

The Question of Justice and Women's Rights

Annika Thiem

Women's Rights and Justice - Opening the Field

The fundamental question of women's rights comes down to a question of justice or, to be more precise, a question of what it means to do justice, particularly whether there are universal rights every woman is entitled to that should be enforced worldwide. The issue of human rights in general has proved in the past and still proves itself to be difficult enough when it comes to enforcement of the agreement that most countries signed in the aftermath of World War II, the United Nations Universal Declaration of Human Rights. The problem that arises in connection with that agreement is the difficulty in talking about norms, values, and rights, what is good and bad cross-culturally, without devaluing the differences of cultures. All of us inescapably are products of the culture or cultures we grew up in; all of us are inescapably formed by our own individual experiences and life-stories; none of us can ever speak from an independent point of view comprising all different voices, cultures, and ideas of value-systems and ideas of what it means to do justice. This is true particularly when we deal with ideas of what it means to do justice to women.

Among the different levels or spheres of the question of what it means to do justice to women includes the sphere of the general theoretical issue of a concept of justice. How do we come to an idea of justice? How do we find out what unjust practices are? Is it enough that someone feels that they have been treated unjustly? And in that case, is justice then negatively defined as the exclusion of any practice that causes someone to feel treated unjustly? This negative definition, of course, is neither a workable definition of justice nor a useful procedure in deciding on a course of action, as a decision in favor of one person may make another feel as if she or he has been treated unjustly. An example of such a situation would be a job opening in which a choice has to be made between two equally qualified applicants, one of them female and the other one male. Either applicant, if turned down, is more than likely to feel unjustly discriminated against because the other one was chosen. Is it injustice simply because the man - or the woman - says it is? Obviously an appeal on this level cannot provide us with a decision about what justice and injustice are; nevertheless, this very discussion is necessary to discover conflicting cases and to initiate dialogue.

To decide what justice might mean in any given situation, it is necessary to take into consideration the specific situation and the framework in which a certain situation is located. In other words, the general sphere of the question "what does it mean to do

justice to someone?" is not independent from the sphere of situational context and practical application. In dealing with the issue of international women's rights, we must recognize that it is impossible to separate the question of what justice means from the question of cross-cultural ethical discourse. In this article I would therefore like to focus more on the question of the cross-cultural dimension without denying the irreducible heterogeneity inherent in each cultural sphere. The necessary heterogeneity exposes every attempt to delimit "cultures" as a contingent undertaking, since every culture itself is a shifting network of power-relations between groups and individuals that renders certain cultures as dominant cultures and others as so-called subcultures. Keeping this "pluriformity down to the bottom" in mind, I will nevertheless set out to deliberate about the general concept of the meaning of justice and what it means to do justice to women from the angle of cross-cultural discourse and, more fundamentally, the possibility for cross-cultural ethical discourse. To start this inquiry I will first look at the current situation of women world-wide, and discuss the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The issue of rights that all women are entitled to will lead into the debate of universalism vs. particularism; further, a consideration of the role of democratic discourse and of hermeneutical guidelines will be necessary. In conclusion I would like to give a twofold answer to the question of what it means to do justice to women.

Women's Rights and Justice - A Short Survey of the International Situation

As a descriptive survey of the actual current state of affairs proves, the question of what it means to do justice to women is an international issue of the struggle both to define and then to enforce the concept of international women's rights. There are women's rights movements and activist groups in nearly all countries of the world; there is also the international discussion, which finds its most vocal forum in the United Nations and which is expressed in various UN documents. Both national and international women's groups in various countries draw on these UN documents as empowering them and providing them with instruments to advance their cause both in their home countries and on the international level. The major document in this regard that has shaped and furthered the discourse and on which all UN member countries' reservations, objections, reports, and proposals are based is the 1979 Convention on the Elimination of All Forms of Discrimination Against Women. The reservations and objections put forth by various countries and against which other countries have then argued have been very helpful to advance this discourse over the last two decades. Two specific examples of this debate are the 1985 Nairobi Forward-Looking Strategies, which critically assessed the gains women made over the decade from 1975 to 1985 and which proposed measures member countries ought to take to reach the goals agreed upon by member nations, and the Vienna tribunal, which provided the forum for a comprehensive

review of global human rights instruments since the inception of the UN in 1948. The Vienna tribunal also functioned as a forum for women as a group to make their case to an international judicial committee, upon whose recommendations the UN in 1993 revised the CEDAW as a declaration.

Especially enlightening regarding what is perceived as violence against women is the 1996 Report on Violence Against Women by the UN Special Rapporteur, which lists as violence acts incest, rape, domestic violence, trafficking, and prostitution, as well as "traditional" practices such as son-preference, dowry-murder, and female genital mutilation (United Nations Department of Public Information). In addition to the issue of violence against women, this document argues that further work needs to be done to create an international platform on women's rights, expanding, revising, and including other UN conventions and declarations, such as those on marriage, literacy, labor force participation, etc., so that the CEDAW will comprise the full range of capabilities for women (see, for example, Okeke 49-63). All of this discussion and the willingness of the UN as a body to implement the CEDAW show that there obviously is international agreement on the fact that there are violent and discriminatory practices against women and that these are unjust.

Despite the considerable international agreement between state governments and their representatives and the international women's rights movements, there is nevertheless sharp disagreement over the question of what these rights mean and what status they have within a specific cultural framework. This disagreement can be assessed by taking a closer look at the CEDAW from the perspective of the main objections and reservations put forth by the governments of countries in the process of discussing and signing (or refraining from signing) that document. A central phrase of the Convention is in the preamble, in which the commitment is made that "the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights." This means that the issue of equality is confined not only to that of equal treatment before the law, but that it is also a question of, for example, women being able to hold property, to run for official political functions, and to have equal power within the family.

The issue of societal devaluation is especially divisive, as the preamble of the Convention notes: "[A] change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women." The meaning of this statement is fleshed out in Article 5a of the CEDAW, which urges that:

the States Parties shall take all appropriate measures: To modify the social and cultural patterns of conduct of men and women, with a view to achieving the

elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

This article, in combination with the provisions calling for women's equal rights in the family concerning marriage and concerning the custody of children, has been the one contested most, especially by the dominant cultures in so-called Muslim countries,[1] but objections have also been raised by other countries that are often very readily categorized and homogenized simply as "non-Western," such as India, Bangladesh, North Korea, China, or Chile.

There are basically three types of arguments raised by which member countries as reservations to the CEDAW. Each argument is slightly different from the others, but all question cross-cultural criticism and, as a result, a universal notion of the meaning of justice, although for the particular perspective they then set up their own culture as homogenous again - and therefore, implicitly, establish the notion of an intra-cultural universality.

The first type of argument is one that runs along the lines of the very general reservation made by Malaysia: "The Government of Malaysia declares that Malaysia's accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia law and the Federal Constitution of Malaysia." The governments making this reservation that the laws adopted by an individual country take precedence over any UN resolution do not consider themselves bound by the provisions of the articles concerning marriage, public functions, immigration and nationality issues, family and marriage, cultural patterns, and their respective legislation. In more general terms, this means that religious law, such as that inscribed in the Sharia, is often invoked to justify certain practices and patterns that according to the CEDAW have been identified as discriminatory against women and as reinstating women as legally and socially inferior to men. The charge of these governments, in other words, is that within a certain religious framework, equality and therefore justice based on gender can be and in fact is interpreted differently because divine law and language override secular law and rights discourse and because the women within such a framework perceive their own situation differently than do women who operate within a framework that developed out of the Western Enlightenment tradition.

The second type of argument put forth against the call by the UN to take measures to change cultural patterns can be discovered in the Nigerian point of view, which finds its grounds for disagreement with the resolution in the recourse to a proper respect for cultural differences. The Government of the Republic of the Niger declared that the

provisions regarding cultural patterns and especially regarding women and their legal position in the family "cannot be applied immediately, as they are contrary to existing customs and practices which, by their nature, can be modified only with the passage of time and the evolution of society and cannot, therefore, be abolished by an act of authority." Although this reservation does not negate that over time women's rights could be instituted, it gives present cultural practices and existing frameworks of values priority over the interpretation of gender equality as fleshed out in the CEDAW. This charge indirectly draws on an indictment of colonialism and of an historical disregard of local and national cultural practices that are based on values different from what is regarded as the "Western value-system." As in the case of the Malaysian reservation, the Nigerian argument sets up the "existing customs and cultures" as a unitary whole and negates intra-cultural differences and oppositions.

Finally, the third type of reservation is argued along lines of liberalism and the related principle of non-interference, as can be seen in the statement of the Indian Government regarding the articles concerning marriage and cultural patterns: "The Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent." Here we encounter an argument that differs from the two previous types insofar as it does not speak to cross-culturalism in the macrocosm, but in the microcosm, and invokes as the guiding and overriding principle of democracy the principle of self-determination. But the question then has to be how the minority cultures are acknowledged and protected or disregarded and oppressed by the hegemonic cultures in individual communities.

Although much of the discussion of these points is part of the juridical debate on how to mediate international and particular law, be it constitutional or religious, I will concentrate the rest of my discussion instead on the ethical, not the legal, implications of these issues, especially as these frame the discourse on cross-culturalism. Based on the above brief examination of the international official objections to the CEDAW, the question of justice can now be rephrased as a question of whether cultures are so distinct and so disjunctive that no cross-cultural criticism is possible and whether, in fact, the idea of international women's rights, and the interpretation and enforcement of those rights, is simply another form of neocolonialism. This leads to the consideration of just and fair deliberation and decision-making that allows for a cross-culturalism that does not fall short of its promises and that merely ends up being hegemonic universalism by instead providing for interpretative guidelines that work in practice as well as in principle.

Women's Rights and Justice - A Question of Relativism vs. Universalism

Justice in cross-cultural discourse and cross-cultural discourse as ethical discourse become problematic whenever these come down to questions of judgment and criticism and, finally, coercion. Dealing with this issue means attempting a careful navigation between the Scylla of universalism, which often turns out to reinstitute hegemonic practices and privileges of power élites, and the Charybdis of relativism, which refrains from any judgment, disregarding that this tacitly means an acknowledgment of the status quo and thus is already an ethical judgment. In this section I would therefore like to first argue that the claim of cultural relativism cannot be upheld if we take the reality of human suffering seriously. Then, in a second step, I would like to argue that simply embarking on a search for universals does not cure the shortcomings of relativism either.

Cultural relativism does not accept that human rights and women's rights are universally valid and true; furthermore, such relativism "rejects any universal process for interpreting treaties that could support universal human rights standards" (Singer 45). All norms and values, according to the cultural relativist argument, are solely products of a particular culture and, thus, it must be acknowledged that norms and values are appropriately defined and understood only within that culture (Singer 46). Consequently, it is impossible to criticize norms and values from any standpoint within another culture; the only allowable cross-cultural principle is a principle of universal validity, which demands that cultures respect each other and grant each other cultural autonomy.

Such an argument for cultural relativism has to be refuted since it is made on its own theoretical premises, namely, that cultures are, relative to each other, independent. This premise cannot be upheld, since cultures are always interdependent. There are no hermetically sealed and ultimately unambiguous cultures. Michael Singer makes an argument for interdependence of cultures by extending the concept of self-identity. Any self-concept has two constitutive dimensions: on the one side, intrasubjective reflection; and on the other side, intersubjective interaction. Self-concept is therefore necessarily ambiguous and dependent on interaction with others. In the same way, cultures are collectives of individual human beings and in their constitution depend on interaction with what is perceived as different. We are thus constructing a myth if we attempt to construct cultures as independent and homogenous, because "cultures interact with other cultures, and in the process they change" (Singer 50).^[2] Martha Nussbaum refutes relativism by pointing out that "people are resourceful borrowers" (48), as the example of Marxism shows: Marxism originated as an idea in the German Marx's mind in the British Library, but still was adapted for use in Cuba, China, and other countries (cf. Nussbaum 48). As this illustrates, people within their cultural frameworks are influenced by these frameworks in constructing their value-systems, but still this does not mean that the guiding principle for what they strive for is merely the reproduction of tradition in itself and for itself; instead, people strive for the good (cf. Nussbaum 49).^[3]

The counter-argument, the argument for cultural relativism, is made from two sides. On the one side, there are those who belong to so-called Western cultures who are fearful of the charge of neocolonialism being leveled against them. On the other side, there are those who belong to cultures that for a long time were colonized. Western feminists especially often feel that to attend to the cultural differences and avoid devaluation, they - or we - are unable to utter legitimate moral criticism of cultures other than our own (cf. Narayan 126). Uma Narayan argues that this reluctance might be due to a certain personal desire to avoid being accused of racism or colonialism, but might also be due to a far less personal and much more principled concept about "reservations about Westerners in general engaging in negative, critical, or prescriptive judgments about practices and affairs having to do with Third-World communities" (126). The refusal to judge, however, is in itself a reinstatement of the moral inequality of those countries and is also counterproductive to the aim of striving for justice, since "a blanket immunity . . . does very little to politically engage with the problems of individuals and groups who suffer injustice and mistreatment within these [Third-World] contexts." (Narayan 150).

Often, however, it is the dominant cultures in these Third-World contexts that make the most use of the relativism argument. These individuals and groups are those who have an interest in opposing change and maintaining the present system (cf. Singer 52-54; see also Narayan 151).^[4] In other words, cultural relativism serves the purposes of the power élites by warding off intra-cultural opposition. With regard to invoking religion and religious law to argue that women's rights as proposed in the CEDAW have to be interpreted in accordance with the existing cultural, moral, and religious framework, we can now see how the stylization of, for example, the Muslim world as homogeneous is a myth-creating practice that means totalizing culture and playing "into the game of fundamentalists and identity politics" (Hèlie-Lucas 23). The Norwegian response to the argument that women's rights have to succumb to the rules of the Sharia shows clearly that the critical angle from which any argument has to be tested has to be the question "cui bono? for whose good?":

The Norwegian Government will stress that by acceding to the Convention, a state commits itself to adopt the measures required for the elimination of discrimination, in all its forms and manifestations, against women. A reservation by which a State Party limits its responsibilities under the Convention by invoking religious law (Shariah), which is subject to interpretation, modification, and selective application in different states adhering to Islamic principles, may create doubts about the commitments of the reserving state to the object and purpose of the Convention. It may also undermine the basis of international treaty law. All states have common interest in securing that all parties respect treaties to which they have chosen to become parties.

Ann Elizabeth Mayer (106-116) shows that the governments of Muslim countries often invoked the notion of a homogenous Islam, but when they were asked to give expert testimony on Islamic doctrines in the process of debating the CEDAW, they refused to do so. Mayer also points out that the governments which used religious grounds to make reservations are not in charge of deciding those religious issues. Mayer therefore concludes, "[R]eligious reservations when offered by governments simply mean that states are refusing to comply with CEAFDAW [sic] and are hoping that invoking religious grounds for their noncompliance will win them special indulgence" (114).

The fact, however, that there exists international linkage between women from these Muslim countries and communities worldwide means that within these countries and communities the doctrines invoked are not interpreted as univocally as the hegemonic power may argue. International cross-cultural dialogue, furthermore, can only take place if these women from different backgrounds experience a certain consciousness about commonalities and diversity. Marie-Aimée Hèlie-Lucas, along with many other feminists, therefore advocates women's rights as universal human rights: "Although universalism, as it exists today, is generally criticized for its implicit ethnocentrism and leaning toward so-called Western values, most women nevertheless recognize the need for, support the principle of, and work for a new definition of universality in human rights" (Hèlie-Lucas 26).

Nevertheless, the charge that universalism is or at least tends to be ethnocentric and thus results in hegemonic oppressive mechanisms must be taken seriously. This means that it is necessary to ask on which level the problem of universalism lies and whether there is a way to deal with the dilemma. The problem of the universalist argument occurs, as Judith Butler points out, where it seeks "recourse to a position - hypothetical, counterfactual, or imaginary - that places itself beyond the play of power, and which seeks to establish the metapolitical basis for a negotiation of power relations" (Butler, "Contingent Foundations" 6).

Owing to the fact that all human interaction is always already subject to power relations, however, it is impossible to escape power play. Claiming to argue or negotiate from a perspective that lies beyond power politics, therefore, means to legitimate a certain perspective and basic system of norms and values while at the same time withdrawing from discourse a system and perspective that are stated as foundational and universal. It is no solution to mediate between competing and often conflicting interpretations of what it means to do justice by acknowledging that there are a multiplicity of "universalities." Either this means adopting a relativism disguised as universalism or pluralism itself, or it means that the decision will be made at the price of

violence. Consequently, the category of the "universal" has to be relieved of its foundationalist weight and opened as a "site of insistent contest and resignification" (Butler, "Contingent Foundations" 7).

The quest for universal values, then, is not the striving to find the grail of ultimate normativity; instead, it means, with regard to the notion of the universal as a foundation, to hold such a quest permanently open and to not be exclusive, but truly universal. In other words, the difficulty of establishing a foundation does not mean that there is no foundation at all, but rather that the foundation is the continuous contestation of exactly that which is stated as foundational. Stating universals as an irrefutable foundation covers up their own specific history and thus contingent coming into being, emptying them of their substantive political power and rendering them a dead formalism. Foundations, therefore, are constitutively political and "exist only to be put into question . . . , as it were, the permanent risk of the process of democratization" (Butler, "Contingent Foundations" 16). With regard to its political and practical dimension, invoking a universal value cannot mean presenting an ultimate truth about what it means to be human, or what it means to be a woman, because this always already includes a decision about what is excluded from that category. Invoking a universal value therefore will be contested by that which, due to its exclusion, will remain a challenge to precisely the claim to universality.

Capturing the universal as an empty signifier as political theorist Ernesto Laclau does sheds light on the relation between the universal and the particular: "The universal is an empty place, a void which can be filled only by the particular, but which through its very emptiness, produces a series of crucial effects in the structuration/destruction of social relations" (Laclau 58). One has to caution against being all too ready to make the move to interpret women's rights or human rights as such a universal, since that would already cover up the particularity and historicity of women's rights and human rights in their emergence. An empty signifier universality has to remain empty and the particular contents always remain in a battle to fill this position. The problem then is the adjudication between the particular representatives. The task, therefore, must be to find ways to negotiate in a fair and just manner and to keep the contest open while ensuring that it is possible to decide and act despite these irreducible contingencies.

Women's Rights and Justice - A Question of Democratic Discourse

To deliberate the questions of women's rights and what it means to do justice to women, it is therefore necessary to ask how a democratic and fair discourse on the interpretation of these rights can be achieved and what it means to be a woman and how these women as individuals are to become empowered to fully become moral and human

agents. These questions can be tackled if we start with the exploitation of human vulnerability and human suffering as a reality, a reality that we acknowledge as not good and not tolerable. However, just as it is insufficient to define peace as the absence of war, it is insufficient to define justice as the absence of injustice and to define eudaimonia (happiness, the good life) as the absence of suffering. To find interpretation guidelines for this "more" of the good life, the capabilities approach, as argued especially by Martha Nussbaum, can be enlightening. Nevertheless, the question of how basically to reshape discourse has to be dealt with first before the question of material guidelines to the specific discourse on women's rights can be discussed.

The issue of deliberating what procedures of a fair - or in other words, just - discourse would be addresses the problems of how we deal with differences and of how not only judgment, but also decision-making and enforcement of decisions, are justified. Taking the argument regarding cross-culturalism as non-foundational universalism seriously, one has to acknowledge "any justification for coercion will be necessarily incomplete" (Mansbridge 46). Yet people are often willing to accept a certain amount of coercion as just enough and legitimate enough, even though that acceptance is not a consensus resulting from an unconstrained discussion among all those affected. Such willingness is often hardly based on reflection but is more often derived from tradition and habitualized cultural patterns. Additionally, even if there is dialogue that seems to be open, not all the affected are seen and heard. It is therefore necessary to expand the concept of democratic communication, which so far is very much limited to what is perceived as "rational argumentation." As it is constructed and applied by those who are in charge of the discourse and thus those who decide whose contribution to the discourse counts as persuasive and whose does not, the criterion of rationality functions to silence those who, owing to different social and cultural backgrounds, are unable to express themselves and their concerns according to that criterion. The notion of democratic discourse consequently needs to include other forms of communication along with the rational argument, such as greeting, rhetoric, and storytelling (cf. Young 120-135).

Furthermore, it is necessary to come to an understanding of "differences of culture, social perspective, or particularist commitment as resources to draw on for reaching understanding in democratic discussion rather than as divisions that must be overcome" (Young 120). Difference does not mean utter otherness to the extent of incommensurability, since if that were the case, any interaction would be impossible and the cross-cultural traveling of ideas (as in the case of the Marxist ideas, with their continental European origin and their Far-Eastern implementation), adaptation, and defense would be absolutely impossible. Difference instead provides the condition of the possibility of a dialogic interchange and necessitates "cultural translation" (Butler et. al, "Restaging the Universal" 35) that is needed in order to interpret the specific meaning of

a universal in the local cultural and historical circumstances. The interpretation of what justice means and the conditions for decision-making in such an intra- and intercultural interchange across the borders of the individual groups then could be formulated in terms of awareness and an acknowledgment of interdependence, mutual respect, and agreed-on procedures. The adequate model for transformative acknowledgment of interdependence and relation then is solidarity, since "the goal of communicative ethics is not merely consensus but mutual critique leading to more adequate understandings of what is just and how particular forms of justice may be achieved" (Welch 129).

The call for solidarity and for a wider discourse, one that includes more voices, striving to include everyone, does not mean that there will not be any conflict between different interpretations of what it means to do justice in a certain situation. Decisions are necessary and unavoidable since, as I have already pointed out, the decision not to act already is a decision and thus inherently is an ethical judgment. For example, if the decision is to wait to act in order to further discuss an issue, such as, for example, female genital mutilation (FGM), such a decision does not mean that one acknowledges FGM is good and is an acceptable cultural value per se. It definitely means, however, that one is convinced that out of the options one has, it would be more unjust and therefore worse to use force to end such practices at the cost of devaluing cultural traditions and thereby depriving those women who administer clitoridectomy of their income.

There are two issues that have to be addressed: firstly, that of accountability, and secondly, that of how that discourse works performatively. To whom does one hold oneself accountable? The question is not simply what it means to do justice, but justice to whom. In the case of FGM, this becomes a question of accountability to the people engaging in that certain practice, to those living in a culture where that practice is performed, to the women both undergoing and performing FGM. The inquiry into the performativity of that discourse will then have to consider how it sets the plane for ethical considerations and how this configurative delimitation has ethical consequences. In the example of FGM, the question then is whom such a discussion inaugurates as agents, how relegations to roles such as victim and actor are at work, and how they are placed and instituted in these social circumstances.

Women's Rights and Justice - A Question of Hermeneutical Guidelines

Therefore, although it is necessary to inquire into the foundations - as into who gets to count as a human - in order to hear all the different voices and to locate these different voices with regard to their position within the discourse, it is also necessary to think about what links there are that establish a cross-cultural connection between people as humans. Regarding the notion of the human that is the fundamental one on which the

human rights discourse is built, a serious charge is being made that the operative concept of the individual is not shared cross-culturally, because, so the argument runs, some cultures are far more communitarian and give preference to the society over the individual. Individual human rights are therefore seen as having to surrender to the right of the community. However, such an argument has to face the criticism that a community is never merely a community, but that as a community it is a community of individuals, and thus it could not exist if it were not constituted by its individual members. Alan Gewirth (1978, 1996) presents a theoretical discussion and analytical argument for the individual as starting point on which to base the human rights debate. Gewirth starts by noting that in order to say "the community is more important than the individual," the specific individual making this case already has to claim to be granted certain basic goods, such as his or her ability to utter such a statement. The argument then runs along the lines of self-consistency, because even wanting to be able not to have to want anything already means wanting something and because to want anything one cannot not make certain claims to, for example, physical and psychological integrity. Gewirth then argues for the principle of human rights via the correspondence of rights and duty.

UN Special Rapporteur Radhika Coomaraswamy argues a similar position, focusing more on the material and legal dimension; in addition to the debate on so-called "Asian values" that undermine the notion of the individual, she discusses the status of women in societies as the result of specific religious law. Regarding these, she introduces a valuable differentiation between religion and culture by pointing out that "it is essential to argue that the spirit of all the world's religions is supportive of human rights and that it is only man-made practices that result in the violation and abuse of human rights" (84). The solution she proposes follows Courtney Howland's argument that by joining the UN, countries subscribe to the Charter of Human Rights as more important than local cultural and religious practices.

From this point it seems that an explanation and legitimization for human rights as universal rights could be possible, but there still needs to be a justification why it is necessary to explicitly argue for women's rights. If we try to search for a commonality to which all human beings can relate and which in all differences enables human beings to relate to each other, one reality is, as mentioned above, the vulnerability of all humans and the reality of experiencing pain. Another factum is that suffering, which in this context I would like to define as pain that is experienced over a period of time and that is not perceived as pleasure, exists and that human suffering is not only not desirable but also not tolerable. To avoid a reductionistic view of human life that would reduce the notion of the "good life" to the absence of pain and suffering, it is necessary to consider alongside the exploitability of human vulnerability the role of desire and the ability to experience pleasure. Acknowledgment of this can function as a basis from which to

inquire what it means to be and become human, since a more concrete response is needed to address the reality of human suffering than simply recognizing that it should not be. This means realizing that declarations such as the CEDAW can always only capture and strive for a formal equality, but it is then necessary to argue for the substantive consequences of this equality.

A valuable methodology for the project of arguing the substantive meaning of the proposal of formal equality can be found in Nussbaum's capabilities approach, which entails the establishment of a threshold of capabilities, that "beneath a certain level of capability, in each area, a person has not been enabled to live in a truly human way" (74). This approach also entails the universal "principle of each person's capabilities." That is, in order to be capable of human flourishing, each person must be treated as an end instead of as a means; the capabilities Nussbaum is concerned with are the capabilities of "each and every person," not of the family or the state (74). She then lists ten central human capabilities without which human flourishing is neither guaranteed nor sustained. Finally, she defines rights as "combined capabilities," that is, not only as capabilities guaranteed on paper, but also secured and facilitated through effective political measures (98).

The list of ten capabilities is open-ended and open to contestation, yet the different capabilities cannot be reduced to each other. Therefore, it is not possible to "satisfy the need for one of them by giving a larger amount of another one" (Nussbaum 81). The list as it is presented comprises life; bodily health; bodily integrity; senses, imagination, and thought; emotion; practical reason; affiliation; living with and concern for other species; play; political and material control over one's environment (see Nussbaum 78-80). These capabilities can be seen as belonging to three different types. First, there are the "basic capabilities," which can be defined as "the innate equipment of individuals that is the necessary basis for the development of the more advanced capabilities" (Nussbaum 84). A child, for example, has the potential capacity to work; however, this basic capability is not yet fully developed. Second, there are the "internal capabilities"; these are sufficient conditions for functioning insofar as it takes bodily maturity and usually the support of the surrounding environment to fully develop and learn these capabilities, but beyond that point of development, these capabilities, such as, for example, the capability to play with others, can be used by the person. Finally, there are what Nussbaum calls "combined capabilities": to exercise the function of these internal capabilities, it is necessary to have appropriate external conditions. She presents the very clear example of citizens of repressive nondemocratic regimes, as they "have the internal but not the combined capability to exercise thought and speech in accordance with their consciences" (Nussbaum 85). With such a list of capabilities, which is not closed and withdrawn from contestation and so in itself needs interpretation, one still gains a valuable set of

interpretative guidelines when dealing with the question of what it means to do justice to someone. Talking about capabilities does not replace rights language, but it does function as a hermeneutical guide, since the capabilities perspective provides a very concrete formulation of goals working toward the well being of every person.

The notion of the well being of every person still leaves us with the question what it means to do justice to *women* and why there is a need to state women's rights as part of and yet distinct from universal human rights. The necessity to integrate the gender perspective can be easily understood when one realizes that human rights laws and codes in the past have tended to address the concerns of men, to the exclusion of issues that directly affect women's lives. Domestic violence, for example, only became a human rights issue because of the activism of women's rights groups. This objection also extends to the gender-neutral language of human rights laws when that language, gender neutral or not, is not sensitive to the particular circumstances of women's lives, which, if considering the example of marriage and family, are vastly different from the circumstances of men's lives (see Cornell 280-296; Bunch 11-17; and also the others essays in Peters and Wolpers). Consequently, the need for specific discussion on women's rights as an addition to the human rights debate results from the fact that patriarchal culture has stylized human as male and so the category of the human cannot serve to reveal injustice against women in particular. If we, therefore, want to think about what equality means, we need specifically to take gender difference and discrimination against women into account. Yet the idea of equivalent rights that recognize the human species as comprising not merely one gender cannot mean to establish a praxis discriminating against those who do not qualify as women. It must instead be guided by and aiming for equality as an equality of capability and well-being in the first place, although with a very specific accountability for and attendance to women and women's suffering.

Women's Rights and Justice - A Question and No Conclusion

"What does it mean to do justice to women?" - This survey of the international struggle for women's rights as an instrument to do justice to women showed that although there is a certain degree of agreement that something has to be done, it turns out that the real question lies in what this exactly means. The descriptive level of this survey also revealed that there are several problems when it comes to stating rights women are entitled to by virtue of being women and ensuring the reality of that to which women are entitled. This in the first place turned out to be a question of whether cross-cultural ethical discourse is possible at all and, if so, how an argument for women's rights as universal rights is possible without being subject to the charge of neocolonialism. In this article I have argued against cultural relativism by firstly pointing out that it is an

insufficient theory to describe reality since in practice cultures are interdependent and not hermetically sealed and thus able to engage in absolutely incommensurable discourses. Secondly, the refusal to make moral judgments does not contribute to what relativism establishes as norm, namely, the mutual respect of cultures for each other. The refusal to make moral judgments reinstates colonial practice insofar as it reinscribes the other as morally inferior and does not acknowledge the other as equal partner in the ethical discourse on what it means to do justice. On the other hand, the case had to be made against universalism as foundationalism; searching for universals merely to then withdraw these from the discourse by stating them as universally true and not subject to interpretation would be simply another form of hegemony and colonialism.

Therefore, universals as interpretations of what it means to be human, what specifically it means to be a woman, and what it then means to do justice have to be open to contestation. This led to the question of the procedures for such a contestation and the question of hermeneutical guidelines. The practice of the international discussion of women's rights shows that most often women are excluded from the discourse. Therefore, the proposal has been made to reshape the concept of democratic communication to include all voices. Thinking of discourse in terms of solidarity and accountability with regard to the question of doing justice has thus become the connection to considering what features can be useful to interpret what doing justice to women means. The insufficiency in limiting a definition of justice to the absence of injustice in order to arrive at a value-oriented interpretation, which then can shape practice, pointed us to the capabilities approach. Asking the question what it means to do justice to women, however, showed that, owing to the gender-reductionist construction of the notion of the human being, it is necessary to formulate women's rights gender-specifically to attend to the reality of women's suffering.

I would like to conclude by giving two answers. I would like to offer the answer regarding the theoretical dimension of this question by rephrasing the approach to this question that I tried to argue in this article, and I would like to offer the answer regarding the practical dimension by making a commitment to a material approach trying to capture the meaning of women's rights. I consider both of these answers as offers and contributions to the discourse and, therefore, open to challenge.

First, the theoretical answer to the meaning of doing justice to women is that we are dealing with three intersecting and interdependent spheres within which the meaning of justice has to be determined. The first sphere is the one in which rights and duties and their legitimacy are argued. The starting point for this argument is human reality in terms of human vulnerability and the interdependence of all human beings, but also in terms of the human species comprising more than one gender. The second sphere is the

hermeneutical one in which interpretations of what it means to be and to become a woman have to be argued. Guidelines for interpretation can be found in the capabilities that are derived from the goal of well being and that are linked to functioning or, in other words, that are linked to practice. The third sphere, then, finally is the sphere of practice in life, which is where interpretations come into action. It is in this sphere where we as persons interact, the sphere where we have to decide which interpretation we choose.

This sphere is also the sphere in which, as my second answer to the question what it means to do justice to women, I would like to commit myself to the 1993 UN Declaration on the Elimination of All Forms of Discrimination Against Women, which is based on the 1979 CEDAW, as a basic interpretation of women's rights. To flesh out the political consequences of these rights, I do believe that the capabilities approach is the most helpful, since it enables us to be specific about goals and to give a positive account of what well-being means. To re-evaluate and renegotiate interpretations and practices, it is necessary to perform a critical analysis of policies, actions, and instruments from the perspective of solidarity and accountability, which have to inform our choices and judgments.

Nevertheless, any answer to the question what it means to do justice to women, no matter whether regarding the theoretical or the practical dimension, always will fall short of a final resolution. It is important, though, that the answers we give are empowering and allow for reconsidering our interpretations, since the encounter and interaction with others in the practical sphere will teach us the consequences of our actions. And the sphere of life practice will always remain the one in which it becomes painfully clear that there is no ready-made answer to what justice means and that the struggle for peace and justice in practice at all times summons all of us to action and re-evaluation.

Notes

* I am grateful to the anonymous reviewers and Rebecca Kennison for their incisive reading and comments.

¹ These countries either have a mainly Muslim population and/or their constitution is based on the Sharia and the Quran. The Taliban's recent call for resistance to UN sanctions based on Islamic unity aside, my use of the term "Muslim" as well as the brevity of this remark by no means should indicate that it is possible to construct a homogenous and monolithic notion of Islam or of "Muslim countries," since it is necessary to note the various forms of Islamic societies and communities and attend to the differences between them. Nevertheless, for the purpose of indicating a certain religio-cultural background on which these countries draw in their argumentation in the international forum, the term "Muslim country," despite its enormous limitations, should suffice.

² Similarly, Uma Narayan (26) criticizes the idea that Western countries are depicted as dynamic and modernizing, whereas non-Western countries are defined by their ancient and traditional elements.

³ This idea of the good, and not tradition in itself, which shapes the strife of every human can be found also in Aristotle's *Politics*, 1269a3-4: "In general, people seek not the way of their ancestors, but the good." (quoted in Nussbaum 49). The formation of the various conceptions of "the good," however, takes place in and through the works of a specific cultural setting.

⁴ Narayan argues that the feminist project that engages in the political project to work for social change always means commitments to analysis, evaluation, criticizing.

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