

Chris's reply to my criticism:

It's important to recognize that "justice" has a heuristic meaning in which it functions to specify what the democratic discourse established by a proper democratic constitution is all about. In *this* meaning, "justice" may be said to be a formative concept—and to be properly used in a constitution (as it, in fact, is used in the U.S. Constitution).

But no substantive concept of justice that would take the place of the heuristic (formative) concept, including even the substantive principle (or criterion) of general emancipation itself, has a proper place in a democratic constitution. Of course, it is necessarily implied by (even as it, in turn, necessarily implies) the formative principle of communicative respect. But what is *implied* by constitutional provisions is one thing, what they *explicitly* provide for or prescribe, something else. And all that properly belongs in a democratic constitution as such is: (1) use of the concept "justice" in its heuristic (formative) meaning to make clear what the democratic discourse instituted by the constitution is all about; (2) specification of the formative rights/liberties—private and public—that are necessary conditions of the possibility of participating in the democratic discourse; (3) specification of all the institutions necessary to make laws and to interpret and enforce them; and (4) specification of the conditions under which and the means by which the constitution can be amended, allowing that it may not be as democratic in fact as it is supposed to be in principle.

As for the formulations in the Declaration or in the Preamble to the Constitution that might appear to express the substantive principle of justice, they can be accounted for either as using "justice"—or other terms and phrases synonymous with it—in its merely heuristic (formative) meaning or as stipulating properly formative rights/liberties as distinct from any properly substantive ones. (This clearly seems to be the case, for example, with "equality," "life," "liberty," and "the pursuit of happiness" in the Declaration; or of "the blessings of liberty" in the Preamble. On the other hand, the reference to "justice"

in the Preamble, as well as, perhaps, its references to “the general welfare” and “domestic tranquility,” seem to use the terms in their heuristic [formative] meaning.)

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I'm not convinced that you've correctly sorted out the precise sense in which justice is, as you say, "compound." So far as I can see, the most fundamental substantive right to general emancipation is as "constitutive" (or even "formative" ), i.e., as metaphysically necessary, as the most fundamental formative right of communicative respect.

Thus, to my mind, there is a certain analogy here with the distinction between "metaphysical" and "empirical." True as it is that the properly metaphysical as such does not imply any *particular* empirical state of affairs, it is just as true that it does imply that there be at least *some* empirical state of affairs. *Mutatis mutandis*, the formative principle of communicative respect necessarily implies the substantive principle of general emancipation; even though it does not imply any of the necessarily empirical substantive moral principles that themselves require the principle of general emancipation as the criterion of their validity. But, then, a democratic constitution has good reason to stipulate at least the principle of general emancipation, even if it has no business *qua* constitution stipulating any substantive principles of an empirical kind that require to be validated by the principle of general emancipation.

Why you do not reach the same conclusion is not clear to me, since you yourself (1) introduce the distinction between moral principles that can be validated only empirically and moral principles that must be validated metaphysically; and (2) identify the substantive principle of general emancipation as a nonempirical, properly metaphysical moral principle.

I would also ask whether the Constitution does not in fact stipulate the substantive principle of general emancipation in so many words when it explains, in the Preamble, its own *raison d'être*—namely, "to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity."

And what is it for the Declaration to assert that the reason governments are instituted among men who are created equal is to secure their inalienable rights to "life, liberty, and the pursuit of happiness" if not to

imply that the substantive principle of general emancipation is rightly stipulated as a constitutional principle?