

Do Norms Count?

State Regulation and Compliance in a Norwegian Fishing Community

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Abstract

The article addresses the interface between law and the morality of civil society. It starts with a review of the discourse between the utilitarian approach to rationality and perspectives which include normative action. It subsequently explores the dynamics of compliance and non-compliance among a group of Norwegian fishermen. The choice of compliance was guided by an informally-enforced set of moral norms, which largely dissolved the connection between expected benefit and the likeliness of infractions. This moral system defined instances in which violations could take place without being met with informal sanctions, and thus also allowed for strategic action to some extent. The article illustrates how civil society enforces the law according to moral rather than legal standards, and it ends with a suggested concept of legitimacy of law.

Introduction

State regulation of fish harvesting activities has expanded over the past twenty years. As a result, the issue of enforcement and compliance has been the object of increasing attention. In the academic literature as well as in the public debate, the problem of violations of fisheries law is often hypothesised to be rooted in an absence of moral restraints and in inefficient formal enforcement. However, the issue has been insufficiently explored empirically. This article addresses the interface between the laws of the state and the morality of civil society. It attempts to explore if and how the morality of a specific collectivity of fishermen influences choices regarding compliance, and how formal regulations are informally enforced. The data are based on an ethnographic fieldwork in a Norwegian fishing community in 1997, and consist of informal and semi-structured interviews as well as observations. The study included approximately 25 informants, but it emerges as a study of one social network, as it focuses on the relations between these individuals. The informants constituted the most active part of Uerhavn's fisheries milieu. The primary data upon which the article is based are summarised as descriptive text in this article. However, I will also use a few direct quotes as examples and illustrations.

Theoretical Background

The question regarding the role of norms will be addressed at two levels. First, there is the extent to which action in a specific collectivity of fishermen is influenced by moral considerations. In its most simple and puristic form, this question relates to the traditional distinction between the socialised actor and the atomized, rational,

utility maximising, self-interested individual in social theory. Secondly, there are the more specific questions as to *which norms apply* and *how they regulate behaviour*.

Whereas the first question will be addressed through an evaluation of the relevance of well established theoretical perspectives, elaboration on the latter will have more of a “grounded theory” approach in Glaser and Strauss’ terms (1967).

The topic of this article is thus linked to a sociological discourse which is as old as it is tenacious. Parsons’s ([1937] 1968) general attack on the “utilitarian system of social theory” has a number of more empirically specific derivatives, several of which are potentially relevant to the topic of this article. As we are concerned with fishing as an economic activity, we face the debate between neoclassical economics and economic sociology (Swedberg & Granovetter 1992). As we are concerned with management of a common property resource, we face the debate between the Tragedy of the Commons school, represented by e.g. Garret Hardin (1968) and H. Scott Gordon (1954), and its critics who argue that the narrow rational choice approach of this school of thought overlooks people’s institution-building capacities (Acheson 1975; Berkes 1983; Berkes & Farvar 1989; McCay & Acheson 1987; Ostrom 1987; Ostrom 1990). The analytic focus of this article is compliance with the law, and we find a derivative of the discourse also in this field.

Becker’s model of crime and deterrence applies neo-classical economics to the field of criminal behaviour. A choice concerning compliance is seen as the outcome of the actor’s expected net gain from breaking the law, the risk of detection, prosecution and conviction, and the severity of punishment (Becker 1968). As state regulation of fish harvesting expanded in the 1980s, Becker’s model was combined with bio-

economic models in order to adapt this perspective to the field of fisheries (Sutinen & Andersen 1985; Anderson & Lee 1986). Some years later, these models were also applied in a few empirical studies on the issue. The studies were based on survey data and had neo-classical economics as their sole perspective (Sutinen & Gauvin 1989; Blewett et al. 1987; Furlong 1991). These studies have generally shown some degree of correlation which is consistent with theoretical predictions. However, the explanatory power of this perspective has not proved to be very strong.

Several years before compliance with law became an issue in fisheries research, a number of general surveys on people's compliance with the law were carried out (Friedland et al. 1973; Silberman 1976; Meier & Johnson 1977; Grasmick & Green 1980; Paternoster et al. 1983; Tyler 1990). These studies were consistent in their conclusions that social factors such as morality, peer involvement and threat of social disapproval were the main factors influencing choices in terms of compliance with the law. The effect of factors connected with legal punishment proved to be comparatively weak.

On this background, the dominant position of neo-classical economics in studies of compliance in fisheries may seem surprising. On the other hand, fisheries is an economic activity, and it can be argued that this makes it reasonable to believe that cost-benefit calculation is likely to be more relevant here. However, the findings of the general research on compliance have been confirmed by several studies on business crime. Morality and informal social control has emerged as more important than formal sanctions also in these studies (Paternoster & Simpson 1996).

In the 1990s, numerous authors have emphasised the need to take a broader approach to the issue of compliance in fisheries, and particular emphasis has been placed on the normative aspect (Jentoft 1989; Sutinen et al. 1990; Sagdahl 1992; Jennings 1994a; Jennings 1994b; Sutinen 1994; Spagnolo 1994; Hønneland 1995). A few empirical studies which have included normative aspects have been carried out in recent years. In a statistical survey on fisheries in the Philippines, Indonesia and Malaysia, Kuperan et al. (1997) found that personal moral development and compliance among peers, as well as the probability of detection and conviction, affected violation rates. A study of compliance in the Barents Sea offshore fisheries suggested that the Coast Guard ensured a relatively high level of compliance due to successful use of discursive measures and the fact that fishermen tend to have positive attitudes towards the Coast Guard (Hønneland 1998; Hønneland 1999). Nielsen and Mathiesen (2000) used questionnaires and semi-structured interviews in a study of compliance in Danish fisheries. They concluded that most fishermen had an opportunistic approach to compliance, but that normative aspects played a part.

The research on compliance in fisheries has almost exclusively focused on the *extent* to which different factors influence fishermen's choices. In-depth studies of *how* and under *what conditions* the different factors affect their choices are lacking. Theoretical developments within this particular field have also been scarce. We consequently lack knowledge on the actual dynamics of compliance in fisheries. This article is an attempt to take a step in the direction of remedying this lack.

The extreme versions of rational choice theory that have been addressed above disregard norms altogether. Boudon (1998) has argued that this narrow rational

choice approach, which he labels the “utilitarian version of rationality”, should be replaced by the “Cognitivist Model” which includes false beliefs and normative considerations, provided that they are founded on *strong reasons*. A theory of normative action does thus not imply any rejection of rationality and agency. Neither does a theory of normative action have to imply that actions are *determined* by norms, i.e. an “oversocialised conception of man” (Wrong 1961). The two models of agency addressed above are only mutually exclusive in their most extreme and reductionist forms.

Regulation and Compliance among Uerhavn’s Fishermen

The Setting

“Uerhavn”¹ is a fishing community of approximately 390 inhabitants constituting 150 households. It is located on the outer tip of a headland on the north-western coast of Norway. The community has 60 registered fishermen, 36 of whom are registered as full-time fishermen. Fishing and fish processing are by far the most important industries in this community. Uerhavn has 17 vessels participating in fishing, eleven of which can be classified as professionally active. All vessels are decked. None of the vessels are longer than 25 meters and only three are longer than 13 meters. The larger vessels operate a combination of gill nets and purse seines, while the smaller boats use automatic jiggers², sometimes in combination with

¹ “Uerhavn” is a pseudonym. Names of informants are also fictional.

² The automatic jiggling machine is a mechanical device which imitates the traditional handline jiggling. This gear consists of a line with a series of artificially-baited hooks and a sinker attached to it. The line runs from the collecting drum on the machine mounted on board the boat, over the boat side along a jib and into the sea. The machine automatically pulls the line approximately a fathom and lets it back down until a certain quantity of fish is hooked, and it subsequently hauls the line automatically.

gillnets. A decked fishing vessel under 13 meters is generally referred to as a *sjark*. Most of Uerhavn's *sjarks* are one-man operations, but those who mainly use gillnets normally have crews of two or three. The purse seiner/gill netters have crews of three to seven people. The *sjarks*, which usually operate on a day-trip basis, fish groundfish exclusively. The main species are saithe, cod and redfish. When fishing out of their domestic harbour, saithe is normally the target species while redfish is caught as by-catch. Most of the professionally active *sjarks* go north in the winter and spring to participate in the Lofoten cod fishery. Some also participate in the cod fisheries in Finnmark after that. The larger boats participate in purse seine fishery for herring and mackerel, in addition to gill net fishery for cod, and gill net and purse seine fishery for saithe.

Uerhavn has a local fish processing plant, but four plants are possible places for delivery within an hour's boat trip from the local fishing grounds, and two more within two hours' boat trip.

Uerhavn is a fishing community in decline. During the 1960s, the community had a fleet of twelve 15 to 22 meter purse seiners which altogether employed approximately a hundred people. Today the community experiences a drain of young people, as employment opportunities in the Uerhavn area are scarce for those returning home after higher education. The population has dropped with 20% over the past fifteen years. The average age of an Uerhavn full-time fisherman is 43, and the fishermen report having serious difficulties with recruitment. Some express worry that the knowledge of fishing will die with their generation.

The social networks among Uerhavn's fishermen are characterised by Granovetter's term (1973) "strong ties", in the sense that most of them socialise on a daily basis. The harbour is located at the centre of the community and work-related activities are carried out alongside with other community life. The social transparency is high and news potentially spread quickly. A fisherman's professional behaviour and qualities affect his general standing in the community as a matter of course. There is no clear distinction between work and leisure, colleagues and neighbours or kin. In order to understand the efficiency of the informal social control described later, this social transparency must be kept in mind. A fisherman is not expected to keep too much to himself in the long run, and in mutual care there is an element of mutual surveillance. Furthermore, the intimacy of this social network makes the possibility of social degradation or exclusion appear as threatening. A fisherman's identity is strongly linked to the adequate membership of this collectivity, and there are few alternative collectivities to join in the case of exclusion or degradation. This sense of belonging implies that the moral standards of the community tend to have significant regulatory force, also for people who may not have internalised them.

Incentives for Non-Compliance

My fieldwork was carried out during a season when many of the fishermen depended on saithe. This fishery was regulated by a total allowable catch³ (TAC) which was distributed between different groups of vessels, categorised according to size. These group quotas were also divided between different seasons of the year.

³ Total allowable catch is the total amount allowed to be harvested from a certain fish stock.

Each boat was *allowed* to catch a limited amount in that year, but no share of the TAC was *guaranteed*, and in effect this was a competitive fishery.⁴ This system resulted in several temporary closures of the saithe fishery for certain groups of vessels in 1997. More than half of Uerhavn's professionally active vessels were affected by these closures. During these closed periods, a certain amount of by-catch of saithe was allowed when fishing for other species. However, in the Uerhavn area, fishing for other groundfish was extremely difficult without getting illegal amounts of by-catch. The fishermen who depended on groundfish thus had to stay at the wharf unless they wanted to risk getting illegal catch. The Norwegian government is authorised to confiscate the value of illegal catch. Although this is an administrative measure aimed at removing the incentive for landing illegal catch, and has no status as a legal sanction or punishment, it can inflict significant economic loss on the fisherman.

At delivery, the buyer and the fisherman are required by law to fill in and sign a purchase slip, which shall contain correct information on the amount and species landed. Purchase slip information is subsequently sent to the management authorities, and is a vital part of the Norwegian quota monitoring system. Falsification of purchase slip information is illegal, prosecuted by the court system, and one of the most commonly-reported violations in the Norwegian fisheries enforcement system.

In sum, Uerhavn fishermen could have a significant economic incentive to conceal catch information during the saithe closures. The fishermen also knew of a

⁴ Such a system of maximum quotas is combined with competitiveness through a certain level of "over-regulation", which means that the sum of the maximum quotas exceeds the TAC. The fishermen consequently risk that the fishery is closed before they manage to catch their quota.

fish buyer within range who sometimes was willing to falsify purchase slip information. Such falsification can also be in the interest of the buyer.

Although dockside inspections did occur, Uerhavn fishermen perceived the risk of being detected by enforcement authorities as being minor.

Morality and Sanctions

Uerhavn's fishermen most often complied with government regulations, including the closure on saithe, despite economic incentives for non-compliance and the low risk of being detected by enforcement authorities. During the interviews, the fishermen were asked about their personal reasons for compliance, and the answers revealed that the level of formal enforcement in this area provided little incentive to comply with regulations. None of the informants gave formal enforcement as their primary reason for compliance or for keeping violations secret.

The fishermen's reasons for compliance focused on the risk of being the object of "talk" in the community and on their own moral convictions. It can be argued that these must be considered as two aspects of the same cause - namely the moral standards of the collectivity. Individual moral convictions in Uerhavn reflected the collective morality expressed in public negotiations and gossip.

The predominance of data emphasising the role of informally enforced morality does not necessarily suggest that the general causal connection between formal enforcement and compliance is weak, as these data were generated in a situation with a modest level of formal enforcement and a high level of social transparency. However, this setting provided a good opportunity to study the nature and effect of informal compliance mechanisms. The relatively high level of compliance and the

fishermen's reasons for this law abidingness indeed suggested that such mechanisms played an important part.

When the closure of the saithe fisheries was announced, several of the affected crews were clearly expected to stay ashore, which they did. What puzzled me in the beginning, was that a few fishermen continued fishing, and were seemingly allowed to do so without becoming objects of back-biting or other sanctions, despite the common understanding that they concealed illegal amounts of by-catch by falsification of purchase slips. I consequently tried to explore the foundation for this differentiated treatment and behaviour. This led me to a set of moral distinctions which largely governs the dynamics of compliance in Uerhavn. Observational data on the negotiations among the fishermen, as well as interview data, showed that their considerations concerning compliance included three basic moral norms.

I found that an informally-enforced moral obligation to obey the law was the single most important factor explaining compliance among Uerhavn's fishermen. Some fishermen expressed that they felt morally uncomfortable when breaking the law, while others expressed fear of the gossip which could follow a law-violation. Gossip generally consisted of rumours that someone did "something illegal". The obligation to obey the law was believed to be valid regardless of how the regulations were otherwise perceived. Uerhavn's fishermen agreed that state regulation of the *sjarks* was unnecessary⁵, but they nonetheless enforced -- with some exceptions -- the

⁵ Uerhavn's fishermen thought that the fishing effort of the small vessels was sufficiently limited by the weather. The fishermen on the small as well as on the big vessels agreed that regulation of the small boats did more harm than good, but that regulation of the larger vessels was absolutely necessary. This can be seen as a conflict between science and fishermen's knowledge. Uerhavn's fishermen believed that the scientists grossly overestimated the size of the cod stocks for instance, but that the activities of the vessels under 13 meters had only limited effect on the stock. The fishermen were generally sceptic towards current scientific knowledge, and did not regard it as superior to their own. However, Uerhavn's fishermen, including those in small boats, felt morally obliged to obey fisheries law, regardless of whether they agreed with it. In other words, the law had independent moral force among these

obligation to comply. The following quotes may serve as illustrations of Uerhavn's fishermen's morality.

The fisherman quoted below ("Isak") refers a rumour to me.

I'm afraid he's fishing a little bit illegally that fellow... There is some talk about it, you know, that someone fishes illegally and that. ("Isak" -- Uerhavn fisherman).

When I interviewed "Vegard", I attempted to draw his attention towards deterrence.

Author: When you try to stick to the regulations, what is your main reason for doing so? Is it the control service⁶?

"Vegard" (Uerhavn fisherman): Well, it's because it's the law. One would rather keep to the law.

Law-abidingness is an important part of the Norwegian idea of the "good citizen". Illegal fishing practices may thus conflict with Uerhavn fishermen's image of self.⁷ Rhetoric under an illegal protest fishery connected with restrictions on driftnet fishing for salmon in this area in the 1970s emphasised this moral meaning of law.

fishermen. Several authors have addressed the relationship between science and fishermen's knowledge (Felt 1994; Finlayson 1994; Thorlindsson 1994).

⁶ The "control service" is a label used for the enforcement authorities in Norwegian fisheries management. The "control service" is a unit under the Ministry of Fisheries responsible for quality control and enforcement of fish harvesting regulations.

⁷ For a theoretical elaboration on normative behaviour and identity, see Hogg & Abrams 1988: 172-175.

We are solid Labour Party people⁸. We are not notorious lawbreakers. We are fighting for our daily bread. The government is facing its own in this case and ought to keep that in mind.

(Fisherman quoted by Knudsen 1979: 101, my translation).

The obligation to obey the law was accompanied by a general demand that one follows the same rules as one's colleagues do, and particularly rules which regulate competition. This will be referred to as the norm of loyalty. In many situations it works as a norm against free riding. Informal sanctions connected with a broken rule were reinforced if the offence was perceived as having been made in order to obtain special advantages compared to others. Albeit this norm did not concern the moral authority of the law as such, it generally increased the chance that the law was complied with.

The situation described by "Vidar", is an example of how the informally enforced moral norm of loyalty ensures compliance when formal surveillance poses no threat.

"Vidar" (Uerhavn purse seine fisherman): Because the share of small fish was higher than allowed, the boats from here had to go up north to fish saithe...We got an offer from a buyer to go out and fish undersized saithe. We said that we can't because of the surveillance. They said there was no danger, as they knew where the control service was, so we could just go out and fish. But that is something you just don't do to your comrades. When the others have gone up north to fish, and they know you're lying down here fishing undersized saithe. You don't do it.

Author: Would it have given you a bad reputation?

⁸ The Labour Party has been the largest and dominant party in Norwegian politics since World War II. It has been in government most of the time since 1945 and was so also during the drift net conflict of 1977. Declaring that one is a "solid Labour Party" person in this context implies not only that one votes for the governing party but also that one is loyal to the Norwegian political order and basic values of government. It is also worth noting that Norwegian fishermen, particularly in northern Norway, historically have had strong links to the Labour Party (Sagdahl 1982: 31-32).

“Vidar”: Yes, absolutely.

The moral obligation to obey the law and the norm of loyalty explain why violations of fisheries regulations were met with gossip and consequent social degradation, but they do not explain why illegal actions sometimes could be left unsanctioned. However, there was a third basic moral norm, which potentially came into conflict with the other two. It was generally agreed among Uerhavn’s fishermen that a fisherman had a moral right to secure for himself an income good enough to stay in the business and to make a reasonable living of it. This will be referred to as the right to secure a satisfactory life. I have chosen to use the term “satisfactory life” instead of “satisfactory outcome”, as this perceived right also includes a social dimension. The importance and scope of this right cannot be properly understood unless one keeps the multi-dimensional meanings of fishing in mind. Losing a job as a fisherman means losing an identity and a way of life as well as an income. Moreover, the economic viability of fishing is linked to the continued existence of the community as such. This moral right implies that two fishermen who break the same law could be judged differently according to their different situations.

Quite a few Uerhavn vessels had already had good seasons at the time of the saithe closure. Abstaining from fishing for a certain period implied no economic threat to them. These vessels were clearly expected to stay ashore, and they did. Some fishermen, however, were quite severely affected by the closure, and it was generally agreed that they depended on a continued fishery. A few, although not all, of these fishermen continued fishing, and these were not objects of backbiting or gossip in an outright negative sense. However, their practice was not seen as

unproblematic. It was the source of ambivalence, discussion and some disagreement in the community. Several fishermen expressed a certain discomfort about this illegal practice, but only one of them -- "Karl" -- openly criticised those who continued fishing. He referred to the obligation to obey the law as well as the norm of loyalty in his criticism. However, as it was mostly agreed that these fishermen were in a special situation, the norm of loyalty was seldom brought up in the discussions on these particular cases. It was the fact that someone fished *illegally* in order to resolve a difficult situation that was met with unease, albeit also with understanding. The right to secure a satisfactory life did thus not define instances where the obligation to obey the law was put out of force, but it created an area of moral doubt -- a moral grey zone -- in which violations were not met with efficient informal sanctions.

Those who fish saithe around here have been denied to work. I'm talking about human rights...For saithe now, they have a right to 25% by-catch, but then there's 60-70% in the nets. If they want to survive, they just have to deliver it. Have the slip falsified. And they're not blamed for it...But you know, we are a profession too. It's too bad you should have to be a scoundrel all the time. ("Lars" -- Uerhavn fisherman).

There's a boat here that delivers saithe as [different species than the one actually landed] to [a fish buyer]. No one looks askance at that. The boys say that when the regulations don't allow small boats to survive, they just have to make such arrangements. ("Vidar" -- Uerhavn fisherman).

"Stein" had had a very poor season and it was generally agreed that he was among those who were the most severely hit by the closure. He ceased fishing when the closure was announced, but he often expressed doubts about whether to resume

fishing. In the quote below, he attempts to resolve the moral conflict by classifying an illegal practice as being legal in a deeper sense in his case. However, he did not resume fishing as long as the closure was in force. The reference to his own feelings also indicates that breaking the law conflicts with his image of self.

I must say that such as now, if I have some by-catch falsified on my slip, I wouldn't feel like a law-breaker. 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-defence⁹ in a way. ("Stein" -- Uerhavn fisherman).

But if there is someone who's had a very good season and then starts getting his slips 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. ("Stein").

As regards theoretical models of the agent, the data were clear that illegal acts which related to professional fishing most often were economically motivated. Personal utility and cost-benefit calculation no doubt played their parts. However, the moral system described above significantly disturbed the predictive power of the utilitarian rational choice model. The informal system of social control largely dissolved the connection between expected net gain and the likelihood that an illegal act was committed. Illegal fishing for the purpose of *maximising* profit was met with severe social degradation and potentially also exclusion. Only situations defined as instances of economic *force majeure* allowed for illegal practices. My data suggest that fear of social degradation or exclusion from the collectivity was usually enough to prevent opportunistic, utility-maximising action beyond the law. A fisherman could

break a law with little social risk provided that he did it in order to ensure a *satisfactory*, as distinct from a *maximum*, outcome. The pursuit of economic goals was in other words subjected to efficient moral restraints.

Strategic Action and the Grey Zone

The fact that an act takes community norms into consideration does not exclude the very same act from being strategic, self-interested and goal oriented. Pursuing personal economic aims while conforming to collective moral standards may imply that the actor adapts to the collectivity's expectations while he also attempts to influence these expectations according to his own needs.

The moral grey zone created a certain elbow-room for fishermen who had an incentive to break the law. If a fisherman intended to violate a fisheries regulation, it was important that his colleagues defined his situation as covered by the right to secure a satisfactory life. Whether or not a situation was covered by this right was seldom self-evident. It somehow needed to be negotiated. The fisherman was then faced with a dilemma as regards openness about his intentions. Secrecy might be the safest strategy in terms of the risk of being reported, but it was risky in terms of colleagues' moral judgement. However, in situations clearly not covered by the right to secure a satisfactory life, secrecy was mandatory.

⁹ He uses the Norwegian expression *nodverge* which is a legal term which describes a situation where an individual can legally commit acts that otherwise would have been illegal in order to defend himself.

“Tor” (Uerhavn fisherman): The cod quotas were so small those first few years.¹⁰ We fished a lot more. We delivered double quotas some years, you know...We had the slip falsified by the buyer, you know. We could deliver it as for instance [different species than the one actually landed]. It had approximately the same price as cod...We could spread it throughout the year. The buyer profited, you know. Then they took 50 øre¹¹ per kilo for the falsification.

Author: Did you talk openly about this to people around here?

“Tor”: No. One has to be a little careful with that.

Author: Because of the control service?

“Tor”: Well, because of the control service too, as far as that goes, but it creates rumours among people, you know... [T]here were a few hints. People wondered if we weren't finished with our quota soon. We fished for almost [a large amount of money] some years, you know.

By contrast, if a fisherman felt that he had a reasonably good case in the moral sense, he would be more likely to choose the strategy of openness. If it could be justified that he was in a difficult situation, a strategy of openness about the intention to violate a regulation in the near future would have several advantages. First, this strategy allowed the fisherman to influence the collectivity's moral classification of his situation and to make allies.

If you break a rule because it creates big problems for you, no one will look askance at you... You talk to others...You collect support from the others, you know. (“Stein” -- Uerhavn fisherman).

Secondly, it allowed him to feel out the situation in advance of the violation and thus avoid acting contrary to collective moral expectations. Thirdly, openness implied the fisherman's confidence that his plans were morally acceptable, which as

¹⁰ This fisherman refers to the period around 1990. The cod quotas were small, but the accessibility of fish as well as the fish prices were good in those years

such served as an argument in the public negotiations. Finally, openly taking part in the discussions reduced the chance of social exclusion, as the collective moral judgement was less likely to take place behind his back. The conversation between “Leif” and “Peter” below can be seen as an example of how a fisherman makes sure that his situation is classified as an instance of economic *force majeure*, and also collects support from other community members.

“Leif” (Uerhavn fisherman): Now the saithe fishery is closed again... now that we’ve had two weeks of bad weather. Nothing for us to do on the water... The weather was bad in January, February, March and for two weeks now.

“Peter” (Uerhavn resident, former fisherman): The small ones are being regulated away from the coast.

“Leif”: Yes, we’re being regulated away. Well, I’m going fishing anyway. I’ll take the fine, with a clear conscience... I mean deliver, and have the slip falsified. I’m doing it as long as it’s possible.

“Peter”: ...Yes, just go along and do that.... Cheat and find your way around it.

“Leif”: ...I’m behind this year, you know. Didn’t earn a krone for three months this summer. I need more, to make ends meet. It’s true.

“Peter”: ...Remove the ten or twelve *sjarks* that lie here, and you have removed the entire community.

The moral ambiguity of the grey zone implied that grey zone activities were objects of unease and negotiation. The extent of public negotiation as such also indicates the problematic nature of this issue. In the moral grey zone one might risk being met with moral blame, but this blame was not likely to gain widespread support. Moreover, it could trigger counter-sanctions. Such protection of the moral

¹¹ 50 *øre* is 0,5 Norwegian *kroner*.

elbow-room of the grey zone may reflect sincere moral conviction but also individual, strategic concerns. Prior to the conversation quoted below, I had heard “Otto” and another fisherman, both of whom were severely affected by the closure and one of whom had chosen to stay ashore, speak rather depreciatory of “Karl” who, as mentioned earlier, was the only one who openly criticised those who continued fishing.

Author: What was it with [“Karl”]?

“Otto” (Uerhavn fisherman): Oh, [“Karl”] was out with his claptrap yesterday. He was on the radio preaching about [some boats] fishing illegally, and that they should stay ashore. Then he said that their gear was in the way of the others. He can be rather crass [“Karl”], but I don’t know how seriously he meant it.

Author: Did others support him?

“Otto”: No, someone came in and asked him to have a rusk.

Author: What does “have a rusk” mean?

“Otto”: Well, that is choking up the talking hole.

It can also be argued that the moral grey zone, as well as the protection of it, reflects rationality at a collective level. This topic will be addressed in the next section.

The Community as an Enforcement System

Despite their perceived obligation to obey the law, Uerhavn’s fishermen regard the state’s enforcement as rigid and as bearing the imprint of literalism. This conflict follows from the fact that while the state enforces the law, the community enforces the moral obligation to obey it. Hence, there is potential conflict between the

differing principles of legal and moral judgement. First, an *unintended* violation of the law is still a violation of the law, but it cannot be classified as a moral offence. Secondly, while fisheries regulations usually make up a clear and consistent set of rules which relevance can be clearly determined in each situation, the moral obligation to obey these regulations may be accompanied with an indefinite number of other moral norms which may or may not conflict with such an obligation. The moral grey zone is an example where other moral norms *conflict* with the obligation to obey the law. Thirdly, the legal system defines and delimits the factors taken into consideration when judging whether an act is legal or illegal. These factors may more or less correspond to the moral standards of civil society. Moral judgement, by contrast, may take an indefinite number of specific factors into consideration and thus often emerges as comparatively holistic. The moral judgement of an act may thus conflict with the legal one, even when there is a moral obligation to obey the law.

Compared to the state's enforcement, the community thus emerges as a flexible, knowledge-intensive and knowledge-sensitive enforcement system. The economic and social well-being of individual fishermen as well as the future of the community as such are appreciated moral values – they are seen as being associated with *rights*. The community as an enforcement system thus adapts to the social consequences of its own activities. The right to secure a satisfactory life can be regarded as a moral buffer against the obligation to obey the law, as the rigid and universal nature of the law has a potential of threatening the continued existence of the community. As an enforcement system, the fishing community thus avoids undermining its own

existence. In this respect, the informal enforcement system emerges as collectively-rational.

However, the data suggest that the relationship between formal and informal enforcement also has symbiotic features. In the Uerhavn area there were certain local regulations which had never been enforced by Norwegian authorities. These were regarded as paper regulations, and violations of these were not met with informal sanctions. The informal enforcement system was only concerned with regulations that were subjected to some degree of formal enforcement. The level of formal enforcement was often too low to be particularly deterrent. However, the mere fact that some degree of formal enforcement was in place seemed to have *symbolic* significance, as it confirmed the *genuineness* of the law. A fairly modest level of formal enforcement thus kept the informal enforcement system at work. In terms of compliance, there were thus significant differences between regulations subjected to modest levels of formal enforcement and regulations not enforced at all. If the state fails to confirm the law's genuineness through formal enforcement, citizens will experience the moral obligation to obey the law as irrelevant, and the informal enforcement mechanisms will consequently be put out of action.

Conclusions

Uerhavn can be seen as a case of how state regulations are transformed into civil society morals. A *general* moral obligation to obey the law induces moral meaning into *specific* laws and thus provides them with regulatory force regardless of how their actual contents are perceived. When civil society has conveyed general moral

authority to the law in this manner, we may refer to the law as *legitimate*¹². In other words, the legitimacy of law refers to the *specific moral weight of the law*. Law is regarded as legitimate when it is experienced as morally binding *due to the fact that it is law*. Legitimacy of law thus implies a general, morally based subordination to the state. Without the legitimacy of law, the state would depend on ad hoc moral justification of each and every law in each and every situation in order to govern with some degree of normative support. Borrowing moral authority from civil society in such an ad hoc manner is costly. Moral support reduces the costs of enforcement, and the legitimacy of law reduces the costs of moral validation.

However, the Uerhavn case also illustrates that the legitimacy of law does not imply that laws are automatically *obeyed* regardless of their content. When law is transformed into morality, it merely becomes *part* of the complex and wide-ranging moral system of civil society. The law may thus be overruled by moral requirements which are perceived as more fundamental than the obligation to obey the law whenever the contents of specific laws conflict with certain moral norms of civil society.¹³

As the informal enforcement of the law follows the principles of moral rather than legal judgement, a violation of legitimate law may be left unsanctioned when legitimate law conflicts with other moral values and thus renders moral judgement difficult. Civil society will also tend to excuse unintended violations of the law to a greater extent than the legal system.

¹² This would imply an empiricist concept of legitimacy in the Weberian tradition (Weber 1978).

¹³ Civil society may naturally also define particular situations or domains in which law has no moral force whatsoever, i.e. *delimit* the legitimacy of law.

As regards the more general theories of action, the utilitarian rational choice model is insufficient, albeit not altogether irrelevant, in order to explain compliance and non-compliance among Uerhavn's fishermen. The models that until recently have dominated the thinking on compliance in fisheries have hence had limited explanatory power also in this particular case. The acts and rationales of Uerhavn's fishermen are significantly more in line with the patterns described in the general survey research on compliance with the law. Social norms and social control partly dissolve the connection between expected benefit and the likelihood of infractions in Uerhavn. On the other hand, we have seen that actors may pay regard to and take advantage of moral norms in a strategic and goal-oriented manner. The model of the braindead conformist is in other words as insufficient as the model of the atomistic, utility-maximising opportunist. Softer versions of rational choice theory, such as Boudon's Cognitivist Model, can no doubt take us part of the way. However, underlying Uerhavn fishermen's strategic adaptations and moral thoughtfulness is a deeply-rooted sense of belonging which can hardly be ascribed reason alone.

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