

IV. As regards the freedoms, they are principally three in number, namely, personal liberty, freedom of communication (speech, press, assembly) and freedom of worship. As regards these, it may be said that the Charter simply proposes that the rule of law be adopted by the nations, namely, that no person shall be prevented from exercising these rights except as prescribed by law. This rule is fully established in Canada, although of course it may be expanded by increasing the protective legal remedies enjoyed by the public.

V. A Bill of Rights as distinguished from the Charter purports to guarantee freedom in some particular or generally to the inhabitants, particularly against infringement by any legislature, government or official. A Bill of Rights is either a declaration of fundamental and permanent principles to be found in some written constitutions, as, for example, that in the French Constitution of 1791 providing that every citizen had the right to speak, write, print and publish freely his thoughts subject to legal protection against abuse. Or, it may take the form, as in the case of the English Bill of Rights of 1689, of a series of express statutory prohibitions. You might call the first a general declaration of rights, the second a special Bill of Rights and different considerations arise depending on which type is under consideration. In some cases you may find a mixture of general declarations and specific prohibitions.

VI. Each of these freedoms is exercised by the doing of a great variety of separate and distinct overt acts. Some of these acts would be regulated or prohibited by parliament, some by the legislatures and some again would be regulated in different aspects by both parliament and the legislatures. The legislature which may so restrict or infringe may also to the extent of such possible infringement protect. The legislature which can infringe can refrain from doing so and can prevent others from doing so. As examples of what I mean, parliament might prohibit the broadcasting of political speeches altogether and the province might ban the use of school houses for political meetings. Both of these would be restrictions on freedom of communication.

It cannot, therefore, be said that these freedoms fall exclusively in the legislative field of parliament or of the provinces. Each of these so-called freedoms might be described as an agglomeration or cluster of legal rights.

VII. Freedoms are comparative and not absolute. They are hedged about by necessary restrictions on the individual to protect other individuals against licence or abuse. If provincial legislation restricts or abolishes civil rights in the case of any class of citizen to the point where the union of the provinces is threatened, parliament might conceivably intervene.

VIII. The opinions of Sir Lyman Duff and Mr. Justice Cannon in the Alberta Press case, however, indicate that to a certain extent freedom of communication is protected by the constitution as it now stands. A free press is the breath of life of parliament and cannot be abolished. The same might be held to be true of personal liberty in some aspects and freedom of assembly. Parliament could probably find means to maintain these freedoms, it being within the power of parliament to protect the constitution. Such legislative act by parliament would, however, leave the legislatures free to enact restrictions which are not in pith and substance intended to limit political freedom.

IX. As regards religion there would seem to be no constitutional safeguard.

X. It is necessary to observe that the legal effect of a declaration guaranteeing any of these rights is uncertain since no legal consequences would seem to flow therefrom. So far as the provinces are concerned, such a declaration would not restrict their powers and of course such a declaration would not limit the exercise by parliament of its powers.