

Reciprocity for all?

Remarks Concerning the Notion of Justice for Marginalised People from a Philosophical and Theological Perspective

The question of justice is becoming even more relevant today, since there are more and more heterogeneous groups of people in our societies. How can all the different needs of these diverse people be met? How can solidarity and mercy be practiced among people of different cultures and values? Very basically, how can they get along with each other? What is the foundation for such processes in open societies? When thinking about these questions, one must inevitably deal with the idea of justice. Justice defines the rights and duties of individuals in a group or society. Justice is not all that can be said about the relationship between individuals and groups in a given society. The idea of justice involves very strict rules and norms that are frequently applied in a universal manner, for instance, the equality of humankind or the dignity of human beings. In virtue of its universal approach that guarantees individual rights and freedom, justice implies strong obligations; people have to follow the rules of justice.

Apart from justice, there are also other virtues. There is solidarity, which, however, includes a moral obligation that has a limited scope. Solidarity is usually felt and shown in certain groups of people who express a distinctive obligation to each other, for example, "I care for you while you are a baby and

you will care for me when I am old and weary". Usually, solidarity does not include everybody; it is not universal but presupposes some kind of relationship in a family, sports club, volunteer organisation, et cetera. There is also mercy or charity which is shown out of a good heart because a fellow human being is suffering. Help is thus motivated by the concern for the need of the other and nothing is expected in return. The help one gives may be reciprocated but expecting this is not part of the act of compassion itself. Therefore, the obligation to show mercy may be a moral one, however, it has a limited scope – one cannot oblige other people to act mercifully.

With these introductory remarks a widespread threefold notion of reciprocal obligations in a group or society, which underlies this article, has been addressed. Fundamental to open societies is the equal status of human beings as subjects with equal rights. This is also fundamental for the liberal approach to concepts of justice. My argument in this article is that this notion or idea of justice is not sufficient to ensure that marginalised people can exercise their freedom and actually participate and cooperate as equal partners in the well-ordered society. In this respect, a complementary perspective is necessary that also includes other concepts such as charity.

To develop this line of thinking, I would like to begin with analysing Rawls' theory of justice with respect to this question. Liberal theories of justice generally presuppose actors capable of cooperation and self-determination. Not all marginalised people, for instance, people with disabilities, meet these requirements. In the second part of this article this insight will be taken up and an important differentiation regarding the participation of marginalised people will be discussed. Thirdly, the question will be addressed how such notions like charity which are rooted in specific religious traditions can be linked to universalistic conceptions of justice. Finally, some conclusions will be drawn.

THE LIBERAL CONCEPT OF JUSTICE AND MARGINALISED PEOPLE

I would like to illustrate an example from practice by choosing the issue of disability, since disabled people belong to the marginalised groups in society. In Germany, it is still being discussed whether children with disabilities should be allowed to attend a regular high school. For example, a teacher stated regarding Marie-Helene, a girl with short-limbed dwarfism resulting from diastrophic dysplasia: "For aesthetic reasons such a child should not attend a regular school." One immediately thinks that it is not fair to Marie-Helene that she is being excluded only because she is smaller than other "normal" people although she passed all required cognitive tests. Those who are concerned about just conditions for people with disabilities have at least an idea of what those conditions should not be: People with disabilities should neither be excluded from social life nor accept being disadvantaged or being discriminated against because of their impairments. To the contrary, they should enjoy the same right as others to a self-determined life in freedom and dignity and have the same chances to attain such a life.

In modern societies, justice is considered a fundamental value. An "unjust" society faces significant acceptance and legitimacy problems. Still, what does justice mean with regard to marginalised people such as people with disabilities? To what extent do the concepts of justice in philosophy and theology consider the interests and needs of disabled

people? The fact that these questions are not purely theoretical but rather, because of experiences of injustice, have been brought to public discourse with considerable pressure to draw attention to existing discrimination and exclusion of people with disabilities, underscores the significance of conceptual work on the notion of justice. How can equality of opportunity and participation of people with disabilities be established through a theory of justice?

The Dilemma of Justice for Disabled People

In the attempt to lay the foundation for justice for people with disabilities, one is presented with a real dilemma.¹ On the one hand, justice seeks to ensure that people with disabilities have the most equal chances to take part in societal life; thus differences that exist because of their impairments must be compensated for. The focus is on their impairments that have to be treated. On the other hand, the impairment as such should not be focused on; instead, people with disabilities should be perceived and treated above all as people just like other people and not as "the disabled".² From a theory of justice point of view, the dilemma lies in the fact that according to the first argument, the inequality between people with and without disability must be stressed in order to elevate it, whereas according to the second argument, the inequality between them should not be focused on. Since this is a true dilemma, it cannot be easily solved; rather, it must be dealt with in a manner that both lines of argumentation are given their proper due in order that one is not developed at the expense of the other.

In doing so, one cannot start in the theoretical analysis from equally neutral ground between the two lines of argumentation. Why is this not possible?

1 See Eurich 2008.

2 Because of this, some prefer the wording "differently abled people", stressing that a disability is not a defect or a deficiency but is rather to be seen as a social phenomenon. Though I am in favour of this understanding, I prefer the wording 'people with disabilities', since this is the official term used in the UN Convention on the Rights of Persons with Disabilities.

To answer this question, one must look more closely at the presuppositions of liberal concepts of justice. In short, the reason is that only individuals who are fully capable of self-determination and moral judgments are considered. Individuals who do not meet these requirements need to be treated in a special manner, which, however, turns out to be insufficient for disabled people. This line of argumentation will be developed in the following.

In the liberal tradition, ideas of justice emerged that manifest themselves in open societies in the form of basic rights, individual rights, social rights, et cetera. Such rights, however, are based on the notion of a self-determined, autonomous individual who is fully capable of social cooperation as a participant in society. The autonomy of the subject relates to the capacity of the person to be able to make a moral and rational judgment. Above all in the tradition of Kant, the individual person is considered as a "subject of moral-practical reason".³ In his most influential theory of justice, the American philosopher John Rawls has taken this understanding of the person as a basis for his formulation of the "original position",⁴ since according to him, individual freedom entails that one is a "self-authenticating source of valid claims".⁵ Since the right to freedom is valid for every person,⁶ but people are nevertheless very different, the unequal conditions must be taken into account and compensated for in order to establish equality (of opportunity). Rawls favours an institutional resolution of distributive conflicts and would like to legitimise and limit inequality through a purely procedural process. The redistributive effect of this principle of difference thus permits a higher distribution of resources to disadvantaged people. But is this solution really adequate to ensure equality of opportunities for marginalised people such as people with disabilities?

Distributive justice concepts such as that of Rawls have undisputed and significant advantages for people with disabilities. Through the guarantee of equal basic rights, such concepts should prevent that people with disabilities are deprived of their autonomy or treated as second-class citizens in comparison to people without disabilities. Considering the frequently heteronomous living situations and

existing dependencies of people with disabilities, such concepts require that their self-determination should be strengthened systematically. Furthermore, emphasising the equal dignity of all people, it is necessary that people who are in need of a long-term support should be provided with financial means to lead a dignified life. However, arrangements to the benefit of long-term dependent people are so conceived that the difference between them and the "normal" members of society is compensated for to the fullest extent possible. In Germany, as in other countries, a whole system of medical rehabilitation services is in place for this objective.

Yet, there is one great disadvantage that goes hand in hand with such an approach. One must keep in mind that the norm of equality is an individual without disabilities who is fully able to socially cooperate and exercise his or her freedom. Correspondingly, in his theory of justice Rawls also assumes that people as citizens have all necessary capacities to be able to be normal and fully cooperating members of society.⁷ Thus, the question arises as to whether the interests and needs of people with disabilities can be adequately considered in a theory that sets people without disabilities as the standard.

Equality of What?

Already in the "equality of what?" debate it was pointed out that crucial is not only how many goods a person has but also what the person can do with these goods.⁸ The distributive approach of rights and goods only works as long as people can make good use of such goods. What if the actual differences between people distort the picture with the result that marginalised people are disadvantaged by that approach? Traditional conceptions of equality did not develop any notion of non-hierarchical difference. Instead, differences between people served to provide a natural legitimisation of inequality. This points to the dilemma of the question of equality, "which indicates that if unequals are treated equally, new inequalities arise,"⁹ and calls for a non-hierarchical difference to be incorporated in the conception of equality. Annedore Prengel has appropriately summarised the interconnection between equality and difference as follows: "Equality cannot be up-

held without the recognition of difference, and difference cannot secure appreciation without the basis of equal rights.”¹⁰ In such a way, difference becomes an excellent precondition for achieving a successful equality. The focus is not on eliminating difference but rather its deformative character.

What individuals can do with their goods essentially depends on which capabilities and competences they develop or acquire over the course of their lives. Thus, it is debatable whether the approach to distribute (basic) goods constitutes sufficient conditions for equal opportunities for people with disabilities. For example, it is questionable whether Rawls has sufficiently considered the social prerequisites for the exercise of a good like self-esteem, one of the five basic goods in Rawls’ theory of justice. Let us consider once again the situation of Marie-Helene. Her mother said: “One should be glad to find a school that admits such a child in the first place.” How can a child build up any self-esteem if he or she experiences being rejected and treated like an unwanted individual, just because he or she is different? Legal rights may guarantee access to a school and parents can go to court to fight for it, however, these rights cannot prevent experiences of stigmatisation or discrimination. Given their experiences of exclusion and stigmatisation, particularly people with obvious impairments can hardly develop a healthy self-esteem or a normal self-reference because of existing prejudices, it is also impossible for them to use goods in the same way or apply for public sector positions like people without disabilities.¹¹

Furthermore, it must be taken into account that the physical environment is arranged entirely for the needs of people without disabilities. Entry barriers, inadequate means of communication, transportation difficulties, et cetera make it difficult for people with disabilities to participate in societal life. The same applies to people in poverty or other marginalised groups. Empirical studies show that poor people have fewer social contacts, tend to withdraw to their homes, have only binding social capital that reproduces experiences of dependency, hopelessness, and other negative experiences. In examining Rawls’ understanding of justice, it becomes ever

clearer that the specific needs of people in asymmetric relations cannot be sufficiently taken into account through concepts of distributive theory. Differences between people require a non-hierarchical notion of difference in concepts of justice so that the focus is not on the elimination of difference through the distribution of goods but on the ethical-existential life conditions of people at the margins of society. “We can live with our physical, mental, or emotional disabilities, but the social disempowerment and discrimination that dominate our daily lives is unacceptable for us.”¹²

CRITICISM OF THE LIBERAL APPROACH TO JUSTICE

Rawls’ theory proved extremely stimulating for the discourse on justice at the end of the twentieth century. From the multitude of reactions and criticisms only a few points can be singled out here:¹³

(1) Many liberal concepts of justice share with Rawls an image of the human being that is inadequate in view of people with disabilities. The norm are the “normal”, healthy individuals, to whose level the “abnormal” disabled people should be raised. This means that it is not the disabled people themselves who are in the foreground but their impediments or impairments (inequality perspective). “As a logical consequence, a disabled human being

3 Kant 1983, 568.

4 See Rawls 1993, 99–101.

5 Rawls 1993, 32.

6 See Rawls’ first principle of justice in Rawls 2001, 42–49.

7 Rawls 1993, 11–14.

8 See Sen 1982, 353–369.

9 See Ralser 2001, 11–23.

10 Prengel 1997, 125.

11 Naturally, this assessment depends heavily on the existing impairment in each concrete case. Nevertheless, it should be indisputable that in many cases one cannot assume that there are equal opportunities but rather disadvantages for people with disabilities.

12 Cf. Sauter & Abderhalden & Needham & Wolff 2006.

13 Cf. Eurich 2012, 1–17.

turns from a 'subject with a life story to a case with a history of illness'.¹⁴ This perspective leads to a paradoxical situation: People with disabilities have the right to be different; at the same time, however, all measures – from therapy services or rehabilitation efforts to prenatal diagnostic tools that facilitate the abortion of disabled foetuses – signal "that their features and capabilities require correction or are undesirable if they indicate a physical, intellectual, psychological, or emotional 'damage'".¹⁵

(2) Closely connected to the above criticism is the question of the social construction of disability. To this day, the notion of disability is symbolically linked to characteristics that deviate from the norm. The criticism on this point concerns the legally established difference between "disabled" and "normal". Thus, in social welfare practice, apart from the positive aspects of secure subsistence, aid, support, et cetera provided to those in need of help, there are also negative effects: Social welfare arrangements increasingly dominate people's everyday lives and produce new social "cases" such as, for example, early retirees, social welfare recipients, or severely disabled persons. These social figures have an identity-creating power. In this context, the question must be raised as to whether the modern phenomenon of "disability" has not, in fact, been created by the labelling resulting from social welfare arrangements and the closely related segregation of disabled people. If that is the case, then disability appears as a construction and an interpretation connected to a social context.

(3) The discussion concerning the social construction of disability suggests that as to the question of justice, two levels must be distinguished: The first is the level of the political community in which a disabled person is normatively integrated as a legal person. The basis for this are concepts of justice like Rawls' concept that through their principles define the individual's (right to) freedom and the societal order. On the second level, however, the social attributions that ethically-existentially affect people with disabilities must also be recognised. On this level, the identity of the disabled person is in various ways closely connected with the experience of being disabled: "A disabled person should realise that be-

ing disabled is a problematic form of existence and should define his or her identity through it."¹⁶ It is not only the concern about the lack of legal recognition or social security that represents a burden for people with disabilities; equally problematic is the fact that pejorative identity-creating attributions make it impossible for them to be esteemed by fellow human beings.¹⁷ The acceptance of people with disabilities is frequently violated through exclusion, discrimination, marginalisation, et cetera, despite the existence of equal rights to freedom and corresponding distribution arrangements. These forms of injustice are not sufficiently captured by theories of justice which like that of Rawls focus on the first level.

LOOKING FOR A DIFFERENT APPROACH

Up to now, the predominating notion is that of a cooperative society in which people pursue their goals in a productive, commercial, and civic interaction. Equal participation can only be sought for those who can be integrated in accordance with this notion. However, many people at the margins, for instance people with multiple and/or severe disabilities do not fit this picture and cannot be encouraged or enabled to reach the level of "normal" people fully capable of cooperating. The same is true for other groups of people such as long-term unemployed people, refugees without papers, asylum seekers, et cetera.

In the study of diaconia, questions concerning justice are above all addressed from the perspective of those who face social discrimination, marginalisation, or exclusion. With this, a specific aspect of theological thinking on justice is realised, which has already been established in the First Testament – religio-historically at a very early stage – so called social laws for the protection of marginalised, outcast, and excluded people.¹⁸ By following this Jewish tradition, Christian ethicists also speak of God's partiality for the poor; the approach to the poor adopted by Liberation Theology is also partly rooted in this tradition.¹⁹

From the perspective of the theory of justice, this approach means that one should not just consider general principles of justice²⁰ and deduct from them

what is to be guaranteed in a differentiated society with respect to equal opportunities in the health system; it also means taking people's living situations of debasement, marginalisation, or injustice into account and focusing on those "who fell among robbers",²¹ i.e. combining top-down and bottom-up approaches. Today, if the situation of victims of injustice is taken as a starting point, the perspective changes. No more does one look from the perspective of concepts of justice and the achievements and services established on their basis, but tries to recognise new situations of need or exclusion.

This is precisely what the US-American philosopher Judith Shklar, who took concrete experiences of injustice as a basis, tried to do: "Whatever decisions we do make will, however, be unjust unless we take the victim's view into full account and give her voice its full weight."²² Very interesting is Shklar's assumption that injustice is not merely the opposite of justice but that it can also exist alongside justice. By taking this perspective as a basis, I would like to ask what the consequence from the preceding discussion is in relation to human beings who in societal respect are "unequal" in the sense of social discrimination.

One observation is that – despite the equal rights established by the liberal tradition of justice – marginalised people are nevertheless excluded. Thus, it is obvious that a complementary approach to justice is necessary. This complementary approach has to deal with the problems on the ethical-existential level. It should provide an orientation for the acceptance of people at the margins. In the following, I will address the biblical thinking on justice and charity in order to see if it can serve as a possible basis for this social attitude.

Reflections on the Biblical Understanding of Justice and Mercy

The biblical notion of justice is different from modern concepts of justice which are sometimes called concepts of formal or, in the case of Rawls, of procedural justice. In contrast, biblical thinking on justice is oriented towards relationships of mutual reciprocity.²³ Since this concept is well established within theology,²⁴ I will not elaborate on it in detail

but rather point out some characteristics which are also relevant to the concept of love.

The adequate translation of the Hebrew Bible expression of justice (*s^c dakā*) is faithfulness to one's community or community solidarity.²⁵ Some dictionaries even translate it as charity.²⁶ The concept of faithfulness to one's community not only conveys the idea of service to the community but also the respect of the individual position of a person and his or her demands on the community. A sound community will balance the interests of all its members and of each individual. Hebrew thinking about justice envisions such human relationships which consist of a balanced reciprocal quality.²⁷ Therefore, it is no surprise that the Hebrew notion of justice also includes the saving intervention of God to the benefit of suppressed or marginalised people.²⁸ One can therefore make the point that in the biblical thinking about justice the needs of people are taken

14 Gröschke 2003, 177.

15 Rösner 2002, 68.

16 Rösner 2002, 26.

17 Charles Taylor has paid attention to the connection between identity and recognition through others. According to Taylor, our identity is affected at least partly by the recognition or non-recognition, often even by the underestimation of others; as a result, individuals (or a group of people) can suffer serious harm or distortion if the environment or society reflects back an image of themselves that is limiting, derogatory, or disdainful. Lack of recognition or underestimation can cause suffering, it can be a form of oppression, it can lock the other in a false, distorted existence. Cf. Taylor 1992.

18 Cf. Huber 1999.

19 Cf. Gutierrez 1988.

20 Cf. Rawls 1999; as to the problem of applying general principles of justice to marginalised groups, see Eurich 2008, 75ff.

21 Cf. the parable of the Good Samaritan; Luke 10:25–37.

22 Shklar 1992, 203.

23 Cf. Huber 1999, 160–166, 164.

24 Cf. Lebacqz 2000 cf. Pelton 2003, 737–765; with reference to the law, cf. Welker 1986, 237–260; with reference to marginalised people, cf. Spitaler 2011, 89–126; with reference to social justice, cf. Fretheim 2008, 159–168.

25 Cf. Jenni & Westermann 1997.

26 Cf. www.websters-online-dictionary.org/Judeo%20Spanish/sedaka.

27 Cf. Huber 1999, 164.

28 Cf. Lebacqz 2000, 70–120.

into consideration, just as it is the case with charity or mercy. In fact, mercy shown towards those who suffer is not left to the discretion of individuals – it is expected to be fulfilled.²⁹ In the times of the New Testament this concept of justice was adopted and extended (cf. the Sermon on the Mount). Love was understood as the fulfilment of the law (cf. Romans 13:8). Accordingly, present-day theologians like Wolfgang Huber or Michael Welker have continually interpreted the Hebrew concept of justice as a basis for the church's social-ethical acting and have referred to the connection between the law, the knowledge of God, and the love of neighbour.³⁰

Concepts of Personhood

The discussion about justice and charity points to a different conceptual basis of justice for marginalised people than the one existing in modern theories of justice, especially regarding the individual. In the Christian view of humanity, every human being is a being loved by God, without any further preconditions. This perspective has undisputable sides, especially regarding the most disabled or stigmatised people: All human beings are regarded as God's children whose dignity is inviolable. In the Christian concept of humanity, a person is not defined as a self-conscious individual – self-consciousness as a criterion for being a person excludes persons with severe forms of mental disabilities. Furthermore, the Christian notion of personhood does not presuppose that an individual must be fully capable of acting as an independent subject.

Being identified as a person is always an attribution. Modern ideas of a person link the concept of personhood to certain characteristics such as rationality, self-consciousness, et cetera; this is also the case with Rawls' theory of justice. Consequently, human beings with severe intellectual disability are (sometimes) excluded from the status of being a person.³¹ Human dignity as a concept is no longer attributed to them.³² The Christian argument for human dignity is based on an attribution made by God and includes everybody: "The dignity of the image of God, which is given to all human beings in the same way, means at the same time that every single human being deserves protection, even in

his imperfection and deficiency."³³ In the Christian perspective the mere life of a human being given by God deserves unconditional respect – this signifies that the necessary precondition of being a person is thus fulfilled and no further abilities are required;³⁴ instead, deficiencies and disabilities are seen as an integral part of life. In this sense, the idea of humanity follows from the createdness of humankind. It asks us to be attentive to all forms of life.

Consequences for the Discussion about Justice

The biblical notion of justice can be understood as a complement (not replacement!) to modern forms of procedural-formal justice which establishes abstract rules of justice into which individual needs must fit. People who do not fit in are exposed to the risk of being excluded. Precisely because it can rise above every kind of social justice, the biblical thinking about justice can also be used as a critical corrective of the gaps in the liberal concept of justice.

This insight shall now be applied to the situation of Marie-Helene. How did she finally manage to go to a regular school? The answer is: One teacher opposed the rest of the teachers and voted for admitting Marie-Helene to the school on the grounds that if she had a child like Marie-Helene she would also wish for the child a "perfectly normal school education". This teacher decided from the heart and convinced all other teachers and the director of the school that Marie-Helene should be allowed to attend the school. And the girl finally did. Of course, the action of this teacher should not have been necessary. Laws are needed to ensure that disabled children do not have to depend on the good heart of a teacher. On the other hand, however, discrimination and exclusion take place despite such laws. This is precisely why we also need complementary notions such as charity.

Yet, charity should not be the first and only but always the next-to-last resort. It is not meant to replace the law but to be a complement with a special function: Charity will always (re)assess the concrete needs of other human beings in order to develop a sensory system on behalf of people disadvantaged by the legal system. Therefore, as an additional

criterion for participatory processes, it should be asked whether political measures in favour of justice increase the chances of participation for excluded people. According to Karl Golser, the supplementary contribution of the religious perspective with regard to a just society consists precisely in the fact that religions, "through reference to their own rational discourse-transcending roots, have a new opportunity to bear witness to the conflict as representatives of the 'underdog'".³⁵

However, it remains open how the requirements of charity towards others can be materially determined or limited. Thus, a theological-ethical question requiring further consideration deals with the relation between material justice and charity. A one-sided orientation towards the needs of a severely and multiply disabled person can result in a very cost-intensive care and support situation by which the allocation of additional financial means would come at the expense of other targets of justice. What level of financial resource allocation does commensurate with the exigencies of charity?

There is, of course, no fixed limit to the amount of charity. The above questions point to the weak spot of charitable giving. Apart from the fact that charity makes the receiver dependent on alms, it also cannot serve as a basic principle for the allocation of goods in modern societies. Charity displays its strength on a different level of social interaction which was addressed above as the ethical-existential dimension. The concept of charity shows that we also have to pay attention to the underlying notion of personhood. This notion is decisive when one talks about realising justice for people at the margins on the existential level. Instead of orienting the anthropological bases of liberal theories of justice towards the criterion of self-determination and cooperation, charity is based on the perception of people as they are and consider their forms of living in order to identify ethical consequences. Thus, people with severe mental disability, for example, who are clearly not able to act in the self-determined and cooperating way postulated by Rawls, can nevertheless be involved in intensive and diverse forms of reciprocal relationships.³⁶ Obviously, there are loving, humorous, respectful, playful, or other interactions

between people with mental disabilities and their principal caregivers. However, their dependence on other people's support does not fit with Rawls' idea of social cooperation. Moreover, since according to Rawls' concept of the person conclusions as to their ability to make moral judgments must be drawn, they can be granted a certain protection but not a full citizen status.³⁷ This, however, is hardly consistent with a theory that intends to establish social justice.³⁸

LINKING CHARITY TO CONCEPTS OF JUSTICE

One of the main arguments of the second part of this article is that charity will always address the concrete needs of one's neighbour to develop a particular sensitivity on behalf of people disadvantaged by the legal system. This argument faces the problem, however, that the notion of biblical justice represents a particular perspective that cannot be taken up by the liberal state. Thus, the question is how it may apply as a complement of liberal justice in a pluralistic society. The line of argumentation that I shall develop here is not that the state may favour a religious notion above others to complement its social principles and policies. Rather, I will point out that liberal concepts of justice themselves rely on certain virtues that can be understood as weak notions of the good.

29 Cf. Welker 1994.

30 Cf. Huber 1999.

31 Cf. Reinders 2000, 105ff.

32 Cf. McMahan 2002.

33 Krefß 1997, 161.

34 Cf. Eurich 2008, 357.

35 Golser 2004, 238.

36 See Nussbaum 2006.

37 See Nussbaum 2006, 135.

38 Why should, for instance, the right to marry be refrained from people with trisomy? In Germany, attempts have recently been made to conduct marriage for people with trisomy in order that they can have children of their own. A counsellor is at hand for specific questions that may come up. However, the family lives by itself and makes its own decisions.

The argument goes as follows: A weak theory of the good can be reconciled with universalistic concepts of justice, if particular notions can be qualified as indispensable preconditions of each and every conception of a good life and can be differentiated at the same time from individual values. The decisive point is that liberal concepts of justice also presuppose a minimum consensus of virtues and values, which are an indispensable precondition of a contract based model of society. The following virtues have been listed: tolerance, loyalty, courage, independence, faithfulness et cetera.³⁹ These virtues are relevant because societal collaboration is not possible without them. Additionally, one may point out that Rawls understands his list of basic goods as a weak theory of the good: they are weak because they only contain such goods which do not define what a good life is but which are viewed upon as prerequisites of a good life.⁴⁰ Hence, the question is not, if certain virtues or attitudes can be reconciled with a universalistic conception but which.

To answer this question one may refer to Herlinde Pauer-Studer who has pointed out that a theory of the weak good refers to a core set of universalistic attitudes which includes shared experiences of vulnerability and suffering: "This shared humanness is the starting point of moral consideration."⁴¹ The crucial argument is that, besides liberty rights, such a conception of the weak good also has to include affective attitudes, such as empathy and sensitivity, because there is no moral responsible action over against a concrete human being without these.⁴² Looking at a severely handicapped person who cannot participate in societal collaboration this can easily be understood: empathy and sensitivity to their basic needs as a human being is necessary if one wants to protect him or her from injustice. Therefore, a universalistic theory of justice cannot be separated from the consideration of the needs of individuals: "This integration of moral sentiments and the concentration on neediness and vulnerability require that such an understanding of morality refers not only to reciprocal and symmetric relations but gives asymmetric relations also their due attention."⁴³ Thus, specific attitudes like charity can be accepted and approved by an impartial point of

view on the basis that these attitudes belong to the universal normative core of differing notions of the good life as elements of the weak good.⁴⁴

Of course, one has to carve out which elements of charity are the ones that belong to the universal normative core underlying differing notions of the good life. Specific religious attitudes and values cannot be acknowledged as such. It has to be shown which elements of charity can actually be accepted by an impartial point of view. Some indications have been given above: those elements which respond to shared experiences of vulnerability and suffering.

CONCLUSION

In this article I have argued that liberal theories of justice generally presuppose actors capable of cooperation and self-determination. An equal status as a subject of rights – which is the basic approach in liberal concepts of justice – is not sufficient to enable an individual who is not capable of cooperation and self-determination to actually participate as a cooperation partner in the well-ordered society. In this respect, a complementary perspective is necessary, since Rawls' understanding of cooperation requires that even people who need support should be raised to the level of cooperation that underlies the social contract – otherwise they drop out of the exchange relationships established in that contract.

Therefore, from a theological point of view, the liberal theories of justice have also to be examined with respect to the underlying notions of personhood. As such, people at the margins are portrayed only against the liberal background of a free, self-determining subject capable of participating in an unrestricted manner. However, with this, a specific human image becomes the leading idea for the development of concepts of justice, which runs the risk of excluding exactly the people who find themselves in a vulnerable living situation because of an illness or an accident. A theological approach can help to correct the one-sided liberal image of humankind. The target perspective should not consist of raising people with disabilities to as close to a "normal" level of cooperation as possible but rather of regarding them in their existing state as an expression of dignity and thus of ultimately asking how arrange-

ments must be made in order that all forms of human life in a society can attain equal participation.

Theology with its specific notion of justice and charity can provide a complementary understanding to the modern concepts of justice. In my view, such a complementary perspective can be reconciled with the universalistic condition of liberal theories of justice. It also serves as a critical basis for the church's own practice. The acceptance of people with disabilities as equal human beings is one of the core requirements that may help the church to become a more inclusive body which makes no differences between people with or without disabilities. The fellowship of people with and without disabilities in the church's community life could even be a Christian service to the world paving the way for many people with disabilities to extensively participate in societal life. Justice for people at the margins can ultimately be achieved only if there are social spaces so designed that these people can take part in social communication and cultural life. To be at the forefront of these places is the task and the challenge of the church and of Christian theology.

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WORKS CONSULTED

- Eurich, Johannes
- 2012 "Justice for People with Disabilities: Philosophical and Theological Arguments". *Religion and Theology* 19, 1–17.
- 2008 "Eingeschränkte Menschenwürde: Unterschiedliche Menschenbilder in der Pflege und ihre Folgen für Menschen mit Demenzerkrankung". *Pflege & Gesellschaft* 13, 350–362.
- 2008 *Gerechtigkeit für Menschen mit Behinderung: Ethische Reflexionen und sozialpolitische Perspektiven*. Frankfurt am Main & New York: Campus.
- Fretheim, Terence E.
- 2008 "The Prophets and Social Justice". *Word and World* 28:2, 159–168.
- Galston, William A.
- 1991 *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State*. Cambridge: Cambridge University Press.
- Golser, Karl
- 2004 "Zum Verhältnis zwischen Bioethik und Religion in postmoderner Gesellschaft". *Zeitschrift für medizinische Ethik* 20, 235–245.
- Gröschke, Dieter
- 2003 "Behinderung als 'Leiden'? Biopolitik der Behinderung zwischen einer Ethik des Heilens und einem Ethos des Imperfekten". *Bioethik und Behinderung*. Hrsg. Markus Dederich. Klinkhardt: Bad Heilbrunn, 167–192.
- Gutierrez, Gustavo
- 1988 *A Theology of Liberation: History, Politics, and Salvation*. Maryknoll, NY: Orbis.
- Huber, Wolfgang
- 1999 *Gerechtigkeit und Recht: Grundlinien christlicher Rechtsethik*. Gütersloh: Gütersloher Verlagshaus.
- Jenni, Ernst & Claus Westermann (ed.)
- 1997 *Theological Lexicon of the Old Testament*. 3 vols. Transl. Mark E. Biddle. Peabody, MA: Hendrickson.
- Kant, Immanuel
- 1983 *Schriften zur Ethik und Religionsphilosophie*. Zweiter Teil. Hrsg. W. Weischedel. Darmstadt: Wissenschaftliche Buchgesellschaft.
- Kreß, Hartmut
- 1997 "Verantwortungsethik als Ethik der Person: Grundlagen und Konkretionen einer Ethik der Person".

39 Cf. Galston 1991.

40 Cf. Rawls 1999, 356. In conclusion, one might say that the different acceptable individual forms of life are marked by a common spectrum of basic values. Cf. Pauer-Studer 1996, 223: "Rawls' conception is bound to basic values that are underlying all acceptable notions of the good life."

41 Pauer-Studer 1996, 268.

42 Cf. Nussbaum 1992, 202–246.

43 Pauer-Studer 1996, 269. Cf. O'Neill 1996, 251.

44 Cf. Pauer-Studer 1996, 268.

- Verantwortungsethik heute. Hrsg. Hartmut Kreß & Wolfgang E. Müller. Stuttgart: Kohlhammer, 115–238.
- Lebacqz, Karen
2000 *Justice in an Unjust World: Foundations for a Christian Approach to Justice*. Minneapolis, MN: Augsburg Books.
- McMahan, Jeff
2002 *The Ethics of Killing: Problems at the Margins of Life*. Oxford: Oxford University Press.
- Nussbaum, Martha
2006 *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge, MA: Harvard University Press.
1992 "Human Functioning and Social Justice: Defense of Aristotelian Essentialism". *Political Theory* 20, 202–246.
- O'Neill, Onora
1996 *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*, Cambridge: Cambridge University Press.
- Pauer-Studer, Herlinde
1996 *Das Andere der Gerechtigkeit: Moraltheorie im Kontext der Geschlechterdifferenz*. Berlin: Akademie Verlag.
- Pelton, Leroy H.
2003 "Biblical Justice". *Journal of the American Academy of Religion* 71:4, 737–765.
- Prenzel, Annedore
1997 "Gleichheit versus Differenz – eine falsche Alternative im feministischen Diskurs". *Differenz und Gleichheit: Menschenrechte haben (k)ein Geschlecht*. Hrsg. Ute Gerhard et al. Frankfurt am Main: Verlag Ulrike Helmer.
- Michaela Ralser
2001 "Egalitäre Differenz: Bedingung und Notwendigkeit der Unterscheidung". *Egalitäre Differenz: Ansätze, Einsätze und Auseinandersetzungen im Kampf um Anerkennung und Gerechtigkeit*. Hrsg. Michaela Ralser. Innsbruck: Studia Universitätsverlag.
- Rawls, John
2001 *Justice as Fairness: A Restatement*. Ed. Erin Kelly. Cambridge, MA: Harvard University Press.
1999 *A Theory of Justice*. Oxford: Oxford University Press.
1993 *Political Liberalism*. The John Dewey Essays in Philosophy 4. New York: Columbia University Press.
- Reinders, Hans S.
2000 *The Future of the Disabled in Liberal Society: An Ethical Analysis*. Notre Dame, IN: Notre Dame Press.
- Rösner, Hans-Uwe
2002 *Jenseits normalisierender Anerkennung: Reflexionen zum Verhältnis von Macht und Behindertsein*. Frankfurt am Main: Campus.
- Sauter, Dorothea & Abderhalden, Chris & Needham, Ian & Wolff, Stephan
2006 *Lehrbuch Psychiatrische Pflege*. Bern: Verlag Hans Huber.
- Sen, Amartya
1982 *Choice, Welfare and Measurement*. Oxford: Basil Blackwell.
- Shklar, Judith
1992 *Über Ungerechtigkeit: Erkundungen zu einem moralischen Gefühl*. Berlin: Rotbuch Verlag.
- Spitaler, Peter
2011 "Biblical Concern for the Marginalized." *Ephemerides theologicae Lovanienses* 87:11, 89–126.
- Taylor, Charles
1992 *Multiculturalism and the Politics of Recognition: An Essay*. Ed. Amy Gutmann. Princeton, NJ: Princeton University Press.
- Welker, Michael
1986 "Security of Expectations: Reformulating the Theology of Law and Gospel". *Journal of Religion* 66, 237–260.
- Welker, Michael
1994 *God the Spirit*. Minneapolis, MN: Fortress.