

# Splitting Hairs

**There is no reason to wait for consensus on what is justice before we do something about injustice in small-scale fisheries**

**W**ith the Blue Economy/Blue Growth now spreading around the world, I believe the issue of social justice for small-scale fisheries is an important and increasingly urgent issue, also for social research. We now have the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines), a landmark achievement when member-states of the Food and Agriculture Organization of the United Nations (FAO) endorsed them in June 2014. I believe that if states do nothing to implement the guidelines, the Blue Economy will come at a loss to small-scale fisheries. Then the many injustices they have faced for so long will only exacerbate.

framework that is broad enough to help guide us in capturing the many complexities, dimensions and dilemmas of Blue Justice.

## Blue Justice

People familiar with TBTI's publications know that we have been drawing extensively on a so-called 'interactive governance theory' to direct our research, as originally developed by Professor Jan Kooiman of The Netherlands. With other TBTI colleagues, I worked with him for many years. Since he passed away, we have continued to apply and elaborate on his theory. Thus, we believe that Blue Justice – both as a concept and as a phenomenon – can be assessed through the lens he left us. In his 2003 book *Governing as Governance*, he explored what he termed the “orders” of governance: the meta-(third), second, and first order. Let me say something here about research questions related to Blue Justice, from the different governance-orders perspective.

Starting on the top, the third (meta-) governance order emphasizes how images, values and norms within a particular social system convert into justice principles in a small-scale fisheries governance context. Think of the 'guiding principles' in the SSF Guidelines. They derive from human-rights standards, which are all about justice. However, national governments may have a different idea of justice than that of the SSF Guidelines. Similarly, the justice principles of the government may be discordant with those of the small-scale fisheries community. We cannot know if such disparities exist unless we have checked them empirically, which we should because it will affect governance processes and outcomes.

Take, for instance, the famous 'Difference Principle' of the philosopher John Rawls, which says: “Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality

**“A just society is one that allows all of its members access to the widest possible range of fundamental goods”**

The justice question has been with us since humans started to form groups and communities. It never went away – and most likely never will. Up through history people have been thinking hard and long about what is justice and who deserves it. One cannot, and should not, in my opinion, discuss the Blue Justice concept without visiting this ancient old philosophical discourse. Because it is very much alive today.

A short essay is not the place to go into any depth of this discourse. Let me instead offer some ideas, based on some more recent contributions, on how we could approach the Blue Justice issue as a research topic. It is not sufficient to be morally concerned about justice for small-scale fisheries. We also need to know what we are talking about and how we should acquire more knowledge. For that, we will benefit from an analytical

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of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.”

You will recognize the Difference Principle in the renowned French economist Thomas Piketty’s definition of social justice, which could also work for small-scale fisheries in the Blue Economy. It reads as follows:

“A just society is one that allows all of its members access to the widest possible range of fundamental goods” and “organizes socioeconomic relations, property rights, and the distribution of income and wealth in such a way as to allow its least advantaged members to enjoy the highest possible life condition.”

The Difference Principle is also recognizable in several SSF Guidelines articles, for instance in 5.7: “...States should, where appropriate, grant preferential access of small-scale fisheries to fish in waters under national jurisdiction, with a view to achieving equitable outcomes for different groups of people, in particular vulnerable groups.”

Does the governance system under investigation honour this principle? If not why, if yes how? At the second governance order, the focus is on institutions (like laws/rules) and the organizations that have the role to ensure that rules are just, for instance, with regard to representation of small-scale fisheries. Do existing access rules discriminate against small-scale fishers? Do small-scale fishers have equitable rights of access to the decision-making process where rules that affect them are established, which Rawls say they should? This is about what is called ‘procedural justice.’

With two Swedish colleagues, I am currently working on a chapter where we demonstrate that in the Swedish fisheries governance system, small-scale fisheries fall outside the advisory and decision-making system. Instead, this system is primarily working in the interest of the large-scale fisheries sector. In the Swedish fisheries, injustice is not so much at the third order as at the second governance order, in Kooiman’s terminology.

We would also look for justice gaps at the second-governance order, that is, not only at what’s there but also at what’s not. Multiple governance institutions may work side-by-side and in competition with one another: some are of the government, others of the community; some may be informal, some customary

and others more recent. Justice must also be assessed within customary institutions, for instance, with regard to their inclusiveness. They might, for instance, discriminate against women, and thereby be unjust as a whole.

Commenting on Rawls’ theory of justice, including his Difference Principle, Amartya Sen, in his book *The Idea of Justice*, argues that there is more to social justice than justice principles and just institutions. We need, he holds, to investigate how justice plays out in the daily life of people, in the freedoms they actually have, the capabilities they possess, and the choices they have or do not have, and in the choices they make. Institutions guide and steer, but do not necessarily determine, interactions, at least not to the full. They do not guarantee justice. Therefore, justice is also an issue at the first governance order (in Kooiman’s scheme); that is in the daily experience of small-scale fisheries people.

Institutions set limitations, but often also provide opportunities for irregular behaviour that negatively affects small-scale fisheries. Governments are supposed to be ruled, and to rule, by law. But sometimes they abuse their authority. Some people at the receiving end do not always follow existing rules, especially those imposed on them. They are often involved in strategic games for power and resources, and they often succeed to bend the rules in their particular interest.

In an ideal world, there would be consistency between the orders; justice principles at the third (meta-) governance order would determine the design of institutions at the second order, and in the next instance the governance interactions at the first order. Yet, we know that in practice, this ‘ain’t necessarily so.’

### Authority abused

Here is Thomas Piketty again: “... it is wise to be wary of abstract and general principles of social justice and to concentrate instead on the way in which those principles are embodied in specific societies and concrete policies and institutions.”

The gap between governance orders is not always easy to reveal or close. Thus, the dissonance between meta-order principles, second-order rules, and first-order interactions may persist. We must, therefore, try to understand why this is so. What are the

bottlenecks? Why does the status quo remain? Despite the consensus, the SSF Guidelines' justice principles may fail to trickle down to lower orders, where business as usual prevails. The old wine just gets a new bottle.

The values, norms and justice principles that guide people's daily social interactions may not trickle up and contribute to institutional and normative change in the way small-scale fisheries are governed. Thereby, the justice gap persists, especially if it

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has powerful supporters whose interest is to conceal it. "Justice comes to mirror too closely prevailing institutions and practices, rather than serving to assess them critically," writes David Miller in his book *Principles of Justice*.

The Blue Economy will test how serious FAO member states were when they endorsed the SSF Guidelines. States committed themselves to respect and enhance a series of justice principles, like the Difference Principle. Will they also do so in the Blue Economy?

There is, of course, nothing wrong as such with concepts like Blue Economy and Blue Growth. They are neutral, hard to reject, and could apply everywhere. We always had a Blue Economy! The problem starts when things are put into these concepts—if they do not include small-scale fisheries in reality, which they tend to leave out. Then, small-scale fishers have a reason to be wary. The gap between talk and practice is certainly an issue for inspection and criticism because of the hypocrisy it involves.

Small-scale fishers and other marine stakeholders, including governments, do not all need to agree what these ideal justice principles are, or what they should be, before they act to correct the gaps. Even if they do not have the conceptual sophistication of a professional philosopher, they will still know injustice when they see it. The SSF Guidelines give them a lot to go by. Again, following Piketty, third (meta-order) justice principles are not sufficient to secure justice, but they are a yardstick for the evaluation of processes

and outcomes, and may well provide a basis for litigation if gaps persist.

However, institutions alone are not sufficient either, says Amartya Sen. They are necessary but not enough. Therefore, to secure Blue Justice, we cannot stop with the formation of just institutions at the second-governance order. We must also continue to the first order. That is where the final justice litmus test must take place, since justice is "ultimately connected with the way people's lives go, and not merely with the nature or the institutions surrounding them", in Sen's words.

### Theory of justice

We do not have to wait for conceptual clarification and institutional perfection. We probably never will, but we should always try. In the meantime, we can still do more to reveal and correct the injustices that are apparent now and in the Blue Economy. Amartya Sen underscores this point: "If a theory of justice is to guide reasoned choice of policies, strategies or institutions, then the identification of fully just social arrangements is neither necessary nor sufficient." 

#### For more

<https://sk.sagepub.com/books/governing-as-governance>

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<https://www.hup.harvard.edu/catalog.php?isbn=9780674007147>

#### Principles of Social Justice

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#### A Theory of Justice

<https://www.cambridge.org/core/journals/utilitas/article/amartya-sen-the-idea-of-justice-london-allen-lane-2009-pp-xxviii-468/1E52B5D37FEBD063DD9EF6206F877E53>

#### The Idea of Justice