

The Instrumental Rationality Nature of the Equality Theory

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Abstract: How to understand the issue of equality is one of the theoretical controversies through the ages. Unlike the previous debates that emphasize egalitarianism and anti-egalitarianism, there are also different theories that require equality in some aspects, such as equality of resources, equality of opportunity and equality of luck, a new way of interpretation of formal logic and gender equality based on economic analysis will provide a new perspective for deepening the understanding of equality theory. It helps to find out the difference between equality theory and equal rights theory and equal protection theory. On this basis, it makes us consider the more realistic and pure core problem of equality theory, and let us have a clearer understanding of the instrumental rational nature of equality theory.

1. Introduction

Equality is one of the core values pursued by the contemporary society ruled by law, but the understanding of the concept of equality in different historical periods use the same equality "bottle" to load the content of "new wine" in different times. In what aspects require equality or what kind of equality is worth discussing and unavoidable topic, because equality theory in essence is how to deal with natural differences and human differences, embodies the reasonable differences to achieve specific value goal tools, unlike the anti-equality which throw aside the idea of equality, also do not adhere to the equality of equalitarianism.

The current discussions on the topic of equality focus on "what equality demands ?", such as Ronald Dworkin's "resource equality" in the field of politics [1], other concepts put forward: income equality, equal opportunity [2], equal rights, equal ability [3], equality of luck [4], are proposed to find a certain theory which answer the question. In terms of source and priority of its value, egalitarian theory can be divided into two basic types: external egalitarianism and internal egalitarianism. Internal egalitarianism emphasizes that equality is independent and worthwhile, especially in the field of political philosophy [5]; External egalitarianism tries to pursue equality on a more basic value while avoiding committing to intrinsic egalitarianism, mainly in economic schools such as prioritarianism [6], contractualism and sufficientarianism [7]. But this paper is discussing a different formal equality with traditional one, or the formal framework of all equality theory. It should be clarified that the topic of equality in reality does not strictly distinguish the form and content of equality theory, and actually cannot distinguish it. But in theory, we can make abstract, symbolic or formal assumptions of the substantive factors involved in equality, so as to highlight what is discussed in equality itself, and whether the framework of equality itself is meaningful for building a clearer and reasonable equality theory in terms of rights or theory of equal protection.

The discussion in this paper will be based on realistic materials rather than certain idea, supported and sculpture by the conditions in the real environment, so it tends to "describe" or explain the equality or inequality phenomenon in reality, and reduce the value judgment or normative requirements for certain equality or inequality phenomenon, which could avoid the preset position in belief, while social laws based on empirical materials (even hypothetical, but reasonable cases) can explain much more other similar social phenomena.

Specifically, the discussion will start from a real case, which is a typical problem of gender

equality valued by the modern society, and extend its application appropriately on other hot topics of equality theory, to test whether equality theory of this paper is reliable.

2. Analysis Tool: One Case of Gender Equality

2.1. Case Profile [8]

The plaintiff Fengqing Xie, born in Taoyi Village on October 8, 1986, is the member of the collective economic organization of the defendant, Fifth Economic Cooperatives of Taoyi Village. The plaintiff's household registration has not been transferred in the Fifth Economic Cooperatives of Taoyi Village since her birth. The plaintiff married to Jianxin He on January 12, 2011, and the plaintiff's household registration was still not moved out. However, the defendant has stopped distributing the annual bonus to the plaintiff since 2016 on the grounds that the plaintiff was married.

The plaintiff applied to to government of Shapu town, Dinghu district, Zhaoqing for administrative treatment in September 2019, the government on September 9, 2020 made the decision: Confirm that Fengqing Xie possesses the membership of fifth economic cooperatives of Taoyi village, enjoys equal collective income distribution. Neither the plaintiff nor the defendant has applied for administrative reconsideration of the written decision within the reconsideration time limit, and the written ruling has now taken legal effect. After the administrative award came into effect, the defendant did not issue any collective income distribution to the plaintiff, but had paid the dividend income of RMB 2, 000 to other members of the organization in 2018. The plaintiff believed that the defendant infringed on her rights and interests of the members of the collective economic organization, and then filed a civil lawsuit with the people's court.

The people's court, on the grounds that the membership of the plaintiff has been confirmed by the government and article 261 of Civil Code, determined that the plaintiff has the equal right of collective income distribution with the members, and then ordered the defendant to pay the dividend income to the plaintiff.

2.2. Civil Judgment of Dinghu District People's Court of Zhaoqing City, Guangdong Province (2021) No.350, Guangdong 1203 Analysis of the Case

Although many theories of equality believe that equality refers to "the same treatment of the same situation and different situations treated differently", this paper still regards it as a hypothesis to be tested (should be elaborated later) but as the premise of discussing this case. Under this assumption, if we deem the judgment of this case and collective resolution about collective income distribution embodies the theory of equality (even if the scope of subject of equality is different), we should find out what kind of situation conforms to the requirements of equality, that is, discern what is "the same treatment" under "the same situation", or what belongs to the "the same situation" but "treated differently" in this case.

In this case, the collective and the non-collective members are distinguished in the scope of collective income distribution, and the collective income is distributed differently according to their different qualifications. The criterion for dividing different situations in this sense is collective membership. On the question of what standard to determine the qualification and scope of collective membership, the collective economic organization put forward another standard different from the household registration, that is, there is no substantial correlation between the qualification of collective members and household registration in this case, and should be treated differently on this basis. As a result of differential treatment, people registered in the village collective are not necessarily members of the village. In this case, according to the resolution made by the collectives, the collective membership should meet two conditions: ① household registration of the village; ② Not married people outside the village if you are the woman meeting condition ①. According to this standard, if women with household registration of the village, their collective membership will be deprived because of marriage outside. But the government and the people's court deem that the household registration itself has the legal effect of determining the collective membership, that is,

the people possessing household registration in the village and the scope of the village collective members is consistent, there is no difference between the two, also should not be treated differently with them. In this case, it means the plaintiff should not be deprived of her collective membership because of her marriage, and the household registration should be upheld as the only standard.

3. The Theoretical Analysis of Case

3.1. Symbolization of Equality Theory

Theory is one thing that is to systematize and simplify the generalized causal relationship between various phenomena. In order to easily explain the essence of the equality problem, it can also be symbolized by means of formal logic. The basic treatment mode of equality problems can be composed of two simple hypothetical propositions: proposition ① if S, then E; and proposition ② if non-S, then non-E. ① \wedge ② is the basic model of equality theory. Since the presentation is adopted by mode of formal logic, there is different from with propositions of pure formal logic (namely the validity of form) for the basic mode of equality theory, which focuses more on the expression and elaboration of the two elements of S and E.

In the two hypothetical propositions, S describes the extent to which the pending facts as the same. The key question in this part is whether it's reasonable to generalize facts to the same situation S, where non-S is also a treatment of pending facts. However, which facts may be summarized and whether they belong to the implication relationship may have a normative meaning. While E and non-E belong to the standard requirements corresponding to S or non-S, which reflects a process of value judgment and choice: If a fact can be summarized as situation S, it shall be handled or acted in the manner or result of E, and the violation against that means an inequality; for non-S, we shall not act as E, otherwise it is still an inequality.

For S itself, it can be further formalized. If we decompose all the facts F as F1, F2.... FN, in the sense of human rights, the concept of equality emphasizing "All men are created equal" is to simplify or reduce all the facts about human beings into the level of organism "person" according to DNA, and take this as the content of S. That is, if each person meets S, all people should be treated equally in the way of E. In the classic expression of contemporary empirical law, the equal state of "every person meets S" is limited in line with subject or regional applicable scope of laws. For example, Article 33 of the Constitution of the People's Republic of China stipulates that all citizens of the People's Republic of China are equal before the law. If one person is a citizen of the People's Republic of China, he has the right to be treated as other Chinese citizens "before the law" in China. In this article, S is "someone is a citizen of the People's Republic of China", and E is "all equal before the law".

Accordingly, the facts in this case can be decomposed into a bundle of situations. If the basic model of equality theory is applied to this case, it can be found that S in this case means "someone is a village collective member", and E means that "each villager will enjoy the collective income dividend of RMB 2,000 in 2018". S itself is sometimes composed of a series of facts, and may a single fact, such as household registration (F1), non-married woman (F2), etc., and then abstract or reduce all other natural differences except F1 and F2 into the same FN, as the premise of equality theory but not as the content of S. However, the reason there is a difference between the scope of the collective members determined by the village collective resolution and the scope of the collective members determined by the court is that the standards elements or conditions of the collective members established by the judge and the collective resolution are different. The government and the court take the household registration as the only standard of determining the collective members (formalized as: S court and government = F1), and the collective resolution of the village on the basis of the household registration, had "non-married women" (F2) into the standard of determining the collective members, formalized as: S village = F1 + F2. The difference between the court and the collective resolution can be expressed in S court minus S village, that is, S court-S village = F1- (F1 + F2) = -F2, that means, the difference between the two standards is

whether F2 is one of the necessary conditions to determine the collective membership.

Whether the household registration is in the village collective, there are differences between different people. That is, some people's household register in the village, some people's household registration is not here. The S court takes household registration as the only standard of determining whether collective members or not, and its role is to take household registration as a type of difference, not just one case. Collective resolution of the village not only took household registration as the standard of delimit the equal range, but also made gender and marital status into the standard of it. Excepting the dispute over the collective resolution and the court to determine the collective membership, the collective members enjoy the same collective income dividend.

3.2. Differentiating the Reasons for the Actual Differences

Everyone knows the basic model of equality and basically knows how to express it, even if it is not in stereotyped language. It is not the original intention of this paper to only establish the model language to express the equality theory, but to explore the deeper problems in equality theory on this basis. For real society, from the perspective of physics and biology, unless in different ways to express the same thing, otherwise there are no two physical or biological sense of things completely same (the difference in the natural sense), even if the external performance attributes make it hard to discriminate for human beings, but there are always differences in the material, time and space conditions, etc. But human in production and life for the universal and absolute difference quantitatively, not follow the difference in this sense to treat, at least in the normative sense may exist same requirements beyond the action, space and time conditions such as the Constitution of "all citizens equal before the law", even when there are still the universal, absolute different treatments and practical actions. So why do humans treat some differences in the same way and emphasize differences on the other hand?

Correctly distinguishing differences in facts is in line with the needs of cognition and decision-making to decide whether they should be treated differently. In the case, why should collective and non-collective members be treated differently? This kind of discrimination is to construct a system of collective property right to deal with the inevitable collective property and other rights and interests in rural collective life, so as to reduce the possibility of negative externality caused by Commons Tragedy. In fact, the contracted management system of rural families has clarified and allocated rural collective property to households in the form of contracted management rights, so as to avoid the situation of "the leveling down" of the tragic characteristics of leading to equal poverty. Especially in the expropriation and compensation mechanism for household contracted land on the basis of collective land-ownership, the household also obtains the land compensation according to the numbers of the contracted land, and distributes the green seedling compensation according to the crops on the ground. By clarifying collective ownership for some collective common property but cannot contract to someone, it arouses enthusiasm and initiative for collective members to actively maintain and effectively use of collective property, at the same time the improper use of collective property made negative externalities caused by individual property division is internalized, which will promote the internal collective to make suitable management system through the villagers autonomy system for its characteristics and requirements of the collective property, such as packaging the collective property for rent, hiring collective members to management or having the village committee for management. At this time, the income distributed equally among collective members is a realistic consideration to reduce the occurrence of the Commons Tragedy and increase the collective wealth.

But in this case, will the exclusion of married women from collective members through the other villagers' resolution cause a Commons Tragedy? If all the rights and interests of the plaintiff are deprived based on the collective resolution, and the village or community where the plaintiff's husband is located agree to give the plaintiff the same rights, this will promote the village collectives to have the incentive to take other village ride, thus causing negative externalities to the whole society.

Another reason to exclude the collective membership of married women is that married women

basically do not live in the village and are unable to fulfill their obligations as villagers. But married women and rural migrant workers basically belong to the same situation at this point. Working outside is becoming the common way of rural labor to realize their social values, thus the influence of The phenomenon of migrant workers and the plaintiff married is almost same for the village collectives. If the collective of village be endowed with the right to exclude part of villagers from the collective members through democratic resolution system, the villagers can only choose between village collective income and income working-outside, which will undoubtedly greatly weaken the possibility of income through migrant workers' labor.

In addition, the village collective itself has collective committees and other collective property management institutions and institutional mechanisms, and on this basis, the comprehensive cost of collective property management and income distribution is lower compared with other ways. In addition, if equality theory is considered to be a discussion of how to distinguish and deal with realistic differences rather than erase the realistic difference, the difference is not a "original sin". If we can make differences a reasonable classification and proper treatment, then the differences will become the best way to create social wealth, improve everyone's living conditions. The economic basis of this reasonable theory of equality for dealing with differences lies in the scarcity of resources in real society, which including personality resources and unpersonality resources divided by Ronald Dworkin. The scarce resources compared with human needs requires human to try their best to use the limited resources to meet as many human needs as possible, which puts forward efficiency requirements for the way of using resource. Although this point of view will regard resource scarcity as a theory basis, but the "efficiency" of equality theory is not blindly product production efficiency, but a kind of rationality for subjects' main value pursuit based on an equal utility theory, also closer to instrumental rationality proposed by Max Weber .

Of course, this is not to say that a specific equality requirement is in line with its possible goals, in which irrational and other external factors may lead to the "irrationality" of a group to achieve a value goal for a certain equality requirement.

3.3. Reasons for Treating Different Situations Differently

Another key question in the proposition of "if S, then E" is: Why does S need a unified treatment of E, rather than other treatment N or L that are different from E? In the equality theory of law, it is the key how to define the "rationality" in the "reasonable difference". In the sense of law "rationality" generally points to the value of "justice". However, throughout the development of the concept of "justice" in law, we can see that "justice" itself becomes a value "bottle" just like "equality". There may be some clear orientations in the abstract general sense, but the specific value content is always full of controversy. Compared with the perspective of equality starting from reality and evidence rather than faith, just as Ronald H. Coase pulling the "transaction cost" into the basic research of economic theory, it makes the equality theory more realistic and scientific, and reduces its metaphysical attributes. In the practical sense of equality concept, whether in the field of political ethics or law, we have to consider the cost of equality, otherwise the pure concept of equality will lead real society gradually from modern civilization into "leveling down", that is, living standard of everyone will fall to the most vulnerable level and cannot be improved through redistribution, which is a fundamental deviation against the overall trend and pursuit of promoting social progress.

In terms of the value pursuit of economics, differences are the premise of all economic efficiency: the fundamental realistic premise of promoting productivity and improving human life through transactions. On the basis of the differences, natural persons with different natural foundations and socialization processes have different needs for different things in a particular situation, and pay different time, energy and other resources for different activities (especially production activities), which results in interindividual comparative advantage between different individuals in the same social activity. What's more, by guaranteeing and maintaining a market for the free exchange of products or services, everyone can engage in market cycle that he does best production at the lowest cost and increases his wealth in the exchange of what others are good at producing. In the process,

the total social wealth also increases. In terms of the background and requirements of economic efficiency and wealth growth, not only everyone is pursuing differentiated developments and abilities, but also the society is boosting this growth subconsciously.

In the book, *The Cost of Justice*, Professor Bingyuan Xiong has assumed the situations and causes of the difference between men and women. [9] When other conditions remain unchanged, it is only assumed when Pangu separates sky from earth, men and women need to face the problems of survival and reproduction together. The conditions required for reproduction and survival are the same as the realistic conditions, and the ability to breed and survive at this time are not clearly endowed to men or women. There are three possibilities for men and specialization for survival and reproduction: ① Men are just as tall as women, taking turns in survival and reproduction, or one of them is fully responsible for two things; ② Someone is tall and responsible for reproduction, and the other is petite but responsible for survival; ③ Someone is tall and responsible for survival, and the other is petite and responsible for reproduction. In the process of evolution for survival and reproduction in the most conducive way, ③ is the most "efficient" combination in human competition, that is, the ability of lower "cost" for more "benefits", and eventually in the evolution of natural selection constantly transforms human in shape and division of labor with such differences. In contemporary society of science and technology, the demand for pure manual labour in social survival is weakening, and men loss rational basis (comparative advantage) to promote "survival" and "reproduction", so the gender in labor opportunities, remuneration distribution and many other fields no longer become alone as a reasonable factors for differences. Factor affects the production efficiency lies in labor ability, which is the reasonable standard for distributing labor opportunities and remuneration distribution, because it conforms to the value pursuit of labor. Just relying on gender stereotypes and not on the basis of labor ability to exclude women from labor opportunities, it will have a great deal of superior labors meeting the working conditions and requirements omitted from the labor market, which results in that appropriate competition of social welfare surplus space will be further weakened, and it will stay in women's way through labor to create wealth, improve life. In a word, taking gender as the preset condition and the "fact" choice to distinguish the difference in labor ability violates the economic "efficiency" standard of both the employer itself and the society as a whole.

Accordingly, the racial discrimination between white and black people is not an "inequality", but in the systematic racial discrimination system the racial "equality" limits to white people, which is a "rational" choice based on the "white first", at least based on the white society consensus, and treats other races differently.

In this case, the collective resolution excluded the plaintiff from the subject of collective income distribution, it is indeed a way to prevent collective interests "outflowing", and maintain collective interests through democratic resolution with instrumental rationality for the subject with collective membership. But the problem for the overall is that negative externalities is not internalized, which causes derogation for overall social welfare. The most favorable persons to avoid it is the village collective itself, that means it should be arranged for the village collective to avoid the exclusion of any people registered in the village from the collective members under the cost-benefit analysis and the improvement of social efficiency.

4. Conclusion

Equality theory and other theories about equality has differences in forms and contents. In a strict sense, equality theory answers how to deal with realistic differences, and emphasizes how to treat the same situation and with it action based on summarizing realistic differences. Whether a system is equal or not, we should review whether it sets equal scope of subject, whether and how to treat its subject value pursuit, help subject to achieve the value in a optimal way, that is, the instrumental rationality of equality theory can be reflected. Of course, this is not to say that equality theory should not pursue an ethical value as the goal. But based on an accurate understanding of equality theory and theory of model, our social pursuit of legitimate value goal can be achieved in a better way to avoid the specification content of the facts in a false reduction and abstract way, and

set up an efficient theory of equality theory to make goal better implementation.

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