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L'idea alla base di questo approccio è che sia non solo desiderabile ma istituzionalmente possibile muovere verso forme di politica «civile», informate a quel «pluralismo ragionevole» che Rawls ha indicato come tratto caratterizzante del liberalismo politico. Identificare i contorni di questa nuova «politica civile» è particolarmente urgente e importante per il sistema politico italiano, che appare ancora scarsamente preparato ad affrontare le sfide emergenti in molti settori di policy, dalla riforma del welfare al governo dell'immigrazione, dai criteri di selezione nella scuola e nella pubblica amministrazione alla definizione di regole per le questioni eticamente sensibili.

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TABLE OF CONTENTS

KEYWORDS

value conflicts, fair hearing, procedural equality, justice, conflict management

ABSTRACT

VALUE CONFLICTS, ADVERSARY ARGUMENTATION AND PROCEDURAL EQUALITY

The paper discusses a procedural minimalist approach to justice in terms of fair hearing applicable to value conflicts in politics. This approach may be summarized in the Adversary Argumentation Principle (AAP): the idea that each side in a conflict should be heard. I engage with Stuart Hampshire's efforts to justify AAP and argue that they failed to provide normatively cogent foundations for it. I suggest deriving such foundations from a basic idea of procedural equality (all parties in a conflict should be granted an equal chance to have a say) which all conflicting parties could be thought to endorse. But what happens once all parties have been heard if no agreement is reached? Borrowing a distinction well-known to scholars of peace studies, but surprisingly neglected by justice-driven political philosophers, I claim that although AAP might be inconclusive with a view to *resolving* a conflict, it is a promising principle for *managing* value conflicts justly. AAP is thus considered anew through the lenses of conflict management: as a principle of justice to characterize normatively the way conflicting parties should interact for their interaction to be morally justifiable to them with a view to changing antagonistic conflict dynamics into cooperative ones.

VALUE CONFLICTS, ADVERSARY ARGUMENTATION AND PROCEDURAL EQUALITY♦

INTRODUCTION

Liberal political theories of justice typically aspire to define trans-contextual –if less than universal– principles, able to regulate the interaction of diverse agents, adjudicate between their competing claims and, specifically, solve possible disputes caused by their various cultural, religious and ethical allegiances *vis-à-vis* matters of public concern. Disputes regarding the permissibility of euthanasia, as well as those concerning the display of religious symbols in public spaces, are only a couple of examples of the sorts of situations in which diverse moral values (e.g. individual freedom of choice vs. sanctity of human life) and political worldviews (e.g. a difference-blind political sphere vs. publicly visible religious commitments) may come to clash.

Faced with such situations, some political theorists have suggested resorting to principles of justice denoted in minimalist and procedural terms. Minimalism, on the one hand, requires that principles of justice be as parsimonious as possible in terms of the controversial conceptions of the good on which they draw, so as to be compatible with a number of them. Proceduralism, on the other hand, requires that principles of justice limit themselves to prescribe the properties qualifying just procedures, remaining silent on those qualifying just outcomes. One of the key, though frequently neglected, exponents of this approach to justice is Stuart Hampshire.

My aim in this paper is neither to carry out an exegesis of Hampshire's minimalist proceduralism nor to champion or challenge a minimalist procedural approach to

♦ Parts of this paper were written while I was Departmental guest at the Princeton University Center for Human Values, which I thank for providing the most congenial environment for my research. A previous version of this paper was presented at the Manchester Workshops in Political Theory held at the Manchester Metropolitan University in September 2008. I am grateful to all participants in the "Confronting Cultural Diversity" workshop for helpful discussions. Thanks also to Ian Carter, Valeria Ottonelli, Mauro Piras, Jon Quong and Hillel Steiner for discussing many of the ideas in this paper, and to Corrado Del Bò and Federico Zuolo for their detailed written comments. Some of the claims defended in this paper were presented in a preliminary, tentative form in E. Ceva, "*Audi Alteram Partem* but Why? On procedural equality and justice", *HDCP-IRC Working Paper Series*, 10/2008, Human Development, Capability and Poverty International Research Centre, Istituto Universitario di Studi Superiori di Pavia.

justice (see Ceva 2008). Building on Hampshire's work, I intend, rather, to bring attention to, and shed some light on one specific connotation minimalist proceduralism has frequently taken in terms of fair hearing.[1] This may be summarized in the Adversary Argumentation Principle: the idea that each side in a conflict should be heard. In particular, I intend to test whether this principle may provide the bases for a conception of justice applicable to value conflicts in politics. More precisely, the considerations I shall offer aim to answer the following question: "How should fair hearing (and in particular fair hearing *qua* listening to the other side) be construed and justified in order to provide the basis for addressing value conflicts justly?". In answering this question, I contend that Hampshire's efforts to argue for the Adversary Argumentation Principle (hereafter AAP) have failed to provide genuinely universal and normatively cogent foundations for it. I submit that such foundations are nonetheless derivable from a basic idea of procedural equality which all participants in value conflicts could be thought to endorse. My argument unfolds as follows.

In section 1, I introduce some preliminary conceptual clarifications on the notions of proceduralism and value conflict employed.

In section 2, I criticize Hampshire's justification for AAP. I contend that Hampshire draws too heavily on a supposedly widespread familiarity of different agents with *practices* of adversary argumentation as a basic justification for resorting to AAP in situations of conflict. This is done without offering any strong enough reason to explain why conflicting agents should accept and comply with AAP, should it be incompatible with some other moral commitment of theirs.

In section 3, I introduce an idea of procedural equality (all parties in a conflict should be granted an equal chance to have a say) *qua* the normative presupposition on which, I propose, the justification of AAP should be based. The plausibility of the claim that all parties in a value conflict would endorse this idea is in turn justified through a pragmatic argument on the way the parties are likely to regard the possibility of being granted a chance to express themselves that is not inferior to that accorded to others.

In section 4, I acknowledge, and tentatively address, a possible charge of inconclusiveness that might be levelled against AAP as a basis for dealing with value conflicts. My suggestion is that, although the endorsement of AAP might sound inconclusive with a view to *resolving* a conflict (what happens once all parties have been heard if no agreement is reached?), it may be seen instead as a promising principle on the grounds of which value conflicts can be *managed* justly. Roughly speaking, adapting standard definitions used by scholars engaged in peace studies,

[1] Besides Hampshire's own work (1999) and the immense bibliography on theories of democracy, influential formulations of the principle of fair hearing may be found, among others, in the works of H.L.A. Hart (1994) and Jürgen Habermas (1984). I have decided to concentrate on Hampshire's treatment of fair hearing as it is explicitly related to issues of *justice* (rather than democracy) in *conflict*.

theories of conflict resolution are addressed to the core of the disputed matter, and when conflicting values are at stake, aim to suggest principles to establish an order of priority among them. Theories of conflict management focus, instead, on the ways the parties interact, and aim to handle conflicts by offering principles informing the parties' *modus agendi*, with a view to removing the attitudinal causes of the intractability of some conflicts and leading eventually to a qualitative change in the conflict dynamics. The importance of the intrinsic quality of the interaction between the conflicting parties has been widely acknowledged by scholars in the field of peace studies but has received surprisingly little attention by justice-driven political philosophers.[2]

I submit that managing conflicts in this sense is particularly important where there may be conflicts between incompossible values, among which their holders are unable to establish an order of priority on mutually acceptable grounds and are thus left in a situation of *impasse* in which none of their values is realized. Such are the conflicts affecting the regulation of many issues of public concern such as those related to the treatment of human life (human cloning, euthanasia), as well as the place of traditional cultural practices in a liberal democracy (female circumcision, wearing of *burqas*). In such scenarios, theories of conflict management have important recommendations to give with a view to changing the conflict dynamics and thus contributing to removing those attitudinal impediments to moving out of *impasse*. Therefore, my final suggestion is to consider AAP anew through the lenses of conflict management: as a principle of justice to characterize normatively the way the parties should interact for their interaction to be morally justifiable to them with a view to changing antagonistic conflict dynamics into cooperative ones.

1. PRELIMINARIES

With this declaration of intents in place, I should like to specify that I do not endorse the premise, shared by many theorists of minimalist proceduralism, that a procedural approach to justice is more suitable to contexts characterized by value conflicts because an agreement on the properties qualifying just procedures is easier to reach than one on those qualifying just outcomes. As argued elsewhere, the merit of proceduralism does not lie in its offering less controversial principles of justice (Ceva 2008, 55-68). If disagreement on values is acknowledged, there are no sufficient grounds to expect that it will not also involve the likelihood to reach an agreement on the properties qualifying just procedures, besides those qualifying just outcomes (see Cohen 1994, Newey 1997 and Rawls 1993). Proceduralism acquires interest, rather, as it points to a different, and at times underestimated,

[2] For the distinction between conflict resolution and conflict management (and for an appraisal of the latter) see, among others, Wallensteen 2006; Miall, Ramsbotham and Woodhouse 2005; and Burgess and Burgess 1996.

locus where justice is (also) to be sought: the way procedures treat the parties interacting through them, independently from the outcomes of their interaction.

Thus understood, proceduralism should not be regarded as a mere second-best approach to justice, failing the possibility of theorizing in a cogent way on the properties of outcomes, given the fact of moral disagreement. The main point of proceduralism is rather to claim for the moral salience of procedures (and procedurally, rather than outcome, regulated interactions) as an appropriate *locus* of justice. It seems at least plausible to maintain that persons are not indifferent to the way in which they are treated by the procedures through which they interact, quite independently of the outcomes to which their interaction will eventually lead. A straightforward example would be the importance attributed to the principle of due process in legal proceedings. Regardless of how a given trial will end, the procedures according to which the prosecutor and defence attorney interact, the room given to each of them to make their cases and the terms according to which these are made are endowed with intrinsic value and may constitute an object of autonomous theorizing.

In sum, the core point of proceduralism (including Hampshire's –see Hampshire 1999, 21 and 42) lies in the moral relevance of procedures, the evaluation of whose properties does not have to be carried out either necessarily or exclusively in view of the qualities of the outcomes to which they could lead. These admittedly sketchy considerations will suffice to qualify the interest in proceduralism animating this paper and the sense in which AAP is considered a procedural principle of justice. More considerations on this last aspect will be offered below.

A second specification regards the types of conflict to which this study applies. As anticipated briefly, relevant scenarios are not characterized by a "mere" disagreement among agents holding various value-commitments. I concentrate, rather, on instances of conflict between incompossible values, among which their holders are unable to establish a shared order of priority on mutually acceptable grounds.[3] This may be the case where there are either intrinsically incompossible values (for example, pro-life vs. pro-choice views of euthanasia) or where there are values whose joint realization is impossible under certain circumstances (for example, climate change conditions forcing us to choose between economic development and safeguarding the environment). The presence of such conflicts constitutes a relevant circumstance of political justice. Just as the better known circumstance of moderate scarcity of resources generates a demand for distributive justice regarding the way such resources are distributed, the presence of diverse agents holding a plurality of conflicting values creates a demand for political

[3] This is not to suggest that conflicts typically presuppose that all parties value x and y, but whilst person P_1 values x>y, P_2 values y>x. It may well be the case that P_1 values x and fails to recognize y as a value and P_2 values y and fails to recognize x as a value. However, in both cases, if x and y are incompossible, solving the conflict to regulate a matter of common concern to P_1 and P_2 would require to establish what value between x and y should have priority. I am grateful to Corrado Del Bò for discussing this point.

justice, for agents are in need of principles through which they can accommodate disagreements over the values that should inform the regulation of matters of public concern. Demands of justice arise out of both of these two scenarios as in both cases principles are needed to adjudicate between competing claims in a way that all competing parties may find morally acceptable.

To wit, conflicts relevant for my analysis occur when the holders of incompossible values confront each other on a morally controversial matter of public concern, and find themselves at *impasse*, unable to solve the conflict, that is to establish an order of priority on mutually acceptable grounds between the positions that on such values are built.[4] Under such conditions, conflicts risk escalating and, at any rate, condemning the parties to see their chances to realize their values undermined during a confrontational, fruitless opposition. Facing such conflicts, rather than throwing in the towel and resorting to contingent political bargaining, some important normative, justice-oriented work can still be done. The aim of this paper is to test what sort of work AAP, appropriately qualified, is capable of carrying out in this context.

2. THE ADVERSARY ARGUMENTATION PRINCIPLE AND HAMPSHIRE'S ARGUMENT

Facing value conflicts, Stuart Hampshire suggested a minimal procedural principle of justice: the Adversary Argumentation Principle (AAP). This principle is condensed, in line with the legal tradition, in the Latin formula *audi alteram partem* (hear the other side), and requires agents involved in a conflict to listen to each other. AAP is procedural, since it does not provide a characterization of the properties qualifying the just outcome for an argumentative process, but shows the agents a just way to proceed in order for the process itself to be just.

In presenting this principle, Hampshire builds on what he deems to be those "natural and universal procedures and institutions which are to be found in all or almost all societies" and which can be summarized in AAP itself (Hampshire 1991). Think, for instance, of "the weighing of evidence for and against a hypothesis in a social science" or "in a historical and criminal investigation or in a civil litigation" (Hampshire 1999, 30). AAP is thus presented as a general principle of justice, applicable to different contexts and situations, which relies for its realization on well-established context-related institutionalized practices of deliberation

[4] It should be noted that the normative considerations I shall offer *only* apply to these types of value conflicts, and do not aspire to say something relevant for *all* types of political controversies (e.g. struggle for powers, or strategic disputes). Furthermore, I should like to emphasize that I do not share Hampshire's take on conflicts as essentially ineliminable and unavoidable (Hampshire 1999, 43-44). I limit myself to observing that, generally speaking, moral conflicts tend to affect quite persistently the regulation of matters of public concern, without implying that specific solutions to specific conflicts can never be found.

and interaction, which "must have earned, or be earning, respect and recognition from their history in a particular state or society" (Hampshire 1999, 58). The way Hampshire presented this argument famously draws on the Platonic analogy between the soul and the city. Hampshire argues that harmony cannot be achieved either in the soul or in the city and that, consequently, both intra-personal and inter-personal conflicts may at most be kept under control through well established procedures of practical reasoning and adversary argumentation (see Hampshire 1999, 18). More precisely, for Hampshire, the exercise of intra-personal practical rationality should be "seen as the shadows of publicly identifiable procedures that are pervasive across different cultures" (Hampshire 1999, 20; see also Hampshire 1989, 169).

Unfortunately, Hampshire's argument in support of the soul-city analogy hardly goes beyond showing that human beings are quite familiar with practices of adversary argumentation and have in fact recurrently resorted to them to deal with many instances of intra-personal and inter-personal conflict throughout history (Hampshire 1999, 20 and 1989, 51-78).[5] Even if the soul-city analogy held, Hampshire does not seem to explain how it is possible to derive the *normative* presumption that conflicting agents should accept AAP and conform their conduct to it from the *fact* that they happen to be familiar with practices of adversary argumentation (for they have fallen back on them regularly throughout history). Although Hampshire asserts many times the connection between AAP and justice, it remains unclear why AAP is needed in the city or called for in the soul as a matter of justice rather than, say, prudence or efficiency.[6] In short: why is the historical recurrence of practices of adversary argumentation strong enough a reason to think that they tell us something relevant about justice at all?[7]

In sum, my dissatisfaction with Hampshire's argument is as follows: it is disputable that there is any analogy between the soul and the city. But even if the analogy held, this could only show that human beings are familiar with certain practices both in their souls and in their cities, as it were. This is not enough to show that they would be ready to accept and comply with a principle grounded in those practices (and to do so as a matter of justice) should it be incompatible with other

[5] A fundamental critical reading on the plausibility of the soul-city analogy is Williams 2006.

[6] Hampshire writes for example that "An unjust procedure, violating this necessary condition of procedural fairness, is unjust, always and everywhere and without reference to any distinct conception of the good" (Hampshire 1999, 27-28). However, no obvious argument is given to back these assertions other than the considerations on the derivability of procedural justice *qua* adversary argumentation from the unavoidable necessity to make people committed to diverse conceptions of the good coexist (Hampshire 1989, 118). This seems to give at most an argument for the necessity of justice *tout court* (*qua* adjudication between competing claims), but it remains unclear why this should take the form of fair hearing *qua* listening to the other side (apart from the consideration that this has *de facto* been the case on many occasions throughout history).

[7] Note that many people (including some theorists of democracy) regard procedures of adversary argumentation, as described by Hampshire, as a matter of legitimacy, with justice being conceived as an outcome-related matter (among many others, see Waldron 1990). Failing a refutation of this line of argument, Hampshire's *de facto* claim that procedures of adversary argumentation have been seen, largely and quite indisputably, as a basic requirement of justice appears at least contentious.

moral commitments of theirs (e.g. religious principles – for a similar concern see Haldane 2001, 91).

To be fair to Hampshire's argument, the defence of AAP would not be complete without mentioning its being premised on the idea of shared evils. In short, although there is disagreement on what is good, there seems to be a wide agreement on what constitutes an evil. Think, for instance, of "massacre, starvation, imprisonment, torture, death and mutilation in war, tyranny and humiliation" (Hampshire 1999, 47). Among such evils, Hampshire lists anarchy deriving from violent means of dealing with conflicts. If it is accurate that persons generally feel this as an evil and therefore want to avoid it, the way is open for Hampshire to support the adoption of a procedure based on a principle of dialogical interaction (AAP) capable of addressing and containing conflicts (see Hampshire 1999, 77-78 and 91-92).

Against the evil-based argument, one may protest that the *idea* of the evil is hardly separable from some idea of the good, of which the former would be the negation. If disagreement invests ideas of the good, the very possibility to find a shared idea of the evil seems thus undermined. After all, it seems plausible to maintain that if one deems imprisonment an evil, this is because she values positively some idea of freedom; if one regards tyranny as an evil, this is because she thinks an autonomous life is a good one; and so on. However, to challenge Hampshire's case it is not necessary to press this argument. His case does not draw on the possibility to conceptualize the idea of the evil as separate from that of the good. It is based, in fact, on the pragmatic registration of historical recurrences, which are supposed to demonstrate a factual convergence on what is evil, notwithstanding persistent disagreement on the good. It seems therefore enough to offer counterexamples to factually deny Hampshire's thesis and open a breech in his defence of AAP.

From this perspective, the idea that what constitutes an evil is more cross-culturally acceptable than is what counts as a good is at least controversial (see Archard 2001). It is not so hard either to imagine individuals who deem humiliation or death, or even starvation, as values (think, for instance, of a masochist, or of a suicide bomber, who willingly accepts death as the supreme realization of his life, or of a saint who finds self-fulfilment in starvation). Nor is it difficult to conceive of people who consider, say, autonomy or attachment to life as great evils (think of some populist authoritarian doctrines, or of religions which condemn attachment to the worldly life as an impediment to reaching the real, heavenly one).

Hampshire seems to be willing to rest his case on this point, by conceding that – depending on their personal experience– different people may have a different feeling for what is an evil or to the avoidance of what evils political action should be addressed (see Hampshire 1999, 78-79). Nevertheless, the evil caused by the suppression of conflicts with the use of force looks to Hampshire generally perceived as an evil to avoid. This position seems to be built on some thick –but

weakly supported– presuppositions. It builds indeed on a conception of moral psychology and aversion to violence which is quite controversial and not at all justified (beyond the usual, debatable reference to history) *vis-à-vis* other competing views of the world and the human nature.

What is needed at this stage is a justification for AAP, which is both more cogent than the appeal to the supposed cross-cultural familiarity with practices of adversary argumentation, and more universally valid than the evil-based argument. It is to this task that I turn in the next section. In so doing, I shall not travel miles away from Hampshire's argument. My aim is, rather, to propose a more straightforward and simpler argument which could make a more compelling case for AAP and point to a fruitful direction in which it may be used to address value conflicts in politics.

3. A NORMATIVE FOUNDATION FOR THE ADVERSARY ARGUMENTATION PRINCIPLE: THE IDEA OF PROCEDURAL EQUALITY

As argued above, to show how AAP could be justified to diverse and conflicting value holders, it is not enough to base one's case on the idea that such agents are familiar with practices embodying it. I suggest justifying AAP through the appeal to a basic idea of procedural equality, which all parties in value conflicts could be thought to endorse. This consists in the idea that all parties should have an equal chance to have a say. In commanding that *all* parties hear *all* the others, AAP reveals an egalitarian commitment which I think should be made explicit in order to ground this minimalist procedural principle on solid bases. In this sense procedural equality works as a normative presupposition for AAP. To advocate this claim, I shall offer in what follows a qualification and a defence for the idea of procedural equality. With these in place, I shall then draw the relevant connections between the endorsement of this idea and the justification of AAP.

THE IDEA OF PROCEDURAL EQUALITY QUALIFIED[8]

To be consistent with Hampshire's approach to justice, the idea of equality to which I appeal should be shown to be procedural in kind. It qualifies as a procedural idea as it denotes the property of procedures, which must grant all agents involved in a conflict an equal chance to have a say. This means that this idea is silent on the properties of the outcome that might be reached through application of a procedurally egalitarian procedure. Moreover, in line with Hampshire's suggestion that procedural principles be general enough to be applicable across and specified within a number of diverse contexts of conflict, the specific material way

[8] A first formulation of the ideas in this section may be found in Ceva 2008 and Ceva and Calder 2009.

in which agents are actually given an equal chance to speak up remains undetermined theoretically (Hampshire 1999, 58 and 91). Elements to be left for contextual evaluation and formulation include the assessment and compensation for the material inequalities that may affect the full realization of procedural equality, for instance, by hindering the actual chances one agent may have to take the necessary time off to participate in a procedural consultation.

This does not certainly translate into the recommendation to bracket material inequalities and pretend they do not exist. But compensation for such inequalities falls beyond the reach of procedural equality. This latter is meant to qualify only the main property of the procedures following which the parties should interact to address their conflict justly. The construction of specific policies, meant to implement such a property and translate it into effective practices and material procedures, falls beyond its reach. This task should, in fact, be carried out on consideration of the contextualized evaluation of specific contingent conditions (at what level does the conflict take place –local, national or international? Who are the parties?), in light of the specific conflicting claims and the nature of the issues at stake (does the conflict rest on moral, cultural or religious grounds? Does it affect a matter concerning all society or only the members of some minority?). To wit, in line with Hampshire's invitation, the form and account of such policies is better understood and developed if subtracted from the hands of political philosophers within a general theory of justice and left open to a case by case evaluation of the specific circumstances of conflict.

One may protest here against my half-baked suggestion that the determination of who are the conflicting parties be one of the contextual variables taken off the hands of political philosophers. Although a serious treatment of this point would lead me far beyond the explorative character of the present considerations, I would like to emphasize that I do not certainly intend to suggest that the determination of who are the parties in a conflict is a straightforward and trouble-free operation, both practically and theoretically. In general terms and in line with the characterization of a conflict offered above, the parties in a conflict may be formally defined as those who hold values clashing with other values as they are mutually incompossible *vis-à-vis* some matter of public concern. Therefore, the determination of who is involved in a conflict follows the "self-declaration" of certain value holders *qua* parties, in virtue of their carrying conflicting claims on certain issues of public concern. For example, the parties in a conflict regarding the permissibility of euthanasia could be pro-choice activists, citizens and liberal political parties, on the one hand, and pro-life religious associations, citizens and Christian political parties, on the other.

THE IDEA OF PROCEDURAL EQUALITY DEFENDED

In the light of this characterization of the idea of procedural equality, let me try to present a defence for its endorsement. In particular, the question I would like to address may be summarized in the following terms: on what grounds can a procedurally egalitarian procedure be morally justified to a variety of conflicting value holders? It should be noted that the conception of moral justification I employ corresponds to an idea of acceptability, conceived in terms of the compatibility of a certain normative proposal with the values and beliefs held by those to whom the justification is addressed.[9] Consistently, any justification for the idea of procedural equality must show how it will be acceptable to diverse agents holding a plurality of conflicting values.

I propose doing this through a pragmatic argument drawing on the worth conflicting agents may be expected to attach to their being allowed an equal (and not comparatively smaller) chance to have a say, as a means to express their disagreement. Such an argument draws its plausibility from the presumption that agents are actually involved in a conflict at *impasse* (as characterized above), and do not instrumentally pursue it to achieve some other end. From this perspective, for example, the dispute regarding the permissibility of euthanasia is thought to derive from the incompossibility between pro-life and pro-choice values, rather than from an opportunistic use of the debate to encourage an authoritarian control over citizens' choices. By definition (see section 1) conflicts between incompossible values such as this one are normally characterized by the parties being at *impasse*, unable as they are to establish an order of priority between their conflicting values on mutually acceptable grounds.

In this context, it seems unlikely that any of the parties would think it unjust to be granted a chance to have a say. Therefore, since the opportunity to have *a* say seems to be widely desirable and recognized as just by each and every conflicting party, it seems plausible to affirm that for a procedure for addressing conflicts to be just it is essential that such an opportunity is given equally to all of them. Let me expand on this claim.

I do not presuppose here that all those who are involved in a conflict possess good reasons to believe that all the others, similarly involved, should have an equal chance to have a say. The argument is, rather, that if all the parties were asked how a fundamentally just procedure to address value conflicts should be, it is plausible to presume that each of them would answer that such a procedure should at least grant them a chance to have a say that is not inferior to that granted to the others. Now, the only type of procedure capable of meeting such a *desideratum* is one that grants each party an equal (thus not inferior) chance to express their position. Therefore, all parties have good reasons to accept procedurally egalitarian proce-

[9] For more details on this conception of justification see Ceva and Calder 2009.

dures. Having such a chance to speak up is likely to be important to the parties in order not to give up on the possibility to affirm their values, the commitment to which is what may be plausibly thought to push them to find a way to move out of *impasse*. The endorsement of the idea of procedural equality allows parties to do so by means of a largely acceptable procedure, whose minimalist normative basis is compatible with the otherwise conflicting conceptions of the good they hold (as its acceptance is not conditional on the acceptance of any of those).

One may want to press the following challenge here: why should one worry that all parties accept the procedure? Does this not presuppose a preliminary normative commitment to treating all persons as moral equals? If so, how could the account of procedural equality proposed remain minimalist?[10] My reply would go as follows. To establish the justice of a procedure (at least from the liberal perspective endorsed in this paper), a theory should ensure the moral acceptability of the principles of procedural justice to all those who shall interact through the procedure such principles are meant to qualify. This presupposes only a fairly standard view of the liberal concept of justice: if the main end of a theory of justice is to adjudicate between competing claims, it is essential to its function that its principles are acceptable to all competing parties, otherwise their very *raison d'être* would vanish. This is even more so when the kind of justice one is after is political justice, that is a normative approach to deal with value conflicts in politics. This is the sole reason why all parties should be involved in the "acceptability test", apart from any ascription of equal moral status to all conflicting agents.

It might certainly be possible that some parties (Christian activists, for example, in the euthanasia case) preferred a procedure that either denies others (holding what are viewed as morally offensive convictions) such an opportunity, or gives themselves a greater chance to speak than that allowed to others. However, it remains plausible to argue that the essential *basic* requirement is that she herself is not given a smaller chance than others. In sum, the argument may be synthesized as follows: "if you want a chance to speak up for yourself which is not smaller than that given to others, then you should accept a procedurally egalitarian procedure as this is the only one meeting your basic requirement for sure". On this account, procedural equality may accordingly be considered a promising basis for the justification of procedures for addressing value conflicts, as it corresponds to the views of justice shared by otherwise conflicting agents.

Note that, pace Hampshire's reference to the city-soul analogy, justice is conceived here, in Rawlsian terms, as a virtue of institutions rather than of individuals. Accordingly, justice in conflict does not consist in the idea that, to be just myself, I should allow you a chance to have your say that is at least as big as mine. It rather resides in the idea that for an institution (or for the procedures through which it is articulated, in this case) to be just, it should ensure that all parties are allocated

[10] I am grateful to Mauro Piras for vigorously pressing this challenge.

a chance to make their case that is at least as big as that conceded to the others. Notwithstanding its pragmatic connotation, the argument I offer is significantly different from that proposed by Hampshire for AAP. Hampshire endeavoured to derive the justification for AAP from the historical *de facto* familiarity of all human beings with practices of adversary argumentation. I have, rather, aimed to explain why the parties would find it plausible to subscribe to the reasoning presenting procedural equality as a basis on which to qualify as just a procedure to address their conflict. I have not therefore fallen back on the contingent recurrence of certain, historically persistent, practices. I have rather insisted on the moral acceptability of an idea, which all participants in conflicts could be thought to endorse.

PROCEDURAL EQUALITY AND THE ADVERSARY ARGUMENTATION PRINCIPLE

If the argument in defence of procedural equality holds, a basis is also offered for the justification of AAP. AAP would then prescribe that for a procedure to be just it should require that all parties hear what the others have been granted an equal chance to say. This does not have to be seen as a separate request from that derived from the endorsement of procedural equality. On the contrary, the endorsements of AAP and of procedural equality are two steps of a single process. Let me explain what I mean by this.

In view of the characterization offered above, those who endorse procedural equality do so with the aim of setting up a just procedure to address, and possibly accommodate, their conflict. If the procedure allowed agents to use, say, earplugs when others speak, the justification of procedural equality would collapse, since its very function would thus be undermined. In other words, "procedural equality with earplugs" would not be defensible on the pragmatic terms offered above since the agents would see little point in being allowed a chance to speak if no one were there to listen to them. Put in slightly different terms, although AAP explicitly requires of agents the passive attitude of hearers, for a conflict to be dealt with it is essential that there is something to be heard. Otherwise agents may find themselves in the bizarre situation of trying to get out of the *impasse* in which they are caught by listening to absolute silence.

This provides a stronger, egalitarian foundation for AAP which, although resting on a pragmatic basis, seems to offer more cogent an account of minimalist proceduralism than Hampshire's. On this account, a conception of justice applicable to value conflicts in politics is one that allows (and requires) that all parties speak and be heard on a procedurally egalitarian basis. The "passive" requirement that all voices get a fair hearing is dictated by AAP. The "active" part (the requirement that all parties are allowed to speak) is based on the idea of procedural equality. This conception qualifies as minimalist as the endorsement of procedural equality, as shown by way of a pragmatic argument, is not conditional on the acceptance of controversial conceptions of the good. And it is procedural as it qualifies the

property just procedures to deal with value conflicts should display. On this overall account of my argument, conflicting parties have good reasons to accept AAP, given their endorsement of procedural equality, and to comply with it with a view to moving out of a situation of *impasse* undermining their chances to see their values realized in matters of public concern. It is plausible to presume that, for example, both pro-life and pro-choice parties to a conflict on euthanasia are motivated to move out of *impasse*, as this brings with it an unjustified negation of their respective values. If euthanasia is not regulated, the realization of individual freedom of choice in such an important matter as the end of one's own life is undermined, and so risks being the value of the sanctity of life by pushing practices of euthanasia towards private, unofficial and unnoticed channels.

Most naturally, the kind of material procedure suited for this conception of justice would be dialogical: a procedure of face-to-face discursive confrontation between the different conflicting parties. But this does not necessarily have to be the case. What is more, procedures of dialogue may vary significantly: for instance, the order and method according to which the floor is given to the parties may change in accordance with different criteria, for example "first-come-first-served", alphabetical order, or even considering the age of the different parties. These are technical details which may be left open to contingencies without undermining the general cogency of my proposal.

4. THE ADVERSARY ARGUMENTATION PRINCIPLE AND THE MANAGEMENT OF VALUE CONFLICTS

A potential challenge should be mentioned regarding the choice of AAP as a promising principle of procedural minimalism for dealing with value conflicts. It may be objected that the price to pay for having singled out a widely acceptable principle is a high level of abstraction. The contention is that one is left with a merely formal –almost "void"– principle, which may be accepted by a number of different agents precisely because it demands little –too little, maybe– of those who are to interact within its boundaries (see Haldane 2001, 92; Horton 2006, 144 and Spragens 2003, 595). More precisely, since AAP only demands that all parties listen to all the other parties' claims, it cannot generate any sound expectation –let alone offer a guarantee– that, once this requirement is fulfilled, the situation will actually change, and not simply revert to *impasse*.

Although a satisfactory examination of this challenge, whose worries I share, would require a work on its own, I would like to offer here some tentative considerations. On the one hand, I concur that a situation in which the agents involved in a conflict hear each other's claims is far from satisfactory. Once the different claims are heard, AAP does not require agents to build on what they have heard in order to try and accommodate their conflict. The idea that a conflict may be accommo-

dated merely by granting a formal fair hearing seems at least dubious, given the possibility of agents' losing the thread during a long series of interactions.

However, on the other hand, I do not think it completely fair to say that no sound expectations may be held that things will not revert to the exact same state in which they were before AAP entered the picture. The implementation of procedural equality and AAP through a material procedure and the interaction under such a procedure require and suggest that the parties understand that, beside their conflicting claims, they all share the same urgency to overcome a situation of *impasse* which risks preventing their values from being realized. And that a just, acceptable to all way to do that is to address their conflict by means of a procedure that grant them all an equal chance to speak up and be heard. Although certainly not conclusive, a transformation of the conflict scenario along these lines seems promising indeed and hardly comparable to an *impasse*.

In light of such an emphasis on conflict dynamics, I submit that AAP be viewed as a promising principle for the *management* of value conflicts, even though a procedurally egalitarian procedure of adversary argumentation may not be enough for their *resolution*. Revisiting the definitions offered at the beginning of the paper, whilst resolving a value conflict requires establishing an order of priority among the conflicting values, managing a conflict implies a shift of attention from the object of the conflict to the interaction between the conflicting parties. Theories of conflict management aim to offer a characterization of a *modus agendi* capable of leading to a change of the conflict dynamics, in the parties' attitudes toward each other and the disputed matter, thus contributing to removing the attitudinal impediments to moving out of *impasse*.

Most theories of justice building on circumstances of moral disagreement have concentrated on the normative formulation of principles to *resolve* the conflicts between *reasonable* agents (Rawls 1993). The presumption of reasonableness of those who are expected to conform to such principles has led political philosophers (especially those following John Rawls's footsteps) to neglect that grey, transitional area lying between a Hobbesian-flavoured prudential bargaining and reasonable disagreement. I suggest viewing conflict management as the bridge between these two much more explored areas in political philosophy. On the one hand, one would find those realist, Hobbes-inspired theories assuming the ineliminability of conflicts and offering only *ad hoc* measures to contain them out of prudence or other strategic reasons with a view to install a *modus vivendi*. On the other hand, one would locate those ambitious, Rawls-inspired theories of public reason focusing on those forms of pluralism tamed by the commitment to reasonableness and proposing normatively demanding principles aimed at conflict resolution. It is in the grey area between these two opposites, between strategic bargaining and reasonable conflict resolution, that I locate conflict management and AAP *qua* a minimal, widely acceptable principle normatively characterizing how the conflicting parties ought to interact for their interaction to be morally justifiable

to them in cooperative rather than antagonistic terms. The focus on conflict management is premised on the belief that the conflicting parties, their attitudes and relative positions, are not fixed and unchangeable (see Sen 2006). Encouraging the fair and egalitarian interaction between the parties on mutually acceptable grounds may contribute to fighting the deaf-and-blind, antagonistic confrontation between reciprocally distrustful parties, notwithstanding the persistence of substantial disagreement.

The occurrence of conflicts at *impasse* is quite persistent a feature of many debates concerning ethically-sensitive issues across contemporary pluralistic democracies. The above-mentioned debates regarding the permissibility of (some form of) euthanasia exemplify such a situation in clear terms. It is enough to recall the discussions surrounding the case of Eluana Englaro in Italy to picture an instance of conflict at *impasse*, statically entrapped in the deaf-and-blind opposition between those holding Christian moral loyalties, on the one hand, and those advocating individual freedom of choice, on the other.[11] The stagnation of the debate is certainly due, to a significant extent, to the complexity and moral salience of the issue at stake. However, a theory of conflict management focusing on the formulation of just procedures with a view to easing the interaction between the parties and changing the –oftentimes suspicious and prejudiced– way in which they relate to each other constitutes a crucial step to removing at least the attitudinal causes of *impasse* and to prepare the ground on which the controversial issue can be, at a later stage, directly addressed and possibly resolved.

From this perspective, far from being inconclusive, AAP can contribute to characterizing the *modus agendi* through which the conflicting parties may develop a reciprocally trustful attitude thus moving out of the *impasse* in which their conflict risks being trapped. The exit from *impasse* is not viewed here as a just outcome whose efficient realization makes the procedure leading to it just. As explained, not any procedure moving the parties out of *impasse* would qualify *ipso facto* as just. Only one meeting the standard of procedural equality would do. The exit from *impasse* should rather be seen as the prospect that makes a procedure of conflict management necessary in the eyes of the parties in the first place. Thus conceived, conflict management constitutes a fruitful, albeit admittedly limited, area of application of a minimalist procedural approach to justice and identifies an important sense in which it may be worthy to theorize on procedures independently of theorization on the justice of their outcomes.[12]

[11] See http://www.timesonline.co.uk/tol/news/world/article5697099.ece (last accessed: 18 January 2010).

[12] I should mention that the conflict management function of AAP is distant from the function Hampshire appointed to it: negotiation aimed to compromise (see Hampshire 1989, 137-142 and 153-155). For, as declared, my main interest in Hampshire is not exegetical, I shall set this issue aside. It will be enough to mention that if procedures of adversary argumentation were primarily meant to achieve compromise, the charge of formalism and inconclusiveness addressed in this section would be quite powerful.

CONCLUSIONS

It goes almost without saying that for the present proposal to be complete and persuasive it should be paired with a strong argument in support of a procedural minimalist route to justice in conflict. However, as declared at the outset, this has not been my aim in this article. I have rather decided to tackle a more modest, but I think still significant, issue: how should a minimalist procedural proposal, based on the idea of fair hearing, be construed to be inherently cogent and trans-contextually –if less than universally– justified. And have suggested that, building on the work by Stuart Hampshire, one such proposal should be founded on an idea of procedural equality which all participants in value conflicts could be thought to endorse.

Although this basic idea is capable, or so I have argued, to ground AAP on stronger and more universal bases than Hampshire's turn to "familiar practices" was able to do, a problem of inconclusiveness may still affect the present proposal. In response to this challenge, I have conceded that it may prove seriously problematic for those who –perhaps traditionally– concern themselves exclusively with conflict resolution. However, borrowing the distinction scholars of peace studies draw between conflict resolution and conflict management, I have suggested that AAP may be viewed under a new light as playing a paramount role in structuring the interaction between the conflicting parties in accordance with the demands of justice. Needless to say, some more, empirically grounded work is necessary in order to show how AAP can contribute to managing conflicts in a way that is actually capable of transforming the conflict dynamics in a way conducive to moving out of *impasse*. But this task will have to be carried out elsewhere in light of contextualized instances of conflict which would hardly fit in the boundaries of the theoretical procedural study I have offered here.

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