



**HAL**  
open science

## Conflict or Avoiding Evil: Hampshire's Negative Justification for Procedural Justice

Nicolai Abramovich

► **To cite this version:**

Nicolai Abramovich. Conflict or Avoiding Evil: Hampshire's Negative Justification for Procedural Justice. International Colloquium on Global Ethics of Compromise, CESPRA, EHESS, <https://hal.archives-ouvertes.fr/COMPROMIS>, Mar 2019, Paris, France. hal-03112355

**HAL Id: hal-03112355**

**<https://hal.science/hal-03112355v1>**

Submitted on 16 Jan 2021

**HAL** is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

# **Conflict or Avoiding Evil: Hampshire's Negative Justification for Procedural Justice<sup>1</sup>**

*Nicolai Abramovich*

Department of Philosophy, Sorbonne University - France

**Abstract:** The aim of the paper is to demonstrate a) that there is a link between Hampshire's philosophy of knowledge and his political theory and b) that the distinction operated by the English philosopher between procedural justice and substantial justice is also a consequence of his negative approach of rational morality. Therefore, the article will focus mainly on his own political work since the main purpose is to highlight an internal bridge between Stuart Hampshire's metaphysics and politics and to underline the author's rationale to consider ethics and politics as tools which main goal is not to produce good but to avoid evil. More precisely, the thesis of the following study seeks to put in evidence that Hampshire's concept of imagination leads to a diversity of substantial definitions of justice whereas Hampshire's notion of reason leads to the unitary idea of procedural justice. The latter is necessary to make live together the former and most of all to avoid unbridled conflicts that would put at risk civil and social cohesion.

---

<sup>1</sup> This paper was presented at the International Conference on Global Ethics of Compromise, EHESS (CESPRA), Paris, in March 2019 [Editor's note].

## 1. Reason and Imagination

It is important to start by recalling Hampshire's general theory of the human mind<sup>2</sup> because there is a link between his political philosophy and his philosophy of knowledge. The British philosopher sustains that the two principles that define the human mind are Imagination and Reason.

On the one hand, we have Imagination that leads our development of a unique and particular point of view on the world. In other words, we built our individuality using imagination. We collect our memories, our emotions, our feelings among other circumstances and we create a particular and unique perception of the world. The paradigm of this principle of human nature would be the work of art. For instance, Van Gogh and Dali have two completely different individual perceptions of the world. The style and images of their canvases testify that both are two distinctive and unique individuals. The *Sunflowers* from Van Gogh and *Living Still Life* from Dali are two examples of still life paintings; yet, they could not be more different. They enhance the originality of each artist and they demonstrate that individuals are irreducible universes. Van Gogh and Dali are humans. Van Gogh and Dali are painters. But Van Gogh is unique and Dali is unique. Artists are the most evident examples, but the principle is valid for everyone. It explains, for instance, why some of us prefer chocolate and some others like strawberry better or why some people prefer to stay at home and watch a movie eating popcorn while some other people prefer to go out dancing all night long. In that sense, Imagination guides and fosters our creativity and our personal vision of the world. Therefore, the principle of imagination describes the human diversity.

On the other hand, we have reason. When we use the principle of non-contradiction to elaborate or understand a demonstration or when we apply the Euclidean axioms of geometry to study objects and space, we use reason. No matter who we are, what we do for a living or what are our personal preferences, when we use reason, we all apply the same system of procedures. It does not matter if we are a Caruso, Justin Bieber or if we only sing in the shower, we all use the same principles

---

<sup>2</sup> HAMPSHIRE Stuart, "Chapter 1: Parts of the Soul" in *Innocence and experience*, Cambridge, Harvard University, 1989, p. 23-48

when we think rationally. In other words, reason is indifferent to individuality. This means that rationality gathers humanity together. It describes human unity.

Likewise, when we have to take a decision and we weigh the pros and the cons to make our mind, we also use a type of reason that Hampshire defines as deliberative reason. According to Hampshire's intuition, the principles of deliberative reason work as a device that help individuals make choices between the different imaginative and substantial ideas they produce. Thus, if we like to eat but we also want to be fit; times come when we have to make a choice between spending Sunday morning having a delicious brunch or going out for a jogging at the park. The same happens when we have to choose between reading Molière or Racine. Imagination constantly depicts various substantial options, but how do we choose between them?

The answer is simple for Hampshire; we weight pros and cons. In this sense, rationality comes to our rescue and provides us with a procedural system to decide what option is good for us. It does not give us a substantial answer; it only furnishes us the formal framework. Hence, people will take in count their particular circumstances and make a decision according to their individuality by comparing the available possibilities in the framework given by reason. That is why not only some people will choose Molière and some other people will choose Racine; but also the same individual can choose Molière on Monday and Racine on Saturday. That is how we usually deal with internal conflict, we come up with substantial positions and we use a formal device to choose between the available options. Human mind works using this dual system. If we did not have this mechanism, it would be hard to make choices and take decisions. Conflict between possibilities would be hard to resolve and our practical thinking would suffer from a permanent chaos. On the contrary, when Imagination and Reason work together the conflict remains irreducible, but it can be settled.

## **2. Substantial Justice and Procedural Justice**

According to Hampshire<sup>3</sup>, this internal device we use to solve problem is a mimesis of the external device the society generally uses to deal with diverse positions that can be competitive and sometimes conflictive; namely, public debate. In a sense, the agora of the mind is the daughter of the social agora<sup>4</sup>. Since childhood, we observe parents, friends and people in general discuss about their individual positions regarding multiple subjects more or less transcendent. This procedure takes place, for instance, when critiques argument in favor or against a work of art (What is the best film between ‘Apocalypse Now’ or ‘Raging Bull?’); or when the Assembly has to take a vote (Should we validate or not the economic recovery policy suggested by the government?). But it also happens when we discuss more trivial matters. For example, when a couple has an argument deciding whether they are going to eat soup or salad for the dinner; or when two kids have to choose if they are going to play to knights or pirates. Usually, the different tenants present their arguments in favor of their respective positions and eventually their arguments against the other options while the other parties listen and then reply. In this manner, the dynamic of a conflictive discussion arises. After exchanging for a while, generally, we choose between the available options or sometimes we negotiate and split the baby as Solomon. Hampshire thinks that way we deal with conflict externally shapes the way we deal with conflict internally. Thus, when we have competitive positions, the mind replaces its usual monologue for an artificial dialogue, which is no more and no less than a depiction of social dialogue.

Substantial justice and procedural justice follow the same scheme. Substantial justice is linked to the concepts of imagination and individuality whereas procedural justice is linked to the notions of reason and unity. In this sense, there is diversity and conflict regarding the substantial definitions of justice; but there should be agreement and unity regarding procedural justice. The latter designates a conception of justice determined by a particular moral conception whereas the former describes the device

---

<sup>3</sup> HAMPSHIRE Stuart, “Justice is Conflict: The Soul and the City”, in Gretha B. Peterson (ed.) *The Tanner Lectures on Human Values Vol. 19*, Salt Lake City, The University of Utah Press, 1998, p. 145-171

<sup>4</sup> Jean-Pierre Vernant defends a similar thesis applied to Ancient Athens in the chapter 3 “The Crisis of Sovereignty” of his famous book *The Origins of Greek Thought*. He suggests that when the *anax* or chief disappeared as the legitimate possessor of political authority in Athens, *agora* became then a place where political *agon* or conflict could take place peacefully, without physical violence. According to Vernant, the purpose was to find collectively and publicly the right rules to govern legitimately the diverse groups composing the *polis*. Hence, we can establish a conceptual link between Vernant’s historical and structural construction of the Athenian *agora* and *agon* to Hampshire’s respective ideas of procedural justice (*agora*) and substantial justice (*agon*).

of rules that particular positions must use. If we employ a helpful metaphor, we could say that procedural justice settles the rules of the lottery game and substantial definitions of justice are the buyers of a lottery ticket hoping to win the big prize. Yet, just as a lottery winner cannot logically become the lottery, the tenant of a substantial definition of justice cannot and should not take the place of procedural justice. They are two different things, which are not interchangeable: procedural justice is the game, whereas substantial justice represents the players. But if we have these social devices to deal with the competitive and conflictive substantial possibilities, why have we been and still are witnesses of unbridled violence and of moral atrocities in History so often?

### **3. Against Domination: The Negative Rationale for Procedural Justice**

In the Introduction to *Innocence and Experience*, Hampshire recalls some biographical circumstances that marked him profoundly and determined his approach of political and moral theory. One of the main events that modeled his ethical thinking was his experience as an officer of the British secret service during World War II. As part of his tasks, he participated in the interrogation of senior SS officials. Particularly, he interrogated Ernst Kaltenbrunner who was partly responsible for the design and the adoption of the Final Solution. Kaltenbrunner was very well known for his interest in finding the best the killing methods to eradicate the prisoners of extermination camps. Thereafter, Hampshire was largely shocked by the late revelations regarding the atrocities perpetrated in the Stalinist regime such as the Gulag policy or the forced confessions. More generally, he was consternated by the easiness that governments encounter when they have to engage torturers or hitmen. These diverse empirical data convinced him that men were capable of doing evil as well as good.

It is important to link these observations made by Hampshire with his theory of knowledge. Indeed, if men constantly produce substantial points of view on the world according to their individual circumstances and if men are equally capable of doing evil as well as good; therefore, men can bring about evil substantial points of view on

the world. Consequently, if imagination can produce a substantial definition of justice, it can also bring about an evil substantial definition of justice.

*“There is a basic level of morality, a bare minimum, which is entirely negative, and without this bare minimum as a foundation, no morality directed towards the greater goods can be applicable and can survive in practice. A rock-bottom and preliminary morality of justice and fair dealing is needed to keep a balance between competing moralities and to support respected procedures of arbitration between them. Otherwise, any society becomes an unstable clash of fanaticisms”.*<sup>5</sup>

If there are no rules for the confrontation, then the conflict becomes a sort of perpetual fight between the defenders of the respective particular positions on justice. Yet, each tenant wishes to see his own view adopted by society. In this configuration, the winner takes it all, but his position is unstable, and he could also easily lose everything. Hence, in order to win and last, the substantial position must increase its tendency for domination. That is why Hampshire sustains that this type of configuration leads to a *“clash of fanaticisms”*, because the radical positions have better chances to prevail.

Hence, procedural justice is paramount. By settling the framework in which substantial definitions of justice encounter, it avoids the possibility of seeing one of the substantial definitions completely dominate the others. If a society considers that it should ward off the risk of seeing an evil and radical substantial definition of justice triumph, then it needs to switch the arena of the confrontation and appeal to procedural justice in order to settle the framework for conflict. In this manner, it will prevent the peril that a substantial definition of justice completely dominates the others. Without procedural justice, moral tragedies could become real and effective.

Let us go back for a moment to our metaphor. If the winner of the lottery takes the place of the lottery then automatically the game of lottery disappears and we do not know what the winner will do. Analogically, if a substantial type of justice replaces procedural justice, the game of justice automatically disappears and society would be at the mercy of the winner. Yet, in this type of disposition, there are big chances that the winner would turn out to be evil and dominant. That is a big risk that

---

<sup>5</sup> HAMPSHIRE Stuart, *Innocence and experience*, Cambridge, Harvard University, 1989, p. 72.

every person desiring to avoid submission to a strong domination should be willing to avoid. In that sense, every position respecting “*the basic level of morality*” should agree that a scenario of evil and domination is a horizon society should avoid. That is the reason why the tenants of diverse substantial types of justice should agree to have rules of procedural justice to arbitrate even though their substantial views on moral and justice are competitive or conflictive.

*“The universal necessity of basic procedural justice, as a reasonable and arguable restraint upon the natural drive to domination, has to be recognised as contrasting with the variety of great goods acknowledge in different moralities. The contrast is so great that it justifies talking of two aspects of morality: the universal and the particular. [...] If it is true that an unrestrained neutral drive to domination is the greatest source of evil, and if evil here is neutrally interpreted as involving destruction of life, oppression, and misery, then it is rational for each and all of the moral sectaries to look for a non-divisive and generally accepted conception of justice, however thin a conception this may be, amounting at its minimum only to fair procedures of negotiation”.*<sup>6</sup>

Thus, the main justification for the need of procedural justice and political institutions to frame it is actually negative. Indeed, political institutions such as the rule of law and the separation of powers are necessary to secure the rules of procedural justice, and procedural justice is necessary to prevent society from a clash of extremisms and from domination. Therefore, the rationale for political institutions is the avoidance of the evil depicted in the nojustice scenario.

In this sense, when a substantial type of justice wants to replace the institutions that endorse procedural justice, it becomes particularly dangerous. It happened when Hitler dismantled the Reichstag and even more when he started to rule by decrees. He suspended the liberties secured by Weimar Constitution and adopted the *Schutzhaft* or preventive detention, which allowed the police to arrest and imprison citizens without control and without any time limit. Hence, rules of the game of procedural justice are tokens against the confiscation of justice and the unbearable oppression it could produce.

---

<sup>6</sup> *Ibid.*, p. 77-78.



*“Uniting all humanity, from the nursery to the grave, the practice of promoting and accepting arguments for and against a proposal is taken as the core of practical rationality. The procedure is as well recognised and respected as the procedure of counting, and as unavoidable. It is of the essence of the procedure that the pro and the contra should both be heard and evaluated, and that the procedure should not be cut off before all the arguments are in. The discussion of an issue of practical policy is both an adversary procedure, with two sides represented, and a judicial one, because in the end a Solomonic judgment will normally be made, with the acceptance of some arguments and the dismissal of others. [...] Justice and fairness are always in part procedural notions; a decision, whether in a law court or by a deliberating person in private, can be accepted as completely just and fair only if the reasoning that supports it has been adequate, and the main relevant considerations have in fact been impartially weighed in the balance”.*<sup>7</sup>

If the dominant substantial position reaches a way to eradicate procedural justice, then the tenants of the other substantial conceptions could be reduced to silence. They would be in weakened and uncomfortable position where they could lose their rights and be subjugated by the dominant view. Hence, a substantial type of justice that threatens procedural justice is essentially dangerous. That is why people should react to political speeches that menaces to sweep political institutions or to disengage from the rule of law because it implies to open the door to radicalism and domination.

#### **4. Democracy and Minority: Following the Negative Rationale**

Furthermore, respecting procedural justice is paramount because substantial positions are competitive and have a natural tendency to dominance. When a substantial type of justice gains ground in society, it tries to secure its advantages. The strategy often used consists on presenting some of their particular moral claims as if they were natural in order to exclude any possible discussion and reconsideration regarding those claims.

---

<sup>7</sup> *Ibid.*, p. 53.

*“That animals have no souls and therefore no feelings that demand respect; that primitive societies are always by nature morally inferior to advanced and civilised societies; that variations on a single pattern of sexual intercourse are unnatural perversions – these are a few of the false fixities designed to protect particular ways of life”<sup>8</sup>.*

Having a framework for open discussion – available to all the members of society – restrains that risk and its possible corollary, namely, a tyranny of the majority. When a society respects procedural justice, it also assesses that substantial definitions of justice do not have a natural status because they rest on particular moral systems, which is also a way of stating that the minority views have an equal right to be heard. For instance, decisions as the sentence of judge Johnson that allowed Martin Luther King’s march for the equality of rights to pass by the state of Alabama in 1965; or the decision by the Conseil d’État in France that overruled in 2018 Cannes’s maire decrees on burkini would not have been possible without procedural justice. It has a crucial status, to a large extent, because it gives to the minorities the possibility to be listened. It protects them from the abuse of the majority. Therefore, when a society does not respect procedural justice, then minorities and the tenants of other substantial definitions of justice are in danger.

Following the same logic, democracy plays also an important role in preserving and defending procedural justice:

*“Democracy has usually been advocated as the form of government that will ensure the most complete and fair representation of all citizens of the state, as far as this is possible. The implication is that the more democratic the state is in this sense the better, because it is a good thing that the most popular policy, the most strongly supported, should prevail. This is a substantial moral claim, perhaps to be further defended by some specific theory of freedom or of natural rights. But I see no reason myself to accept this claim. When a majority, following a natural tendency, advocates wrong policies perhaps in the punishment of crime, in treatment of ethnic minorities, in immigration policy, in foreign policy, and elsewhere -the popularity of the policies cannot for me, for my conception of the good, mitigate the errors and the evil. Rather, the value of a democratic constitution lies in the defense of minorities, not of*

---

<sup>8</sup> *Innocence and experience*, Op.Cit., p. 57.

*majorities. One needs to ensure, for the sake of justice, that the minorities are properly heard and that they play their necessary part in the process.*"<sup>9</sup>

Here, Hampshire defends democracy using a negative approach. Democratic constitution and democratic configuration should not be defended because of their capacity to represent the largest part of the population but because of their capacity to give shelter to minorities from domination and oppression. Hence, the reason why democracy should be defended is because it contributes to the protection of procedural justice and it avoids, *in fine*, cruel practices that minorities could suffer if they were subjugated by a substantial view of justice. In this sense, rules of democracy are a subchapter of the book of procedural justice. Democracy is not a good *per se*. It has a functional value. The democratic device is important because it limits evil and dominance.

## 5. Why Justice is Conflict

The more or less mysterious title of Hampshire's book *Justice is conflict* seems now to make sense. The purpose of justice is to preserve a space for deliberative rationality so that the different moral conceptions can fairly discuss and confront, thanks to their commitment to rules and procedures. Conflict is not bad. It is just ineluctable. Conflict is the device that describes the way we reason when we have to make a decision: we weight the pros and the cons. The diverse arguments we analyze in this process convey reason but also feelings, passions, values, memories, circumstances, convictions etc.

*"I have been arguing that the diversity and divisiveness of languages and of cultures and of local loyalties is not a superficial but an essential and deep feature of human nature – both unavoidable and desirable – and rooted in our divergent imaginations and memories. More fundamentally, our stronger sentiments are exclusive and immediately lead to competition and conflict, because our memories, and with them our imagination, are focused upon particular persons, particular inherited languages, particular places, particular social groups, particular rituals and religions, and particular tones of voice; and hence our stronger loyalties are similarly focused. We*

---

<sup>9</sup> HAMPSHIRE Stuart, "Justice is Conflict: The Soul and the City", Op.Cit., p. 170-171

*want to serve and reinforce the particular institutions that protect us, and to extend their power and influence at the expense of their rivals”.*<sup>10</sup>

Hence, the path we follow towards a practical resolution is often a rocky road. When an individual defends a political or moral position, he invests its own person and its own identity. Therefore, moral judgments should not be considered as futile because their psychological and emotional weight is heavy. Yet, moralities are particular objects and that is why it seems difficult to get to a definitive agreement on morality. Nonetheless, people give importance to their moral convictions because they define, at least partially, their individual personality.

For that reason, it is important to have a space where moral views can be expressed. Otherwise, without rules to play the game of moral disagreement fairly, tensions between positions could ratchet up. Then, conflict would be solved differently and very probably in a bloody way.

*“The two elements in procedural justice – a universal rational requirement of two-sidedness and respect for locally established and familiar rules of procedures – are linked as two natural forces of our minds in their practical and political working. If either the rational requirement or respect for custom breaks down and ceases to operate, we should expect catastrophe. Conflicts will then no longer be resolved within the political domain but will be resolved by violence or the threat of violence, and life will become nasty, brutish, and short. Whatever one’s conception of the good, such anarchy will generally be reckoned a great evil, alongside starvation and near-starvation, disease, imprisonment, slavery, and humiliation”.*<sup>11</sup>

## **6. Rawls and Hampshire: Positive and Negative Justification**

At this point, it seems important to compare Hampshire’s approach of justice to Rawls’s approach because it represent a different way to deal with conflict and pluralism. We would like to underline the reasons why Hampshire strategy might be more efficient in setting rules without being accused of comprehensivism.

---

<sup>10</sup> HAMPSHIRE Stuart, *Justice is Conflict*, Princeton, Princeton University Press, 2000, p. 37-38.

<sup>11</sup> *Ibid.*, p. 97-98.

We can see that unlike the principles of justice, procedural justice has no content. The only condition is to respect a set of rules. But the main difference seems to be based on the distinction of rationale given to justify justice. In contrast to Rawls, Hampshire does not give a positive justification but a negative one. Justice does not promote good; it avoids evil. In Rawls's approach, there should be a consensus on the principles of justice based on rationality or reasonableness. The principles of justice should be chosen *because* injustice should not be natural, therefore, society should allow every individual to carry out its project of life and they let exist every conception of the good. That is what the principles of justice and the priority of liberty rule do<sup>12</sup>. In Hampshire's approach, procedural justice should be defended exclusively *because* it averts from domination and violence.

One of the main critics that suffered Rawls's position is that the argument in favor of the priority of liberty required the use of a liberal morality that considers individual autonomy as the primary good in order to justify it.<sup>13</sup> Hampshire's approach is resistant to that critic not only because he does not defend the necessity of a liberal society – even though a liberal society does respect procedural justice – but mainly because of the negative structure he uses to defend justice.

## **7. Conclusion: The Asymmetry of Good and Evil and Procedural justice**

The emphasis put by Hampshire in procedural justice seems to work as a return and a renewal of the Solonian notion of justice:

*“The point of Solon's message is rather to fix imaginatively a frame of reference within which the occurrence and effects of stasis could be properly appreciated. Stasis is not an isolated event that comes only when willfully fomented by the "lover of dread civil strife" (II. ix. 64). It is an integral part of a breakdown of the state of social well-being, which Solon called eunomie. Consequently, (1) any act of injustice, impairing the "good order," "good sense," and "soundness" of the common life, is a real, though quite likely unintentional, cause of civil strife; and (2) the distemper of the body*

---

<sup>12</sup> RAWLS John, *A Theory of justice*, Oxford, Oxford University Press, 1999, p. 266.

<sup>13</sup> See HART H.L.A., “Rawls on liberty and its priority” in *University Chicago Law Review*, Vol. 40, N°3, 1973 p. 534-555 & TAYLOR Robert S., “Rawls's defense of the priority of liberty: a Kantian reconstruction” in *Philosophy & Public Affairs*, Vol. 31, N°3, 2003, p. 246-271.

*politic, evidenced by stasis, is all comprehensive in its effects. It is a "plague which comes to all the city" (Frag. 4. 17); a "public calamity which comes home to everyone," invading the private security of the family. Therefore, any act of injustice, impairing the common security, threatens everyone's individual security and family solidarity can interpose no effective protection".<sup>14</sup>*

It is a return to the origins of Greek justice because procedural justice's first goal is also to avoid the destruction of social order by preserving by allowing an open space for conflictive discussion. Solon's justice and Hampshire's justice are negative: they wish to avoid an evil: stasis for the former and oppression for the latter. However, it is a renewal because Hampshire's insists on the negative side: the *good order* is an *open order*. It is not natural and has no content. It is not a presence but an absence, the absence of any substantial definition of justice. Or, in other words, the only possible nature of procedural justice is the absence of any content. And that essential feature is actually, the *sine qua none* condition to avoid stasis or oppression and to protect the living together. Hence, any attempt to replace the rules of procedural justice by a substantial and particular definition of justice is illegitimate and should worry every citizen because it implies breaking the conditions to dispense justice.

If Hampshire's argument is so effective it is because it articulates optimally with the principle of asymmetry of good and evil. Indeed, evil seems to be epistemically and morally more evident than good. As moral agents, it is clearer to see what we should avoid doing rather than what we should do. Moreover, bringing about evil actions is more condemnable than bringing about good actions is praiseworthy. For example, if we picture a homeless person suffering from cold in the street, would we react stronger if we saw a passer-by take away one of his coats or if we saw a passer-by give him a coat? Intuitively, it seems that the evil action would shake up us more than the good action. We are more sensitive to evil than to good. Following that logic, we are more attuned to an argument that promises to reduce evil than to an argument that swears to

---

<sup>14</sup> VLASTOS Gregory, "Solonian Justice" in *Classical Philology*, Vol. 41, No. 2, Apr. 1946, p. 69.

produce some kind of good.<sup>15</sup> Hampshire seems aware and convinced of the negative structure of moral rationality:

*“There remain the unchanged horrors of human life, the savage obvious evils, which scarcely vary from culture to culture or from age to age: massacre, starvation, imprisonment, torture, death and mutilation in war, tyranny and humiliation – in fact, the evening and the morning news. Whatever the divergences in conceptions of the good, these primary evils stay constant and undeniable as evils to be at all costs averted, or almost all costs”.*<sup>16</sup>

In that sense, there seems to be an evident connection with other authors that consider negative entities such as cruelty<sup>17</sup> or humiliation<sup>18</sup> as the moral priority because they are epistemically and morally more evident, more urgent and probably more universal than goods. In other words, the main purpose of ethical behavior is not to realize a *summum bonum* but to avoid a *summum malum*. Procedural justice as a political necessity responds to that crucial and primary ethical imperative.

The negative justification used by Hampshire not only gives sense to 1) the need for procedural justice as well as 2) its priority over substantial justice; but it also 3) gets closer to a universal status. Hence, the changeover of argumentative structure is efficient because it is in line with the structure of our moral rationality that follows the asymmetry of good and evil. Exchanging the positive social aim for a negative social aim is an effective strategy that gives solid foundations to Hampshire’s argument. Indeed, no matter the circumstances, a society that *is not* a slaughterhouse should be preferable to a society that *is* a slaughterhouse to every person blessed with common sense. That is a good reason to enclose conflicts in the limits of procedural justice.

---

<sup>15</sup> On the asymmetry of good and evil: CHAUVIER Stéphane, “A challenge for moral rationalism : why is our common sense morality asymmetric ?” in DUTANT J., FASSIO D. & MEYAN A. (dir.), *Liber Amicorum Pascal Engel*, Genève, Université de Genève, 2014, p. 892-906; KNOBE Joshua, «Intentional Action and sideeffects in ordinary language » in *Analysis*, N°63, 2003, p.190-194; ROZIN Paul et ROYZMAN Edward B., “Negative bias, negativity dominance and contagion” in *Personality and Social Pathology Review*, Vol. 5, N°4, 2001, p. 296-320; SHRIVER Adam, “The Asymmetrical contribution of pleasure and pain to subjective well-being”, in *The Review of Philosophy and Psychology*, Vol. 5, N°1, Mars 2014, p. 135-153.

<sup>16</sup> HAMPSHIRE Stuart, *Justice is Conflict*, p. 43.

<sup>17</sup> SHKLAR Judith, *Ordinary Vices*, Cambridge, Harvard, Belknap, 1984.

<sup>18</sup> MARGALIT Avishai, *The Decent Society*, Cambridge, Harvard University Press, 1996.

## References

- CHAUVIER Stéphane, “A challenge for moral rationalism: why is our common sense morality asymmetric?” in DUTANT J., FASSIO D. & MEYAN A. (dir.), *Liber Amicorum Pascal Engel*, Genève, Université de Genève, 2014, p. 892-906.
- HAMPSHIRE Stuart, *Innocence and experience*, Cambridge, Harvard University, 1989.
- HAMPSHIRE Stuart, “Justice is Conflict: The Soul and the City”, in Gretha B. Peterson (ed.) *The Tanner Lectures on Human Values Vol. 19*, Salt Lake City, The University of Utah Press, 1998, p. 145-171.
- HAMPSHIRE Stuart, *Justice is Conflict*, Princeton, Princeton University Press, 2000.
- HART Herbert L.A., “Rawls on liberty and its priority” in *University Chicago Law Review*, Vol. 40, N°3, 1973, p. 534-555.
- KNOBE Joshua, “Intentional Action and side-effects in ordinary language” in *Analysis*, N°63, 2003, p. 190-194.
- MARGALIT Avishai, *The Decent Society*, Cambridge, Harvard University Press, 1996.
- ROZIN Paul and ROYZMAN Edward B., “Negative bias, negativity dominance and contagion” in *Personality and Social Pathology Review*, Vol. 5, N°4, 2001, p. 296-320.
- RAWLS John, *A Theory of justice*, Oxford, Oxford University Press, 1999.
- SHKLAR Judith, *Ordinary Vices*, Cambridge, Harvard, Belknap, 1984.
- SHRIVER Adam, “The Asymmetrical contribution of pleasure and pain to subjective well-being”, in *The Review of Philosophy and Psychology*, Vol. 5, N°1, Mars 2014, p. 135-153.
- TAYLOR Robert S., “Rawls’s Defense of the Priority of Liberty: A Kantian Reconstruction” in *Philosophy & Public Affairs*, Vol. 31, N°3, 2003, p. 246-271.
- VERNANT Jean-Pierre, *The Origins of Greek Thought*, Ithaca, Cornell University Press, 1982.
- VLASTOS Gregory, “Solonian Justice” in *Classical Philology*, Vol. 41, No. 2, Apr. 1946, p. 65-83.