k literatuře pod analýzu a výklad. Didaktická Bílkova kniha rozhodně není, snad na několik drobných shrnutí, zřejmě proto, aby čtenář nezůstal sám (co však zmizí-li s intimitou právě čtenář?). Srovnávat do sebe uzavřenou velmi zdařilou propedeutickou knihu Cullerovu *Krátký úvod do literární teorie* vzhledem k jejímu malému rozsahu nemá smysl.

Má-li tedy Bílkova kniha co nabídnout, když se nezaštiťuje definitivností tezí a není ani propedeutická? V této absenci lze rozpoznat gesto, jak se vyhnout školnímu provozu a literárnímu snobismu, které jsou od sebe často obtížně rozlišitelné.

Pokud jde o teoretické zázemí jako i o východisko je třeba předznamenat, že Bílkovo pojetí interpretace nelze ztotožňovat na jedné straně s libovolným přístupem k literárnímu textu, na druhé jej nelze vidět ani v perspektivě francouzského pojetí kritiky či interpretace, která vždy pojmenovává smysl. V rámci francouzského literárního strukturalismu stojí interpretace vůči poetice, v jejímž rámci lze pouze vyznačit formální podmínky, za nichž se teprve smysl ukazuje. Teoretické zázemí nalézá Bílek v českém literárním strukturalismu, vlastní východisko pak v Jankovičově pojetí „dění smyslu", ve kterém je literární text vždy jak neoblomným nárokem, tak i poslední mezí interpretace. Teoretické zázemí jako i východisko samo se však autorovi nestává nedobytným diktátem: za svědka vstřícnosti k odlišným teoretickým konceptům můžeme povolat psychoanalyticky orientované teorie, zejména Hollandovy, kde je text jako neodbytný významový pól již programově popírán. Teoretické východisko stojí v pozadí výkladu a původně slouží jako hledisko pro selekci konceptů v uvažování o literatuře.

Vlastní Bílkův výklad je rozčleněn do tří částí:

1. Historický přehled interpretačních teorií od prvních tematizací v rámci hermeneutiky až po současnost (formalismus, „nová kritika", strukturalismus, hermeneutika druhé poloviny 20. století, teorie vycházející od textu ke kontextu, od textu k autorovi, psychoanaliticky orientované interpretace – zatížení recipienta, recepční estetika, interpretace vzhledem k „interpretační komunitě", sémiotika – text jako partitura); 2. vnitřní výstavba vyprávění – zde je výklad založen na klasickém rozlišení příběhu a vyprávění, či příběhu a textu/diskursu; 3. vyprávění z hlediska jeho reference.

Tyto tři do jisté míry komplementární průhledy nejprve v časovém rozvinutí interpretačního úsilí, dále v systematickém výkladu vnitřní výstavby vyprávění, a nakonec v tematizaci reference literárního díla ukazují, nakolik se právě literatura jak vynachází, tak i v interpretačních přepisech ztrácí, a jak právě takové dobývání oné zvláštní diskursivity ji teprve definuje a stvrzuje. Ona nedokonavost hledání, kterou Bílek v názvu zvýrazňuje, nejlépe vystihuje dvojaký interpretační pohyb, kde v nátlaku významových poukazů odbíháme od toho, co hledáme. Parafrázujeme-li jednoho známého autora, pak literatura je neustálým odváděním pozornosti, která nám ani nedovolí uvědomit si, od čeho to vlastně odvádí. ***Jakub Češka***

Sandra Freedman: Discrimination Law, Oxford University Press, Oxford 2002

This book is an attempt to discuss various conjunctions of concepts of equality in legal context. But I must immediately stress that in addition to precious insights from the point of view of judiciary, author of this book is strongly in favor of taking

into consideration a broader social and political context of the issue. Practically, it means that Fredman has a strong position on necessity to promote equality and she tries to look for ways how it can be expressed throughout legal system. In that sense her book is very interesting for scientists who do not deal with legal studies exclusively, because it provides social and theoretical (axiological, we might say) horizon, which enables us later to evaluate different judicial and legal procedures. Specifically speaking, discussing concept of equality and results of our definitions of equality and discrimination essentially influence our understanding of its position in the legal system. In that sense this work is particularly useful because it shows interconnectedness of underlying presuppositions of understanding of the concept of equality and legal provisions, especially development of those. We might say that it comes as a positive shock to be reminded again, how recent our standards of equality are and how slow and complex is a path leading to equality. Fredman manages to show in a very convincing way that removal of legal impediments is a necessary but it is far from being a sufficient condition for desirable state of affairs.

Let's just mention again how precious is this interdisciplinary approach, which takes into account not only legal side of the issue, but includes also social, sociological and political/politological aspects. She runs through various concrete legal cases and judicial decisions, but manages at the same time to connect it with extralegal conditions, mainly concept of equality shared by the society in a concrete period. When she quotes US Supreme Court's decision from 1896, which proclaimed "If one race is inferior to the other socially, the Constitution of the United States cannot put them upon the same plane."[1], she shows at the same time how concept of equality in the expanded way we know nowadays (and still with lots of restrictions and practical problems) is recent and always poses the question of scope of social groups included into protection guaranteed by equality. Who and according to which criterion and how should be equal?

Fredman encounters the same problem, which is often present in dealing with multiculturalism, group or minority rights, namely why isn't it sufficient to proclaim only that all individuals are equal before the law. As a whole range of authors has showed, this type of claim presupposes a universal individual and a neutral attitude of the state. But in addition to this universal protection, equality, recognition and so on, individuals need a whole set of separate provisions necessary to supplement universal rights and even to make them real implemented rights. On the other hand, behind concept of universal individual we tend to oversee a member of majority as a model, or as Fredman puts it, it is white, male, Christian, able-bodied and heterosexual. I might be tempted to change this list a bit and it certainly does change over a course of time, especially in the case of women or homosexuals, but the important thing is that principle is the same, namely, abstract, universal individual always has identity. And that is highly relevant for standards of equality. The dilemma can be reduced to the essential question: "How do we explain then how equal treatment can in effect lead to inequality, while unequal treatment might be necessary in order to achieve equality?"[2]

Fredman tries to answer this question by saying that different treatments involve

[1] p. 77
[2] p. 2

different definitions of equality, a different underlying concept of it. In that sense, she differentiates among three concepts of equality: equality of treatment, equality of results and equal opportunities. Since equality can be formulated in different ways, it is then only reasonable to expect different aims, methods, provisions, applied to certain case. Let's now show what lies behind these three conceptions, although it might be appropriate to stress here that the biggest obstacle in Fredman's opinion is the first concept of equality as equality of treatment and she seems to be coming back to dialogue with this position throughout the whole book.

Equality of treatment operates with concept of justice which is understood as something inhering consistency, stemming from Aristotelian notion that likes should be treated alike. The author immediately says that this is a purely abstract view of justice, which does not take into account existing distribution of wealth and power. This also shows how concept of equality is closely related to understanding concept of justice and that the former in a way can be derived from the latter. Problem with equality as consistency focused on equal treatment can be reduced to following questions:

– We might ask when two individuals are relevantly alike. We are constantly being treated differently e.g. for taxation reasons, but what sort of distinction should be outlawed.

– Equality as consistency doesn't enable differentiation of treating people equally badly and treating them equally well – "There is no substantive underpinning."[3] For example when a city in the USA was required to open its "whites only" pools to everyone, they chose to close all pools instead.

– Third problem lies in a need to find comparator; inconsistent treatment can be proved only if we find similarly situated person of opposite sex or race who has been treated more favorably. But this position supposes that comparator is abstract, whereas s/he is always socially defined and this definition is dependant on historical circumstances, as I already mentioned, Fredman defines comparator as white, male, Christian, able-bodied and heterosexual.

– Another problem is that equality of this type indeed requires likes to be treated alike, but it doesn't require the different to be treated differently.

– The fifth problem then directly follows from the previous: this position is too individualistic; all aspects of group membership should be disregarded. But as Fredman rightly notices, prejudices are often embedded in the structure of society and cannot be attributed to one person. It is worth noticing in my opinion that exactly the same problem arises when attempting to formulate a liberal theory of minority rights (as for example Kymlicka does in his book „Politics in the Vernacular"[4]). For a strictly liberal position, group rights are almost contradictio in adjecto and are regard as corrosive for the type of democracy we developed throughout history, the prototype of a liberal right being right to belief, which has been so heavily fought for.

Let's just mention that Fredman stresses that this concept is coming from market reality, from contractual equality and involves notion of equal parties which conclude contract.

[3] p. 8

[4] Kymlicka, Will: *Politics in the Vernacular*, Oxford University Press, Oxford, 2001

We can now move to another concept of equality, namely that of results, which lies upon a more substantive view of justice and seeks to correct maldistribution. It can, in order to achieve fairer distribution of benefits, require unequal treatment. But this position overlooks that in order to achieve these results, there should be equality in conditions to reach them. This approach is tempting because results are easily measurable, but it doesn't say anything about structures that perpetuate discrimination. For example, if women become more represented in a certain sector, i.e. start achieving the same results, which might be a result of successful assimilation policy where women conform to "male" working patterns contracting out their child-care obligations to women, who stay as underpaid as ever.

That's why the third approach of equality of opportunity concerns that all individuals begin the race from the similar starting point. It can include both unequal treatment and unequal results, equal starting point leaves then to individual circumstances which results will be achieved. But the problem lies in the point in time which we want to designate as a starting point, there might be lots of those during life.

After this criticism, Fredman turns to the position she favors, after saying that our choice of a certain concept of equality is not a matter of logic, but of values and policies. She advocates a value-driven approach to equality, which practically means that we set the goals and then look for proper ways to reach them. And these values are:

– dignity, which replaced rationality as a trigger for equality[5], it fills concept of equality with substance, which lacks in the concept of equality as consistency, therefore people cannot be said to be treated equally when they are treated equally badly.

– remedial and restitutionary aims in order to compensate individuals for the detriment caused by past discrimination. In my opinion Fredman does not however successfully explain why an individual who did not discriminate should be responsible for compensation. Her explanation is that the individual benefited from discrimination and should be responsible for compensation. She wants to move away from the concept of individual guilt, but I am not sure that it works, in my opinion it is much better to argue from consequences for those who were discriminated than from a kind of collective guilt for something a lot of individuals could not have influenced.

– distributive justice, which means not only redressing previous disadvantages but achieving equal distribution of social goods. But here we have to face a question which sources and goods should be redistributed, especially tricky is the problem of elective bodies. If we state a quota of women for the Parliament, we end up in a situation where some individuals might be in the Parliament and not elected. But in my opinion this problem should be solved before entering a Parliament, by introducing quota for voting lists and even more by expecting women to take responsibility for political process and prove the cases in which they were rejected participation on the ground of sex.

– participative democracy, which should by including everyone in major social institutions represent a remedy of flaw in majoritarian democracy and according to some authors, it should also be extended to non-citizens. This last point is particularly interesting in the light of discussions

[5] Reasons for discriminating women, slaves and alike were based upon argument that they are not rational.

on position and place of immigrants in our current societies.

Fredman is aware that there are some major values, which could be seen as competing values to equality, she mentions as two most important liberty and economic or market concern.

In the case of the former she tries to solve this problem by using Dworkin's idea that individuals should not only be free to make choices but also to take responsibility for those choices on the basis of costs of the decisions to other people. Liberty in Fredman's opinion remains the biggest rival of equality like in the case of prohibition of racist speech to promote equality or allowing it to promote freedom of speech.

In the latter case she thinks that equality laws are capable of serving economic and efficiency-based ends, they can be abandoned only if it directly hinders achievement of a business goal. In this respect, I am not sure if in principle it is acceptable to allow the goals, which entail inequality in the same way as it is not acceptable to do it in the case of environmental issues. It's a matter of long-term subtle social calculations to get to conclusion whether at some point we might allow for inequality and how much it would cost in the long run to have a part of population in a disadvantaged position. Another question is who will be the judge of it even if the burden to prove necessity of unequal treatment lies on the business agent.

As I mentioned, I find extremely useful to find in this book a kind of reminder of how recently some freedoms, which we take for granted, became legally grounded. For example, rape in marriage was recognized as a crime in the last decades of the 20th century. Until 1962 women in civil service were paid on separate and lower scales than men doing the same work. Directive on European Union on equal treatment irrespective of ethnic or racial origin was adopted in June 2000.

But the main problem with discrimination law is that its scope should be defined somewhat controversially, i.e. the law should outlaw "bad" differences and permit and support the "good" ones. In that sense Fredman engages in solving the mystery of belonging to a group, treating some usual issues like whether belonging to a group is an objective or subjective feature, do we accept an individual to proclaim that s/he belongs to a group or do we demand formulation of objective criteria? And how about cumulative discrimination, when a person belongs to more than one group, e.g. black women, how does law deal with this? She offers answers by describing three actual approaches:

1. judges decide, society and laws simply state that all persons are equal before the law and it is up to judicial power to decide on case-by-case basis when discrimination took place. This is a US approach.

2. formulate legislation with exhaustive list of grounds on which persons can be discriminated. In this case the list can be changed only legislatively not judicially (UK and partly EU approach)

3. specify list of ground of discrimination but indicate that it is not exhaustive, so judges have some freedom, but it is bounded by enumerated grounds. This is Canada's approach and approach of European Convention on Human Rights and it seems to combine both, judicial power to intervene in the cases of discrimination, but also legislative guidelines, where to look for it, which perfectly fits into the core thesis on equality in this book, that equality is not only about negative measure to limit equality but also about positive duty to promote it. Differences as the other side of

the coin of equality should not suppose deviance from a single norm, but should be about relationship between and within groups. Equality is not about erasing differences, on the contrary, but it is about not using them as a ground for discriminatory treatment.

Fredman's idea of equality as positive duty means firstly to recognize that discrimination is not a matter of individuals, so the duty is not only to compensate the victim but also to restructure institutions. Instead of need to proof of individual prejudice, we have evidence of structural discrimination. She calls this "fourth generation equality laws" and they are "based on positive duty to promote equality, rather than just simply refrain from discriminating..."[6] The aim of equality in her opinion is not only to achieve removal of prejudices and harassment, but to redistribute sources and to accommodate diversity. Positive duties are proactive and anti-discrimination has more reactive and negative approach, that's why positive duties fall not upon the perpetrator of discriminatory act, but upon body in the best position to promote equality.

I will now turn briefly to her concept of reverse discrimination or of what is usually called affirmative action, which "denotes the deliberate use of race or gender conscious criteria for the specific purpose of benefiting a group which has previously been disadvantaged or excluded on the grounds of race or gender."[7] As Fredman acknowledges right away, this is from the legal point of view a highly problematic concept. After so much time was spent to convince judges and legislators that they should be color-blind and that gender differences are irrelevant, we persuade them now to permit discrimination for remedial purposes. This is where the story of fighting discrimination makes a full circle and comes to the beginning. Fredman's idea that the question of legitimacy of reverse discrimination should not be judged from the point of view of legitimacy but from the point of view of its aims and effectiveness seems to be a short-cut, which I am not sure it is safe to take. First of all it brings into play again the issues of collective versus individual guilt and second of all it doesn't mention that in order to be introduced, reverse discrimination should have a broad consensus of the society in which it is applied. Thirdly it fails to deal with issue of how far it should go and how long it should last, when is the time when we can claim that a group, which enjoyed preferential treatment, has finally paid its debt to those who suffered from it.

In a conclusion I might say that a task to connect legal provisions with underlying concepts of equality is, as we can see from this book, not an easy one, but it is comforting to read an attempt, which is in my opinion successful and worth thinking of. I am not sure, though, that we have a broad consensus in our societies to promote the kind of equality Fredman advocates for. The concept is very open and inclusive, but it fails to address issues of responsibility among the discriminated groups, either in direction to its own members or in direction to mainstream society. It is not only up to institutions and majority to promote equality in the sense of a value-driven approach, it is also up to members of discriminated groups to organize themselves and in the context of society in a way, which clearly shows that they accept the concept.

This book is highly useful and recommendable to all those who want to make use of

[6] p. 123
[7] p. 126

legal and broader social issues related to important concept, very much spoken of, but not so successfully implemented.

Selma Muhič-Dizdarevič

Karel Sommer (ed.): České národní aktivity v pohraničních oblastech první Československé republiky, Olomouc, Opava, Šenov u Opavy, Filosofická fakulta Univerzity Palackého, Slezský ústav, Tilia, Olomouc 2003

Recenzovaný sborník představuje výstup z projektu nazvaného „České národněpolitické aktivity v pohraničí českých zemí v Československé republice 1918–1938". Celkem do něj přispělo deset autorů v následujícím pořadí: Karel Sommer (Několik slov úvodem; s. 9–12 a Průběh a výsledek pozemkové reformy v pohraničí českých zemí; s. 35–108), Josef Bartoš (K pojmu a pojetí pohraničí v ČSR 1918 až 1938. Územní a národnostní principy a problémy; s. 13–33), Miloš Trapl (České menšinové školství v letech 1918–1938; s. 109–117); Oľga Šrajerová (Činnosť Matice opavskej v medzivojnovom období; s. 119–149 a Slezská matice osvěty lidové v období prvej Československej republiky; s. 151–172), Jaromír Pavlíček (Národní jednota severočeská a její podíl na prosazování českých národních zájmů v národnostně smíšených oblastech /1885–1948/; s. 173–193), Radim Prokop (Národnostní aspekty v činnosti Národní jednoty pro jihozápadní Moravu v meziválečném období 1918–1938; s. 195–219), Karel Řeháček (Národní jednota pošumavská /1884–1951/; s. 221–244), Jana Burešová (Význam Sokola pro český národní život v pohraničí v letech první Československé republiky; s. 245–256), Jitka Svobodová (České slavnosti a oslavy v Jihlavě v letech 1918–1928; s. 257–274) a Libuše Hrabová (Ostravské školství a vědomí národní sounáležitosti do roku 1918; s. 275–284). Za uvedenými texty je ještě připojen přehled textů, které byly k výzkumnému tématu publikovány jinde.

Jak již samotný výčet jmen autorů a názvů jejich příspěvků napovídá, ve sborníku jsou čtenáři předloženy především studie historiografického charakteru, z nichž naprostá většina je založena na poznatcích získaných z archivního výzkumu a studiu dalších primárních pramenů. Pozornost se soustřeďuje především na činnost národě orientovaných spolků, které byly v období první Československé republiky jedním z nejdůležitějších nástrojů a prostředníků, jimiž docházelo k přeznačování národnostně smíšených prostorů v místa s výrazně českými charakteristikami. Jejich prostřednictvím bylo budováno to, co bývá někdy nazýváno českým národním cítěním, jindy českou identitou lokálního obyvatelstva. Studium aktivit českých národních, národotvorných a státotvorných spolků nabízí výbornou možnost porozumět nejenom tomu, co může být jedním z obsahů pojmu „pohraničí", ale i fluiditě a esenciální nezakotvenosti klíčových manter dnešních historických a sociálněvědných debat, jakými jsou již zmiňovaná „identita", nebo „multikulturalismus" a „komunikace kultur". Když však Sommer v úvodní kapitole sborníku píše, že „problém společné koexistence česko-německé (a česko-polské) netkví jen v otázce soužití, ale v komunikaci kultur", přičemž k porozumění tomuto problému může přispět „i pouhá faktografická a popisná práce" (s. 10), musíme se ptát, v čem že mají být poznatky publikované ve sborníku přínosné. Předně, má-li české dějepisectví podat „nacionálně nedeformovaný obraz o vzájemných vzta-