

The proper provisions of a democratic constitution institutionalize the formative principle of communicative respect. This means that the political association is constituted as a full and free political discourse: *full* in the sense that the discourse takes no moral principle or norm, including the formative principle of communicative respect itself, to be immune to criticism; and *free* in the sense that all individuals who are subject to the common decisions of the association have an equal right to participate in it. Full and free discourse in this sense characterizes the process by which governance of the political association is determined.

A democratic constitution should institutionalize the state and stipulate the decision-making procedures through which officials of the state are selected and legislation is enacted, interpreted, and enforced. The constitution should also stipulate the process by which the constitution itself can be changed, allowing that whether any actual constitution is really democratic is itself subject to debate. Although these general requirements for a constitution do not imply any specific set of political institutions, still no constitution is democratic, whatever its detailed provisions, unless they allow the political ~~association~~<sup>association</sup> to enact, interpret, and enforce its decisions through full and free discourse.

Properly speaking, then, a democratic constitution provides the one set of legal prescriptions that must be explicitly accepted by all citizens as participants in the political discourse about whether the actual constitution is really democratic and even whether democracy itself is the proper form of the political association. Thus the constitutional rights of citizens are those that all political participants must explicitly accept in order to have a political discourse about what all political participants must explicitly accept in order to have a political discourse about—and so on; and it is this character that makes the rights formative. Accordingly, a democratic constitution must also stipulate (in addition to the set of *private* liberties or rights implied by the formative principle of communicative respect) a set of *public* liberties or rights, which includes the familiar freedoms of speech and of the press, the freedoms to assemble and to petition, and the rights to due process and to the equal protection of the laws. Also included is the right to religious freedom, understood as the right of each citizen to choose her or his explicit belief

about the most fundamental character of reality and human purpose. In fact, the right to religious freedom in this sense may be understood as the inclusive constitutional right of democratic citizens, because all other constitutional rights are conditions of it.

The right to religious freedom itself, however, implies that constitutional stipulations should do no more than institutionalize the formative principle of communicative respect, because they cannot properly require of any citizen simply as a political participant explicit adherence to any substantive principle of social action.

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Democracy makes no sense, however, in the absence of something other than the formative principle of communicative respect about which citizens may and should engage in full and free discourse. This something is how the political association shall in fact be governed, and thus the activities of the state and the laws governing all actions within it.

But if democracy thus assumes that other substantive prescriptions pertaining to governance may and should also be subjected to full and free discourse, this assumption is senseless unless the principle of communicative respect itself implies the criterion by reference to which any such substantive prescriptions can be critically validated. In the nature of the case, however, any such criterion must itself be a substantive principle, just as it must also be a universal principle, because what necessarily implies it is the universal formative principle of communicative respect. Therefore, a democratic constitution implies not only the possibility of valid substantive prescriptions but also a universal substantive principle to which all the activities of the state and all legislation governing the political association ought to conform.

Assuming, then, that all properly political principles may be said to be "principles of justice," we may also say that the character of justice is compound or self-differentiating. Its substantive principle necessarily implies as an abstract aspect of itself the overriding formative principle of a democratic constitution, while, conversely, this formative principle in turn

implies the substantive principle of justice as its concrete ground. And this is so even though it is no business of a constitution as such to stipulate any substantive prescriptions.

What, then, is the substantive principle of justice? On a teleological ethics based on neoclassical metaphysics, the comprehensive good or purpose of which all principles of justice are indirect applications is maximizing creativity in the human future as such. But since each individual must decide what to make of such opportunity to be creative as she or he is given, maximizing creativity in the human future by maximizing the communication of distinctively human achievements may also be said to be maximizing the conditions of emancipation, understanding by "emancipation," simply the opportunity to be creative. Such conditions of emancipation are complex for every given individual. But there are certain general conditions that are important, or potentially important, for the creativity of any individual. These include such conditions as health, economic provision, education, cultural richness, environmental integrity, and the general patterns of associational life itself. These general conditions are the subject matter of justice, which, summarily put, seeks to maximize the general conditions for more specific local associations and individuals, so as thereby to maximize everyone's emancipation.

The teleological validation of social practices—as distinct from actions "separately taken"—need not be merely empirical. On the contrary, the validation made possible by the comprehensive good grounded in a neoclassical metaphysics validates the meta-ethical, nonempirical principle of communicative respect and the universal social practice constituted by it, i.e., full and free discourse. How so? In that our maximal common humanity prescribes pursuit of everyone's emancipation, and being the recipient of communicative respect is a formative condition of anyone's emancipation.

But, then, pursuit of our maximal common humanity also grounds teleologically a democratic political association, because democracy is prescribed by the principle of communicative respect. Moreover, the substantive principle of justice is also grounded in the same comprehensive

purpose. This principle may be formulated by saying: maximize the general conditions of emancipation equally available to all.

Thus there is a universal substantive human right to general emancipation, even as there is a universal formative human right to communicative respect, both rights being indirect applications of the comprehensive teleological principle. But while there is quite properly a constitutional guarantee of the universal formative right and the private and public liberties that it implies, there is no proper constitutional guarantee of any substantive rights, including the right to general emancipation. For to affirm that all human individuals have certain substantive rights that democratic communities are responsible for securing is one thing, while to assert that these rights should be stipulated in their political constitutions is something else.