

Egalité - Identité

1) L'égalité est le mouvement vers l'accès à 1 territoire défendue.

Des jalons ont été repérés. Des lacunes sont évidentes encore de nos jours.

2) L'identité est à la fois une œuvre de H la vie individuelle, une assumption de la reconnaissance sociale, une mise en œuvre des droits.

3)

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Faina
602566 (Ezberil) onule
466.1525 ←

Voilà un titre ~~intrinsèque~~ ambigu
à dessin.

Car, si le concept et la pratique
de l'égalité sont, à la fin de ce côté,
sont clairs et précis, il n'en est pas de
même en ce qui concerne l'identité. Le titre
qui devrait être porteur d'une équation
biunivoque et parfaite, est au contraire
ouvert à \neq interprétations.

Eq./ident. - de le langage mathématique
on serait passé à la répétition du même.
Disparue (ou effacée) du présent ensemble
des politiques l'idéologie du même - le
parti unique, la définition et le con-
trôle à partir d'un seul centre -
cette idéologie recient recroisement
partout où elle est fait significatif.

Car profondément elle est fait à la me-
meuse diversité de la vie et à
la complexité qui la charrie
et la constitue.



Egalité - Identité

1

Voici un titre ambigu à dessein.

Car il se déploie en plusieurs équations dont le sens est diversifié.

L'identité peut être mathématique : dans ce cas, pour la même équation, les deux membres présentent tjrs la même valeur, $\bar{q} \bar{q}$ soient les valeurs numériques attribués aux lettres. C'est l'univers de l'interchangeable.

L'identité peut être phénoménologique : qualité qui fait qu'une chose est la même qu'une autre. On en parle ^{à propos} d'animaux identiques parce qu'ils sont clonés, de vêtements faits en série, de comportements conditionnés, c'est l'univers concentrationnaire du même, de la répétition à l'infini,

L'identité peut être psychologique : c'est la conscience qu'a chaque personne, chaque groupe ou chaque peuple de la permanence de repères et de la consistance de son être.

C'est l'univers de l'immense variété, de la réalité multiple et diverse,



I

1. De quoi parle-t-on qd on parle d'idéisme et de réalisme

2. Construction de l'E. à double volet:

- la paix
- l'économie

3. Dans la constr.:

réalisme $\xrightarrow{\text{réd.}}$ pragmatisme :

- com.
- bureauc.
- harmon.

- déf. de m.

4. Acte unique et Maastricht

pointe extrême de cette tendance

II

1. Le débat sur Maastr. - signification

2. Les faits au niveau nat.

d'~~un~~ intérêt de tous les europ.,

3. La mise à nu d'une E. entre Etats

et dont les protagonistes sont des fonctionnaires

III

1. Les \bar{f} s auteurs et acteurs du change/
2. Rapport des \bar{f} à l'id. et au réel.
(Olav. Young.)
 - collées au réel
 - capacité de perspective globale
 - vie et travail d'les interconnexions et les interstices
3. Accès d'emblée à la citoyenneté eur.
 - acte de décision personnelle (dec. d'appartenance)
 - en trouver les instruments
4. Personne n'est propriétaire de la citoyenneté européenne:
 - "avec la maison" l'œuf ↔ porte ouverte
5. De l'Europe fortifiée à l'Europe ouverte
 - une E. de la générosité / change/ du style de vie
 - percev' E. réal. d'1 monde interdep.

Voilà autant d'entrées pour examiner 2
l'égalité,
Egalité identique à l'accès:

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Egalité - Idemité

1. L'ambiguïté du titre :

- des pièges { a) l'égalité du même
des repères { b) l'égalité de l'interchangeable
c) l'égalité de l'infinie diversité
d) l'égalité de la citoyenneté

2. L'égalité de la citoyenneté (le résumé de ce q'a été dit)

a) "les hs naissent égaux" ... et pour tant...

a₁ - la expectativa familiale (le déficit de plus de 100 millions de femmes)

a₂ - les discriminations persistantes

a₃ - l'intériorisation de la disqualification

b) le mensonge institutionnalisé :

pas de Déclaration Universelle des droits des fs

c) une étape politique majeure :

- la citoyenneté d'un espace autre q' l'Etat-nation

- les fs ont moins de tradition, elles sont tjs "sujets de sa Majesté", q' ce soit le roi, le père, le mari (M^{me} Bertrand..., senhora de ...)

- elles peuvent définir pour elles-mêmes la citoyenneté européenne

(cf. V. Woolf)

La question première du rapport des ¹
femmes au politique est leur citoyenneté,
leur possibilité d'être à la fois objet de
protection par l'Etat et sujet de partici-
pation civique.

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- Beatr. - #ce is a group of ♀
 - Petra - not enough information
 - Laure - how to get people more involved?
 - Barbara - information beforehand
- |- discover o programa
|- explicita o q e "LIEN"

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II - Pluralité (Diversité) et égalité

1. L'égalité devant la loi et la société (la norme masculine) - mise entre parenthèses ou déni de la différence entre les sexes?
2. La différence en tant que défi à l'égalité (mise en question de la norme) - l'accent unilatéral sur les droits spécifiques des femmes en tant que ressort de la différence.
3. La pluralité du féminin et son enchevêtrement avec toutes les questions de civilisation.

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Ce que M. M. McCrudden a dit sur l'objectif 7A
justice indiv. vs. justice de groupe parcourt #
mon exposé, va-et-vient entre les deux car
ils sont forcément interdépendants.

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J'étais enchaîné sur le problème 9
M. Claude Vaynade a soulevé ce matin.

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L'égalité est importante dans la mesure où
de nouvelles perspectives sont ouvertes pour les
femmes et, de par leur nombre, ^{de manière,} ~~elles~~ mettent
en question le statu quo et deviennent
~~importantes~~ applicables à toutes les personnes.
E.g. flexibilité dans le travail: un monde
nouveau pour les uns et les autres!

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- 1) - nat. leg. for indiv. redress?
- 2) - diversity of procedures + remedies adopted
- 3) = appropriate measures

- inadequacy of inst.
- " " remedies in fin. terms
- unacceptable delay denying indiv. justice
- lack of involve/ of unions
- remedies + sanctions not generalized
- indiv. rather than institutional practice

- role of Com. inst. will be crucial for eq. law to be real + not only symbolic
 ↓ the Court of Justice should be more interventionist
 on national legisla/ + enforce/

- access to court
- remedies + sanctions

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- empowering nat. courts at this level

diversity/creativity/adventurous
from the judges

- problem of delay
- more effective com. law
 - nat. judges on the scene
 - for " " to have real nat. to work
 - delay in publication from Eur. Court

Com. > future
 || - proc.
 || - approach

Incorporation of com. law in law of M. States

Interpretation of principles of equality

Application in practice

- Access to justice
- Sanctions
- Remedies

• eq. law & in context of comm. law

- labour law
- company law
- etc, etc.

• primacy of comm. law over nat. law

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• assessment of objectives of directives

1) to prevent social dumping

2) to achieve ~~social~~ indiv. justice
♀ + ♂ are equally protected → too limited

3) group-justice
relative position of ♀ / groups + claimer rather than individuals

aspects of both
are in Com. law



1) Strategy 10 points for the Com. strategy

2)

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TABLE 1

NATIONAL PROCEDURES LIMITING THE ACHIEVEMENT OF JUSTICE FOR INDIVIDUALS

- The inadequacy of institutional assistance to and representation of individual litigants
- The need to pay extensive costs to commence and complete litigation successfully
- The lack of trained and motivated lawyers and other representatives
- The inadequacy of remedies provided, both to compensate the individual fully in financial terms, and to ensure that the individual victim secures the benefit discriminatorily denied her.
- The inadequate knowledge of EC law principles by representatives and judges leading to victims not securing redress to which they are entitled
- The difficulty of proof of discrimination
- The difficulty, specifically, of lack of adequate information being made available to an actual or potential plaintiff
- Unacceptable delays in the operation of the judicial process leading effectively to denial of individual justice.

TABLE 2

NATIONAL PROCEDURES LIMITING THE ACHIEVEMENT OF GROUP JUSTICE

- Lack of involvement by unions in addressing equality issues effectively in either the collective bargaining or in the litigation areas.
- The absence of mechanisms for tackling institutional discrimination directly
- Settlements which do not adequately ensure that discrimination against others than the plaintiff is adequately dealt with
- Remedies and sanctions which are addressed only to the individual plaintiff and not generalised to any class affected
- The absence of adequate aggregate information on employers' pay or work force composition by gender making proof of discriminatory practices, and indirect discrimination extremely difficult
- Concentration where litigation does take place on the individual victim rather than the institutional problem
- Lack of public bodies with a specific equality mandate to adopt a strategic approach to enforcement rather than an ad hoc reactive approach
- Understaffed, ill-equipped, badly resourced, or poorly led strategic enforcement bodies.
- Inadequate opportunities to challenge discriminatory collective agreements.

TABLE 3

NATIONAL "GOOD PRACTICE" DEVELOPMENTS: *INDIVIDUAL JUSTICE*

- Providing effective assistance from equality agencies, unions and public interest groups. The experience of the Netherlands, Ireland and the United Kingdom was frequently cited.
- More effective pecuniary remedies which at least attempt to compensate for the actual loss that the person discriminated against has suffered, such as in the Netherlands.
- Non-pecuniary remedies which, even more appropriately, attempt to place the victim where he or she would have been but for the unlawful discrimination. The recent Greek case is a good example of this.
- Interim relief where the court prevents an action taking place pending a decision on whether there was discrimination, such as the recent Greek legislation which permits interim measures where otherwise the plaintiff would suffer grave and irreparable damage.
- A duty on the employer to give reasons explaining a decision to an individual who alleges discrimination, such as applies to a limited extent in the UK and Denmark (in the new legislation).
- Investigatory procedures which lessen the burden to the individual of establishing the evidence independently, such as the employment advisors in Italy or the longer established equality officers in Ireland, the investigatory procedure in France, the Dutch Equal Treatment Commission.
- Greater specialization by judges in equality cases leading to more expertise and greater familiarity with domestic and European equality law, such as to some extent in Britain, and to some extent formally in the Netherlands in social security cases.
- Formalised training of judges in equality law.

TABLE 4

NATIONAL "GOOD PRACTICE" DEVELOPMENTS: *GROUP JUSTICE*

- Locus standi to institutional plaintiffs, without the need for an individual victim, such as the standing accorded to the public interest groups in the Netherlands, and the standing given to the Employment Equality Agency in Ireland, and the more limited standing given to the EOCs in Northern Ireland and Great Britain.
- Remedies which apply beyond the individual victim and attempt to address structural and institutional problems which affect a class
- Contract compliance policies which either deprive a discriminator of access to government contracts, such as in Italy, or act as an incentive to employers to adopt positive action policies, such as apply in some of the German Länder.
- Establishment of public bodies to pursue a more strategic approach to enforcement.
- A duty on employers regularly to produce and disseminate aggregate information relating to pay structure and work force composition, such as applies in Italy and France.



TABLE 5

PRINCIPLES IN COMMUNITY EQUALITY LAW AGAINST WHICH NATIONAL PROCEDURAL AND REMEDIAL PROVISIONS ARE ASSESSED.

- The requirement of effectiveness, in the sense that national provisions must not render excessively difficult or practically impossible the enforcement of Community equality law
- The need for comparability and non-discrimination, in the sense that procedures and remedies adopted in relation to the enforcement of Community law must not be less favourable to enforcement than provisions adopted in other equivalent areas of national law.
- The need for national provisions to have the effect of dissuasiveness and deterrence, in the sense that national provisions must have the effect of encouraging others to adhere to Community law;
- The requirement of proportionality, in the sense that the procedures for enforcement and remedies must reflect the seriousness of the infringement.

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TABLE 6

A POSSIBLE TEN POINT COMMISSION STRATEGY

1. The Commission should develop a strategy towards tackling the issues of national procedures and remedies.
2. A multiplicity of approaches seems not only safest, but also most appropriate, given the variety of problems which need to be tackled.
3. A multifaceted programme of action should be planned and carried out to last for the period of the Third Action Programme and then be evaluated.
4. There is a clearly identified need for significantly increased training and provision of information to lawyers and judges. The Network may be able to play a role in assisting with this.
5. The use of studies commissioned from experts should be considered in a limited number of areas. There are several areas in which further study of possible mechanisms needs to be carried out. A study on the potential of contract compliance mechanisms should be the first priority.
6. The Commission should keep under review the possibility of preparing a draft directive which would ideally include the most important elements from the tables of "good practices".
7. Pending a more auspicious context, in which further Directives in the equality area are a feasible political possibility, progress should be made through various soft law "hybrid" methods.
8. The Commission should consider the adoption of a Recommendation and Code of Practice on procedures and remedies for the implementation of Article 119 and the equality directives, building on the existing case law of the Court of Justice.
9. Such a Code should cover such questions as:
 - access to justice, based on Johnson and Verholen;
 - time limits, based on Emmott;
 - burden of proof, based on Danfoss;
 - indirect discrimination, based on Bilka Kaufhaus, etc., and
 - remedies, based on von Colson, Harz, Dekker and Nimz.
 - collective bargaining, based on Commission v. Denmark; Commission v. Germany
 - right to information, based, as AG Tesauro argued cogently, based on the provisions of the Directives, supplemented by Heylens and Danfoss.
10. There is an important role which infringement proceedings could and should have as part of a Commission strategy. Infringements should be considered, for example,
 - where there is little or no domestic litigation generally, or on particularly important issues; where the law has been clarified by the ECJ, but countries other than the one directly affected have been slow in responding to the judgment;
 - where there are matters unsuitable to individual litigation, such as where group justice issues predominate; where there have been severe criticisms of the adequacy of national legislation by domestic judges;

- where national courts have given consistently incorrect decisions, or refused to refer cases to the ECJ.

Whatever the criteria should be, the Commission should develop a proactive strategy of infringement proceedings.

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