

Human Organization, Vol. 66, No. 4, 2007

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0018-7259/07/040414-12\$1.70/1

Three Paths from Law Enforcement to Compliance: Cases from the Fisheries

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The article addresses three mechanisms whereby enforcement may generate compliance among citizens: the Hobbesian mechanism, which emphasizes deterrence, the Habermasian mechanism, which emphasizes rational communication, and the Durkheimian mechanism, which emphasizes enforcement's symbolic meaning. It addresses these mechanisms in three ethnographic studies of compliance in fisheries, and argues that the Durkheimian view of law enforcement has unjustly been neglected in compliance research and deserves a place alongside the Hobbesian and Habermasian views.

Key words: enforcement, fisheries, compliance, morality

Three Views on Law Enforcement

Writings on citizens' law-abidingness have often emphasised the deterrent effects of formal law enforcement (Friedland, Thibaut, and Walker 1973; Kuperan and Sutinen 1998; Meier and Johnson 1977; Tyler 1990). This view can be traced to the legacy of Thomas Hobbes (1984 [1651]), who regards law as a representation of the mutual interests of citizens who are incapable of creating social order through moral community. Hobbes' state imposes external rules upon individuals and ensures their compliance "by the terrour of some punishment, greater than the benefit they expect by the breach of their Covenant..." (Hobbes 1984 [1651]:101). In modern social theory, the Hobbesian legacy is represented by the economic view of crime and deterrence (Becker 1968), and will be referred to as the "Hobbesian mechanism" of law enforcement.

More than two centuries later, Emile Durkheim developed his theory of social order that opposed Hobbes' pessimistic view. Durkheim (1984 [1893]) sees penal law as the representation citizens' shared morality. Except for in "rare, pathological cases" (p. 26), it emerges as the well-defined expressions of civil society's collective consciousness. Durkheim regards penal law as the manifestation of a latent social solidarity; the state is thus a continuation of civil society's moral community. Crime emerges as an attack on this collective moral consciousness, and punishment represents society's emotional response. The punishment highlights the deviant and reproachable nature of the crime,

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and thus confirms the moral unity that has been attacked. Punishment's main function is thus to symbolically restore the moral order of society.

Hobbes and Durkheim formed different legacies in terms of the role of rationality in social theory. In modern social science, the Hobbesian perspective is associated with utilitarian rational choice theory, while the Durkheimian legacy is less concerned with rationality than with the social psychology of normative action. Modern contributions developed intermediate positions, emphasising the rational aspects of normative action. Weber's (1978 [1921]) idea of "value rationality" has been developed in Habermas' (1984) theory of communicative action, which addresses the conditions for rational consensus through communication subject to clear criteria of validity.

Research on crime and law-abidingness has drawn on all of these three schools of thought, but the Hobbesian legacy's influence has been greatest in terms of law enforcement's regulatory effect. Formal enforcement variables, such as risk of detection and severity of penalty, have often been regarded as indicators of the explanatory power of rational choice theory, while the Durkheimian legacy has been associated with explanations that are not directly linked with enforcement, such as the actor's moral development, the behavior of the actor's peers, and the perceived legitimacy of regulations (Grasmick and Green 1980; Paternoster et al. 1983). This pattern is observed in the literature on compliance in fisheries, which was dominated by neoclassical economics for several years (Andersen and Lee 1986; Blewett, Furlong, and Toews 1987; Furlong 1991; Sutinen and Andersen 1985) before normative action received attention (Gezelius 2002, 2006; Hatcher et al. 2000; Hatcher and Gordon 2005; Hauck and Kroese 2006; Hønneland 1998, 2000; Kuperan et al. 1997; Kuperan and Sutinen 1998; Mason and Gullett 2006; Nielsen and Mathiesen 2003).

Some studies have empirically addressed the connection between enforcement and normative motivations for compliance, largely drawing on the Habermasian idea of rational normative consent. May (2004) has argued that an enforcement style oriented towards facilitation of compliance may increase citizens' support for the regulation's underlying intent, hence increasing compliance. Kagan, Cunningham, and Thornton (2003) have discussed the hypothesis that a co-operative and negotiating enforcement style may do likewise. Gray and Scholz (1993) have pointed to enforcement's ability to direct people's attention to issues that they regard as morally important. Parker (2006) has addressed the potential consequences of enforcement styles that aim to construct moral support for the content of specific regulations by presenting non-compliance as detrimental to society. Within the literature on compliance in fisheries, Hønneland (1998) has argued that a discursive enforcement style has proven efficient in convincing fishermen to comply with measures aimed to protect fish stocks, and Randall (2004) has adopted the view in a set of recommendations for fisheries law enforcement. These perspectives represent a deliberative approach to compliance because they emphasise the importance of consensus between citizens and the state reached through communication. They are thus less related to Durkheim's idea of enforcement as symbolic action than they are to Habermas' (1984) idea of rational consensus through communicative action. They will thus be referred to as the "Habermasian mechanism" of law enforcement. They hold, like the Hobbesian model, that the effect of enforcement depends on how it is carried out.

A few scholars have suggested that absence of enforcement may erode citizens' morality (Nielsen and Mathiesen 2003; Paternoster and Simpson 1996), which may imply an orientation towards symbolic meanings. However, the argument has not been pursued in any theoretical depth. This article develops and demonstrates the empirical relevance of a view on law enforcement that differs from the Hobbesian and Habermasian mechanisms because it focuses on enforcement's symbolic meaning rather than its discursive or deterrent force. This "Durkheimian" perspective makes weaker rationality assumptions than the Hobbesian and Habermasian mechanisms do. The Hobbesian mechanism assumes strictly utilitarian rationality. The Habermasian mechanism assumes that citizens also display normative and communicative rationality, accepting regulations based on their normative rightness, the correctness of their empirical assumptions, and their sincerity (Habermas 1984:306-308). The Durkheimian mechanism only requires symbols of the legislator's sincerity in order to trigger the citizens' latent, emotionally embedded moral commitment to obedience. Unlike the Hobbesian and Habermasian mechanisms, this perspective is not primarily concerned with the question of how enforcement is carried out, but rather with the moral significance of enforcement's presence or absence. Fundamentally, in the Durkheimian mechanism the presence of enforcement is morally relevant because it symbolizes the sincerity of commands. Law enforcement thus emerges as a symbol of the genuineness of law.

We may thus outline three views on the regulatory capacity of law enforcement:

1. The Hobbesian mechanism regards enforcement as a means of deterring citizens into compliance.
2. The Habermasian mechanism regards enforcement as a medium for rational communication whereby the state convinces citizens about the rightness of its decisions.
3. The Durkheimian mechanism regards enforcement as a symbol of the genuineness of law.

The Durkheimian mechanism of law enforcement has been largely neglected in compliance research. The apparent reluctance to adopt Durkheim's view on law enforcement may not be surprising, as subsequent insights have questioned the inherently moral nature of positive law. Hart's (1997 [1961]) classic elaboration on the characteristics of law argues convincingly that modern law is validated by principles detached from the moralities of regular citizens, and that in modern states ordinary citizens often have no general conception of the legal system and its principles of validation. However, there is nothing contradictory about accepting Hart's argument while also recognizing that positive law may possess a prominent position in the moral consciousness of citizens. Positive law and citizens' morality may be connected in at least two ways. First, the content of regulations often corresponds to citizens' moral beliefs. In such cases, citizens may regard the enforcement of these regulations as a tool for the efficient organization of collective action (see e.g., Edmundson 2002; Scholz and Lubell 1998). In the following, I refer to this as moral support for the content of the law. This basis for consent dominates compliance literature influenced by Habermasian ideas¹ (Hønneland 1998; May 2004; Parker 2006). Moral support for the content of a law is not based on the perception of law as inherently moral, meaning it does not imply moral subordination to the legislator. Consequently, the state seeks citizens' normative consent on each law.

Positive law's capacity to influence citizens' morality ultimately rests on the perception of law not only as consistent with morality, but as inherently moral. The second link between positive law and citizens' morality is the perception among citizens that breaking the law is immoral in its own right. This perception is a social norm we may call the "legislators' authority." This notion of "authority" refers to the moral belief of subordinates that they should obey the commands of a specific superior (see e.g., Blau 1963). We may imagine a society where law-abidingness forms part of the collective image of "the good citizen" and where parents raise their children accordingly. Thus, an informal moral norm among citizens requires them to obey the law, regardless of content. At the individual level, this social norm may be internalized by the actors, but it may also be manifest as a fear of being subjected to social sanctions from fellow citizens.

Transferring the moral requirement of law-abidingness between generations through socialization of children means that the legislator's authority does not necessarily depend on most citizens genuinely understanding and actively supporting



the principles of the legal system. The moral force of law may thus not primarily be a question of its justification, but rather a much simpler question of perceived legal genuineness. If we accept Hart's argument, most citizens can settle doubt about legal genuineness only on the basis of manifestations of this genuineness in their everyday lives. This is where enforcement becomes important. Law enforcement can thus be regarded as the means whereby the state symbolically expresses the genuineness of law to its citizens. Enforcement emerges as a manifestation of the sincerity of law as an obligatory normative statement. In the absence of enforcement, citizens may contest the law's legal genuineness and thus its moral force. Consequently, the legislator's authority is latent when the law is not enforced. I refer to this as the "Durkheimian mechanism" of law enforcement.

I demonstrate these points through comparative case studies of crime and law-abidingness in which I present data from one Canadian and two Norwegian fishing communities. The communities can be regarded as cases illustrating the relationships between law enforcement and citizens' reasons for compliance.

Methodological Approach

Data was generated through comparative ethnographic fieldwork among three groups of fishers. The studies all focus on their subjective reasons for either obeying or violating governmental fisheries regulations, and seek to explore the dynamics of social negotiation and informal social control in compliance matters. I stayed two months in a small Norwegian inshore fishing community in 1997 when the fishers faced new state regulations that severely restricted their fishing. I stayed for another two months in an inshore fishing community on the east coast of Newfoundland in 1998. That fishing village faced a moratorium on cod fishing while having an abundance of cod in local waters. The studies address the social dynamics of compliance in intimate networks and included some 25 informants in the Norwegian village and 30 informants in the Newfoundland case. Data was generated through interviews and observations of gossip and normative negotiations. The comparative study of inshore fisheries was followed by fieldwork in the Norwegian offshore fishing fleet. I stayed onboard five offshore purse seiners—for five to 12 days on each vessel—in 2003 and 2004, covering their main fisheries. All vessels were from the same community and skippers interacted frequently, which also made this a community study. Most data was generated through repeated semi-structured and informal interviews with skippers, net bosses, and, to some extent, other crew members. Observations of fishing and communication practices yielded important data. I generated additional data by interviewing owners and company administrations. All informants, vessels, and companies were guaranteed confidentiality, and I also gave their home communities fictional names.

I address four subjective perceptions that potentially constitute reasons for compliance. Perceptions 1 and 2 are

associated with the Durkheimian mechanism, perception 3 is associated with the Habermasian mechanism, and perception 4 is associated with the Hobbesian mechanism.

- Perception 1. Fishers ascribe authority to the legislator.
- Perception 2. They perceive the regulations as formally enforced.
- Perception 3. They strongly support the content of specific regulations.
- Perception 4. They believe that violations entail a significant risk of detection and punishment by enforcement authorities.

In presenting the cases, I classify each perception as either present or absent. When present, a perception is classified further according to the extent to which it is experienced as a strong reason for compliance among fishers. These classifications are systematized in a comparative analysis after the individual cases are outlined (Table 1). The study also generated qualitative data on the level of compliance, which indicates the effects the four perceptions had on the fishers' actions. In Table 1, the level of compliance is classified thus: high, meaning that the fishers generally choose compliance; low, meaning that they generally choose non-compliance; or moderate, meaning that they choose one or the other with about equal likelihood.

Three Cases from the Fisheries

Settings Compared

The three fishing communities have several relevant similarities. All are highly dependent on the fisheries. Fishing vessels are owned and manned locally. Some fishermen fully or partially own vessels, while others are hired by local, family-owned fishing companies. All fishermen are paid on a share basis, meaning that their incomes largely depend on how the fishery is doing. The communities are small and transparent; fishermen's professional reputations affect their standing in the community, meaning that community norms influence their choices in terms of compliance. Fishermen in all communities faced regulations that significantly restricted their fishing activities. They also had economic incentives to violate them.

The settings also differ in ways that are relevant. A certain moral unease associated with "becoming a lawbreaker" exists among fishermen in the two Norwegian communities. Knowledge or suspicion that a fisherman breaks the law often generates gossip, which acts as a significant deterrent on fishermen planning non-compliance. A fisherman can be met with moral reproach for breaking a law even when the fishermen unanimously disagree with the law's content. This indicates the existence of a social norm that I labelled the "authority of the legislator" above. Naturally, the extent to which individuals internalize this norm varies. Law-abidingness is an important part of the Norwegian image of the "good citizen," which has been reflected in public discourse

on fisheries crime in recent years (see e.g., Norway 2004a). The Durkheimian enforcement mechanism may consequently have explanatory force in the Norwegian cases.

The fishers in the Newfoundland village differ from their Norwegian counterparts in terms of their perception of the legislator's authority. Like their Norwegian counterparts, they relate to an informally enforced system of moral rules when fishing; however, there are no norms to the effect that fishers are morally obliged to comply with fisheries regulations unless they collectively support the content of those regulations. In cases where the fishers generally disagree with regulations, non-compliance emerges as normatively accepted (see also Matthews 1993:181-188). The authority of the legislator is thus weak in the Newfoundland fishing community. In Table 1, which sums up and compares the studies' empirical findings, the authority of the legislator is regarded as present in the two Norwegian communities and absent in the Newfoundland community.

Accounting for this difference exceeds the scope of this article; however, Norway and Newfoundland clearly differ in terms of political culture and history. The Norwegian national identity was largely constructed around the political institutions established by the Constitution of 1814 (Seip 1997; Sørensen 1998a, 1998b). The *Storting* (Parliament) and the Constitution—the cornerstones of the legislative system—are two prominent national symbols. The present Norwegian national identity comprises a deeply-rooted and taken-for-granted sense of social belonging (Aagedal 1997; Hellevik 1996; Knutsen 1997). Continuous economic growth and the extensive public welfare system have minimized political conflicts since WWII, and there has been a stable and high level of political trust, marked by confidence in democratic institutions and satisfaction with the government (Aardal 1999; Aardal, Valen, and Opheim 1999; Miller and Listhaug 1998).

Newfoundland became part of Canada in 1949, following two referendums, the last of which had a small majority favoring confederation. The island's geographical isolation provided for a distinct culture and a sense of Newfoundland nationality, and people's relationship with federal Canada has been ambivalent (Campbell and Rawlyk 1979; Hiller 1987; Overton 1979, 1985; Tomblin 1995). Survey data indicate that Newfoundlanders feel strongly attached to their province, and there is latent tension between their identities as Newfoundlanders and Canadians (Elkins 1980; Gibbins 1994; Hiller 1987; O'Brien 1979). While central Canada has experienced continued economic growth since WWII, Newfoundland has lagged behind (Veltmeyer 1990). Newfoundland's political culture has been marked by a stable pattern of political distrust; Newfoundlanders have little faith in their ability to influence government decisions and generally distrust federal and provincial politicians (Gezelius 2003; Ornstein, Stevenson, and Williams 1980; Simeon and Elkins 1974). Fisheries management is a federal responsibility in Canada, and the Newfoundland fishers that I interviewed expressed a deep sense of powerlessness and distrust towards the management

authorities. Similar attitudes were not found among the Norwegian fishermen, although they often disagreed with government policies. Implications of social identity theory (Hogg and Abrams 1988; Tajfel 1982) suggest that the legislator's authority can emerge and grow with less emotional resistance when citizens regard the legislator as a representative of their social group (Gezelius 2003; see also Hønneland 2000). This might explain why the legislator has more authority in the Norwegian cases than in the Newfoundland case.

The primary data are summarized below as descriptive text. Direct quotations are only illustrative. The cases will subsequently be compared for the purpose of outlining law enforcement mechanisms.

Case 1: Spatial Regulations in the Norwegian Purse Seine Fisheries

"Seaborn Hills" is a municipality of approximately 4,500 people on the west coast of Norway. It depends on the fishing industry, including fish harvesting, fish farming and fish processing. The community had some 290 registered fishermen in 2003, 255 of whom were registered as full-time fishermen, and almost half its work force was employed in activities related to the fishing industry.² The harvesting sector mainly consists of a fleet of 24 local-family owned offshore purse seiners, which are usually between 60 and 70 meters long. They operate purse seines in herring, mackerel, and capelin fisheries, and pelagic trawl when fishing for blue whiting. They have crews of eight to 10 people, mostly recruited locally on the basis of kin and personal reputation. The skipper is the chief authority on board, but the skipper and the net boss, who formally leads the fishing operations, usually make decisions by consensus. Other crew members and company administrators generally do not interfere with day-to-day decisions on board. The offshore purse seiner fleet has been the most profitable segment of the Norwegian fish harvesting industry in recent years. The fishing companies currently are not under economic pressure, and the fishermen's incomes are significantly higher than the Norwegian average.

This fleet is subject to various fish harvesting regulations, including regulations concerning gear, quotas, by-catch, fish size, catch report procedures, and time and space delimitations. Illegal practices tend to generate gossip among colleagues, and some fishers explicitly mention the social norm of law-abidingness as a major reason for their compliance. Law-abidingness forms part of their collective image of the "bona fide" fisherman. It is symptomatic of this identity that Seaborn Hills fishermen perceive themselves and their Norwegian colleagues to be much more law-abiding than foreign fishermen. Gaining competitive advantages by illegal means is also generally regarded as unfair play. In Table 1, Seaborn Hills is therefore classified as a case where the authority of the legislator is experienced as a reason for compliance.

Informal social sanctions against lawbreakers depend, for example, on the extent to which the violation is perceived as having been intended or planned for the purpose of

achieving extra benefits. Consequently, violation of spatial regulations, i.e., illegal fishing in an off-limits zone, is the illegal act that most typically leads to a poor reputation among these fishermen. Vessels are equipped with Global Positioning System (GPS) navigation systems integrated with electronic maps; therefore, fishermen always know their exact position, meaning that fishing in an off-limits zone is hardly unintended. There is thus no excuse for this among fishers, as expressed by one skipper, "I mean, if you fish on the wrong side of a line..., you are a crook." The general view is that getting better catches than those that can be achieved legally is the only reason for fishing in an off-limits zone. Violations of spatial regulations are thus widely regarded as opportunism, and repeat offenders risk informal sanctions. One skipper described it this way: "There are some vessels that recur, that push a little hard [on crowded fishing grounds], and that are on the wrong side of the line. We avoid interacting with such boats, and we don't give way to them so easily."

Authorities generally restrict fishing to specific areas (see Norway 2004b), reflecting, for example, fish habitats, gear conflicts, or international conventions. Most spatial regulations are fundamental institutional conditions for action and are not discussed among fishers. The existence of spatial boundaries, such as national exclusive economic zones (EEZs), is taken for granted, and the perceived moral obligation to comply stems from the recognition that these are legal regulations.

Vessels are required by law to have satellite-tracking devices that allow Norwegian fisheries authorities to monitor their movements (Norway 2004c). It is possible for fishermen to isolate or disconnect the antenna in order to conceal their position temporarily. However, disabling tracking gear is illegal and enforcement authorities will notice the disappearance of a tracking signal and may investigate. In addition to electronic surveillance, the coast guard is often present on the fishing grounds, monitoring compliance with spatial regulations. The interviews revealed that the fishermen clearly perceive formal law enforcement as present, and believe that non-compliance with spatial regulations entails a significant risk of detection, as indicated in Table 1.

Today's technology also gives the vessels ability to monitor each other. All vessels in this fleet are now required to have an Automatic Identification System (AIS) that transmits the boat's identity and GPS data to all other vessels within very high frequency (VHF) radio range (normally approximately 20 nautical miles). Consequently, each vessel has displayed on an electronic map the identity, position, course, and speed of all others within VHF range. Skippers who avoid the formal enforcement system are still likely to be observed by colleagues. The transparent nature of the fishing community ashore and at sea and the importance of personal reputation to co-operation and information exchange on the fishing grounds provides for social control. The fishermen report that, generally, spatial regulations are seldom violated, and this is consistent with the observational data, as is indicated in Table 1.

However, the fieldwork data showed a striking deviation to this pattern. This concerns the "Skagerak quota," which are area-based quota regulations used in the herring fisheries south of 62°N. Each vessel has one herring quota for the North Sea and another for Skagerak, which are neighboring waters (Norway 2004d). The North Sea is considered a better fishing area than Skagerak, and it is thus more convenient for the vessels to catch both herring quotas in the North Sea. This can be done fairly easily without being detected by the enforcement authorities. A skipper can catch his Skagerak quota in the North Sea, then steam into Skagerak, simulate fishing, continue to shore, and report the catch as having been taken in Skagerak. The satellite tracking system will not reveal that the catch was taken in the wrong zone. While the fishermen report a high degree of compliance with spatial regulations in general, they claim that fishing the Skagerak quota in the North Sea is widespread. This is known both to the International Council for the Exploration of the Sea (ICES), which provides scientific advice about these stocks, and to Norwegian authorities (ICES 2004; personal communication, Directorate of Fisheries, 18 December, 2003). The fishermen's level of compliance with the Skagerak quota is thus classified as low in Table 1. Unlike violators of other spatial regulations, fishermen who violate the Skagerak regulations are not reproached by colleagues and do not risk their reputations. Violating the Skagerak regulations is generally accepted. When asked why they make this moral distinction, the fishermen typically reply, "[The enforcement authorities] know what is going on and do nothing about it." The fishermen report that the Skagerak regulations remain from an outdated regulatory practice no longer prioritized by enforcement authorities.

Herring quotas for Skagerak and the North Sea are set according to an agreement between the European Union and Norway; the European Union desired a separate herring quota for Skagerak. Norwegian authorities have primarily wanted to remove this spatial separation of quotas. Consequently, they have not enforced the Skagerak regulations (Norway 2004e; Personal Communication, Directorate of Fisheries, 18 December 2003).

In Table 1, formal enforcement and the risk of detection are classified as absent in the Skagerak case. The absence of enforcement has arguably resulted in the perception among Norwegian fishermen that the Skagerak quota is not genuine fisheries law. These regulations are not perceived as a sincere command. Consequently, violating them is morally accepted among the fishers. The authority of the legislator is thus not experienced as a reason for compliance in the Skagerak case, as is indicated in Table 1.

Informal social control is undoubtedly a significant factor in terms of compliance with spatial regulations in this fleet, and formal law enforcement emerges as necessary for informal control. However, the fishermen also perceive law enforcement as a significant deterrent, which makes it hard to separate the effects of the Durkheimian and Hobbesian mechanisms on fishers' compliance. Our next case may bring us a step closer.

Case 2: Groundfish Regulations in Norwegian Inshore Fisheries

“Redfish Harbour” is a fishing village of slightly under 400 people on Norway’s northwestern coast. Fishing and fish processing have always been the main industries. The harbor is at the center of the community, and is both a social meeting place and a workplace. The fisheries are thus an important part of Redfish Harbour’s social life. The community is transparent and rumors spread easily, which provides for social control. In 1997, the community had 60 registered fishermen, 36 of whom were registered as full-time fishers, but this is a fishing community in decline. It had a fleet of purse seiners employing approximately 100 people in the 1960s, but that disappeared during several poor years in the 1970s and 1980s. The number of fishermen dropped by 40 percent from the mid-1980s to the late 1990s³, and fishermen today report great difficulty with recruitment. The fishing fleet now consists of 17 decked inshore and near-shore fishing vessels. Only three boats are longer than 13 meters and none of these is longer than 25 meters. The larger vessels have crews of three to seven people; they fish groundfish with gillnets and pelagic species with purse seines. The smaller boats fish groundfish—mainly saithe, cod, and redfish—with gillnets and automatic jigging machines⁴. These are operated by one-, two-, or three-man crews that are largely based on kin. The fishermen fish year-round, which ensures some continuity in their incomes. Fishermen’s wives often work outside the fisheries sector, and the household economies of Redfish Harbour’s fishermen largely do without government income support.

The inshore fleet is by and large subject to most of the same fish harvesting regulations as the offshore fleet. Redfish Harbour’s fishermen agree that the small inshore vessels that only fish with gillnets and automatic jigging machines represent no threat to the fish stocks, and they consequently think that government regulation of these vessels is unnecessary. This is classified as absence of support for the content of the law in Table 1.

Saithe is the main species that the inshore vessels fish with the local harbor as their base. In 1997, new quota regulations in the saithe fisheries resulted in several seasonal closures of the fishery, which affected many vessels in Redfish Harbour (Norway 1997). A certain by-catch percentage was allowed when fishing for other species, but fishing groundfish in the Redfish Harbour area was extremely difficult without catching illegal quantities of saithe. Several vessels consequently had an incentive to conceal by-catch by violating catch report regulations, i.e., falsifying sales notes, and there were extensive discussions regarding compliance. The perceived moral obligation to obey the law was among the most conspicuous norms in discussions and gossip around the wharf. In Table 1, these catch-report regulations are thus classified as an instance where the legislator’s authority is present and perceived as a strong reason for compliance. A fisherman who broke fisheries law risked significant harm to

his reputation if he was perceived to have done so intentionally and especially if he was perceived to have done so out of greed. Fishermen doing well economically faced stricter demands in terms of law-abidingness than those who had economic difficulties.

A fisherman who had had a poor season and was severely hit by the closure expressed it as follows:

If you break a rule because it creates big problems for you, no one will look askance at you.... But if there is someone who has had a very good season and then starts getting his sales notes falsified, then there’s talk about it. ‘He doesn’t need to do that, he’s been doing so well earlier this year,’ they say then.... I must say that such as now, if I have some by-catch falsified on my note, I wouldn’t feel like a lawbreaker. If I had broken lots of rules all the time, I would feel that way, but not if I have some catch falsified. It would be like self-defense in a way.

Violations were not unanimously and unequivocally accepted when committed out of need, but conflicting normative expectations between the requirement for law-abidingness and a perceived right to make a living from fishing prevented the community from imposing severe sanctions on offenders who depended on a continued fishery to make a reasonable income. In such cases, the legislator’s authority is manifest in the lawbreaker’s need to justify his violation to his colleagues (Gezelius 2002).

Management authorities enforced most harvesting regulations, including catch report regulations, and were also perceived to do so. However, enforcement personnel were not seen in Redfish Harbour very often. Inspectors could only get there by the local ferry; therefore, fishermen often knew in advance they were coming. Redfish Harbour fishermen consequently perceived the risk of detection as minor. In Table 1, these catch report regulations are thus classified as an instance where the existence of formal enforcement is known but not perceived as a deterrent. The community’s informal enforcement system was consequently by far the most important factor explaining compliance among Redfish Harbour’s fishermen. There was a general practice of openness in professional matters among the fishermen, and secrecy was difficult to maintain without generating suspicion and gossip. The fishermen seldom risked acting in opposition to the community’s moral norms. There was consequently a fairly high level of compliance with catch report regulations up to the point where illegal fishing was perceived as necessary to stay in the business, as is indicated in Table 1.

However, certain fisheries regulations were frequently violated without ever causing gossip or discussions. When asked about regulations concerning times for setting and hauling gill nets during the local cod fishing in winter (Norway 1990), the fishermen replied that these regulations were subjected to neither formal nor informal control in this area. One fisherman described the general view as follows, “Nobody has ever cared about that around here. It has never been enforced. The gill nets are supposed to be hauled every day too. But no

one here has ever followed that practice. The gill nets might often be out for a couple of days. No one cares about such things....” Redfish Harbour fishers face similar local gillnet regulations when they go north to participate in the Lofoten winter cod fisheries. However, they report that in the Lofoten fisheries, such regulations are strictly enforced by inspectors, as they are among the fishermen themselves. In Table 1, these regulations are classified as an instance where the authority of the legislator is present; however, it is not perceived as a reason for compliance on the fishing grounds off Redfish Harbour where enforcement is absent.

In Redfish Harbour’s local fisheries, formal enforcement means little in terms of deterrence, but it has significant symbolic force. Violators are informally sanctioned only if the violated regulation is perceived to be formally enforced. Even a moderate level of formal law enforcement can ensure a fairly high degree of compliance in this case, as it triggers the latent perceived moral obligation to obey the law. This community’s behavior can thus be regarded as a fairly pure case of regulation through the Durkheimian mechanism of law enforcement.

Case 3: The Cod Moratorium in Newfoundland

“Little Spruce Harbour” is a fishing village of approximately 350 people, located in a bay on the eastern coast of Newfoundland. Fishing and fish processing are its only significant industries. There are 55 registered fishers, basically organized as 12 crews.⁵ The fishing fleet consists of nine decked vessels—so called longliners, 11–19 meters long, and 35 open boats. Typically, longliner crews consist of four to five people from two to three households, and are largely based on kin. As is usual in the Newfoundland fisheries, people fish on a seasonal basis, usually from March to November. In mid-winter their economy is based on a combination of unpaid work and fishermen’s employment insurance.

Life in the village is transparent and social bonds are close. Professional networks largely coincide with other types of social relations, such as kin and friendship. News and rumors spread easily not only in the village but also in surrounding villages because everyone knows each other.

Cod and capelin traditionally constituted the main fisheries in this community, but the cod fisheries of eastern Newfoundland were closed in 1992, and moratoria were introduced for most other groundfish species in the area two years later. Cod fisheries were essential to settlement in many Newfoundland communities and constituted an important part of the Newfoundland identity. The moratoria generated a social crisis in coastal Newfoundland (Felt and Locke 1995; FRCC 1997, 1998; Harris 1990:19-21; Williams 1996); they were still in effect when I conducted the fieldwork in 1998.

Little Spruce Harbour’s fishers managed comparatively well thanks to traditional pelagic fisheries, a boom in the price of snow crab, which became an important new fishery after the collapse of the groundfish, and a governmental income support program introduced in the wake of the

cod moratorium to compensate for reduced incomes. Consequently, the moratoria did not notably affect the material standard of living in this village, and people’s way of life remained relatively intact, although anxiety and pessimism about the future was widespread.

Subsistence production still forms part of the household economies in Little Spruce Harbour, as elsewhere in rural Newfoundland (see Omohundro 1994), and cod has traditionally been fished for the purpose of food as well as for sale. However, apart from a few days’ food fishery with strict bag limits, the moratorium applied to subsistence fishing as well as commercial fishing. Canadian authorities enforced the ban strictly, regardless of whether people poached for the purpose of food or money, and household poachers were prosecuted and fined. People believed there was significant risk of getting caught by enforcement authorities, which reduced many people’s willingness to poach, as stated by this fisher: “The risk is too high. They’d take the boat, confiscate the gear, and give you a ruining fine. You lose everything. I’m afraid all the time.” Enforcement is classified as present and as a deterrent in relation to subsistence as well as commercial fishing in Table 1.

The moratorium on subsistence fishing represented no threat to the household economies of Little Spruce Harbour’s fisher families. However, Little Spruce Harbour residents believed that household fishing did not threaten the stock, and therefore strongly and unanimously rejected the ban on subsistence fishing, which is indicated as absence of support in Table 1. Cod poaching for the purpose of food is commonly accepted in the village and can take place fairly openly. Poached cod can, for instance, be exchanged as gifts. One fisher described the general attitude as follows: “[I]f you went out and poached a few cod to eat..., we wouldn’t mind. It should have been allowed to do that.” The absence of perceived moral obligation, despite strict formal enforcement, allows classification of this case as an instance where the legislator’s authority is absent, as indicated in Table 1. People react with indignation and fury towards enforcement authorities when household poachers are arrested and fined. However, fear of penalties keeps non-compliance at moderate levels in this community, as indicated in Table 1.

Despite the resistance against the ban on subsistence fishing, the closure of the commercial cod fisheries had been generally supported in Little Spruce Harbour, as elsewhere in the area (Ommer 1998). In 1998, most fishers wanted the government to open a small commercial test fishery for cod, but still supported strict regulation of commercial cod fisheries. Cod’s historical importance has given it prominence as a vital common good in the minds of Newfoundlanders, and cod poaching on a commercial scale was perceived as threatening the stock and as undermining the collective effort to protect it. Consequently, there was a strictly enforced moral obligation to abstain from poaching for the purpose of sale. This view was unanimous and there was absolute compliance in Little Spruce Harbour in terms of the ban on commercial cod fishing (Gezelius 2004). In Table 1, the ban on commercial fishing is thus classified as a case where there is strong support for

the content of the regulations, this is experienced as a strong reason, and there is a high level of compliance.

During my fieldwork, rumors circulated that several people from other villages in this area were involved in commercial poaching. This generated intense gossip and was harshly condemned. The commercial poachers emerged as a criminal sub-group in this area, partly excluded from the larger collectivity, and were regarded with indignation and significant fear. People thus requested more formal enforcement directed towards commercial poaching activities, and when the commercial poachers were finally arrested, the consensus was that they got what they deserved. My observations of gossip were followed up by interviews concerning community norms. The core value underlying people's indignation was a shared moral norm against free riding. People blamed the commercial poachers for destroying the stock and freeloading on a collective sacrifice to protect it, expressed as follows: "They're... earning big money on it while the rest of us stay on shore. They are fishing down the stock. Perhaps they could have opened a cod fishery now if it wasn't for them." Despite my attempts to find signs of the legislator's authority, I have no data indicating that the poachers were blamed for breaking the law *per se*.⁶ The informal moral ban on commercial cod poaching can thus be regarded as a case of support for the law's content in the absence of the legislator's authority.

The fishers of Little Spruce Harbour regard fisheries law as a servant, not a source, of morality. The legislator lacks authority, and the morality of compliance is detached enforcement. When household poachers are punished, indignation is directed at the enforcement agencies, not the poachers. The Durkheimian mechanism of law enforcement appears to have little, if any, explanatory force in this case.

Comparative Analysis

Data from the three communities can be divided into six sub-cases of government regulation, outlined in the comparative matrix of Table 1 in which a letter is assigned to each perception addressed in the study:

- Perception 1. Fishers ascribe authority to the legislator (a).
- Perception 2. They perceive the regulations as formally enforced (e).
- Perception 3. They strongly support the content of specific regulations (s).
- Perception 4. They believe that violations entail a significant risk of detection and punishment by enforcement authorities (r).

Perceptions that are present but not perceived as strong reasons for compliance among fishers are indicated by lowercase letters, while perceptions that emerge as strong reasons for compliance are indicated in uppercase. Parentheses indicate that the perception is vague and, consequently, of little relevance. Perceptions that are clearly absent are indicated with an empty square. The level of compliance indicates the effects of the four perceptions on people's actions. Enforcement (Perception 2) is indicated only in lowercase, as it generates reasons for compliance through consent (Perception 3), deterrence (Perception 4), or triggering the relevance of authority (Perception 1).

Table 1: Comparison of Cases

Causal inferences made from comparative data generally assume that the units compared follow the same causal principles, which is not always self-evident (see e.g., Elster 1999). Furthermore, data from three settings yield no basis for strong general conclusions. Inferences from this comparison can form only bases for empirically grounded hypotheses (Glaser and Strauss 1967). Nevertheless, comparing the data from the six cases arguably triggers hypotheses concerning the relationship between law enforcement and law-abidingness.

First, we have seen that the legislator's authority is insufficient to generate strong reasons for compliance. In the two cases where authority is the only perception present, it does not emerge as a strong reason for compliance, and furthermore, compliance is low. Second, we have seen that a combination of the legislator's authority and enforcement is sufficient to generate strong reasons for compliance. In the

Table 1. Comparison of Cases

		Authority	Support	Enforcement	Risk	Compliance
Seaborn Hills	The Skagerak regulation	a				Low
	Other spatial regulations	A	(s)	e	R	High
Redfish Harbour	Local gillnet regulations	a				Low
	Catch report regulations	A		e		Moderate
Little Spruce Harbour	Ban on food fishing			e	R	Moderate
	Ban on commercial fishing		S	e	R	High



two cases where authority is combined with perception of the law as formally enforced, authority emerges as a strong reason for compliance, and compliance is fairly high. A significant risk of detection and penalty is not necessary for this to be true. In the Redfish Harbour case, the perception of the regulations as being formally enforced was not combined with a significant perceived risk of detection and penalty, but authority still emerged as a strong reason for compliance and compliance was high, except in cases of economic *force majeure*. These points can be summarized in the following hypothesis: The legislator's authority constitutes a strong reason for compliance if and only if it is combined with perceived formal law enforcement. When these perceptions are combined, high compliance may be ensured, even when the perceived risk of detection and penalty is low.

We have also seen that a significant risk of detection and penalty may constitute a strong reason for compliance. In the Little Spruce Harbour case, the legislator lacked authority and there was no support for the ban on subsistence fishing, but the perceived risk of penalty reduced people's willingness to poach. Regarding the sixth case—the ban on commercial cod fishing in Little Spruce Harbour—support for the law's content generated a demand for both compliance and formal enforcement, but strict enforcement did not result in manifestations of a view that breaking the law is immoral *per se*. Formal enforcement does therefore not work through the Durkheimian mechanism in the Newfoundland case. The importance of consent suggests a potential for compliance through the Habermasian enforcement mechanism, but this potential is not realized in the deterrence-oriented enforcement of the cod moratorium (see Gezelius 2003).

Conclusion

The cases illustrate that enforcement affects compliance through the Hobbesian and Durkheimian mechanisms. The importance of citizens' consent in the Newfoundland commercial poaching case also indicates the potential relevance of the Habermasian mechanism. These mechanisms are by no means mutually exclusive, and the Redfish Harbour case also shows that the symbolic force of law enforcement adds another dimension to deterrence: the fear of informal social sanctions. However, in research on the regulatory effects of law enforcement, the Durkheimian mechanism has thus far been neglected compared to the other two. It arguably deserves a place alongside them. The visible, immediate presence of law enforcement in the everyday lives of citizens communicates the genuineness of law to civil society, and thus triggers its moral relevance to citizens sharing a faith in the authority of the legislator. Consequently, the effect of enforcement on compliance is not only a question of how enforcement is carried out. The mere presence of enforcement symbolizes the sincerity of law as a binding normative statement. Provided that the legislator has moral authority among citizens, enforcement triggers the latent moral force of law.

This argument does not rule out the possibility of symbolic meanings also being attached to various forms of enforcement. For example, the intensity of surveillance and the harshness of the penalty may signal not only the sincerity but also the strength of a normative statement. The question of the relevance of enforcement style to the Durkheimian perspective transcends the data presented above and therefore remains a topic for further research.

Compared to the Hobbesian and Habermasian mechanisms, enforcement through the Durkheimian mechanism is far less costly, as its effect on compliance is less dependent on the intensity and form of enforcement. However, unlike the Hobbesian and Habermasian mechanisms, the Durkheimian mechanism completely depends on the legislator's authority. Consequently, the costs of enforcement could be a significant factor to consider when legislative systems are designed. This question has long been a matter of concern in the literature on fisheries management. The state-centred management approach represented by the "Tragedy of the Commons" model (Hardin 1968) has been challenged by scholars who have stressed the importance of user-group participation or "co-management" in order to increase the legitimacy of regulation and thereby increase compliance (Eggert and Ellegård 2003; Jentoft 2000; Kaplan 1998; Makino and Matsuda 2005). Co-management theorists have largely been oriented towards the Habermasian ideal of rational consent, but the Durkheimian perspective may also have a certain relevance to this debate, as it points to the symbolic effects of enforcement that can be achieved when resource management is embedded in institutions having moral authority among the governed. Otherwise, in the absence of the legislator's moral authority, enforcement can only work through the more costly Hobbesian and Habermasian mechanisms.

Notes

¹Habermas' theory is not logically limited to this specific basis for consent. Consent through rational discourse is the core of the Habermasian mechanism of law enforcement.

²Sources: Seaborn Hills municipal administration; census of fishermen

³Sources: the national population register; census of fishermen.

⁴The automatic jigging machine imitates traditional handline fishing with a series of artificially baited hooks and a sinker attached to a line.

⁵Source: Professional Fish Harvesters' Certification Board Newfoundland and Labrador.

⁶I have argued elsewhere (Gezelius 2004) that commercial and subsistence fishing can be regarded as two morally distinct regulatory domains, and that it is much harder for legislators to achieve authority and support for the law's content in relation to subsistence production than commercial activities. For example, the state's authority appeared to be absent in the subsistence sphere of Redfish Harbour, despite being clearly present in relation to commercial fishing. However, Little Spruce Harbour is a more clearly contrasting case in terms of authority because of the absence of signs of legislator's authority in both subsistence and commercial fishing (see also Gezelius 2003).



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