

Maximizing the good requires social cooperation and coordination and therefore social practices or institutions in which roles are to be played or duties are to be carried out whatever the consequences. If they are morally permissible, promises are to be kept because they're made, institutional commitments are to be fulfilled because they have been accepted, and laws are to be obeyed because they have been enacted.

A putative moral prescription is meta-ethically senseless and so cannot be valid if the individuals to whom it is supposed to apply (1) cannot act as it prescribes; and (2) so act because the prescription is valid. So far as the first point is concerned, in other words, "ought implies can": a putative moral prescription is meta-ethically senseless unless the alternatives for action open to an agent to whom it is supposed to apply include the prescribed action. As for the second point, a putative moral prescription is meta-ethically senseless if an agent to whom it is supposed to apply cannot choose in a manner that expresses her or his dissent, in the sense of her or his determination that the prescription is not valid but invalid.

More than that, the meta-ethical character of every prescription prescribes by implication at least one social practice—namely, the specific practice designed to resolve disagreement about the validity of prescriptions, so as to enable common decisions. This practice, which suspends pursuit of other purposes in order to assess the validity of contested moral claims, may be called—using Habermas's term, "discourse"—"moral discourse." Thus moral discourse is the specific social practice of argumentation, or common critical reflection, in which claims to the validity of moral prescriptions are validated or invalidated by giving reasons.

The specific practice of moral discourse, in turn, both implies and is implied by a principle that governs social action universally. In all human relationships, individuals are morally bound to treat one another as *potential participants in moral discourse*. This means that all human individuals always have the rights that define them as such potential participants, one of these being the right to become an *actual* participant. These universal human rights belong to each and every participant in a universal social practice. Nor can they be overridden by any consideration of consequences, or by any other

prescription, because they are necessarily implied by the meta-ethical character of any claim to the validity of a moral prescription, whatever its content.

The principle governing this universal social practice is itself meta-ethical, in the sense that the social action it prescribes is explicitly neutral to all moral disagreements. Treating all individuals as potential participants in moral discourse is explicitly neutral even to disagreement about whether all individuals should be so treated, since that disagreement raises a question about what treatment reason really requires.

As such, this meta-ethical principle is a *formative* principle of social action, in the sense that adherence to it is explicitly neutral to all moral disagreement. In this, it is distinguished from all *substantive* prescriptions, adherence to any of which is *not* thus neutral. But, then, the social practice governed by this formative principle is itself a formative practice, and the rights it prescribes are formative rights.

This meta-ethical principle of social action may be formulated in Kantian terms as requiring that every individual recognize all human individuals as persons, which is to say, as potential participants in moral discourse. The formative rights that belong to persons may therefore be called "communicative rights," even as the formative principle itself may be called "the principle of communicative respect."

The actual content of communicative rights can be derived from the necessary conditions of moral discourse as a specific social practice. Such conditions include equal freedom for all participants to advance and contest any moral claim and to argue for or against it as the situation may require; the absence of internal coercion in the form of strategic activity on the part of fellow participants, or—alternatively expressed—uncompromised commitment to seek only the truth on the part of all participants; and the absence of external coercion that might influence accepting or contesting claims to validity. Thus communicative rights include the rights to life, to bodily integrity and movement, to the use of personal property, and to conscience, in the sense of the right to choose and act in accordance with

one's own understanding of the good. Because these rights have a strictly individualistic character—being definable without reference to any human association—the liberties corresponding to them may be called "*private liberties*." Of course, even these liberties are not unlimited, even if they cannot be overridden by any moral prescription. Each individual has a right to equal freedom (equal freedom being a necessary condition of participating in the specific social practice of moral discourse); and so the freedom of each is morally constrained by, and is subject to interference in order to prevent her or his invasion of, the rightful freedom of every other.

But private liberties do not and cannot exhaust the freedoms protected by communicative rights, because they include the right to be an *actual* participant in moral discourse. To attend to this right returns us to the question of the actual patterns or institutions of common decision making. In the end, the right to participate in moral discourse is the right to participate in *political* discourse, which is to say, in a particular association or social practice that nonetheless has a general character in that its distinguishing purpose is to order or govern all association in society. Thus the formative principle of communicative respect prescribes a democratic political association. And this includes the right to have democratically determined decisions coercively enforced. But, then, the constitutive principles of this association must be legal in character, in that the institutional process whereby governing activities are properly determined must itself be coercively enforceable.

One may say, accordingly, that the proper provisions of a democratic constitution institutionalize the formative principle of communicative respect. This means that the political association should be constituted as such as a full and free political discourse. A constitution is really democratic if, and only if, it allows the political association to maximize the extent to which making, interpreting, and enforcing political decisions is effected through full and free political discourse.

Thus the constitution must also stipulate the right of all individual^s or citizens to be participants in the association's decisions. The duties correlative with these rights must be explicitly neutral to all substantive social (moral or political) prescriptions precisely because the discourse is about the pertinence

of such prescriptions to legal norms. This means that a democratic constitution provides the one set of legal prescriptions that must be explicitly accepted by each and every citizen as a participant in the political discourse, including discourse about whether the actual constitution is really democratic, and even whether democracy itself is the proper form of the political association. In this way, a democratic constitution also stipulates a set of *public* liberties, which includes the familiar freedoms of speech, of the press, of assembly and of petition, as well as due process and equal protection of the laws. Also included is the freedom of religion, in the sense of the right of each citizen to choose her or his explicit belief about the most fundamental character of reality and human purpose. The principle of religious freedom in turn implies that constitutional stipulations should do nothing more than institutionalize the formative principle of communicative respect. They cannot properly require of any citizen as a participant in political discourse explicit adherence to any substantive prescription for social action. On the other hand, precisely because the constitution is not substantive, but formative only, the rights-liberties it stipulates may not be overridden by any other moral prescription pertinent to the activities of the state, including religious ones.

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The universal principle of communicative respect is, in fact, an indirect application of a comprehensive teleological principle. But it might appear that this formative principle as such implies only *that* there are, or, at least, can be, valid substantive prescriptions, but does not and cannot imply anything about *what* these prescriptions are. In truth, however, the presupposition that at least some substantive prescriptions can be valid is senseless unless the formative principle of communicative respect also implies what is meant by "valid substantive prescription," i.e., the criterion by which substantive prescriptions can be distinguished as valid or invalid. But any such criterion is itself a substantive moral principle, and a universal substantive principle at that, since the formative principle that implies it is universal.

If we let "principles of justice" designate specifically political principles, we may say that justice has a compound or self-differentiating character. This means that there is a distinction between the formative principle of communicative respect that should be articulated and institutionalized in a democratic constitution and the substantive principle that should determine decisions taken in or through full and free political discourse. This substantive principle necessarily implies as an abstract aspect of itself the overriding formative principle of a democratic constitution; conversely, this formative or constitutive principle itself implies the substantive principle of justice as its own concrete ground. And this is so even if it is no business of any constitution to stipulate what is substantively required.

But whether justice in this compound sense in turn depends on a comprehensive telos is another controverted question. Assuming that the case for a neoclassical metaphysics has been, or can be, made; and that the comprehensive purpose this metaphysics formulates grounds justice as compound in this sense, we may proceed to identify an inclusive human right that is substantive in character and that implies, even as it is, in turn, implied by, the formative principle of communicative respect.

From the standpoint of neoclassical metaphysics, the basic metaphysical notion is "creativity," according to which actualization as such consists in the unification of diverse relations to other real things, actual and possible. In the unique case of the divine individual, who is the primal source and the final end of reality, the relations in question are to *all* things actual and possible, whereas in all other cases, the relativity involved is not complete, but partial or fragmentary, being to only *some* things. In either case, however, "the good" in its metaphysical meaning consists in realizing unity-in-diversity as a contribution to the all-inclusive divine creativity, and the greater good is always the realization of greater creativity. The comprehensive telos or purpose, then, is the actualization of maximal unity-in-diversity in the world and therefore also in the divine reality.

Because human activities enjoy opportunities for good that are vastly extended beyond those of nonhuman worldly existence, future human creativity occupies a preeminent place in our pursuit of the comprehensive

telos. Indeed, there is a sense in which we act best toward the natural world when we aim at the maximal human future. Recognizing this, we may formulate the comprehensive purpose as a principle for moral decisions as follows: *maximize creativity in the human future as such.*

Because the higher possibilities of human achievement are a gift from past human achievements, favorably ordered, the comprehensive telos prescribes the pursuit of our maximal common humanity—in the long run. In other words, what should be maximized is the creativity shared between or among human individuals, "common humanity" meaning in this context neither the descriptive characteristics nor the normative rights that are universally human, but rather the common world so far as it is constituted by the communication of distinctively human achievements. To be related to a greater common humanity offers individuals the possibility of making a greater contribution to it, and actualizing this possibility, in turn, amplifies opportunity still further. In this sense, the common world, or (as it may also be called) the human order, has a certain self-surpassing character, although this character is a normative rather than a merely descriptive feature insofar as it identifies what *should* be the case.

Our maximal common humanity may be reformulated in terms of conditions of emancipation, understanding by "emancipation" the opportunity to be creative, of which, of course, each individual must decide what use is to be made. Individuals are more or less emancipated, depending on the natural and human context in which their lives are set. Because the order created by human achievements is greater insofar as each individual benefits from and contributes to it, the comprehensive telos prescribes pursuit of everyone's emancipation, everyone's freedom and opportunity to be creative and thereby to make possible the creativity of others. For any given individual, the conditions of emancipation are complex, consisting in part in those that are distinctively hers or his and extending through others specific to intimate and local associations to still others shared with increasingly wider communities. In their widest form, we may speak of "general conditions of emancipation," meaning by that those that are important or potentially important to the creativity of any individual whatsoever such as, e.g., health, economic provision, education, cultural richness,

environmental integrity, and the general patterns of associational life as such. These are the subject matter of justice; and the pursuit of justice seeks to maximize the general conditions for more distinctive local associations and individuals, thereby maximizing everyone's emancipation.

Because maximizing the good requires social coordination and cooperation, however, a comprehensive teleology prescribes its indirect application through social practices or institutions whose norms are morally binding, whatever the consequences of actions "separately taken." Emancipating all prescribes a wide range of social practices with norms that steady and enhance the quality of human interaction.

Nor is this teleological validation of social practices merely empirical. On the contrary, the comprehensive telos, and thus the pursuit of our maximal common humanity, grounds the meta-ethical principle of communicative respect and the universal social practice of moral discourse governed by it; and this is because being a recipient of communicative respect is a formative condition of emancipation. The comprehensive telos, and thus pursuit of our maximal common humanity, also grounds a democratic political association because such an association is prescribed by the same formative principle of communicative respect. The right to participate in the widest possible moral and political discourse, whereby social practices are legislated and justice pursued, is also a formative condition of emancipation. Moreover, the substantive principle of justice that ought to be convincing in democratic discourse and, through such discourse, ought to control all political decisions is implied by the same comprehensive telos. This is the principle that may be formulated so: *maximize the general conditions of emancipation to which there is equal access for all.*

Corresponding to the substantive principle of justice as general emancipation is a universal human right that may be called "the right to general emancipation." In contrast to the formative rights, private and public, properly stipulated in a democratic constitution, this right is a substantive right that may be stated as follows: *human individuals as such have the right to the greatest measure of general emancipatory conditions that a legal order can provide or promote equally for all.* The associational order or set of social

practices legislated by a political association has as its specific purpose securing this universal human right for all individuals or citizens. Moreover, insofar as it succeeds in accomplishing this purpose, the norms of the associational order that it legislates override direct applications of the comprehensive purpose. This means that they are to be observed, whatever the consequences.

In sum: our maximal common humanity prescribes a compound set of human rights: an inclusive substantive right to general emancipation; and the formative right of communicative respect, together with its private and public liberties, that this substantive right itself necessarily implies.

If this view conspicuously fails to include a constitutional guarantee of any substantive rights, it in no way implies that individuals do not have such rights or that democratic communities should not be engaged in securing them. But even if individuals have such rights and democratic communities should seek to secure them, whether any substantive rights should be stipulated in a political constitution is another question. If democratic politics can be constituted only as a full and free discourse, then the constitution as such should be explicitly neutral to all substantive principles and norms of human association, any claim for the validity of which may be contested and so need to be validated by means of the discourse.