Equity and Rule-making

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The principle of equality before the law is valid for the identical and profoundly unjust for the diverse (Rodrigo de la Cruz, 1993).

Equity is about fairness, about 'social justice', about the 'acceptability' of something. Often, it refers to people's perception of a fair relationship between certain items in an exchange situation, between rights and obligations, benefits and burdens, advantages and disadvantages. Therefore, equity is directly related to rules and rule-making processes and to the exchange and distribution of material or immaterial resources in specific social settings. So, it is hardly surprising that several actors use the concept in their own political struggle, according to their own ideology and interests.

While local groups try to defend their equity perceptions, in order to structure their own society according to their own principles, there is a strong tendency for powerful groups or institutions to try to define these rules for them in order to extend their control over these groups. An important mechanism is to require these local groups to 'equalise' themselves to the dominant groups and models and to take over their norms. In this chapter we analyse how the imposition of this would-be 'equality' - an equality according to external standards and models - leads to the denial and destruction of the diverse needs, rules and equity perceptions of local peasant communities, meanwhile promoting the interests and domination of those in power. We will argue that the currently very common concept and policy objective regarding the 'demarginalisation of peasant families' too often hides - mostly unconscious - strategies that aim to incorporate the rationalities and resources of these families into externally controlled and institutionalised development.

However, if we regard equity as a human-made, ideological construction, it means that we not only have to analyse it critically as a political purpose that can be abused to 'advance inequitable interests'. It may also be a tool in the struggle for changing existing conditions of subordination.

This chapter presents some notes related to the process of formulating and implementing the equity concept. First we briefly address the themes of equity and interests, and the relation between equity and legal justice. Next, we analyse the process of rule-making with respect to equity and justice. Subsequently we examine the functioning of an 'equalising model' and the process of institutionalising local forms of equity. Finally, we will focus on the search for recovering the vitality of local equity conceptions and equitable practices.

Equity and interests

Each culture, subculture, region, peasant community or water user association has constructed and still is constructing its local, heterogeneous conceptions of equity. However, the imposition of a certain conception about 'what is equitable' by other cultures, classes or by abstract definitions, tends to cause the loss of local values and autonomy. It denies the heterogeneous character and the peculiar practices of equity in specific situations and places, and paradoxically acts in a way to undermine equity itself. Local equity concepts are replaced increasingly by external definitions, that come to rule formal relations and local everyday life. In Mungoshi's book 'Waiting for the rain' (1989), the Old Man, when reflecting on the erosion of their values and norms, expresses this feeling with the following metaphor:

We are playing the drums of the other, making so much noise that we cannot even hear the beating of our own hearts.

In reality, not all the processes of external re-definition of equity in peasant communities express themselves as brutal impositions. Often they are generated during the (continuous) interactions of local communities with other social entities. The hybridisation of the conceptions of equity in peasant communities can strengthen the latter, but may also undermine their existing power and knowledge.

The most powerful 'external' norms about equity are those that do not appear to be imposed from the 'outside'. They are the new, implicit and internalised perceptions of what people find 'normal', what is marked as 'abnormal' and about how people should behave and think. Obviously, the dominant classes and cultures are interested in 'inventing' or promoting an ideology (including its equity concepts and practices) that legitimises its oppression and intervention. Here, the construction of an equality concept has been important. In the following we will analyse this concept briefly in relation to the themes of legal justice and the equalising discourse.

Justice and equity

Commonly, the fundamentals of national legislation proclaim the equality of all humans with regard to the law. Discrimination must be avoided, equal people have a right to equal treatment. The law should approach justice, has to provide justice, and in the positivist tradition it is even identified with justice. So, legal justice is based on the idea of equality, at least formally and rhetorically. It is supposed that this justice is or should be omnipresent, just as its regulating forces. The generality of the
application of justice guarantees that everyone in society can have equal rights, opportunities and obligations. Especially in consensus based theories, the expectation is that justice, as a harmonious concept that represents universal truth or the common interests of all citizens, is reflected in the law, its legal procedures and even in its empirical outcomes. This positivist justice however, has encountered various fundamental problems.

A first assumption to review is the equality of all humans before the law. If all people are to be equal, then the basic, but hidden issue is: equal to whom? Who must be equal to whom? As history shows, in practice the norms and standards for this so-called equality are defined by the dominated, but by the dominating\(^1\). The denial of people’s intrinsic diversity and of their specific knowledge and lifestyles, in order to gain control over them with universalised rules and institutional practices led to Illich’s (1972) inversion of the common saying that people are born equal:

*People are not born equal, but made equal*

In other words, official (legal) equality is not just a rhetorical question. It is a powerful concept which in some cases is very important in emancipation processes, but in others it is related to practices promoting uniformity, among others through positivist legal justice systems that try to impose supposedly universal rules\(^2\).

Furthermore, it is important to observe that liberal and positivist justice typically defend the very important civil and political *individual* rights, but often fail to address properly the economic, social and cultural *collective* rights. Both are complementary, however. Especially in societies with a high social differentiation, these collective rights are the only way for many social and ethnic groups to be able to sustain their rights as individuals. The full exercise of individual rights necessarily involves the recognition of collective rights (Stavenhagen 1994). Other chapters in this book illustrate the importance of the recognition of collective rights in peasant irrigation, versus the individualising rules of actual water legislation in many countries.

Other problems implicit in positivist visions of justice refer to the point of the ideological contents and functioning of the law, when it is seen as a ‘harmonic, social contract that reflects common interests which are supposed to govern society’ (see also Boelens & Doornbos 1996). With respect to the latter, pluralist and ruling class theories, as well as the more recent contractual contradictions theory (see e.g. Chambless & Zatz 1993) seek different explanations on law and justice, its creation, implementation and reproduction or reformulation. This occurs in interaction with other normative systems, in political arenas characterised by (unequal) power structures, through struggle and negotiation.\(^4\)

Notwithstanding these more adequate conceptual frameworks, the idea that law represents justice as a general and universal concept is still the most widespread and powerful (implicit) vision. It claims that the rules of society must be directed at the general constitution, generating and defending equality, and that law cannot be based upon particular and exceptional cases. Schaffer & Lamb (1981) showed that, in several historical societies and situations, the law and its judges had to declare what is ‘right’, and faced the problem that:

General rules do not deal with particular cases... When there is a system of legal rules (a procedural institutionalization, that is to say) its necessary generality would make the outcomes in ‘individual’ cases unfair, that is inequitable....

Whereas justice deals with ‘rightness in general’, equity in its legal essence deals with ‘fairness in particular cases’. The law, because of its generality and universal statements, often is inadequate to properly address the enormously diverse social reality.

In history, some countries have recognised this fact when faced with the problem of law losing its legitimacy: justice was perceived of as being ‘unfair’ in many specific cases, and common-sense-equity or knowledge-of-the-world-justice offered better solutions. Common laws were called upon and in some cases this second set of principles (fairness) was institutionalised (in the Roman empire: *jus gentium*). This was not to replace the set of rights rules (*jus civile*), but to ‘complement and adapt it’. In fact, ironically, it appeared that the official law, justice, *could survive thanks to the fairness and acceptability of common laws* that were incorporated: an institutionalised equity (Schaffer & Lamb 1981).

In various Andean countries we can see that ‘special law’ was created to deal with the agrarian questions and the legalisation of peasant communities. This special law was ‘added’ to the national law. It therefore not only complemented the latter and prevented its downfall for being too general (and thus useless), but it also nailed and lock up common law (see e.g. Wray 1993; Boelens & Doornbos 1996). Therefore, ‘in a certain manner, the history of this special law is the one of both recognition and denial of social diversity’ (Vidal 1990).

Local, dynamic perceptions of equity are made static when they are institutionalised and generalised in legal frameworks. Apparently, ‘rightness’ is not sufficient and not appropriate to specific situations, but the answer cannot be to simply include ‘fairness’ in legal justice.

*It may be a priori and Aristotelian that legal rules are general and individual cases are particular, hence the need to appeal from one set of rules to another. The point is, however, that the other set of rules, equity, itself becomes a system, an institution, and is to be similarly explained (Schaffer & Lamb 1981).*

The institutionalisation of equity opened the way for another problem: who defines this equitable common-sense and who is to select the ‘right’ common law principle among the many that exist? Obviously, individual and institutional interests are at stake, and especially the powerful are likely to define and win the game. Below, in ‘the struggle for rule-making’, we will elaborate upon this theme.
Here we conclude with a first observation that the distinction between legal justice and equity may offer preliminary grounds for approaching the concept of equity as a useful social construct. In this construct equity stands for fairness not according to some general principles, but according to the conceptions of social justice of diverse localities. In our case, this refers to the conceptions that rule peasants' livelihood strategies and their social production relations. Continuous interactions occur within the community as well as with other normative and social fields: localities generate and re-establish their equity principles during the process of production and distribution, and at the same time, the equity principles structure this process. Therefore, the form and contents of these principles are dynamic. The examples in other parts of this book, e.g. the rules for production and irrigation practices in Andean communities, offer important insights in how local communities structure their livelihood according to these equity principles.

A second preliminary conclusion that can be made is the fact that the enclosure of equity in institutional frameworks, official policies and legal constructions bears great risks. Equity easily loses its proper dynamic and unfair games may be played in the name of equity. This is not to say that equity should not form one of the principal criteria for interactions with peasant communities. On the contrary it should, but the question is not so much how institutions must define equitable principles and 'shape equity' for these communities, but how equity is formulated and functions in the communities themselves. This is the starting point, not the end, for joint political action.

The struggle for rule-making

As we have seen, with respect to both 'justice' and 'equity' the making of rules and the power to influence this process is of central importance. Therefore, this part focuses briefly upon the struggle for defining and implementing rules.

Rights have sources, such as the State, the peasant community, or mixed sources, which authorise access and defend the legitimised claims that are made by applicants to certain benefits. Because of the fact that the legitimisation of the state - and thus of power - is the corner stone of the rights systems, the concepts of 'law' and 'rights' cannot be seen as just neutral and apolitical social contracts between the 'authorisers' and the 'authorised'. Correas (1994b) defines law as

a discourse with a prescriptive character, produced by those who hold the power.

This power is recognised as legitimate, either by the majority of a population or by its armed forces, and organises the violence which legitimates itself precisely by the recognition of this discourse as 'law'.

The circular logic of this definition is a basic feature of discourses and the power they exercise. Foucault showed that discourses are not just thoughts and ideas expressed in words or texts, or 'propaganda', but real practices with rules and conditions, they are specific conjunctures of power and knowledge. The more the discourse is inter-

nalised by the people and accepted as true and legitimate, the stronger the influence of the prescriptions it establishes and the stronger its self-fulfilling forces, actions and effects.

The definition of Correas is essentially based upon the idea that the ruling classes define the rules'. However, notwithstanding the fact that this can explain to a great extent the making and implementation of law in concrete situations (e.g. in the case of peasant communities facing national law) its deterministic character should be revised. Chambliss (1993) relativises Marx' well-known statement that 'the ruling ideas are the ideas of the ruling', pointing out rightly that:

That there are ruling-class interest and influence in vast areas of law cannot be denied. That it is the only force responsible for law creation or law implementation, however, is erroneous. ... The ruling class must respond somehow to forceful demands made by organised groups or risk losing not just the ideological legitimacy of the system but the ability to control its own destiny.

So, structural social, cultural, and ideological contradictions create conflicts and dilemmas which cannot be ignored and cause changes in the socio-legal sphere. However, the new laws respond to particular urgent and major conflicts, in stead of tackling the fundamental contradictions upon which these conflicts are based. Therefore, the resolutions reveal and create new contradictions, and new conflicts and dilemmas emerge (Chambliss & Zatz 1993). It is obvious that in this process of struggle to create and reformulate law and concepts of justice, the interest groups are not in an equal position. Although the outcomes in terms of legal change are very heterogeneous and respond to local situations and encounters, it is quite common - and not surprising - that the powerful groups see more of their interests represented in the law. So 'Justice' is not necessarily just, and although it may claim to represent 'general and universal principles of rightness', it would often be better to speak of 'particular principles of powerful interest groups who want to universalise these principles'. In the political arena groups seek to universalise their version of justice.

Notwithstanding the power expressed by the formal rules and legal justice, it is valid to relativise their direct and uni-directional impact (as is the case with the impact of equity rules). Various 'theories of justice' and 'theories of equity' exist to explain how people should distribute benefits and burdens. The actual outcomes of these distribution practices, however, may be quite different from the intended results. Plans and procedures are mediated by a process of implementation that is constituted by actors with divergent interests and contradictory opinions regarding the equitable distribution of the benefits and burdens in question. They claim, negotiate and struggle for 'their rights'.

Examples can be found at all levels in society. Many countries have established clear regulations for land and water tenancy reform, for example by expropriating and redistributing large estates that are underutilised. This in order to provide at least the
basic conditions for human subsistence for the 'have nots'. However, in many cases the landowners maintain all of their properties, even if they simply possess 'too much' to be able to achieve an efficient, productive land and water use. Some squander and many suffer. In cases where reforms have been implemented, many land and water rights have accumulated in the hands of the relatively well-off outside the 'target group'.

Another common example: although irrigation projects typically formulate rules and schedules for distributing the water 'rationally, equitably and efficiently', most of the projects result in disproportionate accumulation of water access and rights by the large farmers or by those at the head-end of the system, at the expense of the small farmers and the tail-enders.

So it is important to distinguish between conceptions and even decisions with respect to equity and justice, and the actual implementation and its outcomes. This is valid not only when we analyse the myth - but commonly practised ideal - of 'legal and social engineering', which often characterises the juridical system, public policies and/or development interventions. The discontinuity between idea or rule vs. effect is also important when trying to understand endogenous processes in peasant societies, including the interactions between peasant communities and outside agencies. Peasant conceptions of equity do not necessarily transform themselves into rules regarding equitable practice. Furthermore, actual rules may not be reflected in practical decisions; and finally, decisions do not automatically lead to the intended results.

This is even more true because rules and rights do not simply refer to the distribution of 'things' or 'qualities' as such, but to the right to act in a certain way in relation to the rights of other people. They are part of the social relationships between these people. Only when rules succeed in having an impact on existing social relationships, and thus on the actual distribution of rights and obligations between people, rules are effective (Moore, 1973).

The myth of a society and social relationships that simply could be shaped by law or by public interventions, as implicit in the legal and social engineering approaches, should be dismantled. This, however, does not withdraw or deny the power these agencies (and the law) have. Although their formal objectives may not always be achieved, unconsciously and notwithstanding the sincere and conscious planning, their interests based upon class, intellectual, gender or ethnic position mostly face less obstacles in reaching their goals. Apparently, not only the formal objectives, plans and rules, but especially the power position of these actors - and the Foucauldian 'discourse' they produce - is of central importance, which makes it necessary to analyse in more detail the power they express.

Thus, it is not sufficient to analyse formal rules and law according to the statement above of Correas, as a 'discourse produced by the ones who hold the power'. Besides official law as an instrument of power there are other, more powerful mechanisms that impose behaviour and so have important roles in the definition of basic norms that rule people's lives. In the light of the theme of pretended 'universal justice' and the existence of 'diverse equity' we will briefly analyse the power of the equalising and subordinating model. Here, not so much the possession, but rather the strategic functioning of power is of central importance.

Exclusion and inclusion

Historically, the power structure relations in Latin America and elsewhere have been analysed as contradictions between interest groups that did or did not possess power. In the case of the Andes, the colonial kings, conquistadores and hacendados were made visible and honoured - 'placed upon a pedestal' - as a result of the exploitation of the invisible masses of indigenous peoples, peasant communities and huasiapungueros. The power of the powerful was exercised by excluding the subordinated classes from resources, services or social life (see e.g. Galeano 1983, 1986). This vertical and excluding power, however, did not penetrate into all areas of communal life: even the subordinated groups had their own authority in areas where the power of the dominant groups was not effective.

Nowadays the opposite occurs: not the powerful authorities and landlords, but the communities and the common people are made visible. At the same time, contrary to the vertical power, this horizontal and including power itself and the groups that benefit from it can remain invisible. The power surpasses the forces of national regulation or the State, and is not restricted to class relations only. It functions because of its presence, penetrating people and society. It is not exercised only by the State or dominant classes, but also enforced by the dominated (Foucault 1989). Norms are the instruments of this horizontal power, they shape the model and according to this, uniformity and equality is proclaimed.

For example, we may find it surprising that, the world over and regardless of the socio-cultural background of the region and peoples in question, irrigation technicians and development professionals often teach and introduce basically the same irrigation techniques and knowledge. This is a technology that is based on norms and standards developed in western universities and enterprises. It contains norms that share the same rationale of water scarcity and water requirements, irrigation efficiency, allocation rules, role and function of measurement structures, water application methods, commercial crops, organisational structures, and so on. However, it is far more surprising that nobody is surprised when peasants themselves, the world over, whether they are Nepalese peasants, indigenous irrigators in the Andes or Shona farmers in Zimbabwe, ask for this same technology, in order to 'progress' and leave behind their traditional 'backward' technology; in order to become like the western-oriented, 'modern' farmers.

The standards for this equality are taken away from the diverse local communities; they are determined and spread by this disciplining equalising power, making us want to be all 'equal', that is: equal to the powerful model.
This power is exercised rather than possessed; it is not a 'privilege', acquired or preserved, of the dominant class, but the overall effect of its strategic positions - an effect that is manifested and sometimes extended by the position of those who are dominated (Foucault 1989).

So, modern power seeks for the inclusion, rather than the exclusion of peasants and other oppressed classes into contemporary society (Foucault 1989; Achterhuis 1988). At the same time this 'uniformity' and 'equality' makes it easy to measure people and their behaviour. They are individualised, classified and made 'cases' according to their resemblance, or not, to the model. 12

Previously excluded groups feel the obligation and need to participate in the game that sets new rules for their lives, communities, irrigation systems, households, etc. Paradoxically, the less privileged social groups, who think they can take equal advantage of the universal standards, reinforce these norms, although they do not derive the expected benefit. On the contrary, it causes a continuous disappointment, social and cultural disintegration and the position of 'permanently backward people', due to the impossibility of meeting the norms for being equal.

Fanon (1982, 1984) analysed this imposed otherness in the case of the black and colonised people, whose minds and social existence are whitened by the norms of the white and dominant, but still they remain 'black' in the eyes of these colonisers. Because the latter are held up as the model, the oppressed internalise their imposed inferiority and 'blackness'. Black is not a fact, but a social creation by white, an externally determined condition. If white and its related ideology had not existed, neither would have black and the varying degrees of blackness. The imposed equalisation to the white simply would not have existed, but now it has become a powerful mechanism for oppression, enforced by oppressor and oppressed.13 Yet, the ones who represent the equalising model, who imprint their own image on the consciousness of the others and 'require them to become equal', will not recognise and never intended to recognise these whitened colonised as 'equals'.

The bourgeois ideology, which is a proclamation of the fundamental equality of men, succeeded in not contradicting itself, and invites inferior men to become human beings, according to the western example of the humanity that it represents. . . In spite of being fundamentally racist, it generally succeeds in hiding this racism through ever more subtle modifications; thus, maintaining its proclamation of men’s extraordinary dignity. (Fanon, 1982).

Girard (1986) and Achterhuis (1988) explained the functioning of this desire to resemble the occidental, white, male, scientific values and models.14 Galleano expressed the power mechanism as ser como ellos (to be like them). He describes how Simón Bolívar saw his dream broken into pieces, a dream of a Latin America creating its own models. In the words of Fanon, they had been fighting for white justice and white freedom, for an existence that is moulded in the image of the West: Bolívar shouted at the ones in power, incapable of creation, only capable of importing and commodities from Europe and the United States: 'Imitate originality!' exhorted and accused don Simón, 'Imitate originality, since you try to imitate everything!' (Galeano 1993).

So, the process of equalisation, the homogenisation of thought and the loss of authenticity are central themes in the analysis of this normalising (or discursive) power. Whereas the classical expropriation of economic surplus value from the peasants was and still is a result of traditional power, the expropriation process of the peasants' knowledge, of their logic and styles of production and of their being and imagining, is more intense; it is the result of the modern power of 'equalising normalisation'. The two forms of power are present in contemporary society (see also Achterhuis 1988).

It is important to mention that the normalising power should not only be seen as something 'remote', solely structuring relations on a supralocal or international level (as the explanations of power in structuralist State theories use to do). This 'horizontal power' is present in everyday interactions, 'it actually manifests and reproduces or transforms itself in the workplaces, families and other organisational settings of everyday life' (Foucault, quoted in Long 1989). It is omnipresent and invades every area of social life. As such, it may be 'more present and intensive' than the traditional vertical power. In contemporary encounters of peasant communities and entities of the wider society, truth, knowledge and consciousness are reshaped (see Escobar 1995) according to the normalising model.15 This process can be observed eg. in many social encounters between peasant communities and State administrations or 'developmentalist programmes that aim to (demarginalise) peasants and indigenous peoples in contemporary society'.

The ‘demarginalisation’ of peasants

As a result, the concept of demarginalisation and the provision of equality for the peasants must be seen in another light. The legalist analysis is that peasants and indigenous people are backward (lack of schooling and literacy problems, etc.) or do not have sufficient access to the law and therefore to the social benefits of wider national society. The answer is to provide more legal extension (explaining the law), improve the means of communication and facilitate legal and institutional access. In the developmentalist analysis, in the same way, the causes of this marginalisation are analysed in terms of the exclusion of the ‘poor’, from the essential resources and services. Brenninkmeyer & Wierenga (1994) describe the marginalisation as the lasting exclusion of people from (components of) social life.16 Therefore, the objective of development co-operation is to nullify this exclusion, a process referred to as ‘demarginalisation’.

However, some basic questions must be addressed. Are ‘the excluded’ really excluded,
or are they rather included in a subordinated position within the actual power structures? In what must these 'excluded' be included? What exactly is the new game in which these people have to participate and equalise themselves, and who defines the rules of this game? What are the norms and standards to be achieved in this demarginalisation effort? Must they accept and internalise the external standards for equality and equity, and accordingly claim their new rights?

Of course, this is mostly not a conscious and intentional process. However, that is exactly what characterises its power. State-peasant interactions and development interventions usually have many effects that do not correspond with the formal objectives. These 'side effects' often relate to the question of equity and may even generate scarcity instead of relieving it in peasant communities. Let us focus upon this phenomenon in the following, analysing some basic problems which arise when outside entities wish to implement and institutionalise equity in practice. This means that rules for distribution, and therefore institutions, are set up to relieve needs and scarcity.

The existence and creation of scarcity and the institutionalisation of 'equitable distribution'

Equity conceptions are directly related to the allocation of scarce resources. In situations of scarcity, normative systems, such as law or peasant customary rights, establish and implement rules for the distribution of the scarce benefits and for the related distribution of burdens and responsibilities: the question of equity becomes prominent. These normative systems of rights and obligations, or property regimes, usually differ enormously from one location to another, just as the perceptions of what is fair and unfair differ in particular situations. Bromley (1992) rightly points out that 'property regimes take on their special character by virtue of collective perceptions regarding what is scarce, and hence possibly worth protecting with rights, and what is valuable, and hence certainly worth protecting with rights'.

However, the combination of the value and scarcity of a certain resource is not just an objective 'fact' in a particular society. Values are socially determined according to the dynamic of specific local perceptions and external influences and interactions. In the same way, scarcity is socially constructed, although it may seem less obvious.

For example, in the case of irrigation, Hunt and Hunt (1976) showed that water scarcity may be created by new power structures that destroy existing balances of socially defined demands:

> Water scarcity is not a fixed condition of any place, but rather a particular relationship between supply and demand for water at a given point in time. If demand is greater than supply, then there is scarcity. [...] In the Tehuacán Valley, early in the colonial period, water shortages and conflict developed between villages planting traditional crops and haciendas planting sugar as a cash crop, because haciendas took more than their 'legal' share of communal waters. This cropping pattern introduced scarcity because of the high water demands of sugar vis-à-vis traditional crops. [...] When such cases were taken to court, the local communities invariably lost their traditional rights, and a new allocation system favoring the haciendas was imposed from above.

Apart from the lack of resources according to certain 'absolute' or 'objective' needs, the existence of scarcity is strongly related to 'the conditions and possessions of the other' (See Girard 1986; Achterhuis 1988). These needs, which emerge as a result of comparison between human groups or individuals, are relative (this, however, does not deny the importance of these needs as perceived by the actors themselves).

Examples are numerous.

- In the case of irrigation, clear examples are those projects that provide water to the people living below the canals, thereby increasing the relative water scarcity of the community members who have their fields and homes above the canals (and sometimes destroying the existing social ties between 'above' and 'below').

- Another classical example of relative water scarcity is provided by irrigation projects which fail to pay proper attention to the tail-enders of the system: notwithstanding the fact that the water availability in an absolute sense may have been increased, the scarcity and uncertainty experienced usually increases too.

- Very common examples can be seen in those irrigation interventions which fail to recognise existing conceptions of water distribution, which are perceived as fair by the local communities. For example, local conceptions may be based on sharing water shortage among all families, while the intervention may promote or impose water distribution according to the possession of land. In these cases, usually the poorest are given less water, less inputs, less credit and more relative scarcity, just 'because they have less land'.

- Relative water scarcity also increases in cases where interventions create new needs and expectations for water (e.g. by changing crop patterns, settlement schemes, introduction of wells, etc.), but fail to support the implementation of good functioning systems and the capacity to maintain them.

Relative needs do not refer only to material resources, such as water, but, even more importantly to non-material or abstract objects, e.g. development services, specific irrigation knowledge, etc. These needs are continuously refined and renewed, thereby creating and reformulating perceptions of scarcity. Irrigators now experience a previously not perceived lack of modern knowledge and technologies and start to neglect their own. In this way, the new needs can strengthen those institutions that first promote and then provide these so-called needed services and goods. These institutionalised distribution practices require critical analysis.

Institutions that are set up with the goal of achieving a more equitable distribution do not usually act in a way whereby only this objective is met. Schaffer & Lamb (1981) called it 'the irony of equity':
Grant that equity necessitates the setting up of rules for distribution. The implementation of equity, bringing it into action, however, also means their institutionalization. There is then the problem of access... It is the governance of institutional action by these rules and standards which produces the irony of equity... In the end, it is these procedures which come to dominate, and so determine outcomes... The procedures then are seen to produce highly inequitable outcomes.

First, the already advantaged, who possess the social resources to deal with institutional relationships, have far more possibilities to benefit from institutionalization (UNESCO, 1978). Second, the process of institutionalization is related to the mentioned 'creation of needs and scarcity'. It is a consequence, inter alia, of the need for institutional maintenance and reproduction. In this process of institutionalization, 'rural problems' are constructed according to the 'labels' that these institutions pre-establish. The categories or labels used, often are inadequate for understanding the reality of peasant communities. In fact, they tell more about the labellers, their plans, objectives and visions than about the labelled themselves (Wood 1985). However, this does not deny the power of these labels: they are made reality. The same institutions that construct the scarcity perception among the people, are the ones who are 'qualified and authorised' to solve these problems, thereby often replacing many local forms of peasants' knowledge, practices and skills oriented at peasants solving their own problems.

The history of irrigation interventions has produced some interesting and amazing examples. Depending on the school and the national or institutional background of the development mission or engineering team, the problems of peasant communities and their irrigation systems are identified and formulated. Unintentionally, the prescriptions for 'curing' the irrigation practices normally correspond closely with the vision, capacities and medicines that the intervening institution can provide. Their implicit vision of equity is usually part of these prescriptions. In this way, outside institutions tend to reproduce not only their products (e.g. the irrigation concepts, techniques and methodologies), but also the logic and the way in which their clients should make use of these products and they shape the clients' perception of the need for these products.

The discontinuity between on the one hand the peasants' real needs and on the other hand the institutional services is structural because of the (inevitable) process of institutional standardisation and labelling. Peasants' needs are specific and refer to the members of their household, class, ethnic and gender position, the particularities of the peasant community and the heterogeneous production system. However, most institutions can only offer standard services or items, so, to some extent, peasants' problems and roles are pre-determined to fit the institutional and ideological framework.

Institutionalisation itself is not 'wrong'. As a general process it is inherent in human organisation and rule-implementation. Besides, peasants themselves also institutionalise many of their rules and activities to achieve better co-ordination and more efficiency; to obtain official recognition of their right to more self-determination, and sometimes, to create more internal transparency. However, an important distinction must be made between the (self-)strengthening of institutions to fulfil one's own needs and the building of those institutions that seek to do this 'for others'. Even in the case of the latter, they may be very important in the peasants' struggle for equity, and peasant organisations may identify them rightly as strategic partners. But it must be kept in mind that the creation of institutions-for-others, unintentionally, often responds to a process whereby power, so-called neutral services and institutional knowledge are combined to also serve institutional interests, replacing local people's specific knowledge and needs. Regrettably, many development programmes and projects are 'good' examples, although there are also very important exceptions.

The challenge is to find a form of action that fulfils not only 'absolute' needs in a way that is perceived as equitable, but also suppresses the creation of 'artificial scarcity'. This action should also avoid the process of institutionalisation that universalises people's specific problems and solutions. The institutionalisation of equity creates a paradox that calls for serious discussion, profound analysis and conscious practice. A proper analysis of implicit interests and the functioning of institutional discourses is a first step.

**Heterogeneity and hybridised equity**

If we want to understand equity conceptions in peasant communities and irrigation practices or in development interventions, it is not sufficient to only analyse distribution practices: equity in distribution is intrinsically related to the process of production itself. We must look at the historical and dynamic social relationships that constitute the production system, the organisation and division of labour, the forms of property of the means of production, the logic of peasant production, their relations with wider socio-economic systems, etc. In this process of rural production, not only the material inputs and outputs and the rights, roles, responsibilities and obligations are produced, but simultaneously, the local conceptions of equity themselves are created, transformed or reconfirmed.

So, as stressed by Lauderdale (Ch.1), rather than searching for general definitions and fundamental principles of equity, we should analyse and try to understand the enormous diversity of equity conceptions in peasant organisational forms, as well as in our own societies and cultures; and we should analyse the ways these rules and rights are constructed and used in practice, and the power they represent. This makes it possible to review critically the discourses that legitimise specific dominant representations of equity and justice. Such a review should take into account that not all peasant customary rights are necessarily more 'equitable' (see also Benda Beckmann et al., Ch.6), so an attitude of reifying the latter must be avoided. When different perceptions of equity conflict and oppose, the peasants' criteria...
cannot escape critical analysis either. The basic question, however, is: Who models whose concepts of equity? Who models whose future?

A second fundamental issue is the fact that in many peasant communities and irrigation systems, the rules, rights and obligations, and the notion of equity that they carry, form the core of their production systems, organisational strength, collective action, self-defence and sustainability (as well as such as even sustain entire regions and countries). It is therefore of crucial importance to analyse the processes and conditions that foster subordinating norms and external dependence and the ones that empower endogenous rule-making (see Bolin 1994; Boelens & Doornbos 1996).

We have suggested that equitable rules do not necessarily lead to equitable practice. Neither the State, the development institutions, nor the peasant communities or the water users’ organisations can expect to simply select the right rules and then wait patiently for an automatic correct follow up and the ‘fair’ outcomes. Thus, peasant conceptions of equity, when expressed in explicit and collective norms and rules, can be seen merely as instruments, as weapons to use in the political arena where different interest groups meet, first to fight, negotiate and formulate the rules of the game and second, whether there is a complete consensus or not, to defend the actual application of these rules.

Because of the processes of confrontation, negotiation and recreation of its contents, equity as a conceptual tool for political action does not refer to some set of static principles. In each particular situation it is created, reconfirmed and reformulated in dynamic social interactions. A major challenge for peasant communities facing renewed obstacles for self-determination in the actual crisis and subordination, is the hybridisation of equity conceptions: not through absorption into a globalising model, but through the interaction and mixing of existing forms of local equity towards various new forms, adapted to the particularities of local conditions and the new obstacles and challenges of contemporary society.

In fact, this process of hybridisation of equity it is already going on, in the processes of struggle and exchange in many particular communities, irrigation systems, peasant organisations and networks.

We have presented equity as a concept that lodges different and heterogeneous sets of localised fairness principles, contrary to the ‘universal and omnipresent’ rightness of justice. Justice deals with general situations, equity with specific, particular cases. This sometimes leads to important misconceptions, for example, when equity is associated with the ‘individualisation’ of normative reality and social action. However, the right to be different, the right to construct one’s own models and norms and respect for heterogeneity can only be achieved by collective action and mobilisation. Furthermore, the claim for both the right to equality and the right to difference is not a contradiction but a paradox:

The search for equality in the middle of difference goes hand in hand with its contrary: the finding of difference in face of the empire of equality (Ribadeneira, 1993).

Peasants’ participation or ‘demarginalisation’ is a much abused concept. It often refers implicitly to participation and inclusion in the model, objectives and decisions of the intervening parties. It is rarely understood as the endogenous organisation of a process of social mobilisation. It is not the people or cultures who are to be included in a globalising ‘participatory development’, through the assimilation of their diverse and specific equity conceptions, knowledge and skills into a framework of institutionally defined needs. No, it is their voice, their decision, their autonomously defined interests, that should be included.

Equity calls for the creation of fair access by peasant communities according to their own and diverse models, more than planning equality for them. Instead of others defining the rules for production and distribution, support to peasant communities should be directed at political action: the joint removal of obstructions to the negotiation of equitable practice. This then refers to processes where the actual rules for equity are negotiated by the very peasant families and organisations themselves.

Basically it is not a question of peasant communities receiving equity, but demanding it.

Notes
1 I am very grateful to Hans Achterhuis, Geert van Duinhuizen and Erik Heijmans for their valuable comments on an earlier version of this chapter.
2 A major problem in the effort to approach the concept of equity is the fact that its contents are intrinsically heterogeneous and differ according to the interest groups which use the concept. Besides, we encounter implicit or explicit definitions of the concept in several scientific disciplines, such as law, economics and philosophy, that show great diversity and even contradictions within one and the same discipline. Moreover, these definitions may differ considerably from the various notions of ‘equity’ in popular language.
3 On the one hand, it must not be denied that, currently and historically, the idea of equality has provided important grounds for the struggle for liberation of oppressed peoples. On the other hand, it is this more subtle use of equality and homogenisation, however, that serves to perpetuate the subordination of the ‘non-equals’: all those cultures and peoples, e.g. peasants, indigenous and black peoples, who were taught to strive for being equal to the dominant and white classes and to accept their values, norms and visions as the maximum expression of progress and truth.
4 This is not to deny the great importance that legal justice systems can and often do have in spheres of social life, e.g. in the defence of human dignity and certain basic human rights. This, however, should not lead to the formulation of inflexible, detailed rules for regulating behaviour in all spheres and activities of the diverse society (see Boelens & Doornbos 1996).
5 Another problem with the aforementioned concept of (positivist) justice is the fact that it fails or refuses to make the distinction between the formal rules (official juridical texts) and their interpretation and application by law-users (Corrêa 1994). The theoretical function of the latter is to apply and use the law, not to create it. However, in practice it can be seen that law is used and reformulated in diverse manners, according to the very diverse social conditions that are encountered and the specific interests and visions of people who apply the law (see e.g.
Vidal 1990) and interact with other people subject to the law (see e.g. Benda Beckmann et al. 1989). Law is effective or not, according to the recognition of the authority of the applying party; the semblance of legal rules to real practical conditions and problems; and/or the power of the discourse that sustains the legal rules.

These theories also show that people usually apply more than one set of normative rules, and often form a strategy of 'legal shopping' in other normative systems.

Although this idea is basic in Marxist tradition, others before Marx applied similar statements, e.g. Thomas Hobbes: 'Non veritas, sed auctoritas facta legem' ('Not truth, but authority defines the law', quoted in Trimp 1990).

In practice, general principles may be formulated by State bureaucracies, outside institutions, social movements, peasant communities or other entities to express their formal conceptions about an equitable distribution. These principles can be specified through the determination of certain basic criteria and the development of corresponding mechanisms. The latter is operationalized by concrete procedures (see also Elster 1994).

'Most rules of law, in fact, though theoretically universal in application, affect only a limited category of persons in a limited number of situations' (Moore 1973).

In the words of Foucault we might call it the 'political anatomy of peasant communities'.

The rejection of Self came as a result of identification with the Other and as a result of the acceptance of the Other's image of one's 'inferior caste' (Gendler 1983). See also Achterhuis (1991).

It is necessary to distinguish between the various concepts of equality. Nowadays, it does not deal only with the question of equal distribution of scarce material resources (the subject of class struggle), but also with the equal distribution of all possible abstract themes, such as status, happiness, respect, etc. This leads to the comparison of all men to see 'if they are sufficiently equal', trying to resemble to the uniform standard, and the frustration of the ones that do not succeed in approximating the model. Apparently this concept of equality has always existed. However, Achterhuis (1998) shows that it is the result of the penetration of modern (capitalist) Western ideologies and counter-ideologies. Instead, several ancient cultures linked the concept of equality to ideas of diversity and plurality.

Consequently, the model is 'globalized' and the local regime of power and knowledge subordinated.

'Marginalisation is a concept that has already been used for a long time in social sciences. More specifically in the framework of development assistance it refers to a process which excludes persons from their means of livelihood' (Brenninkmeyer & Wieringa 1994).

The mechanisms of 'relative scarcity' make it possible that others, who have the power to impose their vision and image, come to define the needs of peasant communities, thus creating scarcity by expanding 'artificial needs'. The increasing expansion of so-called 'needs' through discursive practice magnifies the perceived scarcity and reinforces dependency and subordination. Or, as Illich (1972) writes, it is the creation of a 'heaven on earth that always stays just out of reach when one appears to come closer'.

We might compare it with a kind of Orwellian NewSpeak: often these institutions create a world and a vision by addressing those problems that they themselves can formulate and by adding only those questions that they themselves can answer.

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