

CHAPTER 6 FISHERIES GOVERNANCE, SOCIAL JUSTICE AND PARTICIPATORY DECISION-MAKING

HANS-KRISTIAN HERNES*, SVEIN JENTOFT** AND KNUT H. MIKALSEN*

**Department of Political Science, University of Tromsø, Norway*

*** Department of Social Science and Marketing, The Norwegian College of Fishery Science, University of Tromsø, Norway*

Abstract

Controversies over distribution of access rights are a distinctive feature of fisheries management. Who should be the beneficiaries and what are the relevant criteria for awarding such benefits? We find it rather surprising that principled fisheries management debates on social justice are so rare. We are equally perplexed that so little attention is paid to issues of justice within social science fisheries research. In this article we try to remedy this, first by outlining some of the arguments in the justice literature to demonstrate their relevance for fisheries governance. Second, the establishment of a particular allocative mechanism – the so-called quota ladders - in Norwegian fisheries is used as an example of how different conceptions of justice can be applied in concrete management settings. We argue that much would be gained if a principled debate among involved stakeholders occurred prior to the actual allocation process; that is if stakeholders would agree on some general rules with regard to what constitute socially just distribution of access rights. In fact, we believe that the issue of participatory decision-making through devolvement of authority and responsibility to stakeholder groups, which is now on the agenda in many countries, would be much easier to realise if a social contract for just fisheries were established at the root.

6.1 Introduction

The politics of fisheries management is particularly zealous on the issue of the distribution of access rights. The reason for this is fairly obvious: with individual livelihoods and the survival of local communities at stake, distribution raises fundamental issues of social justice and fairness. The question, then, of what constitutes a just management regime, and what criteria are relevant for assessing its fairness, becomes pertinent. While this is basically a philosophical question, it can also be approached empirically - starting with questions such as: What principles of social justice do user-groups apply when they claim rights of access to fish resources? What justice principles do governments refer to when they defend their management policies?

Given the pertinence of such questions, we find it quite remarkable, one may say paradoxical, that the debate within political theory, spurred by John Rawls' seminal treatise 'A Theory of Justice' (1972), has attracted so little attention among students of fisheries management. With a few exceptions, such as Gray (1998), little has been written on the normative issues pertaining to fisheries governance. Rawls targeted his contribution at a philosophical audience, but his book also revitalised modern political theory and made quite an impact in the social sciences. For the last ten years or so social

justice has become an important theme in environmental politics (Schlosberg 2003), rubbing off on the fisheries management discourse (Hernes and Mikalsen 2002).

We believe that fisheries management would benefit from a more principled debate on social justice standards and from what Rawls and other philosophers and social theorists have written on this issue. Fisheries management cannot be reduced to a technical exercise that should only be seen from a means-end perspective. As any other social practice, fisheries management must be subject to moral scrutiny. Good governance, in fisheries as well as in other sectors, should start from a reasoned contemplation on some fundamental principles of justice. From a decision-making perspective moreover, the key issue in determining what principle(s) of social justice that should be implemented in fisheries governance is the procedural problem of involving all stakeholders in the process. Any management regime that fails in this regard will have a justice 'deficit'. In this sense, we consider democracy a key ingredient in the lexicon of social justice.

In this paper we make an attempt at applying principles of social justice to fisheries management - using a fairly unique allocation scheme in Norwegian fisheries, the so-called 'quota ladder', as a case in point. The ladder originated in 1989 from within the Norwegian Fishers' Association as a response to the distributional difficulties brought on by the Barents Sea cod crisis. The crisis spurred a debate among fishers on how to share the Total Allowable Catch (TAC) between different sections of the fleet. This eventually led to a (albeit fragile) consensus; a 'social contract'-like agreement on a fundamental and contentious issue - thus avoiding a potential split within the association.¹ Since then, the ladder has been both refined and extended to incorporate other fish stocks than cod. As a 'social contract' - establishing long-term commitments to certain principles and 'rules' for the parties involved - the ladder has reduced the level of conflict and dispute among user-groups by bringing some interactive order into the decision-making process. In condoning this scheme, the government, for its part, has relieved itself of a highly controversial task. From a co-management perspective, this is significant because without the contract implied by the ladder, the government would not have been able to delegate decision-making power on such a socially important issue to the fishers. Agreement on fundamental principles of allocation is thus conducive to participatory decision-making. The key question, though, is whether the 'contract' holds from a justice perspective.

We start by depicting some of the main theoretical positions on social justice and how they may apply to fisheries. Then we summarise the idea, substance and effects of the Norwegian fisheries quota ladder, and the political turmoil surrounding its creation and design. Thereafter, we 'challenge' the ladder from a justice perspective. Did it come about through a democratic process? What are the normative principles underpinning it? How consistent are they? Finally, our concern is with the lessons for fisheries governance that can be drawn from this Norwegian experience. More specifically, we raise the issue of whether 'social contracts' of this type can work as a management

¹ The essence of this 'scheme' is that the relative share of the two basic segments of the fleet (offshore and inshore) should vary by the size of the Norwegian TAC. In its original version, the ladder - as an example - implied that with a Norwegian TAC of up to 150,000 tonnes, the shares of offshore and in-shore were 25 and 75 per cent respectively. With a Norwegian TAC of 300,000 or more, these shares were set to 35 and 65 per cent.

instrument. Do contract-like agreements negotiated by user groups and government have a potential in fisheries governance – in Norway and elsewhere?

6.2 Fisheries and theories of justice

Fisheries managers must take into consideration that there are several heterogeneous user groups and that rules and regulations may affect them differently. As Armstrong and Clark (1997:203-204) point out, “all management regimes have underlying equity implications in the shape of different distributional effects”. Fisheries management thus raises important issues of social justice. Finding a management system to be unjust, a user group would tend to resist it, either through ‘voice’ or ‘exit’ (Hirschman 1970). Such a management system is likely to be ineffective. Thus, justice is not an issue managers can ignore but one that must be addressed from the very beginning. For instance, managers must decide why some users qualify for access while others do not, and who should be allowed to fish what, when and where. In order to be legitimate, such decisions must satisfy some basic criteria – or principles – of justice.

According to Campbell (2001) there is no ‘true’ or ‘correct’ meaning of justice. He also points to the danger that the notion of justice becomes too broad to have any real impact on public policies. In the absence of a precise definition, Sen believes that we at least need “a working agreement on some basic matters of identifiable intense injustice or unfairness” (Sen 1999:254). Perhaps it is not so difficult to agree on what these are when fisheries are concerned. It may, however, be easier to agree on certain principles under ‘a veil of ignorance’ than in the real world, where people make decisions on the basis of cards that have already been dealt. In other words, in real-world settings such as the fisheries, user-groups and other stakeholders have things at stake and, hence, something to lose. Neither can we be sure, as Rawls also points out, that justice will be served when people only look after themselves – even if they should agree on what constitutes a common good, such as sustainable fisheries. From Rawls’ perspective, the maximum good is not necessarily the maximum right; right is defined independently of the good, and it is a concept that is prior to that of the good. We shall try to clarify what this means.

Common property theory regards property rights as essential. The ‘Tragedy of the Commons’, in Garrett Hardin’s seminal exposé, is basically an outcome of a resource free-for-all. “Freedom in a commons brings ruins to all” (Hardin 1968:1244), is among his most quoted statements. Clearly, limiting this freedom by installing a rights-based management regime cannot be criticised from a justice perspective if it makes everyone better off. In reality, however, some lose while others win. Fisheries management is more of a zero-sum than a plus-sum game. However, there are many ways to restrict resource users’ freedom, and not all of them are necessarily just. Even though a particular rights-based system should prevent the worst-case scenario – the tragedy of the commons – it may still be criticised from a justice perspective if some stakeholders lose relative to what they would otherwise have gained in another property rights system (Kymlicka 2002). The essence of property is the right to reserve for oneself, and exclude others from, the benefits that can be drawn from the resource. Although effective as a management device in limiting access and preventing a ‘race for fish’, a property rights system still divides by including some while excluding others. It is for exactly this reason that such systems are so controversial.

Property rights are a more complex issue than management regimes typically recognise. They are perceived as a technical device, but they also infringe upon basic 'natural' or moral rights. There is, for instance, a human rights aspect to fisheries management that is rarely recognised, as is clearly demonstrated in the case of indigenous peoples. The Draft Declaration on the Rights of Indigenous Peoples currently being developed within the auspices of the United Nations, article number 26 reads as follows:

Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of the laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.

Rights to natural resources, such as fish and coastal territories, are here regarded as essential for the preservation of indigenous peoples' culture and material existence. These are rights that state authorities cannot change or abolish with a stroke of the pen without committing an act of legal and moral injustice. If deliberately designed to do so, property rights regimes may well support these basic rights, as, when indigenous peoples *qua* people are positively discriminated against, they are granted quotas or management authority (Jentoft *et al* 2003). Should the Declaration be adopted, we are not talking so much about 'distributive justice' as justice of 'rectification' – a compensation for previous colonisation and discrimination.

Natural rights are, of course, not unique to indigenous peoples. When Marx launched the justice principle of "to each according to his need", he was thinking along similar lines. The idea is that people have inalienable rights – individually and collectively. People have a right to exist and to what that right entails, materially as well as culturally. Also, when dependency – as in 'fisheries-dependent regions' (Symes 2000) – is thought to give priority to fishing rights, such a justice principle is alluded to. In other words, those who are most vulnerable should come first. Quota allocations are often based on the premise that those who can prove a history in fisheries should have a first right. Again dependency serves to justify certain decisions.

In fisheries management, other justice principles are also in use. A fisher, for instance, is entitled to his catch. Once the gear is in the ocean at a spot where he is allowed to be, the fish that gets tangled is his property (provided that he stays within his quota). His labour investment and the risk he takes upon himself make him the rightful owner. He has earned his catch. Here, in other words, a 'merit' principle is employed. This is justice by desert, which is to be distinguished from a principle of equity (Campbell 2001). The problem, however, is that fishing technology is never neutral, but may well be used as a tool of power. For instance, a trawl is a more powerful gear than a gill net or a long line, as can be seen when a trawl is used on fishing grounds where other gears are employed as well. Some gears are more costly and more catch effective than others and, therefore, fishers have unequal opportunities to employ them. The dilemma is well captured by Bavinck (1996:482) in his study of fisheries regulations along the

Coromandel Coast of India and the banning of certain gear from the fishing grounds:

Two principles were seen to underlie fisher regulation along the Coromandel coast: (1) common access to inshore fishing waters; and (2) the right of every community to impose conditions on fishers using adjacent waters. The gear ban, which is an elaboration of the latter principle, has a dual purpose. First, bans apply to types or applications of fishing gear that are felt to affect important fish stocks negatively. Second, they are rooted in conceptions of social justice – gear that benefits a minority to the detriment of the majority of fishers (or the weaker sections of fishing society, particularly the aged), are not tolerated.

Scarcity, as when demand for some ‘good’ exceeds its supply, brings issues of social justice to the surface. Claimants to a resource find themselves having to settle for less than they want, and possibly less than they need to sustain themselves. Clearly then, economics and markets have a lot to do with social justice (Sen 1987). In fisheries, due to externalities, markets will not automatically bring social justice, as for instance between generations (Sumaila and Bawumia 2000). There is a justice principle behind market based management systems such as Individual Transferable Quotas (ITQs). In this case, you are entitled to what you have ‘paid’ for – a principle people may find fully acceptable in this particular sphere of life. Within an ITQ regime, rights are only loosely – if at all – coupled with dependency, which is also a reason why ITQs tend to be so controversial.

Thus, social justice cannot easily be attributed to some universal standard that can be applied in all settings. Rather, as Walzer (1983) points out, justice is derived from – and should be analysed according to – a specific context. The principles of justice backing up various distributional rules are not the same for every good or burden, for every social and political community, and for every situation or circumstance. They may also be highly ‘local’, as Elster (1992) demonstrates. Neither are justice principles always stable – even within the same sphere. As Armstrong and Clark (1997) show for the Norwegian codfish quota ladder, different justice principles apply depending on circumstance – as when the TAC is high or low. Walzer (1983) argues that injustice may be done when goods are converted into other goods, by a transgression of ‘spheres’. For instance, there are things in life that money cannot, or should not be allowed to, buy (votes, love – some would even say fish quotas). Transgression of boundaries between spheres often triggers a moral response. Practices may be highly effective but still regarded as contrary to established social and cultural norms. Thus, some management and resource extracting practices (such as: dragnets, explosives, under-reporting.) are condemned on moral rather than on ‘functional’ grounds. ITQs are usually not criticised because they are ineffective but because they have substantive consequences that people may find hard to accept, as when quota rights become geographically concentrated and end up as property of larger operators (Pálsson 1998).

Following Rawls, Miller (1999:14f) suggests that we should understand justice “as what people would agree to in advance of knowing their own stake in the decision to be reached.” Miller argues that justice does not only relate to substantive outcomes, but also to institutions and their governing principles and procedures. He thinks that justice “must include aspects of social relations that do not fall readily under the rubric of distribution.” Procedural justice has merits of its own and cannot simply be reduced to substantive fairness. This suggests that institutions for regulatory decision-making may

affect the fairness of substantive outcomes and should be evaluated from a justice perspective. In this sense, democracy is prior to desert or need in the lexicon of social justice.

For example, is representation of user-groups and other stakeholders in management decision-making bodies fair? How does one justify the exclusion of groups who claim to be legitimate stakeholders? If it is true, as Schattschneider (1960, 30) points out, that “organisation is itself a mobilisation of bias”, the question is how a particular bias can be justified. If there are limits to how inclusive co-management institutions can be, exactly where should the limits be drawn in order for decision-making procedures to be just and fair? This issue is relevant to the Norwegian fish quota ladder, to which we now turn.

6.3 Resource allocation

As instruments of allocation, quota ladders have – since they were first introduced in the early 1980s - been refined and made more comprehensive. As will become clear, the move towards quota ladders has not only been a major achievement for the Norwegian Fishers’ Association; it has also been condoned by the Ministry of Fisheries and turned into a key instrument in the management system. Table 6.1 depicts the initial ladder agreed upon in 1989 by the members of the national board of the Fishers’ Association. As can be discerned, the allocation key between the two groups, inshore and offshore, changes with TAC volume: the smaller the TAC, the larger the share of the coastal fleet.

Table 6.1. Cod Quota allocation rule

<i>Norwegian cod, TAC in tonnes</i>	<i>Coastal (%)</i>	<i>Trawlers (%)</i>
Under 100,000	80	20
100,000 – 150,000	75	25
150,000 – 200,000	72	28
200,000 – 300,000	69	31
Over 300,000	65	35

The quota ladder system has evolved through three phases. The *first phase* was initiated by the decision of the board of the Fishers’ Association to establish the quota ladder for cod North of 62°N latitude for the five-year period 1990-94. This first allocation rule was a response to a precarious distribution conflict after the unexpected Barents Sea cod stock collapse, which led to the lowest TAC ever. Not all, however, were equally happy with the percentages set. Inshore fishers – from North Norway in particular – perceived the allocation key, shown in Table 6.1, as basically unfair. They did not, however, succeed in making changes during the five-year period. The argument that they had lost part of their historical ‘entitlement’ was somewhat undermined since the coastal fleet did not manage to take its designated quota as the TAC was increased. Another objection – procedural rather than substantive – was related to what some perceived as lack of internal democracy in the Association. According to some, the National Assembly, not the Board, should make decisions over issues of such great importance (Armstrong 1998; Landsmøtesak 7/2001).

In the *second phase*, criticisms with regard to the internal process of decision-making

were met. In 1994, the National Assembly of the association had the final say. The new quota ladder was, like its predecessor, a fragile compromise. As with the previous ladder, inshore fishers from Northern Norway also disputed the new one – to no avail. The allocation rules agreed to earlier were renewed for seven years, putting the dispute to rest until the 2001 National Assembly meeting. Moreover, even though allocation rules had been both fragile and disputed, the ladders had met fertile ground in an organisation well known for internal struggles between gear groups and regions. In addition to renewing the quota ladder for cod, the Association established similar allocation rules for haddock, saithe, herring, mackerel and capelin.

The *third phase* was initiated in 1999 when the Board, as a follow-up of the 1994 National Assembly decision, established a special task force – ‘The Resource Distribution Task Force’ – with a mandate to review the allocation rule experience. The task force counted eight members: four from Northern Norway, two from Southern Norway, and two from the Boat Owners’ Association.² This composition illustrates the intent to balance different interests, an intention further emphasised by the appointed chairman being recruited from outside the organisation: the chief executive of the sales organisation for the pelagic fisheries and a former Ministry of Fisheries state secretary (junior minister).

6.3.1 AUTOMATIC ALLOCATION

In its report, the task force recommended the continuation and expansion of the ladder agreement. In addition to the eight fisheries included in the 1994 decision, the task force considered eighteen new fisheries and recommended allocation rules for four of these. Thus, the 2001 assembly decision included twelve different fisheries, as shown in Table 2. The main reason for excluding the rest on the list, fourteen categories of fisheries, was the absence of allocation problems among Norwegian fishers and thus no need to solve management conflicts. As shown in Table 6.2, the process starting in 1989 is one of gradual inclusion of the large and, in economic terms, important fisheries, into the ladder system.

The report from the Resource Distribution Task Force is predominantly ‘technical’ in the sense that it basically presents and comments on statistics pertaining to the sharing of quotas (TAC) within the different fisheries for a ten-year period. It is also technical in so far as the proposed allocation rules constitute a system for ‘automatic’ distribution of resources among different groups of fishers. These groups are widely encompassing as implied by the distinction between coastal fisheries and offshore/trawling. That said, one should also note that the National Assembly did follow up on the Resource Distribution Task Force’s proposal for a more elaborate system for the coastal fleet by dividing it into sub-groups according to boat size. The main reason for dividing this fleet into four groups was to improve the economic viability of smaller vessels by giving them a set share of the inshore quota. The aim, then, was to avoid a situation where the larger and most effective boats took the lion’s share of the inshore quota.

² The Boat Owners’ Association (Fiskebåtredernes Forbund) is a functional sub group within, but also partly independent from, the Fishers’ Association. Inclusion of functional groups in the late 1960s was a break with the principle of territorial representation used since Association was founded in 1926. The new organisational structure has been a matter of internal controversy ever since.

Table 6.2. Development of quota allocation rules

1989	1994	2001
Cod north of 62°N	Haddock north of 62°N Saithe north of 62°N Norwegian spring spawning herring Herring south of 62°N Mackerel Capelin in the Barents Sea Capelin by Jan Mayen, Iceland, and Greenland	Saithe south of 62°N Greenland halibut north of 62°N Demersal fish by Greenland Demersal fish by the Faeroe Islands

The task force divided the vessels into four groups according to length. Then, for each group, quota shares were proposed for six fisheries; cod north of 62°N, haddock, saithe, Norwegian spring spawn herring, mackerel, and herring south of 62°N. By so doing, the task force added complexity to the ladders already in use. Table 6.3 illustrates the arrangement for cod north of 62°N, where the Norwegian TAC is first divided between trawlers and the coastal fleet and then within the coastal group according to a key defined by the task force.

Table 6.3. Allocation rules for distribution of cod north of 62°N set by the Fishers' Association National Assembly in 2001

Norwegian Allowable Catch (NAC) in tonnes	Trawlers (%)	Coast (%)	Coastal group - internal distribution (%)
< 130,000	29	71	
130,000-330,000			0-9.99 metres: 14
Linear increase/decrease in percentage of shares	Max. 33	Min. 6	10-14.99 metres: 37
			15-20.99 metres: 32
> 330,000	33	67	21-27.99 metres: 17

The allocation rules agreed upon within the Fishers' Association have had a great impact on the actual distribution of resources. As pointed out, the Ministry of Fisheries approved the 1989 quota ladder, and the same happened in 2001. As shown in Table 6.4, the actual cod quota allocation to a large extent followed the proposals of the Resource Distribution Task Force and the adjustments made by the Fishers' Association.

6.3.2 BENEFITS

The extension of allocation rules to an increasing number of fisheries is a major achievement, not least for the Fishers' Association, for several reasons. An overall goal for the formulation of long-term allocation rules has been to create stability for the fishing industry, especially for full-time fishers. The lack of predictability in the fisheries has been perceived as a problem in need of a solution – by government as well as by the Fishers' Association. The Standing Committee on Business and Industry in Parliament has repeatedly argued that a stable resource allocation between different groups of vessels and gear was necessary to stimulate long-term planning and structural

adjustment of the fishing fleet (Innst. S. nr. 93 1998-1999:13). By underlining the need for structural adjustments, the committee identifies a recurrent and unsolvable political issue. The subsidy scheme established in 1963 and negotiated by the Ministry of Fisheries and the Fishers' Association, accelerated the fleet overcapacity problem. However, when the subsidy arrangement was phased out in the early 1990s, the government lost an important policy instrument (Hernes 1999). Despite later efforts to find new ways to reduce excess capacity, the means have either been politically unacceptable, like ITQs, or insufficient, especially when considering the rapid technological developments in the coastal fleet (St.meld.nr. 20 2002-2003:40ff).

Table 6.4. Actual distribution of cod north of 62°N for 2003 set by the Ministry of Fisheries (St. meld. Nr. 20 2002-2003)

Norwegian Allowable Catch (NAC) in tonnes	Trawlers	Coast	Coastal group - internal distribution
195,435	57,919 (29.6%)	137,516 (70.4%)	Group I: 106,836 0-9.99 metres: 14,156 (13.3 %) 10-14.99 metres: 40,865 (38.3 %) 15-20.99 metres: 32,051 (30.0 %) 21-27.99 metres: 19,765 (18.5 %) Group II: 13,064 Boats 28 meters+ 17,616

The Fishers' Association has expressed dissatisfaction with frequent quota level changes. The scientists' problem with stock assessments, and frequent examples of rapid and unexpected alterations in quota recommendations, have been met with scepticism towards scientists and the biological models currently in use. As a better solution, the Association reiterated its request for fixing TACs for more than a year at a time, in order to improve the industry's capacity for long-term planning. As this claim was never met, defining allocation rules can be seen as a second best solution.

Although the quota ladders have clearly been beneficial from a long term planning perspective, the process of allocation rule negotiations has been cumbersome. The Association is a fragile coalition, and reaching viable compromises has always been hard. On several occasions – for instance at the National Assembly meeting in 1992 when some members, completely out of schedule, tried to renegotiate the quota ladder – the organisation has been bursting at the seams. There was always the risk that the Association would fall apart. All the same, the closing of the commons has benefited the members and thus discouraged their exit. Also, the obvious advantages of maintaining the unity and political clout of the Association, has worked in this direction.

The collapse of the cod stock in the Barents Sea mobilised coastal communities against government management practices and scientists (Jentoft 1993). The corporatist arrangement, where the Fishers' Association had been a key player, was put under pressure. A reorganisation of this arrangement, especially of the Regulatory Council,³

³ The Council is a 'corporatist' body that advises the Directorate of Fisheries on management issues. The industry – the Fishers' Association in particular – holds a majority on the Council, which also includes representatives from science and the Sami parliament. The Council is generally considered to be influential, as the Directorate, and eventually the Minister, tend to follow its advice.

could have ended the Association's prominence and paved the way for the representation of other stakeholders. The Association has always rejected such claims, whether they implied a seat for environmental groups in the Council or a say for Parliament in quota management. For instance, the introduction to the 2001 National Assembly decision on allocation rules contains a policy statement expressing the need to keep quota issues a matter for fishers as a group, and the Association's willingness to shoulder management responsibilities. On this matter, the Association could refer to support by the Parliament's Standing Committee on Business and Industry, who emphasised that the industry's organisations should cooperate in the process of allocating quotas among different groups.

6.4 Justice and rights

Given the growing prominence of long-term quota allocations in Norwegian fisheries management, we would expect a principled debate on what constitutes a just distribution and participation among those affected. However, it is difficult to find examples of such a debate. The Resource Distribution Task Force, for example, made a straightforward argument in favour of 'historical rights' or entitlements. The task force obviously took for granted that extending the system of quota ladders should not cause radical changes to the existing pattern of fishing rights. The argument was twofold. First, using historical catch as a basis for initial allocations would promote the wanted stability. Second, continuing established practices would be the least controversial within in the fishing industry. Thus the task force recommended a ten-year reference period, but with the possibility of variation in allocation rules from one fish stock to the other (Ressursfordelingsutvalget 2001:13f).

Thus one may be tempted to conclude that in Norwegian fisheries management, justice is basically a 'philosophical' issue with few practical implications – and as such of little interest to empirical social science. However, such a conclusion would be hasty and superficial. Like David Miller, we think it is both necessary and important to discuss distributive arrangements from a theoretical perspective even though the question of justice is for the most part ignored by the decision-makers themselves (Miller 1999: 42ff). The question is how the idea of historical rights and the pattern of resource distribution among vessel groups can be related to various concepts of justice. We organise the discussion as follows; first we focus on the underlying principle of justice, then we discuss how the conception of what it is to be a fisher may have important implications for the distributive pattern.

6.4.1 FISHERS AND DESERT

Within the social sciences there are basically two views on fishers as social actors (Jentoft and Davis 1993). One emphasises fishers as 'rugged individuals' – embedded in their communities, adhering to local values, norms and rules, and adapting their fishing activities to fluctuating resources and subsistence needs. The other perceives fishers as 'utilitarian individualists' – profit-seeking individuals not restrained by community norms and values, fully oriented towards the market, using the most efficient equipment, and restrained only by rules imposed from 'above', by the state.

An important question is how these views tie in with different substantive principles of justice for governmental policy. The perception of fishers as rugged individuals may lead to an emphasis on need when public goods are distributed – as was the case when the Norwegian state offered financial support to fishers in dire straits during the 1930s. But after World War II, at least from the 1960s onwards, the government and the Fishers' Association underlined the importance of awarding the most productive and efficient fishers measured in terms of catch delivered. This was also the basic principle underpinning the agreement on subsidies between the state and the Fishers' Association in the early 1960s. Most of the subsidies were dispersed according to desert, as an extra income for catch delivered. In other words, the more you caught, the larger the subsidy.

The Fishers' Association perceived the subsidy scheme as essential in keeping them financially afloat and at an income level comparable to that of industrial workers. For the state, the overall goal was to improve the economic efficiency of the fishing industry. The subsidy scheme enjoyed general support within the association until the early 1980s. After that, growing criticism of the regional distribution of government subsidies gradually came to undermine the legitimacy of the scheme (Jentoft and Mikalsen 1987). In response to this, the Association changed its strategy, and argued that the state should calculate subsidies, not on the basis of the size of the catch, but according to onboard working time, a procedure that would still be based on desert as a principle for allocation. The state, however, rejected the idea (Hernes 1999).

Turning to the quota system, the desert principle is not as easily identified. Yet, several things still suggest that desert is the underlying justice principle here as well. First, guaranteed quota rights were reserved for those who could prove a minimum catch level over a period of five years, thus proving their status as bona fide fishers. Part-time fishers and those with little activity before the quota system was introduced, were not considered eligible for guaranteed quota rights. As such, a quota, or more precisely the institutionalisation of a right to fish, has in itself been a reward for the already well-established boat owners. Second, even though this was never intended, a 'grey' market for quota rights has developed – with prospects for windfall profits for those who choose to sell. This has, by and large, been officially accepted, as when Parliament, in June 2003, supported transferable quotas in the coastal fleet. A question raised in the literature on social justice is the problem of distinguishing between need and desert in real life settings. A simple objection to the argument presented above is that the actual underlying principle is need, since those boat owners benefiting are those in need of income to meet financial obligations, salaries, reinvestment and the like. In some sense it is correct that in this instance need and desert overlap, but we will still argue that desert is the most accurate label. For example, in this case need is not synonymous with poverty but rather defined in technical terms as having an economic stake in the resource. Moreover, if we take the Fishers' Association view at face value, the most persistent and capable among fishers should be rewarded.

It is also easy to see that both for individuals and an interest group, desert is a preferable criterion compared to need outside the realm of fundamental requirements, such as health care. In the context of subsidies and quotas, the reverse side of need is the risk that beneficiaries could be stigmatised as clients or free riders. Such labels would have a negative impact in the long run, and would tend to undermine the legitimacy of political action. As the opposite, desert is based on what you deserve as a 'reward' for previous efforts.

6.4.2 RIGHT TO BE RECOGNISED

From a social justice perspective, a focus on the distributional aspects of fisheries management is too narrow. According to Miller (1999), justice should be conceived as a tripartite concept, emphasising need, desert and equality. In addition, there is (historical) entitlement, and the right to be recognised, for instance as being a legitimate stakeholder. The latter points to the procedural – or democratic – elements of justice where participation in decision-making is crucial. The arguments for extending the concept have been raised, among others, by feminist scholars and students of multiculturalism, because the traditional view – what Iris Marion Young (1990) denotes as the ‘distributive paradigm’ – focuses too much on material goods and does not take into account group differences and the fact that some groups are oppressed and excluded. The implication of a request for “broader and more authentic participation” is a demand for empowerment through more participatory democracy (Schlosberg 2003).

It follows from this that social justice is not possible unless peoples’ uniqueness is recognised and procedures are developed to allow for their participation in decision-making. Justice, thus, has both a cultural and an institutional dimension. Even though it is possible to ‘split’ the concept of justice, its various parts are integrated. As David Schlosberg (2003:96) contends: “one must have recognition in order to have real participation; one must have real participation in order to get real equity; further equity would make more participation possible, which would bring further recognition, and so on” (cf. Honneth 2001).

A comprehensive concept of justice may seem irrelevant for discussing quota allocations in the fisheries, since recognition and participation are terms more appropriately applied to groups that have had to struggle to be recognised. After all, the Norwegian Fishers’ Association is no political novice or amateur, as the organisation has long since been recognised as the government’s most important partner in fisheries management. In this context, the development of quota management schemes illustrates the fact that government decisions are largely built on proposals advanced by the Association (Hernes 1999). Interestingly, the change from corporatist arrangements to market-based governance in recent years does not seem to have changed the partnership between the association and the state. However, from a justice perspective we will argue that this solid partnership is a barrier to recognising affected interests outside the industry realm as legitimate stakeholders. Two points support this argument.

First, the established resource management regime has been criticised for not taking into account the interests of indigenous peoples – the Sami living along the coast in Northern Norway. The Sami organised a political and cultural ‘uprising’ in the beginning of the 1980s that paid off in the form of a new paragraph in the Norwegian constitution confirming the government’s responsibilities vis-à-vis the Sami people and the establishment of a Sami parliament. Eythórsson (2003:159) concludes that the interests of the Sami people have been largely invisible in fisheries management: “Matters pertaining to the coastal Sami have been considered not merely irrelevant, but highly inappropriate”. The rather limited appreciation of the Sami presence in the fishery was

clearly demonstrated when the new quota system was introduced in 1990: almost no Sami fisher qualified. The protests raised by the Sami Parliament resulted in the appointment of a Sami representative to the Regulatory Council. This analysis by Eythórsson and others suggests that corporatism can be an obstacle to the recognition of new and legitimate stakeholders. The Fishers' Association – like other actors in Norwegian politics and administration – has rarely recognised the ethnic dimension of certain public policies. The quota ladders and quota markets, as self-governing systems, are 'blind' to questions of ethnicity and cultural diversity. To become relevant, they must be imposed on the management system from the outside, from the government or from civil society.

Second, the co-management role of an interest group such as the Fisher's Association and its close ties with the state imply that the few governs on behalf of the many and that legitimacy rests on the results achieved. From a democratic perspective, excluding other stakeholders from the decision-making process cannot be justified. After all, the Fisher's Association does not represent more than about 60 percent of all fishers. Also, not only fishers are affected by management decisions. The problems encountered by coastal communities in the aftermath of the Barents Sea cod crisis in 1989 mobilised large segments of the population, as well as regional and municipal authorities, who claimed that fisheries management is too important to be left to the 'cosy' coalition of government and Fishermen's Association (Jentoft 1993).

The failure of the Norwegian Fishers' Association – and the management system as such – to include ethnic and territorial concerns, can be explained in different ways. First, although the organisation was established on the basis of regional associations, and controversies along geographical lines have been common, it has always been important to avoid that internal strife which ends in disruption. That would only create dissatisfaction among Association members. Second, when representing the fishing industry, members of the Association identify themselves as representatives of a specific 'functional' category such as boat owner, trawlers, purse seiners or long liners, and not on the basis of their home port or region (Jentoft and Mikalsen 1994).

Also, politicians and bureaucrats have been reluctant to give preferential treatment on the basis of territorial and ethnic characteristics. Predominantly, they adhere to the principle that fish resources are a national property and hence, that management should rest with the state in cooperation with groups such as the Fishermen's Association that are directly affected, and not with regional or municipal authorities. Furthermore, resource rights should be vested in the individual and not in a collective, such as a municipality or a local community. This is a conception of justice that gives priority to desert and not to dependency or need; the management system allows quota-holders to buy and sell their rights, often to the detriment of fisheries dependent communities, municipalities or regions. How the allocation of quotas to individuals, as private property to be bought and sold, fits with the principle that fish resources are a national property is an issue which we will not go into here.

6.5 Conclusion

Walzer's argument is that, since society has no single principle of justice, we should distinguish between different spheres of justice. The Norwegian experience with quota

ladders suggests that it is difficult to draw straight lines between spheres, as actors within the industry base their activity on one principle (desert) that is perceived as dubious, if not totally illegitimate, by other stakeholders who are kept outside the management 'loop'. Therefore, fisheries management seems to work according to several principles of justice, which managers somehow must attempt to reconcile. The calibration of different justice principles necessitates a management process that is inclusive; one that allows for a broader group of stakeholders to become involved in the decision-making process. In this sense, democracy may be considered a crucial precondition of social justice. If so, the Norwegian co-management system definitely needs to be reformed. The privileged role of the Norwegian Fishers' Association is questionable, as it tends to favour functional groups and suppress territorial and ethnic interests and concerns. The quota ladders are a consequence of such a democratic deficit.

Having said this, the very idea of a 'social contract', such as a quota ladder, has some obvious advantages in fisheries management. If stakeholders could arrive at some consensus among themselves on how to allocate scarce resources, the likelihood of co-management through the delegation of management authority to user-groups increases. In other words, the more fragmented and divided user-groups are, the more it is necessary for central government to interfere. The Norwegian government has largely accepted the quota ladder that the members of the Fishermen's Association have negotiated and agreed on among themselves. In 2002, for example, the Fisheries Minister proclaimed that he would not alter the arrangement but stick to the key agreed by the partners involved. He was heavily criticised in the media for declining to intervene in such an important policy issue. One may, of course, question whether this is a sensible thing to do for a minister who is ultimately responsible for all aspects of the fisheries – and to a much wider group of stakeholders than just fishers. Nevertheless, it can be interpreted as a step towards a real devolution of management authority, signalling a great level of trust in the organisation's ability to act responsibly. (There is, of course, a less flattering interpretation: the minister – and the political system – finds it politically convenient to leave controversial issues to the parties involved.)

Whether the agreement will continue to receive support among the fishers and the government in the future remains to be seen. If it does not survive, fishers may become even more divided than they are today. If conflict cannot be avoided, it is better to have the fishers fighting each other each time the allocation key is renegotiated than having them fighting each other all the time. No doubt, the quota ladder system reduces the transaction costs of fisheries management in Norway.

Today, the allocation key pertains only to quota shares among various 'segments' of the fleet. However, the 'contract' could well be extended to include other contentious issues, such as the allocation of quotas among regions and between ethnic groups. A contract should also specify who should be considered as legitimate stakeholders with a claim to representation in decision-making. In other words, we believe that 'social contracts' of this type may have great merits in fisheries management, but that the current quota ladder system is too narrow both in focus and in representation to provide for a more comprehensive discourse on social justice principles in fisheries management. A social contract for the fishery cannot be imposed from the top down. Instead, it must be built

on democratic principles, where all affected stakeholders should be allowed to voice their concerns. Only through such a contract can issues of social justice inform the decision-making process. Far too often, concerns of social justice are suppressed as fisheries management is reduced to a technical fix. No wonder therefore, that fisheries management continues to be among the most contentious areas of public policy, where selective and centralised consultation is undermining the legitimacy of management policies and decisions.

Acknowledgements

The work on this chapter has been sponsored by the EU-funded project *Sharing Responsibilities in Fisheries Management* (Q5RS-2001-01998)

References

- Armstrong, C (1998) 'Sharing a fish resource - bargaining theoretical analysis of an applied allocation rule' *Marine Policy* 22:119-134
- Armstrong, CW and Clark, DJ (1997) 'Just fishing? Equity and efficiency in fisheries management regimes' *Marine Resource Economics* 12:203-220
- Bavinck, M (1996) 'Fisher regulations along the Coromandel coast: a case of collective control of common pool resources' *Marine Policy* 20(6):475-482
- Campbell, T (2001) *Justice*, New York, St. Martin's Press
- Elster, J (1992) *Local Justice: How Institutions Allocate Scarce Goods and Necessary Burdens*, New York, Russell Sage Foundation
- Eythörsson, E (2003) 'The Coastal Sami: a 'Pariah Caste' of the Norwegian Fisheries? A Reflection on Ethnicity and Power in Norwegian Resource Management' in S Jentoft, H Minde and R Nilsen (eds) *Indigenous Peoples. Resource Management and Global Rights*, Delft, Eburon:149-162
- Gray, T (1998) 'Fishing and fairness: the justice of the Common Fisheries Policy', in T Gray (ed.) *The Politics of Fishing*, London, Macmillan
- Hardin, G (1968) 'The Tragedy of the Commons' *Science* 162:1243-48
- Hernes, H-K (1999) *Forhandlingsmakt eller argumentasjonsbyrde? En analyse av Hovedavtalen for fiskerineringen og avviklingen av fiskeristøtten*, Tromsø, Dr. polit-avhandling, Det samfunnsvitenskapelige fakultet
- Hernes, H-K and Mikalsen, KH (2002) 'From protest to participation? Environmental groups and the management of marine fisheries' *Mobilization: An International Journal* 7(1):15-28
- Hirschmann, AO (1970) *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*, Cambridge Mass., Harvard University Press
- Hoel, AH, Jentoft, S and Mikalsen, KH (1996) 'User-group participation in Norwegian fisheries management' in RM Meyers, C Zhang, ML Windsor, BJ McCay, LJ Hushak and RM Muth (eds) *Fisheries Resource Utilization and Policy, Proceedings of the World Fisheries Congress, (Theme 2)*, New Delhi, Oxford & IBH Publishing CO. PVT. LTD.
- Honneth, A (2001) 'Recognition or redistribution: changing perspective on the moral order of society' *Theory, Culture & Society* 18(2-3):43-55
- Jentoft, S (1993) *Dangling Lines: The Fisheries Crisis and the Future of Coastal Communities, The Norwegian Experience*, St. John's, Newfoundland: Memorial University of Newfoundland, Institute of Social and Economic Research
- Jentoft, S and Davis, A (1993), 'Self and sacrifice: an investigation of small boat fisher individualism and its implication for producer cooperatives' *Human Organisation* 52(4)
- Jentoft, S and Mikalsen, KM (1987) 'Government subsidies in Norwegian fisheries: regional development or political favouritism?' *Marine Policy* July:217-228
- Jentoft, S and Mikalsen, KH (1994) 'Regulating Fjord fisheries: folk management or interest group politics?' in CL Dyer and JR McGoodwin (eds) *Folk Management in the World's Fisheries. Lessons for Modern Fisheries Management*, Piwot Colorado, Colorado University Press:287-316
- Jentoft, S, Minde, H and Nilsen, R (eds) (2003) *Indigenous Peoples. Resource Management and Global Rights*, Delft, Eburon
- Kymlicka, W (2002) *Contemporary Political Philosophy: An Introduction*, Oxford, Oxford University Press
- Miller, D (1999) *Principles of Social Justice*, Cambridge, Harvard University Press
- Pålsson, G (1998) 'The virtual aquarium: commodity fiction and cod fishing' *Ecological Economics* 24:275-288

- Rawls, J (1972) *A Theory of Justice*, Oxford, Oxford University Press
- Schattschneider, EE (1960) *The Semi-Sovereign People*, New York, Holt, Rinehard and Winston
- Schlosberg, D (2003) 'The justice of environmental justice: reconciling equity, recognition, and participation in a political movement', in A Light and A de-Shalit (eds) *Moral and Political Reasoning in Environmental Practice*, Cambridge Mass, MIT Press
- Sen, A (1987) *On Ethics and Economics*, New York, Basil Blackwell
- Sen, A (1999) *Development as Freedom*, Oxford, Oxford University Press
- Sumaila, UR and Bawumia, M (2000) 'Ecosystem justice and the marketplace', in H Coward, R Ommer and TJ Pitcher (eds) *Fish Ethics: Justice in the Canadian Fisheries*, St. John's Newfoundland, Institute of Social and Economic Research (ISER), Memorial University 140-153
- Symes, D (ed.) (2000) *Fisheries Dependent Regions*, Oxford, Fishing News Books/Blackwell Science
- Walzer, M (1983) *Spheres of Justice: A Defence of Pluralism & Equality*, Oxford, Basil Blackwell
- Young, IM (1990) *Justice and the Politics of Difference*, Princeton New Jersey, Princeton University Press

Documents & public records

- Innst. S. nr. 93 (1998-99) Innstilling fra næringskomiteen om perspektiver på utvikling av norsk fiskerinæring
Landsmøtesak 7/2001 Norges Fiskarlag
- Ressursfordelingsutvalget (2001) Innstilling fra Ressursfordelingsutvalget, Januar 2001, Trondheim, Norges Fiskarlag
- St. meld. nr 20 (2002-2003) Strukturtiltak i kystfiskeflåten, Oslo, Det kongelige fiskeridepartement.