THE PRINCIPLE OF ADVERSARY ARGUMENT. JUSTICE BETWEEN SUBSTANCE AND PROCEDURES[*]

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ABSTRACT

The aim of this paper is to investigate the possibility of defining a procedural principle of justice, which is capable of making sense of radical intracommunity value pluralism and managing the conflicts that may derive from it. To this purpose, I shall introduce and critically assess Stuart Hampshire's formulation of H.L.A. Hart's principle of adversary argument (audi alteram partem - hear the other side) as a minimal principle of procedural justice. Despite my sympathy for such a principle, I will criticise the justifications Hampshire offers for it, and will argue that it is too thin and erratic. Accordingly, I will then argue for the necessity of grounding this principle on thicker bases (through the appeal to an idea of procedural equality), and suggest the need of some kind of supplementation in order to avoid the charge of formalism in the carrying out of the conflict management enterprise.

1.

1.1

It is a hardly ignorable fact that most Western contemporary societies are characterised by an increasing number of cultural, ethical, religious and political conflicts. The condition underpinning such a phenomenon can be identified with the presence of a plurality of values and views of the world held by different agents within the same communities. Besides the obvious practical issues connected to the necessity of finding ways in which such heterogeneous value-holders can live together under the same social and political institutions, this situation also denotes a significant circumstance of justice. Political theories of justice have always aspired to define trans-contextual – if less than universal – principles able to regulate the interaction of diverse agents, and to solve possible disputes arising among them. A crucial factor in the definition of such principles has always been their being justifiable to a number of diverse agents, so as to overcome the divisions caused by their varied cultural and ethical allegiances. Therefore, it is of capital importance that a political theory of justice is as inclusive and as extensively justifiable as possible. Accordingly, the aim of this paper is precisely to investigate the possibility of defining a procedural principle of justice that is capable of making sense of substantive pluralism, and is largely justifiable to a number of diverse agents holding conflicting values.

The notion of pluralism I endorse is a descriptive one, and can be identified with the recognition of a plurality of views of the world and values as a relevant circumstance of justice. The

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picture of the world I am looking at portrays different agents holding a plurality of views of the world and related values. This plurality is the matter of pluralism as I see it. In this I endorse a basic understanding of value as something that gives meaning to a person's life and that one prefers to realise. A view of the world that draws on a particular value expresses a normative commitment to the attainment of a state of affairs in which such value is realised. It is precisely in this respect that the kind of pluralism I build on is defined as substantive: it recognises the simultaneous presence of a plurality of values that qualify certain states of affairs as good and desirable[1]. Moreover, the kind of pluralism with which I am concerned is characterised as *radical*, as opposed to the Rawlsian narrower interest in *reasonable* pluralism (see Rawls 1993). In the case of reasonable pluralism, the agents involved in a dispute are assumed to have a commitment to the solution of the controversial issue, through a process of reason-giving oriented to reach for a mutually acceptable agreement between the different parties[2]. Conversely, in broad terms, in the case of radical pluralism agents are not assumed to have an inclination to problem solving and reason-giving; they are simply portrayed as experiencing a disagreement about values. This shift is due to the conviction that limiting the scope of pluralism to the only sphere of reasonableness prevents us from facing the most significant and remarkable problem brought about by pluralism itself, that is the necessity of directly dealing with the presence of a number of different and generally *mutually unconcerned* normative views of the world. Although this is only a sketchy argumentation, it will be enough to essentially characterise the conception of pluralism that is relevant for my argument here. I have provided elsewhere a more extensive version of the argument in favour of endorsing a radical notion of pluralism[3].

With these definitions in place, we can now consider the context in which such plurality of values is taken into consideration. The kind of pluralism I am dealing with here is first of all *inter*personal pluralism; in other words, it is not the kind of pluralism a person might experience within him/herself when torn between different commitments to different values. It is related, in other words, to the fact of the co-existence of different agents, each of whom advances different views and values. Moreover, in order to avoid complex issues of global justice, I have decided to ignore questions related to *inter*community pluralism. I will focus my attention, instead, on questions of *intra*community pluralism dealing with different agents sharing the same territory (under the same institutions), despite their diversities as regards values and conceptions of the good. To sum up, this

[1] Along these lines, J. Kekes defines substantive values as those that 'are derived from various conceptions of the good life; they are the virtues, ideas and goods intrinsic to particular conceptions of a good life' (Kekes 1993, p.203).
[2] In Rawls's words, reasonable agents possess 'the particular form of moral sensibility that underlies the desire to engage in fair cooperation as such, and to do so on terms that others as equals might be reasonably expected to endorse' (Rawls 1993, p.51).
[3] See Ceva 2004.

work focuses on radical substantive pluralism on an *inter*personal and *intra*community level as a fundamental circumstance of justice.

Although pluralism, thus defined, is taken to be the main circumstance of justice, I do not intend to engage with pluralism as such, nor do I aim to propose a theory of pluralism and plural values. My focus is, rather, on the conflicts about values that may arise in a context characterised by the presence of a plurality of substantive worldviews. Specifically, if, on the one hand, pluralism as such only implies, in my view, the acknowledgement of the *presence* of a disagreement among agents holding diverse values, conflicts, on the other hand, may be seen to occur when such different values cannot be simultaneously realised, i.e. when agents hold "incompossible" values, and are, therefore, at impasse given the troublesome nature of any attempt to establish an order of priority among their diverse worldviews.

In keeping with this, the considerations I shall put forward in this paper are meant to be a contribution towards the definition of a procedural theory of justice for the management of conflicts about values. By this, I mean the normative definition and justification of a principle of justice (and of the conditions for its application) which can provide guidelines for the creation of procedures that are capable of justly regulating the interactions between agents experiencing a conflict about values. Along these lines, as it is well-known, the commitment to proceduralism refuses all attempts to define substantive solutions for a given dispute, focusing instead on suggesting possible ways in which such solutions should be reached. In other words, the aim of a procedural theory of justice is not to define what a just state of affairs is, but rather how to get to it. A further note of clarification is in order here. As suggested above, this paper deals with a specific kind of theory of justice, that is justice for the "management of conflicts about values". In my view, managing a conflict means constructively addressing it, preparing favourable conditions for its settlement, and teaching agents a positive way to articulate their disagreement. Let me expand on this further.

In order to clear the ground from a possible source of misunderstanding, let me operate, in the first place, a distinction between conflicts and clashes among diverse agents. If we take a conflict to be an opposition between different agents deriving from their holding incompossible values, a clash between them is the form such conflict may take in practice. As an example of this distinction think, for instance, of the cases of internal terrorism that characterised the Italian political scene in the 1970s. There, on the one hand, the clash – between an extremist left-wing group named The Red Brigades and the Italian institutions – took the form of placing bombs in public places, kidnapping, assaults on policemen, and the like. On the other hand, the conflict resided in disagreement on the incompossible values endorsed by the two parties: i.e. rebellion and dictatorship of the proletariat on

the one hand, and civil order and liberties on the other. As will hopefully become clear by the end of this paper, my interest focuses on the latter, i.e. on the conflicts of values underlying actual clashes. Accordingly, as my interest is not directed towards the manifestations of such conflicts, the idea of management I refer to here is not concerned with violence- or, better, clash-avoidance. More precisely, in this work, my undertaking is neither to suggest indications for a theory of negotiation and compromise between the parties involved in specific clashes, nor to put forward specific procedures aiming to deal with empirical cases. In a nutshell, my interest is not in how it is possible to reduce the risk that a conflict about values turns into violence, but how to constructively address the conflict of values itself.

1.2

Having thus restricted the scope of my investigation, let me concentrate on the meaning of the management of conflicts about values. To do so, a first distinction needs to be drawn between the management of a conflict and its resolution. Solving a conflict of values (i.e. solving a situation where the fact of agent-1's endorsing, say, freedom of choice cannot coexist/be realised with agent-2's valuing respect for a leading authority) means to take a decision on the matter of dispute, either establishing an order of priority between the different values, or promoting the adoption of one of them instead of the others, or proposing the introduction of another – say third – value that can prevail over the conflicting ones. The management of a conflict is a significantly different matter. It involves devising a way to address a conflict constructively, preparing favourable conditions for its settlement, without however aiming to solve it. It is not hard to imagine cases where neither an order of priority can be established, nor is there one single value that can become the focus of an agreement among the parties. In such cases, instead of throwing in the towel and accepting the fact of a conflict, some work can still be done. Namely, instead of *merely* "agreeing to disagree", agents may be shown a way to disagree in positive terms. Whilst a theory of conflict management aims to define an effective and time-efficient way to fulfil this task, a *theory of justice* for the management of conflicts about values aims to do this in a *just* way.

This is when the idea of a principle of justice (that can help us in defining what a just procedure is) enters the picture. In order to define such a principle, in what follows, Stuart Hampshire's formulation of H.L.A. Hart's principle of adversary argument (*audi alteram partem* - hear the other side) is called upon (§2). Despite my essential sympathy with this principle, I criticise the reasons Hampshire offers for its adoption, as lacking a strong normative basis. Hampshire draws, indeed, too heavily on a supposedly widespread, and empirically recognisable, familiarity of different agents with procedures of adversary argumentation. This is done without coupling this argument with any reason in light of which such familiarity should be viewed as a strong enough basis to think that agents would also accord priority to this principle in situations of conflict. In view of this, I suggest the necessity of grounding this principle on a stronger basis. In order to fulfil this task, the idea of procedural equality is introduced and explained in its role as a procedural value that is meant to

ground a procedural principle of justice for the management of conflicts about values, which is both minimal and cogent. This idea is presented – in its commandment to allow every party to a conflict an equal chance to have a say – and its adoption is supported in light of two lines of argument (§3). Besides reference to a minimal intuition the parties in a conflict may be thought to have regarding the importance of getting a chance to make their cases, prudential reasons are suggested in view of the characterisation of this idea in low-cost terms (§4). With these in place, the connection between the endorsement of this procedural value and the adoption of the principle of adversary argument is made explicit.

2.

2.1

In the face of conflicts jeopardising the existence of present-day communities, Hampshire suggests that the agents involved in such disputes should adopt, as a normative guidance for just interactions, a minimal procedural principle of justice, namely the principle of adversary argument. This principle is condensed, in accordance with Hart's definition, in the Latin formula *Audi Alteram Partem* (i.e. hear the other side), and requires agents involved in a conflict to listen to each other's claims and arguments. The principle of adversary argument (hereafter AAP) is procedural, since it does not provide a substantive definition of what is a just state of affairs, but shows the agents a just way to proceed in order to deal with the disputed matter in a just way. In putting this principle forward, 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' (Hampshire 1991, p.1) and which can be summarised in the principle of adversary argument itself. Accordingly, Hampshire does not propose AAP as an innovative normative principle to be introduced *ex novo* to different agents. He indeed singles out AAP by observation of different existing political and social practices, at the heart of which a commitment to such principle can be individuated[4]. The reference to AAP as a minimal principle of justice has, in Hampshire's view, a major merit, namely it is capable of combining 'an element of universality with an element of diversity' (Hampshire 1999, p.58). It offers, that is to say, a general principle of justice which can be applied to different contexts and situations, and that relies for its realisation on well-established context-related institutionalised practices of deliberation and interaction, which 'must have earned, or be earning, respect and recognition from their history in a particular state or society' (Hampshire 1999, p.58). Despite contingent differences, such a principle is, therefore, thought to be acceptable to – if not *de facto* accepted by – several diverse agents.

[4] Think, for instance, of 'the weighing of evidence for and against a hypothesis in a social science' or 'the weighing of evidence in a historical and criminal investigation or in a civil litigation' (Hampshire 1999, p.30).

Although Hampshire explicitly introduces AAP as a minimal principle of procedural justice in *Justice is Conflict* (Hampshire 1999), a sort of initial justification of this principle seems already present in *Innocence and Experience* (Hampshire 1989), although in a different form. Whilst in his earlier book Hampshire makes constant, and almost exclusive, reference to a supposed natural human disposition towards the use of practical reasoning, in his latest work he makes his argument in support of AAP also rest on pragmatic considerations, which appear to be more consistent with his overall commitment to develop a minimal theory of justice. Facing the impossibility to find a substantive unanimous solution to conflicts about values, Hampshire suggests adopting a minimal procedural conception of justice. In *Innocence and Experience*, the proposal of such a conception is essentially based on a presumption about the widespread use of practical reasoning (involving competences like the capacity for weighing alternatives, the ability to judge and to search for compromise) in different cultures. Hampshire assumes that practical reasoning is a feature shared by all human beings, or better a 'species-wide and cross-cultural endowment' (Hampshire 1989, p.119), which can constitute the basis for defining common procedures of interaction, despite disagreement on the substance of different particular conceptions of the good held by diverse agents.

The main problem with such a claim is that it seems to rest on an unjustified assumption – i.e. an assumption in support of which no reasons are given – namely, the presumed inclination and disposition of human beings to make use of practical reasoning. This may be a source of problems if Hampshire wants to talk to agents involved in a context characterised by substantive plurality. Substantive disagreement may certainly apply to this idea of human nature, as well as to other substantive views and theories. Now, once Hampshire's presumption of the inclination to practical reasoning is questioned as a widely acceptable basis to defend AAP, another ground must be provided in order to support it. Hampshire seems to take this undertaking seriously in *Justice is Conflict*, where he derives the disposition to practical reasoning (together with the commitment to AAP) from empirical and historical observation of the actual existence of such shared practices of reasoning, problem solving and deliberation. Despite the differences between diverse systems of public interaction, Hampshire detects in the vast majority of them the same essential shared commitment to give reasons when putting forward claims. He underscores, in other words, an inclination to make use of practical reasoning. This move seems to me to be significant if we are to take pluralism seriously[5]. As already remarked several times, the acknowledgement of the presence of a plurality of values within present-day communities prevents us from making any use of such a claim as that on the familiarity with practice of practical reasoning, without sustaining them with reasons that can be widely recognised and endorsed. Consequently, relying on empirical considerations to demonstrate

[5] Let me clarify that by "taking pluralism seriously" I mean the intention to address recognition of a plurality of values as something relevant to questions of justice.

the familiarity of diverse agents with certain practices seems a promising strategic move in order to give strength to Hampshire's argument in support of AAP, which can be conceived as the minimal principle which lies underneath such practices.

2.2

Although I am inclined to accept that AAP is *de facto* present at the heart of different existing practices and procedures of interaction, Hampshire yet seems to give no persuasive argument to explain why agents should give priority to it when experiencing a conflict. Let me explain this remark. I contend that knowledge of a principle (even familiarity with it) does not necessarily imply its prioritisation over other principles or values. Let me offer an example[6]. An official visit was organised by the Saudi Arabian Police to a British military base. As is British custom, a party was to be thrown to celebrate the event. In due respect from Islamic food and drink restrictions, the British hosts decided to animate the party by organising a few games to be played together with the guests. To this purpose, the rules of Musical Chairs were explained to the participants, namely when the music stops everyone needs to get seated as soon as possible. Although the members of Saudi Police were told the rules of the game – assuming a certain familiarity with practices of rule-following – they were unable to play it according to these. When the music stopped, instead of rushing to get a chair, they would wait for the highest ranked officer to be seated before each progressively taking a seat in turn – always in accordance with rank. What such a case seems to show is that to provide a principle or a rule, assuming familiarity with a certain practice, it is not enough to make agents actually accord priority to it. In this case, the assumed familiarity with the very practice of rule-following *per se* was not sufficient to make Saudi policemen give priority to the rules of the game over reverence towards the most important members of the group. In general, we can derive from this story that even if we assume that everyone has had experience of following rules in his/her life, this does not mean, or imply, that s/he will be ready to apply a specific rule when s/he has to decide between different courses of action. Similarly, the familiarity different agents may have with certain practices of practical reasoning and adversary argumentation does not imply that those agents will be ready to give priority to AAP (as a principle grounded on those same practices) when involved in a conflict.

Looking more carefully at Hampshire's argument, we can see that he suggests another defence of AAP based on the idea of shared evils. The argument goes like this: 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, p.47). An argument can thus be put forward, according to Hampshire, suggesting

[6] I am grateful to Alistair Edwards for telling me about this case.

that AAP is compatible with the need to avoid those evils. Unfortunately, the idea that what constitutes an evil is more crossculturally acceptable than is what counts as a good is at least controversial, if we are to take substantive pluralism seriously. It is not so hard, indeed, 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 realisation of his/her 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 (e.g., think of some communist authoritarian doctrines, or of religions which condemn attachment to this worldly life as an impediment to reaching the real heavenly one). Hampshire also gives another slightly different version of this 'evils-based' argument for the defence of AAP. According to this version, whatever conception of the good one might have, anarchy deriving from violent means of dealing with conflicts is seen as the greatest evil, and agents therefore generally want to avoid it. According to Hampshire, this idea should be enough to support the adoption of a procedure based on a principle of dialogical interaction (AAP) capable of leading to the peaceful management of conflict. Although I am quite inclined to endorse this argument, it again seems unfortunately to rest on some unjustified presuppositions, in particular on a specific conception of moral psychology and the aversion to violence. For my current purposes it will be enough to note that this argument also seems unsatisfactory in providing an effective normative and pluralism-sensitive defence for the principle of adversary argument. What is needed at this stage is the definition of a different ground for the adoption of AAP as a minimal principle of procedural justice, and it is to this task that I turn in the next section[7]. Before proceeding with this undertaking, however, let me point out that these critical remarks on AAP are not meant to lay the ground for its rejection. Actually, I endorse this principle in the way it is depicted by Hampshire. My doubts are about the effectiveness of the reasons Hampshire offered in its support, especially as regards the attempt to outline a theory of justice that is sensitive to pluralism and takes it into account when formulating reasons in support of its principles and arguments. My critical points are, consequently, to be read as indications towards making AAP more committing by being more strongly grounded. It is to the fulfilment of this task that I devote the remainder of the paper.

3.

3.1

[7] Note that a sort of epistemological justification may also be proposed in support of the adoption of the AAP. According to this line of argument, the need to hear all sides of a discussed matter is the only way to build up a reliable reconstruction of the disputed issue (reliable, since not fully depending on a partial account) and to get close to the truth. However, given the context of pluralism here considered, and the explicit refusal of the Platonic idea of harmony and full reconciliation that Hampshire argues for, something like *the* truth on a disputed matter seems to be unattainable. In other words, if both the possibility of attaining the truth on a particular controversial matter and the very existence of something like the truth are questioned, then a justification which draws on epistemological reasons seems unacceptable.

Although I am certainly inclined to accept the idea that practices of adversary argumentation can be found – in different forms – within different contexts, I also contend that such familiarity can hardly be considered a sufficiently strong basis on which the adoption of AAP can be grounded, as a minimal principle of justice for the management of conflicts about values. In order to support AAP on a sufficiently strong basis, it is not enough to show its potential acceptability to different agents – although this is for sure an essential goal. It is my contention that an argument is also needed to support the adoption of AAP in situations of conflict. In brief, an answer is to be given to the following question: why should agents experiencing a conflict about values interact on the basis of a procedure that requires all parties to hear what the others say? In short, why should conflicting agents give priority to AAP as a minimal principle of justice? Unless we consider AAP both as a principle of justice and a value in itself[8], it is necessary to introduce an idea that can work as a qualifying criterion for the definition of just procedures. I introduce the idea of *procedural equality* to fulfil this task. This is a very basic conception of equality and can be translated into the idea that everyone involved in a conflict has to have an equal chance to have a say. Let me try to outline a characterisation of this idea, taking the form of a value, in what follows.

In order to understand what are the main features this value embodies, let me make clear in what sense this idea of equality is procedural. A procedural value is a value that provides rules for interaction and has no particular substantive claim in its content, nor does it mirror a specific conception of the good. Let me quote the distinction between substantive and procedural values that is operated by John Kekes:

> 'Substantive values are derived from various conceptions of a good life; they are the virtues, ideas and goods intrinsic to particular conceptions of a good life. […] On the other hand, procedural values regulate the pursuit of substantive values being rules or principles for settling conflicts, distributing resources, protecting people and setting priorities among substantive values' (Kekes 1993, p.203-4).

Examples of substantive values might be the traditional idea of autonomy supported by liberals, or an idea of equality like that put forward by Brian Barry (see Barry 1995), namely the essential equality of all human beings *qua* moral agents. Procedural values are, instead, justified only on the basis of their role in terms of the definition of the procedure they are meant to ground. The conception of equality I am arguing for can be classified as procedural since it does not draw on any specific conception of the good. It does not require agents to accept any specific claim about human nature or about a particular view of the good life. It rather commands the endorsement of a *modus operandi*, which sets the conditions of possibility for the conflict-management interaction itself. Agents are not asked, that is to say, to understand themselves as equals, but to allow each other an equal chance to

[8] See Hampshire 1999, p.66, where he argues that 'open debate about compelling values is itself a value'.

say what each wants to say. Note that this does not correspond to the claim that everyone is to be allowed *a* chance to have an *equal* say, assuming a certain equality in the worth and relevance of every position and case that may be made. Procedural equality only demands agents be given an *equal* chance to have *a* say[9]; here, the way this requirement is met, i.e. the specific material way in which agents are actually given that equal chance, is not to be defined by the theory, but needs to be left for definition to the specific agents, in light of their claims, the circumstances in which they interact, and the nature of the issues at stake. I shall shortly return to this issue. For the time being, it will suffice to note that, in brief, procedural equality does not require agents to change the way they *see* each other, but, rather, to change the way they *interact* with each other. One may understandably ask here in which sense agents would be *required* to adopt procedural equality as the guiding value in their interactions. In my view, they are required to do so, and indeed can be given reasons for this, if they want to overcome the impasse they experience. This conditional requirement can be considered both as a starting point for my normative analysis and as a criterion for inclusion within my proposed procedure of justice. By this, I mean that those who are included are all those who want to do something to bypass the deadlock in which they are caught up and can, on this basis, be given reasons to follow the indications a procedural principle of justice suggests. I shall return to the defence of procedural equality shortly. Let me spell out, first, the main traits that qualify this crucial idea.

3.2

Procedural equality is procedural in a twofold sense. First of all it is a value that makes reference to a procedure, i.e. that qualifies a certain way in which agents are required to interact, namely allowing each other an equal chance to have a say. This means that procedural equality only poses constraints on the nature of the procedure to adopt, but does not say anything about the substance of a state of affairs that may be reached through the application of such procedure. In other words, once agents know that – in order to have a just procedure – they are expected to devise a "procedurally equal" procedure (i.e. a procedure that grants all parties an equal chance to have a say), they yet have no access to indications on the features that will characterise the state of affairs originating from their interaction, nor do they know on the basis of what specific material procedures they will interact. I shall expand on this shortly. What I seek to highlight here is the open-endedness of any procedure which is based on such a commitment to procedural equality. Secondly, procedural equality is justified in a procedural way. This means that it is not endorsed and defended as an intrinsic value, i.e. as something valuable *per se*. It is, rather, espoused as an instrument for the definition of a given procedure. This distinction relies upon a more general one between intrinsic values (valuable *per se*, like for instance the traditional idea of liberal autonomy), and instrumental

[9] The reasons in light of which agents should adopt this idea independently of their considering others as equals in a more fundamental way will be explained below.

values, that are, instead, endorsed in view of something (as, for instance, chastity which in a traditional Catholic moral system is pursued as an instrument to help the faithful to concentrate on praising God without distraction by bodily matters). But this is not all. In my view, another distinction is needed in accordance with the kind of instrumentality that is attached to the pursuit of a given value. Namely, an instrumental value can either be substantive or procedural. In the former case, something is valued in order arrive at a certain state of affairs, or to promote another value, as for instance treating the others equally so as to promote respect in Kantian terms. In the latter case, something is valued, instead, as the basis for a procedure that is needed to deal with a given situation; accordingly, I endorse here procedural equality, as a grounding value for a just procedure to constructively address (i.e. to manage) situations of conflict.

Another feature of this idea of procedural equality is that it does not require, as its precondition, that material equality is realised, i.e. it does not demand in order for its commandment to be fulfilled that the effects of differences in "bargaining" power between the parties of a dispute are nullified. The participants in a procedurally equal interaction (i.e. all the members of a given community involved in a certain conflict) are required to perform a change in their attitude. To this end, possible material inequalities are beside the point. There is no need to equalise the economic or power situation between the different agents in order to carry out an interaction on a procedurally equal basis. This does not imply the need to bracket inequalities and pretend they do not exist[10]. I merely argue that they do not have a determinant effect on the possibility that agents adopt a procedure that is "procedurally equal", i.e. that allows them all an equal chance to have a say. One may object to this that, surely, the effects of inequalities on the bargaining power of different agents need to be addressed in order to implement the idea of procedural equality in a non-utopian way[11]. The answer to this draws on the conception of procedural equality as a requirement of justice, and not as something that is to be directly translated into specific procedures. My concern here is to defend procedural equality as a value to be fulfilled in order to have just procedures. The specific policies or strategies that will have to be adopted to implement this value, so as to translate it into actual practices and procedures, do not fall within the minimal role I have appointed to a theory of justice. They need, rather, to be left to a contextualised evaluation of the specific contingent conditions that are at work in different situations. This implies that within certain situations the definition of just procedures – in terms of "procedurally equal" procedures – will have to be accompanied by the development of certain policies to enable economically disadvantaged agents to actually enjoy an equal chance to have a say. However, I contend that the form and account of such policies need to be evaluated and defined case by case – by flesh and blood agents involved in specific situations – in the process of

[10] On this see also Chambers 1996, p.206

[11] These remarks respond to a point made by Ian Carter, whom I thank for his critical wit.

defining material procedures, which to be just should be "procedurally equal" in the sense specified by the theory. I shall return to these issues later, when discussing a possible objection to this idea of procedural equality in terms of its neglect of power relations.

This idea of procedural equality significantly differs from the traditional legal ideas of participatory equality, where the fulfilment of the material conditions for participation in public debate is utterly relevant to the possibility of the realisation of equality itself. In other words, the idea of equality I propose here cannot be translated into an equal criterion for access and participation in deliberative practices of public discourse. Bearing in mind my interest in the study of a theory of justice for the management of conflicts about values within plural communities, the commitment to procedural equality affects only the agents already involved in a conflict which needs to be addressed, according to a "procedurally equal" procedure of conflict management. My proposal applies, that is to say, to already given contexts of conflict, where the parties concerned are already defined, and not to a deliberative setting, which involves all the community (broadly conceived) in defining its 'constitutional essentials'. This makes my interpretation of procedural equality significantly different from that Rawls referred to in terms of equal participation. That principle commands that 'all citizens are to have an equal right to take part in, and to determine the outcome of, the constitutional process that establishes the laws with which they are to comply' (Rawls 1971, p.221). Since the parties involved in a conflict are already specified, no equal criterion of access to the interaction is needed; what is required is, instead, a criterion on the basis of which those who are affected by a conflict can interact in a way that is acceptable to them all.

4.

4.1

In the light of this characterisation of the idea of procedural equality, let me try to present a possible defence for its endorsement. In particular, the first question I would like to address may be summarised in these terms: why is a "procedurally equal" procedure an essentially just procedure? To suggest an answer to this question, I make reference to a minimal intuition on the worth different agents attach to their being allowed an equal (and not smaller) chance to have a say, when experiencing a conflict, as a means to articulate their disagreement. Moreover, given the circumstances of substantive pluralism that these considerations build on, I suggest that also those agents who do not share such minimal intuition may be given prudential reasons to adopt procedural equality, namely as a low-cost basis for fruitful interactions.

In the first place, I want to suggest that the choice of procedural equality, as the minimal requirement for the definition of just procedures for the management of conflicts about values, is grounded on a widely acceptable intuition. The very basic idea here is that when agents experience a conflict about values, a minimum requirement of justice is that all the parties are allowed to express their views. Such an intuition can find its basis in the idea – having the status of an assumption – that agents are genuinely involved in a conflict, and do not instrumentally pursue it to achieve some other end. In this context, it seems unlikely that any of them would think it unjust to be granted a chance to have a say. I think almost all of us have had experiences of having felt treated unjustly when the chance to say something in our own defence is denied us. Accordingly, since the opportunity to have *a* say seems to be widely desirable and recognised as just, it seems to be plausible to affirm that for a procedure of conflict management to be just, it is essential that such an opportunity is given equally to all those involved. In other words, if agents value their having a chance to have a say – which is likely to be the case when they genuinely experience a conflict about values – it seems plausible to maintain that they would not be happy with a procedure that either denies them such opportunity, or gives some other agents a greater chance to speak up than that allowed to themselves. It might certainly be possible that the preferred procedure is one that either denies others such opportunity, or gives themselves a greater chance to speak than that allowed to others. But however likely this possibility may be, it can nonetheless be argued that in all cases the minimal requirement to be met – from the viewpoint of each party – is that a procedure does not give *oneself* a smaller chance than that it gives others. The idea is that, although one may look at a procedure that denies others a chance to speak as the ideal, the essential *minimal* requirement is that s/he is not given a smaller chance than others. Thus, a procedure that minimally grants to every agent an equal chance to have a say – although it may not correspond to an ideal procedure – nonetheless meets the essential requirement. In other words, I contend that from every party's perspective this can be seen as a minimally just procedure, since it fulfils what I have suggested to be their minimal concern, namely that they do not get a smaller chance to make their case than the others. Hence a "procedurally equal" procedure (i.e. a procedure that grants everyone an equal – not smaller, or greater – chance to have a say) seems to correspond to a basic intuition, and can accordingly be seen as a just procedure. Note that I am not making here any reference to a sort of Scanlonian desire – or disposition – to justify one's view to others (see Scanlon 1998), but only to a widely recognisable need to express disagreement and hope to influence the decision that needs to be taken. Accordingly, no assumption is made as to the preferred way to express such disagreement – whether, say, through "public reasons", or following an interest-maximising strategy.

Unfortunately, however, given the circumstances of pluralism we face, it may well be that some agents do not attach any value at all even to having a chance to have a say as a means to express their disagreement. I suggest that even these agents may be given reasons, i.e. prudential reasons, to adopt the idea of procedural equality. Provided that they genuinely experience a conflict about values, and do not try to exploit a situation as a means to some other goal, such reasons concern the relatively low-cost nature of the endorsement of a "procedurally equal" procedure, when compared to the available alternatives that the involved agents may have. Let me make this point clear. Given the basic presumption that agents can recognise prudential reasons and act in accordance with these – the underlying assumption here is that the agents involved in a conflict about values want to do something to get out of the impasse they experience. This is based on the assumption that they are genuinely fighting over an issue because of its problematic nature (and not because they hope to achieve some other end), and consequently want to find a way out of impasse. This should be distinguished from any presumption of an inclination to exit impasse in a cooperative and peaceful way. In short, agents are not assumed either to be willing to manage (i.e. to constructively address) a conflict, or to be inclined to address it in a particular way. They are assumed merely to be ready to do something to get out of deadlock; this may be anything, literally even killing each other if this appears the best strategy. Any particular way forward carries the burden of proof and needs accordingly to be supported by reasons. Specifically, it is my task to show that a just way to do so consists of the definition of peaceful procedures to constructively address the conflict. It is important to notice, at this stage, that this assumption can be translated into a hypothetical imperative, which goes like this: "if agents wish to get out of impasse, they have reasons to endorse a procedure based on the idea of procedural equality, and give it a try as a normative model in accordance with which to create specific material procedures for the management of conflicts about values". The hypothetical nature of this argument makes it weaker than other kinds of categorical argumentations, where the "if" becomes a "since", thus acquiring the status of a necessity[12]. For the development of a theory of justice for the management of *conflicts about values* to make sense, I deem it essential to ensure that the scenario we examine is relevant to the theory, i.e. is characterised by a situation of impasse reached by agents holding incompossible values. Accordingly, in order to build my case, I assume this condition is met.

Generally speaking, in light of this, those who are included in the area of concern of my proposal are those who genuinely experience a conflict about values – within their communities – and are faced with a situation of impasse that is to be overcome. Conversely, excluded from my area of concern are those agents who do not experience a genuine disagreement over values (and thus are not

[12] See on this Chambers 1996, pp.191ff.

interested in addressing the matter of content in search of an accommodation), and, accordingly, do not mind being stuck in a deadlock, or even hope to exploit it to obtain some other goal[13].

4.2

Once these agents are excluded, I have argued that also those who do not share the minimal intuition about the worth of a "procedurally equal" procedure for the management of conflicts about values can be given prudential reasons to adopt the idea of procedural equality, and to devise procedures that respect it, instead of going for other options. These alternative options might be:

(i) engage in a verbal fight (i.e. address each other insultingly and aggressively);

(ii) resort to physical violence;

(iii) exercise their exit option and leave the scene, or maybe even the community.

Let me consider these options in turn, critically addressing them in order to pave the way for my case in support of the adoption of the idea of procedural equality.

Option (i), i.e. a verbal fight over an issue, can be dismissed as highly unproductive. We have seen that the kind of situations I look at are characterised by an established conflict that causes a situation of impasse, and an indecisive clash between agents. Engaging in a verbal fight, shouting at each other – possibly without listening to what the others are saying – seems unlikely to lead agents anywhere close to overcoming impasse. A row seems, rather, an extremely time- and energy-consuming activity, which is likely to exacerbate the conflict – fuelling misunderstandings – instead of helping the agents out of the impasse. Thus in terms of actually bypassing a deadlock, this option seems not to be worth the effort, in view of its scarce results. Accordingly, it appears necessary to abandon this route and look for something more promising.

Agents may want to escalate their conflict into physical violence (option ii). I contend that this option is an extremely costly way to proceed. Let me first explain what forms violence may take as a way out of impasse due to the presence of a conflict about values. Generally speaking, first of all, there is physical violence of several varieties and degrees, such as civil war, terrorism, bodily or material damage, and the like. Moreover, acts of physical violence, perpetrated by agents to overcome an impasse, may aim either to physically eliminate opponents, or to threaten them. As an example of the former case consider – as an extreme circumstance – genocide, where a party to a conflict is physically and systematically eliminated. Violence can also be a way to "educate" or indoctrinate opponents. Think, for instance, of the strategies adopted by the Fascist and Nazi regimes, who beat up

[13] Hereby, I exclude agents who genuinely experience a conflict about values and do not want to overcome the impasse they are caught up in. The uncontroversial thought that lies underneath this claim is simply that value-holders would like their values to be realised. Accordingly, since their being in deadlock – as a consequence of a conflict – prevents them from realising their values, it is plausible to think that they feel the need to do something to overcome it, unless they are exploiting the impasse to pursue some goal, other than the realisation of the value in light of which they disagree.

political opponents to punish them and inculcate their views. I contend that even if some agents may think that such strategies represent a fast and effective way to bypass impasse, these are, nonetheless, very costly routes to take. More specifically, I go as far as arguing that if violence is not pursued for its own sake, it can hardly be considered the least- or less-costly way to overcome a deadlock, given its costs in terms of human life and of course the high risk of the perpetrator also becoming a victim[14]. If we consider these costs, it seems that violence is a good option in order to get out of an impasse only when a particular value is attached to violence itself, i.e. when it is pursued for its own sake. In order to characterise which individuals might embrace such a position, let me refer to a Stanley Kubrick's film about a gang who commit all sorts of violent acts for their own sake and let me, accordingly, call these agents clockwork-orange types[15]. Once clockwork-orange types are excluded, I contend that the costs and risks attached to acts of violence seem a very high price to pay by agents needing to overcome a situation of impasse, especially if other non-violent alternatives are proposed. It should also be noticed that there are, certainly, some cases in which violence is seen as the best solution despite its costs[16]. Think for instance of, say, ETA terrorism which seems not to regard to the loss of human lives, or a possible state of uncertainty deriving from civil disorder, as costs too high to pay. I cannot but acknowledge this as a limit to my proposal. However, let me say in defence that the fact that the costs associated with violence are not perceived as *too* high, does not mean that they are insignificant. This may plausibly imply that if a less costly procedure is suggested, it could be prudentially justifiable to abandon the route of violence – unless, let me repeat, one attaches an independent value to it. I contend that the development of procedures for the management of conflicts that draw on such a minimal idea of procedural equality can be seen as a relatively low-cost alternative to adopt. The commandment of procedural equality only demands that agents allow each other an equal chance to have a say – not that they treat the others as equals in a more fundamental sense (say, in light of some Kantian imperative of mutual respect), nor that they consider what the others say as having an equal worth. This seems not to be too much to ask from agents who do not value violence in itself, and want to do something to change a situation of impasse their being in conflict about some values brought them to.

Option (iii), i.e. the exercise of the exit option, can also be rejected because extremely costly. Simone Chambers's exemplifies the idea beneath this argument:

> "Let us say that you and I go sailing every Sunday and we have done so for quite some time; I am always the skipper and you are always the crew. One day you say

[14] This argument is consistent with Hampshire's suggestion of the need to avoid violence in the management of conflicts (see §2.2). However, the argument I put forward does not presume any negative value be associated with violence as such. It rather draws on its being a rather costly strategy to pursue for all those who genuinely experience a conflict about values and do not pursue violence for its own sake. In short, the argument I put forward does not presume human beings to be violence-averse, but it rather presents the exercise of violence as an extremely costly route to take to get out of a situation of impasse caused by a conflict about values.

[15] I owe this effective suggestion to Hillel Steiner.

[16] I owe these remarks to Ian Carter.

> that you wish to be in charge and give the commands. I, however, am adamant that I know more about sailing and so should remain in charge. The more value we place on sailing together, *even on just sailing*, the more motivated we will be to resolve this problem rather than simply walk way from it" (Chambers 1996, p.191 emphasis mine).

In line with this idea, since we are dealing with *intra*-community pluralism, it is plausible to argue that there are very high costs attached to leaving a community as a consequence of experiencing a conflict with other members. Namely, having to cut significant relationships with other social partners, and/or rethink life on the basis of changed foundations. It is to be noticed that this argument takes an hypothetical form, that is to say, it gives us no guarantees that one will (now or tomorrow) prefer sailing over making a point of principle. However, I suggest that is certainly plausible to argue that when the whole life of an agent within a community is at stake, s/he may conceivably be reluctant to dramatically change it, if a viable alternative is offered. In accordance with this idea, borrowing from Hume, Chambers also reminds us that the idea of being free to leave one's own social and political context (together with its web of relationships) can often be seen as being free to jump overboard 'into the ocean and perish'. A possible problem with this argument may arise if we think that – dealing with cases of intra-community pluralism – those who might exercise the exit option may be either individuals or groups. It is possible to contend that the costs that are to be paid by an individual leaving his/her own community are higher (in terms of looking for and getting accustomed to a new context, rebuilding relationships and, in general, starting anew) than those paid by a sub-group, whose members decide to leave the community together[17]. In this latter case, especially if the group is homogeneous and has always been fairly independent, the costs of starting anew may possibly be smaller than those attached to renouncing to its own peculiarities for the sake of remaining within the larger community. One may accordingly argue that the costs of leaving the community for a group depend on its size: if it is big enough, it may not find secession an extremely costly route. I concede this may be a weakness in my defence of the adoption of procedural equality in light of prudential reasons. However, let me try to defend my argument with a basic remark, namely that for many groups leaving a community is not a cost-free operation. This is particularly evident if we do not presume that groups are compact and homogeneous entities, but rather recall that they are made up of different individuals who belong to a group in a certain aspect of their lives, and also to other groups in other aspects. For example, it can be very costly for a Catholic, say, to live in a community that legally allows doctors to perform abortions, and this may be much more costly than leaving the community. But all the same, it is plausible to think that this person has a complex identity that can hardly be reduced to his/her being Catholic, even if this may be the leading aspect of his/her

[17] A significant example of the costs attached to an individual's leaving his/her own community can be found in the case of exile, when it is used as a form of punishment. If leaving one's community were not costly, why would exile be considered as a sanction?

life. This person may also be, say, a member of some associations, as, for instance, associations for the care of the elderly, and this membership may be fundamental to this person, and conditional on his/her staying within that community. This person may also have a job and be a part of, say, an academic community, which is equally an important element of his/her identity, and something that would be costly to leave. This conceivably leads us to contend that some agents in some cases may consider leaving their community an almost cost-free operation, insofar as they are members of a particular group. However, in light of their complex memberships, such operation may yet bear costs if agents consider it *qua* members of other groups, which are integrated in the community and which they should abandon if they decide to exercise their exit option.

4.3

In view of these considerations, I suggest that a less costly and more promising way is available, and this is represented by the adoption of the idea of procedural equality as a fundamental grounding value for a principle of justice for the management of conflicts about values. I contend that this idea is acceptable to all those who experience a genuine conflict about values, and want to do something to get out of the impasse that their being in conflict has brought them to, given the lack of evidence in support of one view or another, and of a procedure to articulated their disagreement. This contention is partly based on prudential reasons, which may be given in support of the adoption of procedural equality as a less costly alternative to violence – when violence is not valued in itself – or the exercise of an exit option. Moreover, the adoption of this idea is seen as more promising than engaging in verbal fight, which is likely to give rise to rambling interactions leading to a further deadlock. Furthermore, the idea of procedural equality corresponds to a minimal intuition as to what may count as a just procedure for the management of conflicts about values, namely a procedure that grants every party an equal (not smaller, nor bigger) chance to have a say. Those who do not share such intuition can, nonetheless, adopt procedural equality as a basis for the development of a just conflict management procedure to regulate their interaction, given its low-cost nature, in comparison with the alternatives they have to overcome a deadlock.

Now, the following question may arise: why should agents belonging to the same community, and conceivably held together by certain bonds of solidarity, or by a shared commitment to some common values, be ready to adopt this relatively "thin" procedural value, as a guideline to devise just material procedures of interaction? In other words, why not simply focus on what they (substantively) share in order to overcome their conflict through the pursuit of a sort of Rawlsian overlapping consensus[18]? A tentative answer to this question hinges on the idea that the fact that some agents share

[18] For an extensive definition of the idea of overlapping consensus see Rawls 1993, pp.133-172.

something – either a certain view or a given life experience – that can hold them together is a wholly contingent matter. Such a bond can either be in place or not, and its specific nature is typically unknown outside specific contexts. For instance, some agents, despite their disagreement about political views (e.g. one is a conservative, whereas the other has more progressive views), may nonetheless be linked by sharing a religious faith, and this can be a basis on which to build a strategy to manage the conflict they experience at a political level. But there may be cases where shared ground is not enough to overcome the opposition caused by a conflict about values. Think, for instance, of agents who, despite having been very close friends for years, hold different views of the value of life and the stage at which, properly speaking, life is thought to begin. Now, imagine that this issue has never been a problem until one of the friends – facing an unexpected pregnancy – decides to have an abortion. Since the other friend thinks that having an abortion means to murder a person, whose life already has a sacral value, the background of shared experiences that constituted the bond of friendship between them no longer holds and cannot be considered a strong enough basis on which build a strategy to deal with the conflict. In this, it is evident, a chief role is played by the contingent features that happen to characterise the different relationships established between the particular agents involved in a conflict, within specific contexts and in light of particular circumstances. Being interested in a theoretical approach to questions of justice, my procedural proposal has the ambition to transcend these contextual limits and, in short, to be trans-contextually applicable. In other words, through the proposal of a minimal procedural approach to conflicts of values, what I am trying to do is to suggest a guideline that can be applied and work within different contexts, regardless of the specific relationships holding the members of a community together. If, in some specific cases, such procedural conditions do not serve alone, but agents also make reference to a deeper shared commitment to overcome their disagreement, then this is certainly even better for them, in terms of the possibility to find a way to manage their conflict. This is, however, a matter that is to be left for contextual evaluation. What remains essential is respect for the minimal procedural guidelines that apply to all conflicts and, specifically, make their management not only viable and successful, but also, and most significantly, just.

It may seem odd that, in all this, I have basically left no room for the study of the effects of power relations on the possibility to adopt a "procedurally equal" procedure. I concede this point, but, nonetheless, I would like to defend this choice, following a factual line of argument that draws on the specific nature of the kind of situation I look at, i.e. a situation that is characterised by an impasse due to an underlying conflict about values. The argument goes like this: an agent may object to the adoption of procedural equality in light of his/her claim of having another option – besides engaging in a verbal fight, making use of violence, or leaving the community – namely that, since s/he is more

powerful than the others, s/he is strong enough to override their claims and reduce their resistance to his/her will**,** without using violence but only (either economic, or political) power. In view of this, s/he might believe that treating others on a procedurally equal basis is not worth the cost, since it would imply renouncing the advantage of exercising his/her power. However, we need to remember that the kind of situation I have outlined from the beginning of this work, as the context to which my considerations apply, is characterised by agents' being at an impasse, due to the impossibility to solve their conflict. In this sort of situation, if the powerful agent were actually so powerful as to reduce the others to his/her will, agents would not find themselves stuck in such a deadlock. This is certainly not intended to imply that where there is no impasse there is no conflict; I in no way deny the existence of cases of oppression by more powerful parties. Such cases often conceal dramatic conflicts about values: think for instance of a conflict between freedom of expression and censorship within a totalitarian regime. In that case there is no impasse – since the dictator simply prohibits opponents from speaking – but there is a conflict beyond any doubt. However, the fact that such cases exist – and represent significant circumstances of justice that need to be addressed – yet does not imply that they represent the kind of circumstance of justice that my proposal is concerned with. I have, indeed, explicitly stated throughout this work that I am interested in situations where agents are at impasse. In these cases power relations cannot be too unbalanced in favour of one party, otherwise the impasse simply would not be there, since the view of the more powerful party would certainly be stronger and, accordingly, likely to be imposed. Now, one could certainly object to this that I am making my life easier by introducing this caveat, thus limiting the scope of my concern. This point is well-taken, but I also claim that there are a number of complicated cases of actual conflict around the world that are far from being easy to handle in light of the fact that the distribution of power between the parties is not that uneven. Think, for instance, of the complex and long-lasting conflict between Israelis and Palestinians in the Middle-East; this can plausibly be seen as a conflict where neither of the parties is strong enough to finally outweigh the other, and neither is conversely weak enough to give in without fighting. In brief, this is a case of conflict where the agents are in deadlock, and it is by no means a case the consideration of which would make the life of any theorist easier[19].

Let me conclude this section with a further possible criticism that could be moved against founding my proposal of procedural justice for the management of conflicts about values on the idea of procedural equality. This criticism may contend that my proposal is not notably innovative, since the idea of granting every party to a dispute an equal chance to have a say is a rather trivial

[19] Note that I do not want to suggest by this that my proposal of a theory of justice for the management of conflicts about values is suitable to constructively address the Israeli-Palestinian case. Its aptness should be tested and this task goes far beyond the reach of this work. The reference to this complicated case is simply meant to stress the significance of situations of conflict that are not characterised by a strongly uneven distribution of power.

requirement that lies at the basis of a number of well-known procedures – think, for instance, of parliamentary procedures of intervention during the discussion of public issues. I fully recognise the point that procedural equality (and the related principle of adversary argument) does not present us with a ground-breaking novelty. However, I also think that – as a matter of fact – this works in my favour, or better, in favour of the idea that procedural equality corresponds to a widely shared intuition as to what makes a procedure for the management of conflicts just. It needs to be born in mind that my aim, in this work, is not to outline a procedure for the management of conflicts that is, primarily, highly efficient in its application. I am, rather, interested in outlining what features a procedure of this sort should have in order to be just. Accordingly, the more a feature is perceived to be widely recognised and well-known, the better in terms of my definition of what counts as a just procedure acceptable to diverse agents (i.e. in terms of its being inclusive) and applicable to different contexts (i.e. in terms of its being trans-contextual).

4.5

Once procedural equality is endorsed, a basis is also offered for the adoption of the principle of adversary argument (AAP) as a minimal principle of justice. In accordance with the idea of procedural equality (i.e. all parties are to be granted an equal chance to have a say), AAP commands that a just procedure for the management of conflicts about values is one that requires all parties to hear what the others have been granted an equal chance to say. This does not have to be seen as a separate claim from that supporting the adoption of the idea of procedural equality; on the contrary, the endorsement of AAP and of procedural equality are two steps of a single process. Let me explain what I mean by this. According to Kekes's above-mentioned distinction between substantive and procedural values (see Kekes 1993), the latter are never valued *per se*, but only instrumentally, i.e. as instrumental to the given procedure they are meant to ground[20]. Consistently, I have not offered a defence for procedural equality as something valuable *per se*, but merely as a fundamental value to ground a just procedure for the management of conflicts about values. In view of the assumption of agents' genuinely experiencing a conflict about values, and of their related need to overcome impasse, those agents who endorse procedural equality do so not in virtue of some intrinsic valuable component that procedural equality may be thought to have, but rather with the aim of setting up a just procedure – to get out of impasse – to manage the conflict they experience. The endorsement of procedural equality is functional to the definition of a procedure, which is in turn governed by AAP. This latter, *qua* minimal principle of justice, aims precisely to qualify what is a just procedure. If agents are ready to use earplugs when others speak, there is no point in their endorsing procedural

[20] Needless to say, the fact of being held instrumentally does not make *any* value a procedural one. Substantive values can be held both instrumentally and *per se*, and this does not affect their being substantive. Procedural values are *always* held, instead, as instruments to sustain and develop a certain procedure.

equality at all, since its very function (i.e. helping them out of impasse through the development of a just procedure for the management of conflicts) would thus have been rejected. In a word, procedural equality 'with earplugs' would not be procedurally defensible since it would lead nowhere. This makes the espousal of procedural equality and the adoption of AAP two steps of the same process, on the way towards the definition of a just procedure for the management of conflicts about values. Let me expand on this. The principle of justice I propose to embrace, i.e. Hampshire's AAP, commands all parties involved in a conflict to hear the other parties' voices. Although AAP explicitly requires of agents the passive attitude of hearers, for a conflict to be constructively addressed it is essential that there is something to be heard, otherwise agents – already caught in an impasse – may find themselves in the bizarre situation of it being proposed that they get out of this impasse by listening to absolute silence. A just procedure for the management of conflicts about values is, accordingly, one that allows (and requires) all the parties both to speak and to be heard. In this picture, the requirement that all voices get a hearing is dictated by the principle of adversary argument (AAP), whereas the active part of this conception of justice – i.e. the requirement that all parties are allowed to speak – is regulated by the commitment to the idea of procedural equality. This means that the chance to have a say needs to be distributed in a procedurally equal way, according to what I have called a minimal intuition in light of which every party involved in a conflict wants for itself at least an equal (i.e. not smaller than the others') chance to have a say. Here, as I have anticipated above, procedural equality and AAP are two steps of the same process, in that the procedural adoption of the former requires the latter (since it makes sense to express one's disagreement – with the aim to overcome an impasse – only so long as there is a counterpart to listen to this, otherwise agents may be left speaking to themselves) and the acceptance of the latter requires the fulfilment of the former (since it makes sense to be ready to hear what the others say as long as they are granted the possibility to speak up, otherwise agents may be left to listen to silence). Consequently, once the reasons in support of procedural equality are adopted, reasons are also in place for the acceptance (and prioritisation) of AAP as a principle of justice governing "procedurally equal" procedures.

Let me add that AAP – paired with the idea of procedural equality – does not represent an actual procedure of interaction, ready to be applied to actual conflicts, but, rather, a principle which establishes what counts as a just procedure for the management of conflicts about values, and in light of which different specific procedures can be contingently defined. This is due to my interest in outlining a trans-contextually valid definition of the essential traits a procedure for the management of conflicts about values should display in order to be just; these traits being procedural equality – in the sense specified above – and the requirement that all the voices are heard. In accordance with this idea, the material way in which agents may actually be given an equal chance to have a say needs to be

contextually defined, in light of specific knowledge of the issue at stake and of the claims of the agents involved. Given the variety of contexts where procedures for the management of conflicts about values are needed, the definition of specific material procedures of interaction falls beyond the reach of a theory of justice. This should limit itself to present, and give reasons in support of, a definition of a just procedure, leaving to the agents actually involved in specific contexts the task to define specific procedures that are appropriate to the particular kinds of issues they are dealing with. Most naturally, the kind of material procedure that mirrors both the commitment to procedural equality and that to AAP is a dialogical one, i.e. a procedure of face-to-face discursive confrontation between the different parties involved in a dispute over values. But this does not necessarily have to be the case. Agents may decide to adopt a different procedure, say, one that requires all parties to fill out a questionnaire – allocating to them sufficient space to write down the answers and time to complete the task[21] – and that asks them to then exchange their submissions afterwards, and read out what has been written. Moreover, procedures of dialogue themselves may vary significantly: for instance, the order and method according to which the floor is given to the different parties may change in accordance with different criteria, e.g. 'first-come-first-served', alphabetical order, or even considering the age of the different value-holders. Moreover, instead of meeting around the same table, agents may decide to use e-mail, everyone being given an equal chance to write, and everyone being required to read all the e-mails s/he receives. There may be a variety of material procedures, but the technicalities of their creation fall outside my area of concern, since they cannot be defined once and for all by theory, regardless of the particular context in which a conflict about values emerges. What makes those specific procedures just, instead, is to be normatively defined by the theory, according to basic guidelines that are to be applicable to various specific contexts.

5.

My undertaking is this paper has been to introduce a definition of the essential traits that should qualify, in my view, a just procedure for the management of conflicts about values in circumstances of radical substantive pluralism. To do so, I have presented – and offered reasons in support of – a minimal procedural principle of justice and a foundational procedural value. The former has been identified as the principle of adversary argument (AAP), as formulated by Stuart Hampshire, which commands that all sides of a dispute have a hearing. Faced with the unsatisfactory story Hampshire told to in support of AAP, I have proposed to rely for its foundation on a procedural value, which I have formulated in terms of procedural equality, and which requires that every party in a conflict is to be allowed an equal chance to have a say. Building on the idea that the agents involved

[21] In accordance with the spirit of this proposal, note that what means "being allocated a sufficient space" is a context-related matter, which is to be adapted to the needs and claims of the agents and to the circumstances of conflict they are faced with.

in a conflict genuinely experience it (and do not use the situation instrumentally) and are thus willing to get out of the situation of impasse they are caught up in, the adoption of procedural equality has been based on two lines of argument. First, I have called upon what I have defined as a minimal intuition as to the worth of being allowed an equal (i.e. not smaller) chance to have a say, as a means to express one's disagreement. In the – likely – event that such intuition is not shared by some agents, I have suggested prudential reasons regarding the relatively low-cost nature of the adoption of procedural equality, as the leading value in the definition of just procedures for the management of a conflict. With the defence of procedural equality in place, I have suggested treating this idea and AAP as two steps of the same process, one needing the other in order to make sense within a conflict management enterprise.

Let me conclude, with a few specifications. In light of the characterisation I have offered of a just procedure for the management of conflicts about values, one may object that the adoption of AAP and procedural equality goes quite some way towards converting radical into reasonable disagreement, which is precisely what the argument was supposedly designed to avoid. Let me try to show in what way this view would be unfair to my argument. The idea of procedural equality I place at the heart of my proposal is more inclusive than is the idea of reasonableness. This is mainly due to the defence I have proposed for its adoption. In a nutshell, this builds not on any assumption of a disposition to deal with controversial issues in a certain way (i.e. giving reasons others can understand so as to reach a mutually acceptable agreement), as is Rawls's idea of reasonableness. The adoption of procedural equality, rather, is defended in light of a need to do something to alter a situation of impasse due to the presence of a conflict about values. Excluding those who do not genuinely experience a conflict of values means leaving out of my area of concern a significantly smaller amount of agents than did Rawls, since it would mean including those who, despite experiencing a conflict, are not ready to provide public reasons in support of their views or to interact with each other with the aim of achieving a mutually acceptable agreement. Moreover, I have never *assumed* that agents are inclined to interact with each other in a procedurally equal way, as did Rawls in postulating that the agents he is concerned with are reasonable. I have, rather, tried to *give reasons* why agents should endorse the idea of procedural equality as a requirement of justice for the management of conflicts about values. Accordingly, my idea of procedural equality appears to be both more inclusive than Rawls's idea of reasonableness, and based on widely acceptable reasons. However, this does not mean that I have an ambition to be able to justify my theory to unreasonable agents, but at least to those that I define as non-reasonable (whom Rawls seems, instead, to treat as if they were unreasonable), i.e. those who are not assumed to be reasonable (or who are not factually reasonable), but who may endorse a co-operative attitude once good reasons to do so are provided. Therefore, it is

not wrong to say that I try to give agents reasons to endorse an idea of procedural equality that has some similarities with the idea of reasonableness (especially in its granting others an – equal – chance to speak). However, it would be unfair to my argument to contend that I come close to Rawls in doing what I criticised at the beginning of the work. This is because even if one may think that the image of the world I normatively support, as an ideal state of affairs, is one where pluralism is reasonable – in the sense that conflicts are managed and agents hold their plural values in a co-operative and peaceful way, letting the others speak and listening to them – I do not take it as a starting point for my analysis – as did Rawls in assuming reasonable pluralism as a circumstance of justice.

With this specification in place, now on our table is a procedural characterisation of justice, which is minimal, and accordingly sensitive to substantive pluralism. A procedural value, that is minimal – in its being procedural – and inclusive, has been placed at its foundation. This value – that has been formulated in terms of procedural equality – provides the basis for the adoption, in cases of conflict, of a minimal procedural principle of justice, which has been identified with the principle of adversary argument. In view of this, the definition of a just procedure for the management of conflicts about values may be couched in these terms: a just procedure for the management of conflicts about values is one that allows every party an equal chance to have a say, requiring them to listen to each others' claims.