the control of protected areas is low and there is widespread illegal fishing in the line-fishing sector. Poaching is specifically prevalent in fisheries targeting the south coast rock lobster (*Jasus lalandii*) and abalone (*Haliotis midae*, an edible mollusk) (see Pramod et al. 2011). As an illustration, Raemaekers and Britz (2009) state: “By 2007, almost the entire South African abalone catch, estimated to be well over 2000 tons of whole mass was caught illegally” (p. 184).

Anecdotes suggest that law enforcement in this sector has been tainted with corruption (e.g. Hauck & Sweijd 1999; Raemaekers et al. 2011; Hauck & Fernandez-Gallardo 2013). However, more systematic estimates of the extent of such practices are difficult to come by. In the early 2000s an investigation proved that a fishing company was involved in

a large-scale poaching operation of rock lobster where the local enforcement officials had been complicit: “One of the company directors was fined [South African Rand] 1 million fine on 301 charges of corruption relating to the bribing of fishery inspectors. Eighteen fishery officers were also found guilty and fined (also having to pay back their bribes)” (Hauck and Kroese 2006, p. 76). More recently, a policeman working in the harbor of Simonstown was caught for partaking in poaching activities. In his personal refrigerator, the investigation found abalone worth 1.3 million Rands [approximately 125,000 US Dollars] (Hermanus Times 2014). This event took place in March 2014, indicating that corruption in this sector certainly is not eradicated.

Methodology

In total 43 interviews were conducted during the period from January to April 2014. Out of these, 34 persons were inspectors at the Compliance Directorate of the DAFF. Four persons were former senior managers from this directorate, including past directors. The other five persons were key stakeholders: two journalists specializing in covering developments in fisheries, a university professor focusing on the politics of fisheries, and two leaders of fishermen associations, all purposely sampled due to their insight in the situation.

The interviews with inspectors were sanctioned from the top managers of the department. Management sent a general message to the entire affected compliance staff that I would be permitted to interview some of them on the topic of challenges in the enforcement apparatus. However, I did not share with the management who participated. The interviews were conducted at substations along the western and southern coast (the number and location of substations will remain confidential) as well as in the head office. The context of each substation varies: in some areas poaching is widespread, in others non-compliance is more controlled. Also the extent of corrupt practices is known to vary from substation to substation. This perception was corroborated through informal talks with fishermen in these areas.

The respondents were selected in order to vary the features of substations as well as individual characteristics of inspectors. To ensure the anonymity of respondents taken

from this relatively limited pool of inspectors, the article will not describe any of the respondents in detail since a combination of features could identify certain individuals.⁷ The years of working experience is most likely influential to familiarities regarding bribery. Among respondents, the working experience as an inspector ranged from less than one year to over 40 years. Care was also taken to sample inspectors that have long-term experience, yet are no longer employed, because this supposedly would make them more open to talking freely. Two respondents retired within the year prior to the interview session, thus, not too long before as to make their views lose relevance.

The interviews were made without a recording device since this was the prerequisite for ensuring confidentiality. I therefore took extensive and detailed notes during the interviews. The conversation was structured along themes related to the challenges of enforcing the MLRA regulations. Throughout these sessions English was used (the second language for approximately half of the respondents) and no other person was present.⁸ Corruption was discussed on all occasions and, in general, the perception is that respondents were open about their behavior. In fact, several respondents admitted to having taken bribes and granting noncompliance and discussed such situations in length. On some occasions the respondents were more comfortable talking about how colleagues behave in this regard. Also, some respondents became more open during the session. They would, for instance, first deny being aware of any corruption, yet would after a few minutes describe how colleagues regularly took bribes. Moreover, some interviews could be used as triangulations of more factual circumstances. For instance, one respondent claimed to never have taken bribes. However, several respondents singled out this person as notoriously corrupt. When encountered with this claim at a second interview session, this respondent admitted to some of these allegations. Similarly, some respondents admitted to minor misbehavior, such as underreporting catches, while denying alleged involvement in poaching activities. Due to social desirability, several respondents have likely been lying about their own in-

7 Care was taken to speak with both women and men (five women were included although they are quite scarce in the general pool of inspectors) and both substation managers and subordinate inspectors. Moreover, both black, colored [a specific category in South African context] and white inspectors, as well as inspectors with college education were sampled.

8 On two occasions respondents asked to be interviewed in a pair, together with a colleague. The interviews with respondents 33 and 34 as well as respondents 2 and 3 were conducted in this manner.

volvement in corrupt practices. However, this is not a major potential problem for the reliability of the information because respondents still gave a detailed account of how bribes are used in their daily work and how this is perceived to influence their possibilities of enforcing regulations.

Results

The empirical discussion is structured into two sections. The first one reports the insights related to the first research question, focusing on disentangling the way corruption corrodes the enforcement of regulations. The second one investigates the way corruption poses an enforcement obstacle for inspectors.

The corrosion of enforcement

The respondents certainly perceive widespread corruption in the sector. While it is not viable in this type of sampling to estimate how common the practice of bribery is, it should be noted that respondents give a uniform image of the almost endemic state of bribery. The following quote is illustrative:

We inspectors have eleven substations [on one part of the coast]. And out of these I know that only three of them are without corrupt officials. ... If you should get rid of all corrupt inspectors, then out of our two hundred only thirty would be left. (I:13)⁹

Then what does it mean in practice that inspectors are corrupt? Accounts describe how inspectors become “blind” to violations. This process is built up over time as the inspector and fishermen establish a relationship where bribery is a key ingredient:

They will give me fish. They are preparing your mind. They want to have a favor. They think “tomorrow, you back me up.” ... It is not a difficult choice ... [the following day] they will know if you are guy who will fine them or willing to build a relationship. (I:7)

⁹ Here, I denotes the inspectors and K, the key informants.

There is always some mutual agreement between fishermen and an inspector. So they will try to see ... Do you want to play the dirty game? It is always the temptation. (I:12)

Many fishermen will ask if you want money when they get caught. It is quite common. The person first gives you a fish. Then you know they want something in return. (I:20)

However, not all descriptions follow a narrative in which it is the fishermen who instigates the bribe. There are also accounts of inspectors actively seeking such opportunities:

Inspectors can even fight among each other for getting to inspect certain boats. They know that this skipper is friendly. He gives nice boxes of hake and all of that. So you say "next week it's my chance." Why does this boat owner give fish away? Everybody knows why. (I:1)

There are different ways to benefit the inspector who is, or will become, blind. The most straightforward type of bribe is the financial one, where an inspector receives money:

[A factory making fish meal had] a wrong percentage of a certain fish in their catches, which is illegal. [The owner] said "can we make a plan? I will pay you and you will write a better figure." Then he put something in my pocket, it was a thick wad of money. (I:19)

[A Chinese captain that was arrested last week] called someone who arrived to the harbor with a wad of money. It is quite common ... Imagine these boats, how much money they carry. And we earn so little ... We can make resources of half a million rand disappear from the books. So the temptation is always there. (I:13)

As this quote indicates, there are also gifts that are not monetary. In fact, food also seems to be a common way to bribe inspectors to look the other way:

Much of [the daily task] are made up of course as many of us are crooks... We used to trick this system. We took two cars to the landing site. Then we all went away in one of the cars and left one by the

harbor so it would look as if we were there ... I have done this a lot ... I am also guilty of this ... They would offer me a nice box of fish or crays ... So you sign the sheet that the inspection has been done. (I:1)¹⁰

Me, I also get fish but I don't register it. There is no roadblock here so it is not too harsh. I get fish from someone at the slipway. And then the next day I will see him breaking rules. (I:6)

These nonmonetary gifts seem to open up for interpretations, where inspectors reason whether or not this is considered to be corruption:

The inspectors often get tickets to rugby games from boat owners ... I myself used to go to a rugby match or two ... I used to get a box of fish from the fishing companies. But there is a line to cross. I don't think I crossed it. Because I didn't take these boxes in public, in front of people on the pier. It would not have looked good. We did it in the office instead. But I never encouraged it. I never asked for it. Because it can get out of hand. How can you prosecute them? So you shouldn't actually do it ... [five minutes later in the interview] But taking a box of fish is so wrong. You shouldn't do it. It shouldn't be a praxis. I was never perfect. (I:18)

The exchange between an inspector and a fisherman can also be further blurred, as many of them know each other. Being blind can therefore be understood as a consequence of a friendship or a way of maintaining relations with these fishermen. Having small substations – where inspectors live close to the community – and inspectors that have been in the same place for a long time are perceived as especially spurring this problem:

I have seen this corruption so much ... Say an inspector used to go to school with a poacher, then they owe each other in some sense ... How can I enforce the law on an old friend? ... [They] know your soft spots. It has happened to me, I have also been blind. (I:25)

¹⁰ The references to "crays" in the interviews refers to crayfish.

Maybe [the inspectors and fishermen] are cousins. So it makes it very difficult for them to enforce the law. They socialize. And you can see, they turn a blind eye ... If an inspector stays in a place for 20 years of course you get blind. (I:29)

Then what do these bribes buy? Blindness to rule violations seems to come in various forms. The accounts below illustrate that there are different ways for inspectors to benefit certain fishermen through inadequate enforcement:

[Some inspectors] stay in the office, they go to the shopping mall. And when they go to a landing site they just stand there. They will say "I did not see" if anything happens. (I:5)

Some inspectors write wrong on fines intentionally. Because then lawyers of fishermen can contest this and it is withdrawn in court. (I:7)

Boats are under-declaring. The inspectors are in on this. They will declare a smaller number of bins ... [and] certain species wrongly ... there are technical ways for inspectors to do their job but still be complicit. (K:7)¹¹

Contrasting to inadequate enforcement, another way that inspectors can benefit violating fishermen is to become informants, warning poachers of secret enforcement operations:

[A poacher] has someone on the inside. So when I approach him he already knows that I am coming ... I know that one of my colleagues is leaking ... Once you've tasted that extra money it's a lost case. A phone call to poachers as an informer on the inside could give fifty percent of your salary in a month. (I:5)

At all of our stations information leaks out. It's money driven. So when we do operations at night it is so easy to pick up a phone to call the poachers. (I:21)

¹¹ This key informant has had senior positions as a manager on the scientist-side of the department.

You have two types of corrupt inspectors. The guy providing information. And then you have the other who is more active, [will] steal physically and if they catch someone they will sell their illegal catch themselves. But the informants are the bigger problem for management! (I:22)

As indicated there are also inspectors that are themselves active in illegal fishing. This seems to be a full-scale practice as some inspectors use their cars and office storage in poaching activities. Accounts mention inspectors getting caught for possessing illegally caught abalone, stories referring to different periods and areas, indicating that this practice is more common than merely one case being mentioned several times:

During [a substation manager's] last five years he couldn't care less. He got his friends. He just said "land here, and I will ask inspectors to hide this catch." Once I had caught some poachers with crays. So I took this bag of crays to the station to book it as evidence. And there was only the two of us there. And the bag suddenly disappeared ... They found a freezer in his home with abalone ... We also had a car here ... during nights he would switch number plates. But nothing happened with him. (I:6)

There are a lot of bad guys. Like this Saturday they found this inspector in [name of area] with illegal abalone. So he resigned from his post. It was the only way to get away without public knowledge. (I:18)

There is even a saying "there is nothing as corrupt as an inspector at the west coast." ... if you want to buy the really good crays you should go to the inspector. (K:3)

Corruption as two further enforcement dilemmas

This section reports how corruption can be understood as two types of dilemmas, functioning as obstacles in the work of the enforcing agents. First, it is evident that corruption is present not only in the DAFF Compliance Directorate, but also more generally in the contextual aspects of the legal system these inspectors work within. And this seems to have an impact on the inspectors:

The magistrate can do things to their discretion. And a fisherman who wants to make them disappear can do that. (I:11)

Some fishermen can pay someone to get their fines withdrawn. I don't know what's going when I witness this. And management does nothing. (I:15)

The poachers will always say "I will call this person," [and] it will be someone high up. Sometimes it's just threats. Sometimes it's true; they have contacts in the legal system. So we are powerless. The challenge is the justice system. If a fisherman is "connected" it does not matter how good ... [our work is], fines will get withdrawn. (I:2)

I find [a reoccurring poacher] ... He is caught. But the next day I see him on the street in his community ... Many of them are connected, friends with policemen ... When we leave the police station we don't know if they are doing their job. (I:4)

Furthermore, the accounts indicate that this creates frustration among inspectors:

The fishermen don't care about the fines. They don't worry. Because they know someone at the court. This is distressing and demoralizing. (I:17)

Most of our fines are withdrawn. The magistrate seems to make our fines disappear ... I don't write fines anymore. Because it gets withdrawn ... If my fines are without power, the fishermen don't take my word for it anymore ... You know that your fine will be a waste. So you feel "I give up." (I:5)

Sometimes we know that a fisherman has contacts in the legal side ... our fines will just disappear ... [Violators] will keep their permissions. This demoralizes us. What's the use of working hard? (I:6)

Second, corruption in the DAFF Compliance Directorate itself, is perceived as a further dilemma. Inspectors talked at length on how they perceive this as being an obstacle. Related to the first tier in the organization above them, they describe how a senior manager runs each substation, persons that often is perceived as the most corrupt inspectors:

When I came here the supervisor had worked here for 20–30 years ... He didn't perform well. He knew people. And they knew him well. When you start you want to perform. But the supervisor said "you should only have given this guy a warning." (I:4)

My supervisor fought for this inspector doing this [being blind and taking bribes]. And I told management what I was witnessing. But no one did anything ... Each station is run by the substation manager. They are the boss of their own station. (I:5)

The obstacle of having corruption in the organization is also related to actions in higher management. This corruption is a bit different than the interplay between inspectors and fishermen. Staff members that are not inspectors also find ways of enriching themselves:

In top management they are very corrupt ... They get a lot of gifts, money, boxes of wines. This is from industrial actors to get quotas so they can continue fishing. And if some case gets public it gets withdrawn. And the people in the top are of course quite happy with this system. (I:29)

A clerk at the department even called me and asked if I wanted to buy tails [of crayfish]. This was off season [thus illegal] and she worked at the department. (K:3)¹²

Scientists were sent large gifts, the ones giving permission for fishing. They all have big freezers in their office. They say it's for samples and experiments. But really, it's for birthdays and Christmas ... The culture was so corrupt from the past ... Although I tried to reform this system, it continued. Scientists asked companies to send gifts to their homes instead. (K:2)¹³

Corruption is rampant in the department. How can you start to eradicate this from the bottom? We know that it's going on in the top. And we need to start from there. (K:4)

¹² The respondent is a high profile journalist for a daily newspaper.

¹³ This key informant used to be the Chief Director of this department.

Inspectors know what's going on in top management. I can imagine that this provides an enabling factor to say "[curse] the system" and then think "why not" and then start acting corrupt yourself. (K:6)

Importantly, this former top manager's perceptions of how corruption affects the work of inspectors was also a theme also invoked by other respondents:

[Our management] want to keep their privileges ... It's bad for morale to have blind people above you in this organization ... You feel "screw it" and you also drop it, stop going that extra mile in your work. (I:28)

People at the bottom see these top managers engaging in corrupt behavior. Fishery control officers know that their bosses are corrupt. They know there are no consequences. (K:5)

The minister used the department as a playground to get jobs. Friends got promoted. If the minister is corrupt then why shouldn't you be? It creates a culture of corruption (K:3)

This theme is further developed as several respondents discuss how they perceive that there are signals from "above," indicating that corruption is not a serious problem and that sanctions for such behavior is absent:

This inspector got caught with abalone ... But he was still allowed to work in the department. This clearly sends the signal from top management that this is not too serious. (I:22)

They make an investigation. But nothing happens. We don't hear anything. (I:17)

[DAFF] has the evidence of corruption. So why don't they set an example? ... Do they manage their inspector? I'm not terribly convinced ... There is no political will to reform inspectors' behavior ... With the leadership crooked you cannot straighten this up on the ground (K:2)

Where corruption is perceived as being present at all levels of this agency, the function of whistle-blowing is decreased dramatically. Accounts illustrate this vividly:

You tell [the special investigations unit] one of the inspectors is corrupt. But what if they, someone in their unit, know this colleague? Then he will know what I am up to and he will confront me. So if you want to get along you keep your mouth shut. Most people do this. (I:5)

[If you blow the whistle] you are not getting far. To do something in such a corrupt organization is impossible. One guy was even suspended when calling this to the public. (K:3)

Whistle-blowing is suicide ... you will lose your job. And then it is easier to put your head under the bed cover and pretend you did not see it. Or, better, be in it yourself. (K:5)

This also highlights an important theme invoked by several respondents, that honest behavior is not rewarded professionally:

Honest behavior is not appreciated [at this station]. They will not appreciate straight guys that do not accept bribes. They are not comfortable with someone who will blow the whistle (I:23)

Discussion

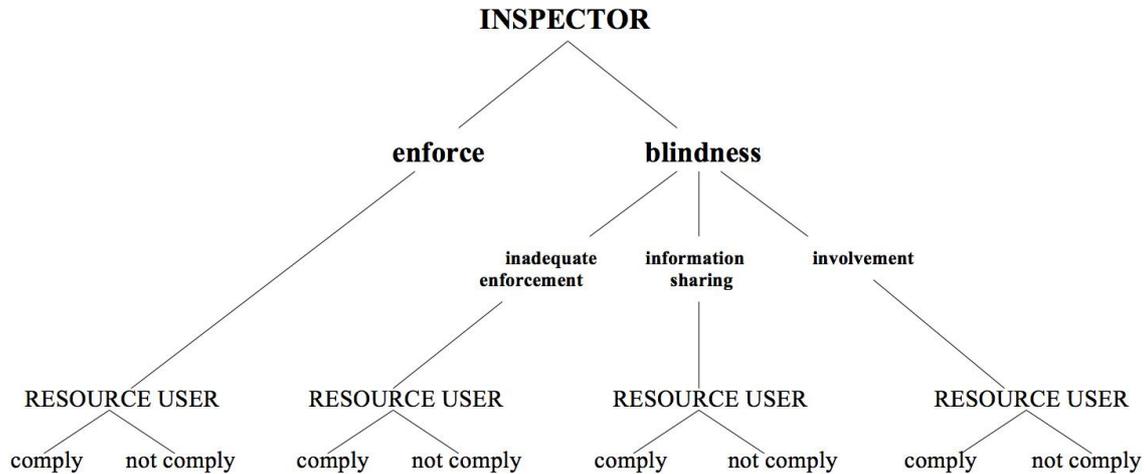
This investigation provides theoretical nuances related to the first research question, in what way that corruption corrodes enforcement. As fleshed out in these accounts, there are analytical categories that can improve our understanding of this process. Bribery involving resource users in this context seem to come in three distinct forms, through *finance*, *food*, or *friendship*. While these forms of bribes differ between each other – the first being monetary, the second being non-monetary and the third being an even more vaguely defined transaction – the three categories share that they **all** target inspectors to be blind to violations. Moreover, the accounts suggest that the mechanisms in this process can be further nuanced analytically. Enforcement agents seem to become blind in three different ways, which are analytically separated from each other. Inspectors may engage in *inadequate enforcement*, practices that could include no monitoring at all, the intended misreporting of landings, or the systematic writing of faulty fines. They may also start to engage in *infor-*

mation sharing, revealing details of secret operations. Finally, blindness to violations among such agents may take the shape of *involvement*, where enforcement officials become a part in illegal actions through transportation of goods, stealing catches, lending freezers for storage or even start poaching themselves. Having found these mechanisms in the empirical accounts it is also interesting to explore how they can be used to improve our theoretical understanding of this process.

First, it can be noted that blindness could be understood through the work of Kahn and colleagues (2001). They make the conceptual distinctions between temptations affecting a public official into two categories: shirking (the avoidance of duties) and corruption (the extraction of a bribe from an evader) (p. 189). The process of becoming blind and corrupt can therefore be seen as the process linking these phenomena. When an enforcement officer has received a bribe, this agent will ‘shirk’ selectively to benefit certain resource users.

Second, this more nuanced understanding of blindness to violations is important as it points to the fact that “not enforce” – one of the two choices by the state actor used in the game-like situations outlined by Gibson (1999) and Sjöstedt (2014) – is a simplified understanding of defection in such interactions. It seems that blindness, rather than only a choice of not enforcing, consists of different strategies. This is illustrated in Figure 2. I have here found three distinctive categories: inadequate enforcement, information sharing, and involvement. They are all different strategies than the choice to enforce regulations. Moreover, they differ to each other in their impact on other inspectors’ decisions, as there is possibly a rank order in how these different options affect management. Inadequate enforcement is the moderate obstacle for enforcement, affecting mostly the individual relationship between the inspector and a resource user. Information sharing on the other hand is understood as a larger impediment, potentially ruining other inspectors’ possibilities of enforcing regulations. Finally, the involvement of inspectors in poaching is perhaps the worst type of hurdle as it fundamentally turns the inspector into a complicit agent in the activities they should prevent.

FIGURE 3. THE INSPECTORS' CHOICE TO ENFORCE FORMAL REGULATIONS UNDER WIDE-SPREAD CORRUPTION



Moreover, the interviews inform us theoretically about the second question, how corruption becomes an obstacle in the inspectors' enforcement work. First, inspectors face a *context dilemma*, making the writing of fines useless as these disappear from bribery among clerks and judges in the enforcement chain. Second, they face an *organizational dilemma* where substation managers and actors in top management of their own organization are known to be involved in corrupt behavior, thus further demotivating the inspectors. Signals from above indicate that it is accepted to enrich yourself and that there are few consequences if you get caught. Importantly, it renders whistle-blowing inefficient as inspectors risk telling someone involved in corruption. Also, becoming blind and corrupt gives advantages to individual inspectors as you are known among colleagues as one who can be included in shady transactions, sanctioned by substation managers. In tandem, the two dilemmas create disincentives to individual inspectors for honest behavior. Put differently, the choice of remaining honest and enforcing laws becomes much more costly for individuals when the presence of bribery has spread in the enforcement chain and in the responsible agency. In such settings it is more likely that enforcing agents will choose one of the defecting strategies discussed above.

In relation to the findings of Akpalu et al. (2009) and de la Torre-Castro (2006) – where it is shown that inspectors may face social costs when enforcing regulations in a local community – this investigation helps us further understand bribery’s role in this relationship. It is suggested in the interviews that the relationship between inspectors and resource users is negotiated over time, where some inspectors are willing to take monetary or nonmonetary gifts in order to be blind to local rule violations. Sometimes, this is a vague transaction, where the benefit gained for an inspector could be future favors or sustained friendship. Other times, this collusion takes a more direct face of rent-seeking behavior, for instance, when inspectors become active parties in ongoing large-scale poaching operations.

So what are the implications of these findings for our understanding of the governance of the commons? On a more general level, the argument in this article was presented at the backdrop of the debate where scholars have depicted the choice of enforcement in CPR governance as one between covenants “with or without swords.” As a contrasting view this article has proposed that when bribery is prevalent in the agency imposing regulations on a CPR, this can be depicted as covenants “with broken swords.” As Table 1 illustrates, the situation of widespread corruption in law enforcement can be contrasted to the situation with a government enforcer but with no corruption present. Importantly, the process outlined in this article, clearly show that in situations with corruption, the likelihood of achieving sustainable outcomes for management of CPRs is severely decreased. When regulations – the policy tools that are meant to steer behavior of resource appropriators – are not enforced due to widespread bribery, this will increase the probability of a “tragedy” where resources are overharvested.

Then how can the path in such situations be reversed? The results from the empirical investigation speaks to a general understanding among studies on corruption where government agents find it difficult to act honestly when bribery is endemic within and outside of the organization. The literature suggests that bureaucrats’ incentives for corrupt behavior is affected by perceptions of other bureaucrats’ behavior in the organization (Shleifer & Vishny 1993; Olken & Pande 2012). This echoes previous findings where indi-

vidual refusals to engage in bribery in a highly corrupt context are perceived as futile (Karklins 2005; Miller 2006). It is also compatible with an understanding that corruption can be described as a social dilemma, where it is rational for actors to partake in corrupt behavior if “everybody else” is perceived as doing it (Rothstein 2005). This is most likely an important point as it is imperative to keep such considerations in mind when discussing ways to reform corrupt authorities. For instance, as accounts indicated, corruption in the top of this department may influence the behavior of street-level employees. Reform programs targeting bribery among local enforcement officers on the ground may need to consider strategies where corruption in top management is also dealt with.

TABLE 1. GOVERNANCE OF STATE-IMPOSED CPR REGULATIONS WITHOUT AND WITH CORRUPTION

<i>De jure institutions – covenants with swords</i>	<i>De facto institutions – covenants with broken swords</i>
Inspectors enforce regulations	Inspectors act blind and corrupt: They receive bribes in the form of finance, food, or friendship, which they pay back through inadequate enforcement, information sharing, or involvement
Sanctioning fines are dealt with by the enforcement chain	Fines get lost from bribes to clerks and judges in the enforcement chain
Whistle-blowing on misconduct is risk free and received seriously	Whistle-blowing is inefficient as it is not prioritized in management and may be risky if colluding colleagues receive this information
Inspectors’ wrongdoings result in sanctions	Inspectors’ wrongdoings seldom lead to sanctions since top personnel in the agency prosper from the situation
There is a norm that rewards inspectors with a record of lenient enforcement	There is a norm that rewards inspectors that play along with corrupt practices
Effectively enforced regulations increase probability of sustainable management	Inefficiently enforced regulations decrease probability of sustainable management

Conclusions

This article focuses on a problem that has been somewhat overlooked when political theorists and empirically oriented scholars have analyzed the challenge of monitoring in governance of CPRs. While research holds that corruption produces suboptimal law enforcement, studies seldom investigate the way this takes place and the government agents enforcing regulations are rarely at the center of analysis. It is here argued that corruption in enforcing authorities risks leading to a situation of covenants with broken swords. In such a condition, bribery corrodes the effectiveness of sanctions for noncompliance. Using original data this article outlines some of the mechanisms of this process and develops our understanding of how widespread bribery becomes an obstacle in enforcement. It also points to improvements in the analytical depiction of the relationship between government inspectors and resource users under widespread bribery.

Illustrating the destructive effects from corruption on governance of the commons, these findings resonates a big challenge for scholars and policy-makers. How to tackle the fact that CPRs around the world – for instance, the tropical forest reserves that are key in global efforts to store carbon and protect biodiversity – are monitored by institutions that are infested with corruption? Future research therefore has several tasks on its agenda. First, to get a better *diagnosis* of this problem, it would be worthwhile to analyze if this case is comparable to other contexts. The research on corruption in local governance of CPRs still relies on a scarce number of in-depth studies and may benefit from a comparative approach across CPR regimes with external enforcing authorities. A pertinent issue for comparative research would be to disentangle the institutional circumstances under which we may find situation of covenants with broken swords. Second, to get an improved understanding of *cures* to such situations, it is essential to explore if there are institutional remedies that are successful in reducing corruption. There is also a need to study existing or future alternatives for monitoring when corruption in enforcement authorities is widespread. It has been said that “when state agencies are involved in corruption and rent-seeking, bottom-up initiatives may improve monitoring” (de la Torre-Castro 2006, p. 11).

A future discussion on governance of CPRs would profit from investigating alternatives or complements to strategies of state-run enforcement further.

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