

The Establishment of the Chinese Model of Freedom of Movement in the Perspective of Comparative Law

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Abstract

China's Constitution does not provide for freedom of movement. With the acceleration of social transformation, the Constitution must respond to freedom of movement. The constitutional practices of Germany, Japan, the United States, Russia and other countries on the protection of the right to freedom of movement are worthy of reference for our country: the Constitution must provide adequate protection for the right to freedom of movement and must also limit it. The plan is to amend the Constitution or interpret the Constitution; when amending the Constitution, attention should be paid to the continuity of the provisions on the guarantee of freedom of movement and the clarity of the restrictions, and the legitimacy and rigour of the interpretation process should be emphasized when interpreting the Constitution. Compared with extraterritorial practice, the right to freedom of migration has a particular historical and institutional background in China. To truly implement the right to freedom of movement of citizens, it also needs to be based on China's reality. The closely related household registration management system and land ownership system will be adjusted accordingly.

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Key words: Freedom of movement; Constitutional guarantee; Constitutional amendment; Constitutional interpretation

1. THE SCOPE OF THE PROBLEMS

On February 23, 2012, the General Office of the State Council announced the "Notice on actively and steadily promoting the reform of the household registration management system".³ Subsequently, the 18th National Congress of the Communist Party of China put forward "accelerating the household registration system reform and orderly promoting the civilization of the agricultural transfer population", and the process of China's household registration system reform was accelerated. As of December 2016, Beijing issued the "Implementation Opinions on Further Promoting the Reform of the Household Registration System," and household registration reform programs in 31 provinces in China have all been issued.⁴ It can be seen from the reform programs in various places that an essential part of the reform of the household registration system is the partial realization of the right to freedom of movement of citizens. For example, the distinction between the nature of agricultural and non-agricultural registered permanent residence is generally abolished in various places. At the same time, it is proposed to improve the residence permit system in the region and establish and promote the policy of credit settlement. That is the first time since the promulgation of the 1982 Constitution that our government has explicitly affirmed freedom of movement, and its positive significance cannot be denied. It can be said that the reform mentioned above measures have, to a certain extent, separated citizens' freedom of movement from the household registration system. However, in our country, the right to freedom of movement of citizens lacks a direct constitutional and legal basis. Whether the right to freedom of

³ See the "Notice issued by the General Office of the State Council on Actively and Steadily Promoting the Reform of the Household Registration Management System", Xinhuanet, http://news.xinhuanet.com/politics/2012-02/23/c_111561689.htm, Last Visit Date: December 18, 2016.

⁴ See Qin Jiaofeng and Xu Haitao: "Domestic Household Registration Reform Plan Is Complete in 31 Provinces, Will the Cancellation of Agricultural Hukou Affect Rights and Interests?", Last visit date: December 18, 2016.

movement should be guaranteed at the constitutional level and how to protect it is a question worth pondering. Based on this problem awareness, this article attempts to demonstrate and improve our citizens' right to freedom of migration by comparing and analyzing the provisions on the right to freedom of movement in the constitutions outside the region.

2. THE CONSTITUTION SHOULD GUARANTEE THE RIGHT TO FREEDOM OF MOVEMENT

Before proceeding with the argument, the author needs to explain that the current research on the right to freedom of movement in academia generally regards it as a fundamental right in the Constitution, and conducts specific research under the guidance of such theoretical presuppositions. The author believes that this kind of research has specific problems logically. As Amartya Sen, a well-known Indian scholar and Nobel laureate in economics, puts it, "A set of fairness theories that can serve as a basis for practical reason must include methods to evaluate how to reduce injustice and promote fairness, not just committed to portraying a just society."⁵ It is taken for granted that the right to freedom of movement is a constitutional right and neglects to justify it as a constitutional right. If the right to freedom of movement as a legitimate basis for constitutional rights does not exist, no matter how it is constructed, it will not be persuasive. Because "the transcendental approach itself cannot answer questions about advancing justice, nor can it compare the various proposals that make society more just, but only a mirage to achieve a world of absolute justice on the spot."⁶ In other words, explaining freedom of movement why it can be a constitutional right is a prerequisite for its further construction. That is also a logical starting point for writing.

2.1. A Semantic Analysis of Freedom of Migration

The definition of the concept is the premise and basis of cognitive things, so it is necessary to define the meaning of "freedom of

⁵ See Amartya Sen, "The Idea of Justice", translated by Wang Lei and Li Hang, Renmin University of China Press, 2012, p.3.

⁶ See Amartya Sen, "The Idea of Justice", translated by Wang Lei and Li Hang, Renmin University of China Press, 2012, p.86.

migration". In ancient Chinese, the term "migration" contained at least the following three meanings: first, change and change; second, derogation, exile, and removal of position; third, change or change in location.⁷ According to the "Modern Chinese Dictionary", the term "migration" is equivalent to "migration", which means "leave the place and change places."⁸

In English expressions, "migration" corresponds to the words flight, flit, migrate, and so on, and their meanings are birds flying, moving away, and relocating overseas. According to this, the author defines migration connotation as the following four aspects: one is to leave his original place of residence; the other is to travel and exercise in different places; the third is to choose a new place of residence; the fourth is to live in a new place of residence settle down.⁹ As for the term "migration", does it include a particular purpose, that is, purposeful, seasonal migration like animals? The author believes that in the context of "freedom of migration", it does not require purpose, but emphasizes movement, that is, as long as it is transferred and settled between different places, it is migration.

According to the definition above of "migration", the author believes "freedom of migration" refers is about the freedom that citizens have to choose the residence place. According to different contexts, "freedom of movement" includes both domestic freedom of movement and freedom of movement abroad.¹⁰ From the domestic perspective, freedom of movement means that citizens can choose their residence place in any region, including a federal state from a state relocated to another state, except following conditions and procedures required by law, the place of immigration must not require a deposit or any special fee from the citizens who move into the place. Freedom of movement means freedom to move abroad and enter or leave the country.

⁷ See Commercial Press Dictionary Research Center: Ancient Chinese Dictionary, Commercial Press, 2014, p. 1226.

⁸ See the Dictionary Editing Room of the Institute of Linguistics, Chinese Academy of Social Sciences: Modern Chinese Dictionary, 5th ed., Commercial Press, 2006, p. 1085.

⁹ See The English-Chinese Dictionary, The Commercial Press, 1998, p. 519 and p. 877.

¹⁰ See Guanghui Wang, Comparative Constitution Studies, Peking University Press, 2007, p. 193.

2.2. The Value of Freedom of Migration

The Constitution should guarantee freedom of movement. In terms of value, it is mainly based on the following two reasons:

2.2.1. Freedom of movement is a natural right

The reason why the Constitution can guarantee freedom of movement as a constitutional right is, first of all, because freedom of movement is a natural human right in the sense of natural law. As a natural right, freedom of movement is usually closely linked to "civil rights" and "freedom rights". For example, in the "Social Contract", Rousseau demonstrated the political connotation of freedom of movement in the sense of natural law. He believed that the state was formed by the social contract reached by all people by "public will." From now on, residence constitutes consent, and living in the territory **is subject to sovereignty**.¹¹ Hayek also pointed out that "People have discovered many laws to liberate slaves, and these laws have drawn us a detailed picture of the basic elements of liberty. It is the emancipation decree that usually grants the rights of liberated slaves: first, it gives them the legal status of protected members in the community; second, it grants them immunity from arbitrary arrest; Right to do any work; fourth, give them the right to move according to their choice."¹²

It should be noted that the doctrine of natural law has made many demonstrations of the right to freedom of migration. Although the argument still cannot escape the transcendental model, it must be acknowledged that the right to freedom of migration in the sense of natural law has obtained the vast majority of the world today.

2.2.2. Freedom of movement is a fundamental right

Secondly, the basic right attributes of the right to freedom of movement make it protected by the Constitution. Is freedom of movement a fundamental right as a natural right? The answer is yes; freedom of movement is and should be a fundamental right. It can be said that freedom of movement is as important as basic rights such as freedom of speech and freedom of belief. The reason is:

¹¹ See Rousseau, *The Social Contract*, translated by He Zhaowu, Commercial Press, 3rd edition, 2003, p. 29.

¹² See Von Hayek: *Principles of Free Order*, translated by Deng Zhenglai, Life · Reading · Xinzhi Sanlian Bookstore 1997 ed. p. 15.

First, the right to freedom of movement is closely related to other specific rights, such as the right to vote and the right to marriage. In summary, the right to freedom of movement is the basis and prerequisite for the realization of such rights as citizens voting right and the right to freedom of marriage. Freedom of migration is conducive to eliminating differences in status and disparity among citizens. As some scholars have said, "Freedom of migration is not only an important human right but also a mechanism for entrusting other human rights. Without freedom of migration, other freedoms or rights will be endangered Implementation."¹³ Second, the reason why the right to freedom of movement is a basic right is, from the perspective of human nature, the embodiment of the legitimate interests of citizens. As the American scholar, Maslow puts it, "People's needs are hierarchical. They can be divided into physical needs, safety needs, social needs, respect needs, and self-actualization needs from low to high. These needs are as the level rises when the needs of the lower level are met, the pursuit of the needs of the higher level becomes the driving force for the behaviour."¹⁴ Based on human nature, citizen migration may be due to physical and security needs. For example, when a natural disaster comes, or war occurs, citizens will choose to move from their current place of residence to a place where there is no natural disaster or war. Social, citizen migration may also be based on social, respect, and self-actualization needs. For example, when citizens are unable to socialize effectively in the current place of residence or cannot obtain the respect they desire, citizens tend to migrate from the current place of residence to helpful Where to get respect and realize themselves.

2.3. In Fact level

The relevant normative provisions on "the right to freedom of movement" on a global scale today also reflect that the Constitution should guarantee freedom of movement. It should be pointed out that the constitutional guarantee of freedom of movement is not a common practice since ancient times. Under the traditional feudal order,

¹³ See Wang Yaohai, *The Constitutional Pulse of Freedom of Migration in China*, Human Rights, 2016, No. 2.

¹⁴ See Lu Naiji, *Human's "Nature-Society, Cognition-Emotion" need Hierarchy and the Way to Realize It*, *Journal of Jiangsu University of Science and Technology (Social Science Edition)*, 2014, No. 1.

freedom of movement did not exist. It can be said that, in a sense, each feudal territory has become a "country", and various estates "remain old and die."¹⁵ It is generally believed that the earliest country to regulate freedom of movement was the United Kingdom. Article 41 of the Charter of Freedom of 1215 states: "Except during wartime and the people of hostile countries, all businessmen can follow the old customs, Can be exempt from harsh donations and miscellaneous taxes, safely pass through waterways and dry roads, enter or leave England, or stay or delay business throughout England."¹⁶ After the Second World War, with the growing demand for protecting human rights, freedom of movement has become not only a matter of domestic law but also a basic human right of concern to the international community. The law is more extensive and stronger.

First, at the level of international law, freedom of movement should be guaranteed. Article 13 of the Universal Declaration of Human Rights declares: "(1) Everyone has the right to migrate and live in the territories of all countries. (2) Everyone has the right to leave any country, including his own, and return to his country. "Article 12 of the International Covenant on Civil and Political Rights also states:" Everyone who is lawfully in the territory of a State has the right to freedom of movement and freedom of choice in that territory; everyone is free to leave any country, including his own country; no one may arbitrarily be deprived of his right to enter his own country. "

Second, from the perspective of the constitutional practice of each country, freedom of movement is guaranteed by the Constitution. Dutch scholars Henry Marsewen and Gelder van der Tang have conducted statistics on 157 written constitutions in the world. After their analysis, they have concluded that 87 freedoms of movement are stipulated in individual civil liberties, accounting for 57% of the statistics. Among the nearly 60 constitutions enacted after the mid-1970s, 49 expressly stipulate that citizens have freedom of movement,

¹⁵ See Zhang Qianfan, "The Freedom of Migration of Beggars and Its Constitutional Significance", Law Science, No. 7, 2004.

¹⁶ See Quoted from Zhu Fuhui, "On Freedom of Migration", "Journal of Sichuan Normal University (Social Science Edition)", No. 2, and 2001.

accounting for 91% of the constitutions under statistics.¹⁷ For example, Article 11 of the German Basic Law¹⁸, Article 22 of the Japanese Constitution¹⁹, Article 16 of the Italian Constitution²⁰, and Article 19 of the Indian Constitution²¹.

Third, judging from the evolution of "freedom of migration" in our Constitution, freedom of movement should be guaranteed by the Constitution. As we all know, since the Constitution of the People's Republic of China was promulgated in 1954, China's Constitution has been amended many times. The current 1982 Constitution does not explicitly provide for "freedom of movement." However, through a review of the previous amendments, it can be seen that the 1954 Constitution stipulates the "freedom of residence and migration" of citizens in the basic rights clause.²² It was only in subsequent constitutional amendments that legislators deleted the provisions on freedom of movement in the 1954 Constitution norms based on various considerations, which resulted in the absence of the provisions on freedom of movement in the current 1982 Constitution. Although the current Constitution does not explicitly stipulate "freedom of movement", the fact that a basic right is not explicitly listed in the Constitution does not mean the right itself does not exist. According to the theory of rights not enumerated in the Constitution²³, the author believes that the right to freedom of movement is a "semi-real non-enumerated right"²⁴ in our Constitution. The protection of human

¹⁷ See Henry Marsewen, Georg van der Tang: *A Comparative Study of the Written Constitution* translated by Chen Yunsheng, Taipei Jiuda Culture Co., Ltd. and Laurel Books Co., Ltd. 1990 edition, p. 268. Quoting from Zhu Quanbao: "On the Constitutional Guarantee and Legal Implementation of Freedom of Migration in China," *Politics and Law*, Issue 11, 2015.

¹⁸ See Sun Qian and Han Dayuan, *The Constitution of the Ten European Countries*, China Procuratorate, 2013, p. 132.

¹⁹ See Sun Qian and Han Dayuan, *The Constitution of the Ten European Countries*, China Procuratorate, 2013, p. 80.

²⁰ See Sun Qian and Han Dayuan, *The Constitution of the Ten European Countries*, China Procuratorate, 2013, p. 434.

²¹ See Sun Qian and Han Dayuan, *The Constitution of the Ten European Countries*, China Procuratorate, 2013, p. 270.

²² See Wang Guanghui, *On the Development of the Fundamental Rights of the Chinese Constitution*, in "Politics and Law Series", Issue 4, 2010.

²³ See Wang Guanghui, *On the Rights Not Enumerated in the Constitution*, in *Law and Commerce Research*, Issue 5, 2007.

²⁴ According to Professor Wang Guanghui's research, the so-called "semi-real non-enumerated rights" means that if people claim that the Constitution should protect a fundamental right, part of the so-called basic right is already within the protection scope of the listed fundamental right. However, it cannot be covered entirely, and

rights and the equality of all citizens before the law "and the" inviolability of the personal liberty of citizens "stipulated in Article 37 of the Constitution are derived, but the preceding provisions do not fully cover the right to freedom of movement.

3. THE RIGHT TO FREEDOM OF MOVEMENT SHOULD BE LIMITED

The above analysis shows that the right to freedom of movement, as a basic right, should be effectively guaranteed by the Constitution, both from a proper perspective and a substantive perspective. So, is there no restriction on the guarantee of freedom of movement by the Constitution? The author will analyze two aspects of value and facts:

3.1. The Value

In our opinion, the right to freedom of movement, like other basic rights, should be subject to certain restrictions. Because in theory, freedom is a relative, not an absolute value, and the degree to which it is cherished depends more or less on its consequences in the current context.²⁵ The American scholar Hannah Arendt also bluntly stated: "The freedom of real and objective existence is always limited by space. It is especially obvious for the greatest and most basic freedom of movement of all negative freedoms. The nation Territorial borders or city walls of states and states are spaces that understand and protect people's freedom of movement. To a large extent, true freedom of movement is universal and effective freedom. Freedom in the positive sense may only be contained inequality, and equality itself is by no means a universally valid principle, but can only be applied restrictively in a spatial context."²⁶ However, it must be emphasized that restrictions on the right to freedom of movement must meet

further supplementary protection is required by the general provisions of fundamental rights in the Constitution.

²⁵ See Stephen Holmes, *Liberalism in the Mirror of Transnational Terror* Tocqueville Review/La Revue Tocqueville, no.2, 2001, pp.5—6. Quoting from Qi Jiangang, "Pragmatist Constitution of Emergency-Richard A. Posner's Theory and Its Enlightenment to China", *Chinese and Foreign Law*, No. 4, 2008.

²⁶ Hans Lindahl, *Finding a Place for Freedom, Security and Justice: The European Union's Claim to Territorial Unity*. *European Law Review*, 2004 (29) . Quoting from Yang Xiaomin: "Yang Xiaomin: On the Symbiotic Relationship of Freedom of Migration and National Sovereignty and Citizenship: Taking the United States and the European Union as Examples", *Contemporary Law Science*, Issue 3, 2011.

certain standards or conditions, for example, the requirements of the principle of proportionality; and, for example, they must be restricted by law. Otherwise, certain restrictions on the right to freedom of movement would, in essence, destroy that right.

3.2. Fact level: German model and Russian model

As mentioned earlier, citizens' freedom of movement is now generally provided for in most constitutions. Judging from the constitutional practice of each country, the right to freedom of movement is not absolute, and it is also subject to the restrictions of each country's legislation. By combing the constitutions of various countries, we can find that there are two main ways to restrict the right to freedom of movement in the constitutions of various countries:

A model of "explicit restrictions" represented by Germany, for example, Article 11 (2) of the German Basic Law states: "In the absence of an adequate basis for living and a special burden on the public, or survival in the federal or state. When the defence of the basic order of freedom and democracy requires defence, it is necessary to prevent the danger of plague, natural disasters or particularly serious accidents, to prevent young people from being left unattended, or to prevent criminal acts."²⁷; at the same time, Article 17a, paragraph 2 of the Law stipulates that: "The law enacted for defence, including civil defence, may provide for restrictions on the basic rights of freedom of movement and the inviolability of residence."²⁸

Another is the "generalized restriction" model represented by Russia. For example, Article 56 of the Constitution of the Russian Federation states: "In the case of an emergency, in order to protect the safety of citizens and defend the constitutional system, the constitutional nature the law makes some restrictive provisions on the rights and freedoms of citizens. However, the scope and duration of implementation of these restrictive provisions should be made clear."²⁹

It can be seen from the above constitutional norms that the two models have the most in common: The restrictions on the right to

²⁷ See Sun Qian and Han Dayuan, *The Constitution of the Ten European Countries*, China Procuratorate, 2013, p. 132.

²⁸ See Sun Qian and Han Dayuan, *The Constitution of the Ten European Countries*, China Procuratorate, 2013, p. 135.

²⁹ See Sun Qian and Han Dayuan, *The Constitution of the Ten European Countries*, China Procuratorate, 2013, p. 192.

freedom of movement both stipulate that the law must conduct them. It can be said that there are advantages and disadvantages to the above two restrictions. First, as far as the German model is concerned, the Constitution explicitly enumerates the restrictions on the right to freedom of movement. To some extent, it has played a role in preventing arbitrary restrictions on the right to freedom of movement, and this model is a milestone in the legislation on freedom of movement.

At the same time, it should be pointed out that with the changes in social life; the substance of the constitutional provisions will change and produce certain social effects.³⁰The specific circumstances that restrict the freedom of movement in an enumerated manner may reduce the "restrictions. The validity of the "Articles" makes it easy to fall into the predicament of frequent amendments to the constitutional provisions. Secondly, as far as the Russian model is concerned, the right to freedom of movement and other fundamental rights are considered as a whole, and general restrictions are imposed on it. The technical requirements of the constitutional provisions are relatively low, and it is a potion for countries with less developed legislation Good policy. However, the generalized restriction model does not correctly distinguish the right to freedom of movement from other fundamental rights, which is likely to cause legislators to abuse the right to restrict freedom of movement, thereby reducing the right to freedom of migration into a mere formal situation.

The above analysis shows that the Constitution guarantees the right to freedom of movement is not absolute and unconditional. Our Constitution does not stipulate the right to freedom of movement. If the right to freedom of movement is included in the Constitution in the future, not only must it be guaranteed, but it must not be ignored. The right to freedom imposes the necessary restrictions.

³⁰ See Qin Qianhong: "On the Changes of the Constitution", "Chinese Law Science" No. 2 2001.

4. HOW THE RIGHT TO FREEDOM OF MOVEMENT CAN BE EFFECTIVELY GUARANTEED

The author makes a comparative analysis of "why does the right to freedom of movement require constitutional guarantees" and "how to limit it necessary" through the preceding. The purpose is to establish the basic idea of protecting the right of citizens to freedom of movement in our Constitution: that our country's Constitution should establish protection of citizens' migration, the value objective of the right to freedom also requires appropriate restrictions on the right to freedom of movement. The following analysis focuses on the specific ways in which our Constitution guarantees freedom of movement:

4.1. The Chinese Constitution and Comparative Analysis of the Right to Freedom of Movement in the Extraterritorial Constitution

As mentioned earlier, the right to freedom of movement is currently regulated in most countries in the world. Through combing, the author finds that there are mainly three types of provisions on the right to freedom of movement in the constitutional practise of various countries based on whether the term "migration" appears in the constitutional provisions. First, the right to freedom of movement is directly provided in the constitutional provisions; the second is that the right to freedom of movement is indirectly provided in the constitutional provisions; the third is that the right to freedom of movement is not provided in the constitutional provisions, but this right is recognized in judicial practice.

Among them, for the first type, the author mentioned it before and will not repeat it; the second type is relatively rare in the practice of the constitutions of various countries, for example, Article 14 of the Argentine National Constitution states. The following rights: labour establishment of various legal industries, navigation and business, petitions to the authorities, entry, stay, transit, and exit³¹; as stated in Article 2, paragraph 4 of the Constitution of the Kingdom of the Netherlands: The parliamentary order provides otherwise. Otherwise,

³¹ See Sun Qian and Han Dayuan, *The Constitution of the Ten American States*, China Procuratorate, 2013, p. 3.

anyone has the right to leave the country. "³² The third type of typical country is the United States. The United States Constitution does not directly or indirectly provide freedom of movement, but the right to freedom of movement is still guaranteed in the United States. That is because the Federal Supreme Court has established guarantees for the right to freedom of movement by Article 14 of the United States Federal Constitution and related constitutional jurisprudence.³³

Besides, according to the constitutional provisions, the specific content of "freedom of movement" is defined as a standard. There are also three models: First, only domestic freedom of movement is regulated. For example, Article 11 (1) of the German Basic Law states: "All German Everyone has the right to free movement throughout the Federation."³⁴ The second is to regulate only the freedom of international movement, as mentioned in Article 2 of the Constitution of the Kingdom of the Netherlands mentioned above. Third, it provides for both domestic freedom of movement and international freedom of movement. For example, Article 27 of the Constitution of the Russian Federation states: "Everyone who legally resides in the territory of the Russian Federation has the right to freedom of movement, choice of residence and place of residence; Both can leave the country free from the Russian Federation, and citizens of the Russian Federation have the right to return freely to the Russian Federation."³⁵

The author believes that there is no "good or bad" issue in the countries above' model of the right to freedom of movement, because all countries are based on a shared value benchmark-guaranteeing the right to freedom of movement, but only in different forms of expression. At the same time, we should also see that the reasons why countries protect the right to freedom of movement will take different models, which are determined by the different legislative backgrounds, legislative techniques, legislative culture, political

³² See Sun Qian and Han Dayuan, *The Constitution of the Ten European Countries*, China Procuratorate, 2013, p.254.

³³See Zhu Quanbao and Wu Chuanyi, *Guarantees or Restrictions: Constitutional Guarantee of the Freedom of Migration in the United States and Germany and Its Enlightenment*, *Journal of Beijing Administration Institute*, No. 2, 2016.

³⁴ See Sun Qian and Han Dayuan, *The Constitution of the Ten European Countries*, China Procuratorate, 2013, p. 132.

³⁵ See Sun Qian and Han Dayuan, *The Constitution of the Ten European Countries*, China Procuratorate, 2013, p. 187.

systems, population numbers, and other factors. The key to the problem, it lies in whether the right to freedom of movement can be effectively implemented in a specific practice.

4.2. Feasible ways to realize the constitutional guarantee of the right to freedom of movement in China

Although the aforementioned different models do not have the problem of "good or bad", it does not mean that foreign regulations on the right to freedom of movement cannot provide valuable guidance and methodological guidance to our country. Through the previous comparative analysis of the constitutional practice of the right to freedom of movement outside the country, the author believes that there are roughly two options for strengthening the constitutional guarantee of the right to *freedom of movement of citizens in China*:

First, the current Constitution is amended to include freedom of movement as a fundamental right in the Constitution. Judging from the constitutional history of democratic countries and the characteristics of migration as a fundamental human right, migration into the Constitution is the general trend.³⁶The reason is that although from the perspective of China's practice, the lack of constitutional freedom of migration does not hinder the movement of the urban and rural population, under the existing dual urban-rural structure, the lack of a constitutional basis for the right to freedom of migration would indeed Institutions and practices that violate the freedom of movement of citizens provide opportunities.

The author believes that the inclusion of the freedom of migration into the Constitution mainly involves two aspects, one is the expression of the constitutional provisions on freedom of migration, and the other is how the specific content of the provisions on freedom of migration should be set. Concerning the first aspect, we can learn from the standard practice in the constitutions of countries around the world today, that is, to expressly stipulate the "right to freedom of movement" directly. Regarding the second aspect, there are mostly two levels: the right to freedom of movement protection and the limitation of the right to freedom of movement. The right to

³⁶ Han Dayuan, Hu Jinguang, "Reference Book on Constitutional Teaching", Renmin University of China Press, 2003, p. 398.

freedom of movement protection, the author proposes that the Constitution of the Russian Federation can be used as a reference to regulate domestic freedom and international freedom of movement, that is, to provide citizens with the right to freedom of movement in the country and the right to choose their place of residence, as well as the right to move abroad. Alternatively, the freedom to leave the country; for the restrictions on the right to freedom of movement, the author believes that the German model and the Russian model described above should be combined to explicitly list the restrictions on freedom of movement, while taking into account factors such as social change, Lay down on situations that restrict freedom of movement. Specifically, the author envisages that the freedom of movement may be regulated by law for military, defence, criminal, and public interest purposes.

Second, explain the current Constitution and guarantee freedom of movement. As mentioned earlier, the right to freedom of movement is a "semi-real and unlisted right" in our Constitution. To some extent, the "state respects and guarantees human rights and citizens are equal before the law," as stipulated in Article 33 of our current Constitution. "And the" inviolability of the citizen's freedom "stipulated in Article 37 of the Constitution, but the preceding clauses do not fully cover the right to freedom of movement. Therefore, it is necessary to realize further the right to freedom of movement through the further interpretation of the Constitution, actively advocated by domestic scholars. For example, some scholars believe that before the "human rights clauses" were enshrined in the Constitution, our understanding of fundamental rights was empirically closed, and we could only consider fundamental rights listed in Chapter 2 of the Constitution. After the "human rights clauses" are enshrined in the Constitution, rights not listed in the Constitution, such as the right to life and freedom of movement can be included in the scope of fundamental rights because of the human rights clauses and thus protected at the constitutional level.³⁷

From the perspective of comparative analysis, constitutional protection of the right to freedom of migration by interpreting the Constitution is similar to the practice of guaranteeing the right to freedom of migration in the United States. However, it is worth noting

³⁷ See Zhang Xiang, "Systematic Thinking of Basic Rights," *Tsinghua Law*, 2012, No. 4.

that our country is fundamentally different from the United States. First of all, their legal systems are different: As a country of case law, the constitutional judgments made by the courts are usually very instructive. The realization of constitutional protection of the right to freedom of movement through judicial adjudication can be said to have a basis of institutional rationality; the representative of the Chinese legal system, China mainly adopts statutory law. According to Article 67 of the Chinese Constitution, the Standing Committee of the National People's Congress is the sole organ to interpret the Constitution. The promulgation of a formal "Constitutional Interpretation Procedure Law" and the constitutional interpretation to regulate whether the effectiveness of the constitutional guarantee of the right to freedom of movement is weakened through constitutional interpretation is still an unknown issue. Secondly, the level of the rule of law is different, which is mainly reflected in the legal system construction and citizen legal literacy. As the world's largest developed country, American citizens have a high overall legal literacy, and they have a complete rule of law mechanism and a power balance mechanism. Freedom can be widely recognized and respected by the society; compared with the United States, it can be said that China's legal construction is relatively backward, citizens' legal literacy is generally not high, and lack of adequate supervision of public power. It is challenging to guarantee freedom of movement through constitutional interpretation.

5. CONCLUSION

It needs to be emphasized that the preliminary analysis of the constitutional practice of freedom of movement in foreign countries is only a methodological guide for the constitutional guarantee of the right to freedom of movement in China. To improve the constitutional guarantee of the right to freedom of movement of our citizens, we must not only revise the Constitution or interpret the Constitution, but also base ourselves on China's reality. That is because, in order to realize the right to freedom of movement, China should not just stay at the stage of a similar experience of extraterritorial experience, but also pay attention to China's unique historical and institutional background. First, China's socialist country is different from the aforementioned extraterritorial countries and requires the

constitutional guarantee of freedom of movement to properly handle the issue of socialist public ownership and clarify farmers' ownership of rural land. Second, China's unique "urban and rural. The aforementioned extraterritorial countries do not own the "yuan" structure. When constitutional guarantees are provided for freedom of migration, various constructions in rural areas must be strengthened to reduce inequality between urban and rural areas. Third, China's household registration system emphasizes restrictions on freedom of migration. The aforementioned national registration system for extraterritorial countries only serves to register the number of people.³⁸ It is required to remove further the restrictions on freedom of migration in the household registration management system when guaranteeing the freedom of movement at the constitutional level.

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