

Discussion on the Principles of the Canadian Charter of Rights and Freedoms

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Abstract. As a country of immigration, Canada is deeply influenced by the traditional legal systems and customs of Britain and France, especially the United Kingdom. The full text of the Canadian Charter of Rights and Freedom runs through the three principles of egalitarianism, liberalism and pluralism. It is a major model in Western countries. The three principles permeate and influence each other, and do not play a completely independent role. The study of the principles of the Canadian Charter of Rights and Freedoms can help us grasp the spirit and value of its constitution from a macro perspective and pave the way for further study of its legal system.

Keywords: Canada; Charter; Freedom and Equality; Pluralism.

1. Introduction

"Principle" is a basic norm of universal truth or behavior, which is the fundamental standard on which people are based to analyze and deal with things. As one of the legal elements, there are different interpretations of the legal principles. Blake's Legal Dictionary holds that legal principles are the basic truths or principles of the law, provide basic or original comprehensive rules or principles for other rules, and are the decisive rules of legal acts, legal procedures, and legal decisions. Some people also believe that legal principles are "comprehensive, stability principles or guidelines that can be used as the basis of many legal rules."

As the highest level of the legal system, the Constitution should also have its own principles, which are called "constitutional principles". The constitutional principle is the basis and criterion for reflecting the value trend of the constitution, unifying the constitutional rules, and guiding or regulating the entire constitutional process. From the perspective of legal doctrine, the constitutional principle, as a part of a country's legal principles, should be a sublimation of the spirit condensed by a country's constitution and other laws.

Based on the concept of constitutional principles, this article discusses the principles of the Canadian Charter of Rights and Freedoms, and divides the principles in the constitutional law into three parts: egalitarianism, liberalism and pluralism, paving the way for the subsequent in-depth study of the Canadian Constitution. In the following article, the term Charter is used to refer to the Canadian Charter of Rights and Freedoms. .

2. Equalityism

(1) Overview of "Equality"

Western countries have experienced the baptism of bourgeois revolution and are deeply influenced by natural jurisprudence. The natural law school promotes the banner of gifted human rights, and one of the cores of gifted human rights is equality. In general, the so-called equality is the right of different social subjects to receive equal treatment, that is, the right to equality. The study of the right to equality, whether Western scholars or Chinese scholars, most of them agree to divide it into formal equality and substantive equality. In short, formal equality is equal treatment, while substantive equality pays more attention to reasonable discrimination, which is manifested as a kind of justice.

Equality includes all aspects, such as political equality, legal equality, starting point equality, economic equality, gender equality, national equality, etc. It is a historical concept. Its connotation



changes with the development of the times, but the right to equality is established as a constitutional basic right by the constitutions of many countries today, such as the United States in the Independent The Declaration declares that all people are born equal, and the French Declaration of Human Rights also makes it clear that all rights are equal, and there are similar provisions in our Constitution. Because of the job, egalitarianism should also be a constitutional principle. The reason why equal rights are guaranteed in the constitution is that the constitutional constitution runs through the spirit of constitutionalism for the ultimate purpose of protecting human dignity. Although there are various differences between people, the dignity of all people is the same in the constitution. The mainstream view of China is that equality has a dual nature. It is both a constitutional principle and a constitutional right, which is also what the author wants to convey.

The study of equality in this article is limited to the distinction between formal equality and substantive equality. Formal equality is mainly general equality. The subject of formal equality cannot be concretized. It recognizes the equality of people in abstract norms and equality at the normative level. It solves the question of whether equality conforms to formal justice. The expression of equality before the law is the best answer, and the form equality table. It is now the universal absolute equality between personality and subject qualification. However, formal equality alone cannot solve the contradictions in real society, and the concept of equality in the abstract sense cannot guide and solve specific problems. In the real society, everyone has their own particularities based on the differences between nature and society. As the saying goes, there are no two identical leaves in the world, so formal equality must transition to substantive equality. Only by analyzing the specific situation and treating different people reasonably differently can justice be achieved in a real sense. For example, the implementation of equality of opportunity and equality of education requires the use of the concept of substantive equality to solve the problem. Substantive equality is a specific level of equality.

Because of its specific historical reasons, Canada is deeply influenced by British common law, and the concept of equality is deeply rooted in people's hearts. Britain mainly relies on ordinary courts to guarantee the right to equality of citizens. As early as the Magna Carta of Freedom in 1215, the concept of equality has been permeated. Hobbes also divided the principle of equality into equality of the right to life, equality of the right to self-defense and equality of rights to all things, which had a great impact on Commonwealth countries. The implementation of the principle of equality in the Canadian Charter of Rights and Freedoms is in place. The following is an enumeration and analysis of the protection of equality in its Charter.

(2) The embodiment of egalitarianism

The Charter of Rights and Freedoms of Canada runs through the principle of egalitarianism, in which egalitarianism is reflected in many ways, and most of them are embodied in formal equality and substantive equality.

First of all, as a constitutional law, the equality stipulated in the Charter is equality in the constitutional sense, that is, the equality stipulated in the public power of the state, that is, the relationship between the government and citizens. Just like an isosceles triangle, the government is at its fixed point, with citizens at both ends, indicating that the government (public power) should protect every citizen equally. Articles 31 and 32 of the Charter stipulate respectively, indicating that the limitation of its public power and its constraints are only matters related to the parliament and the government.

In addition, Article 15 of the Charter specifically stipulates the right to equality under the name of "Equality Rights", which is the most direct expression of egalitarianism in the full text of the Charter and a clear manifestation of formal equality. This article shows four aspects of the right to equality in Canada. Professor Zhu Yingping called it the "four-in-one right of equality in Canada", which specifically includes equality before the law, equality under the law, equal protection and equal rights and interests. The author believes that the provisions here are relatively complete, and the provisions on equality before the law and equality under the law are briefly discussed here. Equality before the law is different from the scope of equality under the law. Equality before the law shows the equality

of all Canadian citizens in all aspects of the law, such as the formulation, application and interpretation of the law. All social subjects should be given an equal legal personality and the power to handle the relationship between rights and obligations in a legal manner. Equality under the law does not include the formulation of the law, just as the lintel of the main door of the U.S. Supreme Court is engraved: "Equal justice under the law". This comes from the British tradition of the rule of law, which puts everyone under the law. Sir Edward Kirk of England once said, "The king is above everyone, but under God and the law."

Another highlight of Article 15 of the Charter on the right to equality is that it will not be discriminated against, emphasizing that it will not be discriminated against on the basis of race, ethnic origin, color, religion, gender, including age and physical and mental defects. What is reflected here is substantive equality, placing the right to non-discrimination and equality together, indicating that the Charter allows reasonable differences, classifying people so that the same people are treated the same, different people are treated differently, and the criteria for classification should also be reasonable.

Secondly, in Articles 6, 16, 25 and 28 of the Charter, it specifically stipulates the right to movement, the right to language, the right to equality of indigenous peoples and the right to equality between men and women. These specific provisions are permeated with the principle of egalitarianism and all adopt a combination of formal and substantive equality. In the content related to Mobility Rights, it is clear that every Canadian citizen has the freedom to enter, reside and leave Canada, but also for individuals who are economically and socially disadvantaged in a province (if the employment rate in this province is lower than that of Canada's employment rate) Inclined protection, which is the embodiment of substantive equality, allows a reasonable differential treatment of the right to movement in Canada. Similarly, this legislative logic is also reflected in other provisions listed above. In the right to language, it is first stipulated that English and French are the official languages of Canada and are used equally in all institutions of their parliaments and governments to promote the equal use of English and French, but it does not restrict the equality of parliament or the legislature in promoting the status and use of English and French, which is enough to show that The official language right also allows certain reasonable differences, which is also a reflection of substantive equality. In the protection of the equal rights of indigenous people, it is stipulated that the rights and freedoms of indigenous people are not affected by this Charter, in which the guarantee of certain rights and freedoms should not be understood as the abolition or derogation of other rights and freedoms stipulated in treaties belonging to the indigenous peoples of Canada, even including the King's declaration on October 7, 1763. Any rights or freedoms recognized. The provisions on equality between men and women also show that the equal rights of men and women should be guaranteed regardless of whether there is a provision in this Charter. These are the embodiment of the unity of formal equality and substantive equality in the Charter.

3. Liberalism

(I) Overview of "Freedom"

"Freedom" in the modern sense, which comes from the West, refers to getting out of a bound state. Liberalism is an important concept in the development of Western modernization and the rule of law. It is related to freedom. The subject of freedom is people. Therefore, liberalism is closely related to human beings as the subject. As Marx said, "Freedom is indeed the essence of human beings."

In a philosophical sense, people have "two egos", one is "true self" and the other is "false self." The "true self" is dominated by acceptance, while the "false self" is dominated by desire. Therefore, the human soul is composed of reason and desire. When people use rational legislation to get rid of the shackles of desire, they form self-discipline, that is, inner freedom in the sense of freedom. However, as human beings, after all, "limited intelligence is inevitable to make mistakes, and limited morality is inevitable to self-interest". Therefore, human rationality is limited. As a group animal, due to the limited nature of reason, human beings cannot have full sense of self-discipline, which will inevitably

hinder others and cause contradictions. Therefore, external freedom came into being, which requires the law to provide constraints and form other laws. Therefore, there is a legal proverb: if there is no prohibition, there is freedom.

What this article wants to express is mainly freedom in the legal sense, which is more expressed as a right and a basic right, a constitutional right. The law recognizes that freedom usually uses rights and obligations to set the scope and realization of the freedom. Therefore, the right to freedom in law is not absolute, but freedom under the law. This article is the right to freedom within the scope of the Constitution. As Locke said, "The purpose of the law is not to abolish or restrict freedom, but to protect and expand it."

"The code is the Bible of people's freedom." In the Western context, there is a difference between "Freedom" and "Liberty". Why is "freedom" interpreted as "Freedom" in the Canadian Charter of Rights and Freedom? It is a question worth discussing. Freedom focuses on expressing the right, that is, people have the right to do something, and have the free will and right to do something, but "Liberty" is the freedom that is delineated as the world of power, that is, the freedom restricted by law. The adoption of "Freedom" in the Charter is based on Canada's own national conditions. It has long been dominated by the British and French colonists. From sovereignty to governance to civil rights, there is no freedom, to break through the confinement of the colonists. In history, Canada's 1982 The Constitutional Act is the only bill that protects the "freedom" of citizens at the constitutional level. The Canadian Charter of Rights and Freedoms is an important link. In order to show the sovereign value of Canada's independence and give its citizens a wide range of constitutional freedoms, it should be their qualifications, abilities and rights. (Freedom) is more of a manifestation of its sovereignty and national independence from British control than "Liberty".

In the field of constitutional thinking, the most important thing is the provision of "Fundamental Freedoms", which is the core of the macroscopic guidance of the whole country's laws to protect the right to freedom. Franklin Roosevelt once put forward what he believes is the basic freedom of human beings, including freedom from fear, freedom of worship, and freedom from lack. (Rom want) and freedom of speech and expression, there are also provisions on basic freedoms in Canada's charter, but they are broader and slightly different in content. The following is a list of the embodiment of liberalism in the Charter.

(II) The embodiment of liberalism

The British Enlightenment thinker Locke is the founder of liberalism and is known as the "father of liberalism". Canada is deeply influenced by Britain, so Locke's ideas have also had a profound impact on liberalism in Canada's constitutional government. He regards "life, freedom and property" as the three basic rights of human beings, and has made a profound discussion of freedom. When elaborating the theory of contract, Locke believes that the transfer of some rights does not include life, freedom and property. He believes that this is the most basic right of people that must be protected by the modern constitution. His thoughts are different from Hobbes and Rousseau. This is reflected in the Charter. The freedom of life and personal safety stipulated in Article 7 are the rights of everyone, and this right is not denied unless in accordance with basic judicial principles, which discusses the protection of freedom from a macro perspective. From natural freedom to political freedom to legal and religious freedom, Locke's liberal system is huge, which provides a certain theoretical basis for the Canadian Charter of Rights and Freedoms.

The importance of freedom to the Charter is self-evident, and there is even the word freedom in the name of the Charter. Article 1 of the Charter shows that the freedoms stipulated in the Charter are only subject to the reasonable restrictions prescribed by law, and these restrictions are obviously reasonable in a free and democratic society. Place it in Article 1 as the role of commanding the whole charter, it is declared that in Canada, freedom is not absolute, but guarantees the legal right to freedom within the framework of law, which is the embodiment of rational legislation.

In Article 2 of the Charter, named "Fundamental Freedoms", it regulates the fundamental freedoms to be protected by Canada. They believe that everyone enjoys the following basic freedoms: freedom of conscience, freedom of thought, freedom of religion, freedom of belief, freedom of speech, freedom of the press and other means of broadcasting and communication, freedom of peaceful assembly and freedom of association. Compared with the six small freedoms in China's Constitution, it has unique protections such as conscience, freedom of thought, and freedom of the press. Freedom of conscience and thought is the embodiment of spiritual freedom. Nobuki Ashibe once believed that spiritual freedom is the creativity of spiritual civilization and has the function of self-realization and understanding of truth. China has briefly stipulated freedom of thought in the Common Program, and Canada's basic freedom stipulated in the Charter and China's Common Program. The provisions in , are more similar.

What deserves further discussion is the protective provisions of the Charter on freedom of religion and belief. The beginning of the charter shows that the charter was established by Canada based on the principles of recognizing the supremacy of God and the rule of law. From the beginning, it was established that the formulation of the charter had a theocratic basis. This legislative phenomenon is more common in Western countries. For example, the Declaration of Independence of the United States believes that basic rights are granted by God, and their concept of human rights is based on religion. Western countries are deeply influenced by the religious concepts of Christianity, and with the baptism of the Enlightenment, they quite agree with the "gifted" human rights. Therefore, it is logical to have a high degree of protection for the freedom of religious belief.

Other provisions of the Charter are also permeated with liberal principles. For example, in the provision of the right of movement, citizens are given the freedom to enter, reside and leave Canada. In the above-mentioned provisions on equal rights, there is also the pursuit of freedom. The charter guarantees the right of Canadian citizens to use the language freely, with English and French as the official languages and the right to free language education. At the end of the last century, Quebec's attempt to restrict Quebec residents' right to English education by law was eventually abolished by the Supreme Court of Canada. The charter also has provisions on the personal freedom of citizens, such as not being subjected to unreasonable searches or seizures, etc. It can be said that the principle of liberalism runs through the Canadian Charter of Rights and Freedoms.

4. Pluralism

(1) Overview of "multiple"

The definition of the concept of pluralism is a difficult problem. Pluralism is a broad concept, which includes multiculturalism, pluralistic politics, multilateralism of diplomacy and other subdivided research fields. What is to be described here is multiculturalism, which requires that the country or society should be inclusive of different texts. Change and values, respect the subjects of different ethnic and religious backgrounds, and better participate in political and economic life.

The author believes that the so-called "multiple" is an organic combination of multiple elements. These elements are basically groups with different backgrounds with "people" as the main body. It can be said that "multiple" is the organic combination of groups with different backgrounds. Since ancient times, the combination of unity and pluralism has been a difficult to balance. How to avoid contradictions and conflicts caused by differences between different groups is a difficult problem for a country where pluralism is prevalent.

The Encyclopedia of Canada written by James H. Marsh has an explanation of multiculturalism, believing that it refers to a society with racial or cultural heterogeneity or the concept of mutual equality and respect between ethnic or cultural groups, and some believe that it refers to the implementation of the Federation and provinces of Canada since 1971. Government policy.

A prominent feature of Canadian society is the diversity of its population. Canada is the first country to implement a pluralist policy among European and American immigrants. It announced the

multicultural policy in 1971 and passed the Canadian Multicultural Law in 1988. However, multiculturalism, as a principled idea, originated from the fact that at the beginning of the 20th century, Karen, a Jewish-American scholar, put forward the theory of cultural pluralism. This theory is a criticism of the popular melting pot theory in the United States at that time, that is, the Americanization movement. It awakens the sense of the rights of minority groups and is the emergence of multicultural political thought. Buds.

The history of Canada can be divided into the New France period, the British North American colonial period and the Canadian federal period. Due to the special historical background, the culture of France and England has a deep influence on this land. In addition, the unique indigenous peoples such as Indians and Inuits and other rich cultures make it constantly intertwined in the development of history. In today's Canada, Quebec has a wide range of French cultural backgrounds, and other regions have a large number of British backgrounds, which is a typical pluralistic society.

Pluralism reflects respect and tolerance for cross-cultural communication. Oppose racism and promote equal integration. For a multi-ethnic China, the balance of multiculturalism is also a link that needs to be learned from and learned. Especially in the context of the great development of globalization, the input of foreign culture is also a problem worthy of great attention.

The author believes that the core of pluralism is to respect differences and protect them. In the above discussion on the principle of equality, the distinction between formal equality and substantive equality is expounded. Only by respecting differences can we have reasonable differential treatment. This is also the concept that needs to be implemented for the organic combination of formal equality and substantive equality, that is, pluralism promotes the general and specific unity of equality.

After decades of implementation, it can be said that the implementation of Canada's pluralist policy has been successful. The country has maintained a relatively stable state, has a high sense of cultural protection and rich multicultural resources, and recognizes the balance and interaction between cultures. The following is a list of the embodiment of pluralism in the Canadian Charter of Rights and Freedoms.

(2) The embodiment of pluralism

The first is the determination of equal rights in Article 15 of the Charter, as discussed above. The principle of non-discrimination and equality is placed together here, reflecting that Canada allows the existence of reasonable differences in the constitutional field, regardless of race, ethnicity, origin, color, religion, gender, age or physical and mental defects. Protecting the differences of people of different races and ethnic groups, religions and skin colors is to ensure diversity from a macro perspective.

The second is the regulation of Canada's official language. Due to historical factors, Canada is deeply influenced by the cultures of Britain and France. It puts English and French in the same official language status and protects the language rights of people in different language and cultural environments, especially the right to education in English or French.

Once again, it is a guarantee for the language rights of ethnic minorities. This provision is the pluralistic protection of language rights in cultural pluralism. Although English and French are used as official terms, based on the national conditions of multiple ethnic groups, it does not oppose the language and cultural rights of ethnic minorities, and also stipulates that they can be provided with minority languages with public funds. The education carried out allows differences to exist while protecting such differences. This is the embodiment of multiculturalism. There are more than 120 ethnic groups in Canada, and special provisions have been made on the cultural and educational rights of ethnic minorities, which is enough to reflect the country's emphasis on cultural diversity. Article 27 of the Charter also specifically stipulates the protection of various cultural heritages.

Based on the above enumeration, we can understand the principle of pluralism in the Canadian Charter. The pluralistic cultural policy promotes the realistic attitude of Canadians towards ethnic

diversity, reflects freedom and equality, echoes and interweaves with the first two principles, strengthens the identity awareness of Canadians, and enhances the cohesion and cultural soft power of this immigrant country.

But pluralism also faces some difficulties in Canada. Pluralism has contributed to the rise of localism. Due to Canada's vast territory, 90% of its population lives within 100 miles of the border between Canada and the United States. Based on the approximate geographical similarities and frequent communication, many Canadians have more in common with Americans than with Canada. The common ground of citizens on the other side shows that in Canada, not only Quebec has shown obvious centrifugal force, but also a large number of people have such centrifugal force, which is a potential crisis brought about by pluralism.

5. Summary

The author believes that egalitarianism, liberalism and pluralism are the three most important basic principles running through the Canadian Charter of Rights and Freedoms, and these three principles are intertwined with each other and are not completely independent of each other. For example, equality and freedom are reflected in the implementation of pluralism. This article is to pave the way for further in-depth study of the Canadian Constitution, and refine and summarize the principled content of the Charter from a more macro level, which is conducive to understanding the value of the Canadian Charter of Rights and Freedoms, better learn from and absorb its essence, and provide experience for China's constitutional research.

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