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A contextual discussion on justice, equality and gender in media ethics

Justice in media ethics: The undiscovered country

If one wants to get an overview of the connection between media and justice and starts researching, one will encounter some challenges. These begin with the fact that when using general and specialized search engines and searching for, for instance, "justice media", innumerable references are shown, which mainly address the topic of how media could contribute to the provision of justice in general (cf. the contributions in Pooley et al., 2013). Another frequently addressed issue is that of ownership of information and knowledge (e.g., the papers in Thomas & Nain, 2004 or Haynes, 2005). By contrast, only a rather small number of findings are shown that refer to texts in which such important normative questions are raised as those about what idea of justice should be embodied in the media itself or in which it is investigated, on an empirical basis, what ideas of justice are pursued by people working in the media. Likewise, there are hardly any papers dealing with which institutional arrangements would have to be in place to create space for this or that conception of justice in the context of the media, or how the respective institutional settings support or undermine normative claims in real life (one of the few exemptions is Siim (2016), but this paper does not refer explicitly to journalism as a profession). If one still wants to find research that addresses all these issues in relation to gender justice, the selection of usable references becomes even smaller. The majority of papers addressing gender equality are about women and how they are reported on, not about how women are represented in the media, for instance, as employees or in leadership positions. It is noteworthy that the few exceptions that can be found are empirical studies and media ethics works

are lacking (e.g. de Vuyst & Raeymaeckers, 2019; the papers in Djerf-Pierre & Edström, 2020; Rush et al., 2005).

If one attempts to supplement and deepen this by no means complete research, for instance, through an examination of corresponding scholarly works on media ethics, whether as essays, monographs, or edited volumes, a quite similar picture will emerge, perhaps even more pronounced. One finding will be that a systematic theoretical foundation of media ethics is rarely to be found, and when it does emerge, it is almost always based on theoretical approaches to individual ethics (cf. Weber, 2014). Certainly, there are contributions on the issues outlined above, and one comes across them in a somewhat roundabout way during a search, but surprisingly, their number is not as large as one might expect. This observation is all the more astonishing, since there is an extensive debate on issues such as informational justice, for example, about the digital divide or within the context of discussions on freedom of information and intellectual property rights (e.g. Drahos & Braithwaite, 2002). Particularly regarding the digital divide, gender-sensitive considerations from both media ethics and sociology of media perspective are common, often taking into account, for instance, the specific situation of migrants. However, the corresponding research is not specifically aimed at journalism as profession, but rather addresses political decision-makers.

Beyond the observation that such research can at best represent a snapshot of current debates, no research into the causes of this discrepancy is intended or possible here. Yet, one assumption should nevertheless be made: In the context of the informational justice debate, information is often understood, following Rawls' conception in "A Theory of Justice" (1999), as a social good that must be fairly distributed (cf. Hoffmann, 2017; Mathiesen, 2015). This being the case, it is easy to agree that the distribution of information in terms of a social good must obey Rawlsian principles of justice. In the case of the digital divide, for example, this would mean that action must be taken to ensure that those who do not have access to information can obtain it in the future. However, the strength and at the same time the weakness of such an approach is that it circumvents any discussion of the question of what that information is about (cf. Weber, 2014). For, to outline it roughly with an example, an equal distribution of private or intimate information, of secrets worthy of protection, would already intuitively make no sense – not everybody is entitled to have access to any information. The question of who should have access to what information under what circumstances cannot be answered simply by pointing to a fair distribution. By whatever standards – more argumentative effort must be expended here to be able to provide convincing answers that would be just as useful for the foundation of media ethics as for instructions for the professional conduct of journalists.

This effort cannot be avoided, especially in the context of the debate about (gender) justice and equality in the media. For media organizations most often have an agenda. Depending on, for instance, the medium itself, the people who work in media companies, or the people who own, manage, or shape the respective

media company or organization – each media organization reports in a very specific way about the world, about the events taking place in it, and about the people who live in it. Therefore, questions arise about whether it is fair that certain people have their say in the media and others do not? Is it just that people are reported on along stereotypes? Is it fair that a few people control what the rest of the population is told through the media and that certain groups or institutions exercise control over the media, but others do not? Is it just that gender inequalities also exist in the media or, better to say, in media companies and organizations? Such and many other questions about (in)equality as an expression of a particular conception of justice cannot and must not go unanswered from a systematic perspective in the context of the debate about justice, equality, and the media. However, the situation becomes much more complex if one takes into account the extensive debates on equality and justice in general to find answers, because the number of different and frequently contradictory concepts of equality and justice is known to be very large. Indeed, the situation is even worse: some voices consider the notion of equality to be an "empty idea" (e.g. Westen, 1982; an overview of different strategies of critique of the concept of equality can be found in Anderson, 1999 and Wolff, 2007). Others think that equality and justice in general (e.g. Kane, 1996) or certain forms of equality and justice (e.g. Cavanagh, 2003; Nozick, 1974; Sinopoli, 1994; Stanley, 1977) are incompatible.

However, this certainly incomplete list of questions raised when seeking an adequate conception of equality and/or justice for media and for media ethics is still too abstract to be answered. Therefore, in what follows, an attempt will be made to develop questions with a stronger orientation towards practice, so that answers can be found which are fertile for the debates about justice and equality in the context of media ethics: What are the social goods that are (un) equally and/or (un)fairly distributed from a media ethics perspective? Could these social goods be redistributed? Should these social goods be redistributed? What should be the purpose of redistribution? What are the (moral) arguments for or against it? Even if these questions were answered, however, we would still not have addressed gender (in)equality in the media and the (in)justice that goes along with it. It will become apparent, however, that from the outset an enlightened debate about equality and justice must always take gender aspects into account to avoid being deficient. Since these remarks and questions already constitute the preliminary decision that, from a media ethics perspective, it is worthwhile or even necessary to take equality and justice into account concerning the foundation of media ethics, the next two sections will first illustrate that the idea of equality in particular as a prerequisite for the very possibility of justice has been and continues to be highly controversial in political philosophy. It must be emphasized that only a small portion of recent and ongoing debates concerning equality and justice can be presented in this paper; for example, issues such as intersectionality, global media ethics, or intercultural aspects are addressed only briefly, if at all.

Against equality, in favor of justice?

After John Rawls published his seminal work "A Theory of Justice" in 1971, a controversial but also extremely fertile debate began about the proper conception of justice in political philosophy. Subsequently, completely opposing concepts were developed, but also details were tweaked, for example, to improve Rawls's approach. As an example of the development of a counter-narrative, one can mention, for example, Peter Westen, who in his essay "The Empty Idea of Equality" depicts equality as a superfluous notion:

> I try in this Article to establish two propositions: (1) that statements of equality logically entail (and necessarily collapse into) simpler statements of rights; and (2) that then the additional step of transforming simple statements of rights into statements of equality not only involves unnecessary work but also engenders profound conceptual confusion. Equality, therefore, is an idea that should be banished from moral and legal discourse as an explanatory norm (Westen, 1982, p. 542).

If one follows Peter Westen, then all that needs to be settled is what (moral) rights persons must have for justice to be established; but from this arises the question of what rights are and to whom they belong. The libertarian answer is that only unrestricted capitalism can protect the freedom and rights of citizens. From this point of view, redistribution through taxation and subsidies is an infringement on the rights of individuals that cannot be morally legitimized. Therefore, the rights of individuals may only be interfered with to maintain individual freedom, protect order and individual rights – redistribution of social goods for, for example, fighting poverty, supporting disadvantaged groups, or, for that matter, organizing public cultural events are morally reprehensible. If one extends these considerations to the labor market in general, the labor market concerning the media in particular, or to the question of the content that should be conveyed through the media, then one must refine the corresponding arguments somewhat. But, in principle, the libertarian position amounts to saying that the state has no moral right whatsoever to ensure, for example, a quota for women or for quotas concerning reporting on minorities using the law. From a libertarian perspective, paradigmatically found in Robert Nozick (1974, p. ix), such measures would be unjustifiable interventions by the state: "[…] a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more extensive state will violate persons' rights not to be forced to do certain things, and is unjustified […]".

If one accepts this line of argumentation, it would, for example, be unjust to force a media company to ensure a 30% quota of women on the board of directors or a 50% quota of women in the total workforce. Of course, this can be extended to the effect that any compulsion to make quotas, for instance, to take ethnic and/or religious minorities into account concerning the workforce or broadcast minutes, perhaps according to the proportion of these minorities

in the total population, would be a morally illegitimate interference with the rights of the owners of such companies. Nozick, and with him other libertarian scholars, would question whether a given unequal distribution of these social goods – jobs or public visibility – is fundamentally unjust. If, their argument goes, the respective distribution came about through the voluntary actions of those involved, then from a libertarian point of view it would not be unjust and therefore should not be corrected by coercive measures. Such measures would always be aimed at certain patterns of distribution of social goods (called "patterned distribution", see Nozick, 1974, p. 155ff), which, however, would be difficult to justify. Some scholars in the libertarian camp go even further and – at least in the form of book titles – put nothing less than the holy grail of the equality debate up for grabs and, like Matt Cavanagh (2003), oppose "[a] gainst equality of opportunity". This is a positioning that calls into question the building blocks of justice built with the help of laws and regulations in all Western countries, be it in the area of the advancement of women or the debate on the inclusion of migrants or handicapped persons. For Cavanagh, all that remains of equal opportunity is the prohibition of discrimination. He squarely rejects all other redistributive measures aimed at actively creating equal opportunity in terms of access to social goods. If one relates this to media, then from Cavanagh's point of view supportive measures for equal access to the media labor market, to public arenas in terms of visibility in the media, or to balanced reporting in the media are to be rejected.

Even beyond libertarian thinking, important arguments against the idea of equality can be found. Carol Gilligan (1993; cf. Gaughran, 1998) argues against the abstract idea of equality in liberalism from a feminist point of view. The queer debate points out that it is precisely the inequality of people, e.g. concerning their sexuality, which needs to be strengthened, because inclusion could lead to a loss of visibility of otherness (cf. the contributions in Conrad, 2014). With Michael Walzer (1983), one can argue for spheres of justice that are (and should be) precisely not characterized by considerations of equality in the liberal sense; likewise, one can find references in the debate to the wide-ranging ethnic, cultural, religious, and social differences that make the achievement of equality seem impossible. Chandran Kukathas' (2002, p. 185; see also Ahmed, 2006 and Benhabib, 2002) views are representative of such arguments against the idea of equality:

> The foundations of human inequality lie in the fact of human diversity, or in the human tendency to differentiate from some while associating with others to form groups. The diversity which results from association and differentiation makes equality unattainable. Diversity and equality are incompatible, and attempts to promote one can only be made at the expense of the other. In these circumstances, we should abandon the ideal of equality as incapable of offering us an adequate understanding of the nature of the good society.

A good society, as this quote can be interpreted, exists because of the diversity of the people living in it in terms of gender, ethnic origin, sexual orientation,

culture, religion, and many other aspects. To disregard this, he argues, is to lose the very possibility of building a good society, or even of forming civic communities that are defined precisely by certain characteristics that identify their members. One could even argue that a fully egalitarian society could only exist if there were no civil society entities such as clubs, associations, or religious congregations in that society since membership or non-membership would always create an inclusion-exclusion relationship, which in turn constituted inequality. An important source of rights (which often arise from membership in a particular group and are not granted to people not belonging to it), which is important for communitarian approaches, for example, is therefore seen by Sunstein (1996) in the appeal to traditions as a normative starting point. However, this is rather static in comparison to evolutionary approaches of a libertarian character, e.g. in Hayek, as well as to contractarian positions as in Rawls. Tradition provides the interpretive background for current conflicts and is not the basis of adaptation to changing conditions, as should be the case from a libertarian and, for that matter, also a liberal point of view: "When constitutionalism is working well, rights are a product of a search for reflective equilibrium […] Rights are not a product of a search for tradition" (Sunstein, 1996, p. 228) This static character then entails that a critique of the prevailing norms proves difficult. Particularly in professions that boast a long tradition – and journalism undoubtedly belongs to this category – and that are ultimately constituted as professions by these traditions, challenging the normative foundations of the profession is therefore always a challenge to the profession itself. This may be one reason why justice and equality have not played a major role in media ethics for so long: The profession would then have to call its traditions and unspoken normative foundations into question, and thus perhaps the profession itself.

Equality and justice!

Of course, the aforementioned standpoints are by no means the only ones that have been advocated for in the wider debate about equality and justice. Although anti-egalitarian ideas are not new in the history of philosophy – one only has to think of Nietzsche – they have become topical again in recent times, especially because they are explicitly directed against John Rawls' conception of justice as fairness, which, for good or bad, still essentially dominates the debate on justice and equality today. Rawls (1999, p. 3) begins his seminal book in the very first paragraph of the first chapter with a bold statement: "Justice is the first virtue of social institutions, as truth is of systems of thought". Thus, all actions that social institutions initiate and carry out must ultimately be aimed at establishing justice for the citizens of a society. A society whose social institutions are dedicated to this aim and whose members agree with and support the conception of justice underlying this aim is what Rawls calls

"well-ordered" (Ibidem, p. 4): "Now let us say that a society is well-ordered when it is not only designed to advance the good of its members but when it is also effectively regulated by a public conception of justice. That is, it is a society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles".

Rawls is aware of the fact that such agreement tends to be empirically non-existent, but that the respective specific conceptions of justice of individual people may differ (drastically) from each other (Ibidem, p. 5). But nevertheless, Rawls believes, these people may agree on a certain role of institutions and, if the institutions fulfill their task, regard them as just. In this case, Rawls (1999, p. 340; see also Rawls, 1987; 1989) speaks of an "overlapping consensus". Herbert L.A. Hart (1994, p. 159) in turn sees the function of social institutions as being that "[t]he general principle latent in these diverse applications of the idea of justice is that individuals are entitled in respect of each other to a certain relative position of equality or inequality. This is something to be respected in the vicissitudes of social life when burdens or benefits fall to be distributed; it is also something to be restored when it is disturbed".

From this perspective, social institutions must be designed in such a way that people's fundamental rights, as well as their duties, are distributed in such a manner that no distinctions are made based on morally irrelevant characteristics of the people concerned, such as gender or ethnic origin. In addition, it is the task of just institutions to find a solution for the problem of collisions of claims and rights that is fair and can be considered acceptable by all those affected. All approaches in political philosophy inspired by the work of John Rawls include the idea that social goods have to be redistributed to be able to speak of a just society.

Some of the key questions mentioned above have been answered by what has been said so far, but many remain unanswered: What are the basic social goods that are to be redistributed from the point of view of media ethics and media practice? Rawls (and other authors) do not address the question of fair reporting or quotas; here, theoretical efforts would first have to be made, for example, to adapt Rawls's two principles of justice and make them applicable to media ethics. Concerning quotas, the discussions from the context of "affirmative action" (e.g. Durlauf, 2008; Dworkin, 2000; Goff, 1976; Moses, 2006) could certainly be adapted to media ethics considerations. Yet, with regard to gender, ethnic origin, and/or other criteria, it would then have to be clarified, for example, how this could be reconciled with the meritocratic aspects of Rawlsian theory. Moreover, all the – more than justified – criticisms directed at Rawls' conception of justice and equality from a feminist perspective would have to be taken into account (paradigmatically Okin, 1987; 1994; 2005). This would start with a gender-sensitive language and would by no means end with the consideration of the social employment and income structures or ways of life, which have changed considerably compared to the 1970s (cf. Abbey, 2007).

As already indicated in the previous section, one can fundamentally question whether justice and equality can be reconciled with each other. Yet, one can radicalize this skepticism even further and ask whether adherence to a liberal social order within the framework of a capitalist economic order does not fundamentally prevent equality and justice from being implemented at all (e.g. Fraser, 1997) – and therefore prevent equality and justice in domains like the media and professions like journalism. In other words: We might have to recognize that the above-mentioned questions concerning equality and justice cannot satisfactorily be answered from a media ethics point of view as long as media ethics is thought within the framework of the prevailing social and economic order instead of radically calling it into question. It is doubtful, however, whether a profession that reflects on its normative principles inherent to this profession has a mandate to undertake such fundamental considerations. Whether more recent social phenomena such as citizen journalism (on various aspects of citizen journalism, see, e.g., Blaagaard, 2013; Goode, 2009; Meadows, 2013) can help in this regard and to improve equality and justice in the media remains to be seen. Since these are still rather isolated phenomena without broad impact, it can at least be argued that the people engaged in citizen journalism currently also lack the legitimacy to represent general moral claims. Nonetheless, the mere existence of such developments can be seen as a sign of unease about a profession whose credibility and legitimacy have not been undisputed for some time.

Justice in media ethics: Some tentative conclusions

On old maps, e.g. of the Middle Ages, one finds images of dragons and sea monsters in those areas that were considered completely unexplored or about which hardly anything was known at that time. Such mythical figures will not be encountered when dealing with justice in media ethics. Nevertheless, the connection between theories of justice on the one hand and media ethics on the other hand is rather poorly understood. This is not so much because theorizing about justice and equality is insufficient, quite the contrary. Even the earliest written evidence, for example in ancient Greek philosophy, testifies to the fact that the establishment of justice and/or equality has always been one of the central issues both at the level of groups and societies and increasingly also of the world population. The only problem is that the answers to these questions, both from a historical and a systematic perspective, are very different and even contradictory. To put it maliciously, one could go so far as to say that the people of each epoch came up with such conceptions of justice and/or equality that could either justify the prevailing property and power relations as well as the people in power, according to their interests. In other, more constructive, words: There is not a lack of (basic) theory on justice and equality, but a decision for an appropriate approach for implementation in media ethics.

This applies equally to those working in the media as well as to those who practice media ethics, in particular when it comes to media practice. If justice in media is not about the mere redistribution of information, but about equal access to media and, above all, to the public, many closure mechanisms that are almost jealously guarded in journalism as a profession and by journalists are difficult to justify (cf. Weber, 2014). When it comes to gender justice in the context of job opportunities, for instance, there is no need for a separate debate – after all, there is an elaborate socially and politically conducted discussion here. When it comes to non-discriminatory reporting, there is a long-running debate about the limits of freedom of expression (some would rather say: about political correctness) or about how to deal with and compensate for the harms of freedom of expression (e.g. McGregor, 1997; Meyers, 1997). Answers to many of the questions raised in the previous paragraphs exist in large numbers; one would only have to make use of them and turn them into considerations applicable in media ethics.

However, this still fails to decide which conception of justice and equality should be integrated into media ethics. Yet, it is precisely this question that is the most difficult to answer, because something comes into play here that perhaps also seems to have gone out of fashion given the (social) constructivism that is widespread in journalism as well as in media and communication studies: truth (cf. Pörksen, 2008; Pörksen, 2011; see for criticism on constructivism e.g. Wright, 2011. Since, for instance, Christians, 2019, p. 133ff emphasizes objectively telling the truth as a paramount priority in journalism, the problem mentioned here might be confined to Germany). The corresponding conflict can only be hinted at here. If, for instance, one looks at the press code of the German Press Council, one would learn that it contains the following sentence under Section 1: "Respect for the truth, preservation of human dignity and accurate informing of the public are the overriding principles of the Press" (German Press Council, 2017). Quite obviously, the search for truth, the protection of human dignity, and truthful reporting were once supreme imperatives of professional journalism, not equality and/or justice in the media. Now, if one from a constructivist point of view denies the possibility of truthful reporting in an objectivist-realist sense, the only orientation left for journalists are the standards inherent in the profession. However, the possibility of speaking the truth, as well as the orientation towards such standards inherent to the profession, presupposes that journalists, particularly in public broadcasting, which is not supposed to be subject to the economic constraints of private media, enjoy far-reaching independence. It could therefore certainly lead to a credibility problem for the media if they were primarily concerned with themselves and their internal constitution. It also would be a problem for credibility if they were merely discussing which persons and/or social groups must be represented in the media and in what numbers to be able to take into account a concept of equality and justice, however conceived, concerning the presence in the (mass) media.

Last but not least, given (not only) the terrorist attacks on the editorial office of Charlie Hebdo in Paris and debates about the scope of freedom of expression

that has thus been rekindled, it must be considered carefully how claims concerning equality and justice can be brought into balance with attempts to safeguard freedom of expression in particular and civil liberties in general. If, for example, considerations of fairness or justice call for a certain form of reporting or, more generally, of journalistic activity that takes cultural particularities into account (e.g. Hamada, 2016; Malik, 2011; Metz, 2015), then it is not at all necessary to take a radical stance concerning the scope of freedom of expression in order to recognize the conflict concerning the relationship of equality, justice, truth, and freedom (cf. Zick, 2017). In this regard, too, different answers have been given over time (cf. Barbrook, 1995), but so far, they have hardly been incorporated into debates on media ethics. This would require a painful self-assurance of the normative foundations of the journalistic profession, which could lead to the realization that journalism as a profession cannot – perhaps even must not – fulfill all (entirely justified) normative demands emerging in society. If the primary professional demands of journalism concerning truth, independence, and impartiality were to change priority, this would presumably call into question the legitimacy of journalism as profession and this would probably also affect media ethics, insofar as it is professional ethics.

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Summary

If the concept of justice and equality is to be integrated into media ethics in a gender-sensitive way, it must be clarified which concept of justice and/or equality is to be adapted from the broad spectrum of political and social philosophy. In some theories of justice, the concept of equality plays an important positive role, while others deny that justice goes along with equality. In the following paper, this complexity and ambiguity will be outlined to show how conceptions of justice and equality affect gender-relevant debates in the media and media ethics. To this end, however, it must be determined which social goods should or must be addressed if justice and equality are to be integrated into media ethics. As a tentative conclusion, it should be noted that the consideration of gender-sensitive concepts of justice and equality in media ethics as professional ethics of journalism could lead to a challenge of the norms and values intrinsic to the profession and thus to the profession itself.

Kontekstualna dyskusja na temat sprawiedliwości, równości i płci w etyce mediów

S t r e s z c z e n i e

Jeśli koncepcja sprawiedliwości i równości z uwzględnieniem płci ma zostać włączona do etyki mediów, należy wyjaśnić, jaka koncepcja sprawiedliwości i/lub równości ma zostać zaadaptowana z szerokiego spektrum filozofii politycznej i społecznej. W niektórych teoriach sprawiedliwości pojęcie równości odgrywa ważną rolę, podczas gdy inne zaprzeczają, że sprawiedliwość idzie w parze z równością. W artykule zarysowano tę złożoność i niejednoznaczność, aby pokazać, jak koncepcje sprawiedliwości i równości wpływają na istotne dla płci debaty w mediach i etykę mediów. W tym celu należy jednak ustalić, jakimi dobrami społecznymi należałoby się zająć, jeśli sprawiedliwość i równość miałyby zostać włączone do etyki mediów. W ramach podsumowania należy zauważyć, że włączenie do etyki mediów koncepcji sprawiedliwości i równości z uwzględnieniem płci jako etyki zawodowej dziennikarstwa może prowadzić do zakwestionowania norm i wartości właściwych dla tego zawodu, a tym samym do zakwestionowania samego zawodu.