

Concepts of Equality and their Limits – Critical Junctures in History and Law

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At the end of November, scholars from various backgrounds came together at Bielefeld University to discuss concepts of equality from a historical and legal point of view. The conference set out to tackle questions evolving around the limits and tensions of notions of equality: To what extent do concepts of equality and inequality like rank or hierarchy intersect? How did the idea of equality emerge in the first place and how was or is it contested not only throughout history but also today? To trace these connections and processes through different times and places, the focus was laid on critical junctures in which constellations of (in-)equality became especially virulent and contested. Special attention was paid to the role of practices of comparing: As ANTJE FLÜCHTER (Bielefeld) und ULRIKE DAVY (Bielefeld) set forth in their welcome address, they can be used by actors to stress similarities or differences and thus, to argue for inclusion or exclusion of specific groups, respectively. Throughout the conference, these initial considerations proved very fruitful for the discussion about the relation between practices of comparing, on the one hand, and defining who is entitled for equality and equal rights, on the other hand. They linked the various contributions, ranging from early modern India to nowadays Israel.

Following the welcome address, ANTJE FLÜCHTER (Bielefeld) presented early modern European conceptions of societal order. She rightly stated that equality was neither an ideal nor a value in premodern Europe but rather that society was conceived in terms of rank, hierarchy and God-given order. Drawing on a broad range of travelogues, she then asked how European authors perceived the society of the Indian Mogul Empire. According to her, the social mobility encountered at

the Mogul's court appalled the elite European travellers who saw the meritocratic system as a flaw. In difference to this view, employees of the Dutch East India Company who mostly were of low rank conceived the society of the Mogul Empire as based on (proto-)national categories. She stressed that by writing about the 'other' society the authors simultaneously located themselves in the social order and that thus, there was an implicit comparison inscribed in these depictions. Finally, she identified order as the value that opposed equality in premodern times and in doing so, made a valuable point for the ongoing discussions by putting 'equality' in a historical perspective that differs from modern day's positive associations.

LYNN HUNT (Los Angeles) then turned to a more classical context regarding the historical study of equality, 18th-century France. She combined this context with a refreshing point of view by conceiving equality as an aspiration with emotions attached to it. Looking at the emergence of the idea of equality during the Enlightenment and the French Revolution, she asked for the circumstances that made it not only thinkable but also such a widely agreed-upon and influential ideal. According to Hunt, there was a developing sense of social relations finding its expression in the emergence of the *sciences sociales*. Also, there was a change in clothing style among the noble elite. By no longer using wigs or powdering their hair and by wearing trousers instead of knee-breeches, nobles were not clearly distinct from other people anymore meaning that appearance and social rank did not necessarily coincide. Against this background, Hunt identified the spread of visualisations which questioned or caricatured the traditional order as a crucial aspect in fostering the idea of a society based on equality. As she argued, images, like a *député* being depicted in the same manner as King Louis XVI, made higher ranking people more comparable and new ways of imagining society possible. Hunt closed with the statement that equality is always about someone making demands and others having to give something up.

DEMETRIUS EUDELL (Middletown) in his paper, shed light on the contradictions inherent in the North American past regarding its

history of slavery on the one hand and the self-definition of the United States as a nation of free and equal people on the other hand. Revisiting milestones of US American history, he critically questioned the discourse about equality and equal rights, starting with the Massachusetts Body of Liberties (1641), moving to the Declaration of Independence from 1776 and *Plessy vs. Ferguson* in 1896 („separate but equal“) and ending with the Supreme Court's ruling in *Brown vs. Board of Education* in 1954 that separate was not equal. By asking whose equality it actually was that was legally defined or disputed in these instances, he showed how the idea of all men being created equal was from the start and way into modern times limited to white, male citizens and excluded Black Americans as well as indigenous people and women. Eudell concluded that whiteness was established as the universal standard, with all variations from it being particularities. In doing so, he put a crucial, but often neglected aspect of equality in a nutshell.

HELMUT WALSER SMITH (Nashville) discussed the development of German Nationalism in the nineteenth century. He argued that to understand the transformation from a society of estates to a nation state where everybody was deemed equal one needs to take economic developments into account. Referring to Benedict Anderson's „imagined communities“ and its deep horizontal comradeship, he stated that for a notion of nation or a people to develop, a sense of belonging was required not only from the masses but also from the elites. While aspects like anti-Napoleonic sentiments were limited in time and more focused on territorial states – Prussia – rather than a „German nation“, as Walser Smith stressed, the economic situation of the peasants „outside the city walls“ was a growing concern for many intellectuals and the former fourth estate came to be increasingly understood as part of the German nation.

DAVID KEANE's (London) paper was concerned with the „Human Rights Turn“ after the Second World War, focusing on the International Convention on the Elimination of All Forms of Racial Discrimination established by the UN in 1948. He gave an extensive overview over the implementation of

ICERD with special focus on its central body, the Committee on the Elimination of Racial Discrimination. Tracking the latter's activities from its establishment until today, he looked at how CERD interpreted the Convention's norms. He concluded that CERD evolved the original treaty as a living instrument from a narrow focus on apartheid and colonialism to a wide range of racial, ethnic, minority and indigenous groups.

On the second day of the conference, ULRIKE DAVY (Bielefeld) looked at a closely related context, the minority protection under the League of Nations, the so-to-speak UN predecessor. She showed how in the aftermath of World War I, the League of Nations established minority rights by international minority treaties that could be claimed before the Council of the League and later, the Permanent Court of International Justice. By analysing the treaties and exemplary cases of the Court, she identified two different concepts of equality. First, there was the notion of „equality among imagined equals“ which was derived from the Enlightenment tradition and defined equal rights to everyone, i.e. that all persons defined as nationals had to have the same rights. Second, focusing more on the relation between minority and majority, there was the concept of „equality among real unequals“ that, based on a sensitivity to power relations, attributed specific rights to the minority. Thus, she concluded, this concept concerned particular equality, not universal equality. Moreover, Davy made an interesting observation about a historical shift in how Human Rights are conceived: Identifying World War II as a turning point, she contrasted the conceptualization of Human Rights as individual rights in its aftermath with the focus on group rights in minority protection during the interwar period.

SAUL DUBOW (Cambridge) provided a case study concerning a particular form of inequality, the apartheid regime in South Africa. Concentrating on the difference between equality and equity, he outlined its history in highlighting three historical moments. While after the British takeover, in 1828, legal freedom was given to all inhabitants, the abolition of slavery remained a fiction, as Dubow stated. After the revolution against British

imperialism and the following new constitutional arrangement in 1910, the different 'white' groups united at the expense of the Africans. As Dubow observed, their residual political rights were traded in for material rights, i.e. communal possession of land, Africans thus gaining some degree of equity in exchange. Towards the end of apartheid in 1989, the different parties united over their focus on rights: While the African National Congress argued for human rights and legal equality, the white elite aimed to keep its possession rights. Dubow stressed that the following developments were an elite project that retained white supremacy, and that formal equality eventually was achieved at the expense of equity.

In the conference's final contribution, GILA STOPLER (Tel Aviv) addressed the constitutional structure of the state of Israel which is, as she argued, of semi-liberal character. She stated that there is a partial, dual nature of equality ingrained into the partly authoritarian and partly liberal state, mostly affecting women and non-Jews. Looking at constitutional law and some selected cases, she showed how Arab Israelis were treated with fewer rights than Jewish Israelis in contexts such as land appropriation. Moreover, she argued that due to the prevalence of male-centred religious law and religious courts in matters of marriage and divorce, women are regularly discriminated against. Stopler also pointed to liberal efforts but simultaneously showed how the right to religious freedom is used to argue for the separation of women from the public sphere by a politically influential ultra-orthodox Jewish community. Taken together, Stopler painted a picture of Israel's liberal constitutional features and the idea of equality notwithstanding gender, descent or religious belief coming increasingly under pressure.

Given the diversity of contexts of equality taken up in the various talks, one might at first, wonder if the theme of equality might be a little too wide-ranging. But, as the conference's lively concluding discussion showed, the question of the *limits* of equality proved to be a common ground on which scholars of such differing backgrounds can enter into a fruitful dialogue notwithstanding dis-

ciplinary and periodical borders. Indeed, albeit equality is often presented as a universal all-encompassing value, its limits were identified as its essential feature in the conference. Particularly important in processes of (re-)defining the boundaries of equality seem to be practices of comparing which can be used to argue for a widening as well as for a narrowing down of equality. What came repeatedly into view during the conference, was the power that lies in „orders of equality“, a phrase coined by Dubow in the final discussion. Ultimately, the broad scope of contributions covering settings on different continents from premodern to recent times proved to be the conference's strong point: It provided a very solid basis to question the still very powerful master narrative of ever-expanding equality in modernity and dismantle the history of equality as a permanent re-arranging of borders.

Conference overview:

Ulrike Davy (Bielefeld University) / Antje Flüchter (Bielefeld University): Welcome Address

Antje Flüchter (Bielefeld University): Hierarchy as Order – Equality as Chaos? Early Modern Perceptions of Social Differentiation in India and the Mughal Empire

Lynn A. Hunt (University of California, Los Angeles): Enlightenment and French Revolution: Why Equality?

Demetrius Eudell (Wesleyan University, Middletown): Equality: The Peculiar Institution

Helmut Walser Smith (Vanderbilt University, Nashville): 19th Century German Nationalism, Economic Development and Equality

David Keane (Middlesex University, London): The Human Rights Turn: Equality and the Elimination of Racial Discrimination

Ulrike Davy (Bielefeld University): Minority Protection under the League of Nations: Equality, but not Universalism

Saul Dubow (University of Cambridge): The South African Case: Apartheid

Gila Stopler (College of Law and Business, Tel Aviv): The Israeli Case: Balancing Religion,

Nationalism and Liberalism

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