**equality /平等(Píng Děng)**

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| Final Remarks | Prof. Thomas GERGEN, Prof. CUI Zhiyuan | 22 Jun 2022 |

Thomas Gergen: Belonging to the triad of liberty, equality, and social welfare, who are intertwined with one another, the term, as far as constitutional law is concerned, becomes concrete in the treatment of persons. Equality plays an important role in democracy, as a fundamental right, and the legal prohibition of discrimination, i.e. equality in the workplace and individual Labor Law.

Men and women are equal before the law, with all genders that are biologically recognized by jurisprudence for diversity reasons later incorporated. Freedom of religion and freedom of conscience are also granted equal treatment with regard vis-à-vis the structuring of one concrete right of freedom. It is a tenet of the labor law that an employer may not arbitrarily treat comparable employees differently.

According to the general principle of equal treatment within the labor law developed by Federal Labor Court, an employer may not, without objective grounds, exclude individual employees from benefits that he generally affords to a group of employees, even if there is no legal obligation to do so. The establishment of groups also may not be arbitrary in this respect. By this, constitutional law-based equality takes a third-party effect in individual (private) law. Another example for this effect is visible in the community of heirs being treated on equal principles.

CUI Zhiyuan: Alexis de Tocqueville’s distinction between “social equality” and “political equality” can help us to understand the Chinese concept of “equality” both in historical and modern times. Tocqueville makes a further point about the “spill over tendency” from social to political equality: “equality ends up by infiltrating the world of politics as it does everywhere else. It would be impossible to imagine men forever unequal in one respect, yet equal in others; they must, in the end, comes to be equal in all”[[1]](#footnote-1).

The Section 2 of Article 33 of the current Chinese Constitution stipulates that “The citizens of the Peoples’ of China are equal before the law”. However, not until 2002, the first constitutional case involving the “equality clause” was brought to the court. It was caused by a bank’s job advertisement requiring applicants must be above certain height[[2]](#footnote-2). This case nicely illustrates the “spill over tendency” from social to political equality. Let’s hope this process goes further.

1. Alexis de Tocqueville, *Democracy in America,* trans. Gerald E. Bevan (London: Penguin, 2003), p.66. See Jiwei Ci’s “The Democracy in China: The Coming Crisis” (Harvard University Press, 2019) for a fuller account of Tocqueville’s view on “spill over tendency”. [↑](#footnote-ref-1)
2. <https://www.pkulaw.com/qikan/604dd589ba0595bcd92a9261d1d3bdb9bdfb.html> [↑](#footnote-ref-2)