ABSTRACT

Drawing on the ideas of Stuart Hampshire, this paper argues that American constitutionalism, thought of as a set of practices for resolving conflict, may be especially helpful in the postmodern condition because it encourages the resolution of conflict among different cultural conceptions of the good by practices of adversarial argument and procedural justice, rather than simply by force and violence. Consequently, a constitutional approach to public administration has merit in directing our attention towards our constitutional practices. However, we must recognize that a constitutional approach cannot provide universal standards for the fair resolution of conflict and that any attempt to legitimate public administration in our constitutional practices is always potentially problematic because such practices, themselves, are always contestable or open to dispute.
In the past two decades or so, an increasing number of scholars (Rohr, 1986; Wamsley et al., 1990; Spicer, 1995; Cooke, 1996; Richardson, 1997) have developed approaches to public administration that are rooted in the ideas of American constitutionalism. These scholars have drawn upon the writings of the founders to support their particular visions for an active and energetic public administration in our system of governance. However, a legitimate question can be raised as to whether or not American constitutional ideas are really helpful for the postmodern condition in which public administrators nowadays find themselves. The postmodern condition consists, after all, in what Jean Jean-François Lyotard has termed an “incredulity towards metanarratives” (1984, p. xxiv), a condition in which we no longer feel that we can root our political thinking and actions in the soil of the various versions of enlightenment dogma, be they conservative, liberal, or socialistic. In light of this, might not American constitutionalism and the surrounding mythology of the Founding Fathers, itself a conspicuous product of enlightenment thinking, be simply yet another meta-narrative, one that we can easily discard in thinking creatively about American public administration in the postmodern condition? We might argue, as Charles Fox and Hugh Miller do, that a constitutional approach to public administration is “simply too conservative,” that it “robs public administration theorists of the independence required to imagine more emancipating conditions of work and governance” (1995, p. 28). We might question, as does David Farmer, why it is the Constitution should exercise any particular “moral grip on our behavior” (1995, p. 81). Furthermore, some may believe that, in our postmodern condition, as Thomas Catlaw argues in a recent paper, “political orders, such as American liberal constitutional democracy, ... that rely on and are
In light of these difficulties, then, is a rapprochement between postmodern public administration and constitutionalism at all possible? I think that it is and that American constitutionalism, thought of as a particular set of customary practices that we have developed over time for resolving conflict, may be especially useful in the postmodern condition. I argue here that constitutionalism encourages the resolution of conflict among different cultural conceptions of the good by practices of adversarial argument and procedural justice rather than simply by force or violence and that, in doing so, it makes possible the protection of a broader range of such conceptions of the good than would otherwise be the case. However, constitutionalism can do this only because it consists of our own particular set of customary practices for resolving conflict, which have, despite their flaws or imperfections, become generally accepted within our particular political culture. In this respect, American constitutionalism should not be thought of as providing any sort of universal model for the resolution of conflicts among different conceptions of the good. Furthermore, while the constitutional approach to public administration has merit in directing our attention towards our constitutional practices, we must recognize that any attempt to legitimate public administration in terms of these practices is always potentially problematic. This is because such practices, themselves, are always contestable.

In developing this argument, I shall draw, in significant part, on the ideas of the English philosopher, Stuart Hampshire (1978, 1989, 2000). Hampshire is, of course, by
no means a postmodernist, but his idea are, nonetheless, useful here because 1). They fit well with our postmodern experience that the conceptions of the good that we seek are inevitably diverse and that these conceptions can conflict with one another not only within individuals, but also across different groups and cultures and 2). They offer an account as to how we might practically reconcile such conflicts. As such, Hampshire’s ideas would seem quite relevant to the postmodern condition in which public administrators find themselves.

**VALUE PLURALISM AND MORAL DIVERSITY**

It is useful to begin here with the recognition, based on our shared moral experience, that our moral values or conceptions of the good are many and varied and that we often find they come into conflict with one another. At an individual level, we know this value pluralism to be true because of our ordinary real-world experience of moral conflict. As Stuart Hampshire observes,

We naturally think, when uncorrupted by theory, of a multiplicity of moral claims, which sometimes come into conflict with each other, just as we think of a multiplicity of human virtues, which sometimes come into conflict with each other; so much so, that if one hears that someone has a moral problem, one immediately assumes that he is confronted with just such a difficult conflict of claims.” (1978, pp. 42).
In other words, “a conflict of moral claims is natural to us” (p. 43). It is part of our ordinary experience of the world. Furthermore, this conflict among moral claims does not arise from ignorance, error, intellectual laziness, or, for that matter, mendacity. It is not a conflict that we can resolve simply on the basis of more thoughtful or more sincere reflection. According to Hampshire,

We not only find these conflicts in our unreflective intuitions and in commonplace morality; we may also find, after reflection on the source and nature of our moral intuitions, that these conflicts are unavoidable and not to be softened or glozed over. It seems an unavoidable feature of moral experience that men should be torn between the moral claims entailed by effectiveness in action ... and the moral claims derived from the ideals of scrupulous honesty and integrity; between candour and kindness; between spontaneity and conscientious care; between open-mindedness, seeing both sides of a case, and loyalty to a cause. ... [M]orality originally appears in our experience as a conflict of claims and a division of purpose” (1978, pp. 43-44).

Furthermore, the issue here is not simply that many of our moral ends happen to be in conflict with one another. It is also that these ends often seem to be incommensurable with one another. By this, I mean simply that there does not appear to be either some single overarching end or some common scale to which we might appeal in order to rationally resolve conflicts among these ends. In such cases, we find, as Hampshire notes, “there is no compelling principle, or rational method, of balancing one
value against another” (1978, p. 45). Our ordinary experience of this incommensurability
denies the monistic assertion made by so many philosophers that there is, in Hampshire’s
words, “a common basis, ... a single reason behind all moral claims” (p. 44).
Incommensurability attests to the insufficiency of reason to settle moral conflict. It means
that “no sufficient reason of any kind is on occasion available to explain a decision made
after careful consideration in a moral conflict” and that “our divided, and comparatively
open, nature requires one to choose, without sufficient reason, between irreconcilable
dispositions and claims” (p. 44). In short, our moral experience is one in which, to use
Isaiah Berlin’s words, “human goals are many, not all of them commensurable, and in
perpetual rivalry with one another” (2002, p. 216).

Moreover, when we reflect upon our moral experience, we find that this type of
conflict among incommensurable conceptions of the good or moral claims can occur at a
variety of different levels. It can exist not only within individuals, but also between
different individuals and between different groups and cultures. As Hampshire observes,
“conflicts between conceptions of the good, moral conflicts” exist for us “both in the soul
and in the city” (2000, p. 5). These conflicts “in the city” arise because of the wide
diversity of conceptions of the good that can exist among human beings. As Hampshire
observes, “prominent among the essential potentialities of the human soul, of its
distinctive function, is [its] capacity for linguistic, cultural and moral diversity” (1989, p.
30). As a result, “the description of ideal societies and ideal persons and ideal ways of
life, and moral imagination ... vary vastly in form and content in different places, in
different social groups, at different times in history, and in distinguishable cultures”
(2000, p. 20). This “diversity, like that of the natural languages, helps to establish the
identity of distinct populations and of cultures” (2000, p. 20). Where different groups and cultures coexist within a state, it can be expected, therefore, that their different conceptions of the good will sometimes come into conflict with one another so that, as Hampshire notes, “within any nation there will always be contests arising not only from conflicting interests, ... but also from competing moral outlooks and entrenched beliefs” (2000, p. 79). As he puts it, “our political enmities in the city or state will never come to an end while we have diverse life stories and diverse imaginations” (2000, p. 5).

This is not to deny, of course, that there are many values that many of us, if not all of us, happen to share even across different cultures, values without which we would cease to understand each other as human beings. We may all recognize, for example, as Hampshire observes, that “courage, a capacity for love and friendship, a disposition to be fair and just, good judgment in practical and political affairs, a creative imagination, generosity, sensibility ... are all dispositions and capacities which are grounds for praising men and women” (1989, p. 134). Nonetheless, we have also learned, both from personal experience and from history, that “differing social orders, and different historical circumstances, promote and constrain different versions and conceptions of these abstractly named virtues” (1989, p. 134). In other words, even shared moral conceptions will manifest themselves quite differently in different places and different times.

If Hampshire is correct here, therefore, conflicts between conceptions of the good are endemic to the human condition and they are not notably postmodern in character. However, there is good reason to argue that these types of conflicts may become both more frequent and more visible, given the postmodern condition and the cultural fragmentation that is associated with it. As John Gray puts it, in the postmodern
condition, the idea that “the human good is shown in rival ways of living” is “no longer only a claim in moral philosophy,” but also “a fact of ethical life” (2000, p. 34). According to Gray,

Today we know that human beings flourish in conflicting ways, not from the detached standpoint of an ideal observer, but as a matter of common experience. As migration and communication have commingled ways of life that used to be distinct and separate, the contention of values has become our common condition. For us, pluralism is an historical fate” (p. 34).

**CONFLICT RESOLUTION AND PROCEDURAL JUSTICE**

Where there is this type of conflict or contention among different groups and cultures in regard to their differing conceptions of the good, such conflict can be resolved either by means of force or violence or, alternatively, by more peaceful means. While one cannot and should not rule out the use of force in settling conflict altogether, there are good reasons why different individuals and groups in societies, whatever their particular values or conceptions of the good, might find useful institutional mechanisms that aid them in the peaceful and non-violent resolution of their differences. After all, while, as argued above, individuals and groups may differ quite sharply in their conceptions of the good, much greater agreement is likely to be found with respect to the avoidance of those evils that are frequently associated with the use of force and violence either by governments or by warring groups and cultures. Notwithstanding the very real
moral differences that exist between us, there also remain what Hampshire terms

the unchanged horrors of human life, the savage and obvious evils, which scarcely vary from culture to culture or from age to age: massacres, 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 (2000, p. 43).

These types of evils, in Hampshire’s words, “unlike visions of a better social order, are not culture-dependent,” but, rather, “are felt as evils directly and without recourse to the norms of any particular way of life or to any specific set of moral ideas” (2000, xii). They are “immediately felt as evils by any normally responsive person unless she has perhaps been distracted from natural feeling by some theory that explains them away: for example, as necessary parts of God’s design” (2000, xii).

In this respect, we need not buy into Hobbes’ dark notion of the necessity for an all-powerful Leviathan simply to appreciate his insight that a state of war is something that, as a practical matter, we would generally like to avoid and to see that there is often merit, then, in seeking ways to resolve our differences that avoid or, at least, lessen the use of violence. In light of this, it should not surprise us that, as Hampshire observes, “there is everywhere a well-recognized need for procedures of conflict resolution,” procedures “which can replace brute force and domination and tyranny” (2000, p. 5). Of course, these procedures take on a variety of different institutional forms in different
cultures, but they include, among others, such institutions as parliaments, courts, and other assemblies or councils. What is common to most, if not all, of these institutions is that they involve some sort of adversary process that provides an opportunity for different groups to present their arguments and views on the issues that divide them, one that meets “the single prescription audi alteram partem (hear the other side)” (Hampshire, 2000, p. 8). As Hampshire puts it,

In accepting any adversary procedure, the normal case is the man who from the beginning of his adult life finds himself attached to an ethnic group, a social group, a locality, perhaps a religious or moral group, and where each group is in competition with other groups for some degree of dominance in a single society. In such conditions of competition there are two routes by which a person or group may seek to gain its ends: by outright domination, involving force and the threat of force, or, alternatively, by an argumentative procedure within some institution (parliament, law court, assembly) that happens to have come into existence with its own recognized rules of procedure (2000, p. 17).

To put this another way, these practices, in allowing some sort of a hearing for the different parties involved in moral conflict, provide an intimation of a norm of “procedural justice” or “fairness.” Hampshire recognizes this when he argues, “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” (1989, p. 72).
That such a norm of procedural justice should be somehow connected to how groups resolve conflicts among different conceptions of the good should perhaps not be surprising. Indeed, it can be argued that in a world in which there was some single conception of the good overriding all other conceptions, a monist world, there would be no real necessity for procedural justice as a norm. In such a world, in fact, there would be no moral choices left to be made at all, only instrumental choices or, perhaps more accurately, calculations about how best to pursue that given good. Procedural justice as a value can only make sense to us in a world in which we have rival conceptions of the good. Hampshire sees this when he observes that “a denial that there is one supreme good for human beings” is “essential in understanding why ... procedural justice is the necessary foundation of any particular set of virtues, supporting any particular way of life, whatever that way of life” (1989, 72).

However, in observing the generality of this norm of procedural justice, one that is rooted in the practice of “hearing the other side” across different times and places, we should never deceive ourselves that there exist some universal set of procedures available to us to resolve value conflicts. To the contrary, the very character of the procedures, which have evolved within a given society at a given time, is inevitably contingent upon its particular historical experience, because, to use Hampshire words, “institutions earn respect mainly from their customary use and from their gradually acquired familiarity” (2000, p. 40). As he notes,

Human beings are habituated to recognize the rules and conventions of the institutions within which they have been brought up, including the conventions of
their family life. Institutions are needed as settings for just procedures of conflict resolution, and [these] institutions are formed by recognized customs and habits, which harden into specific rules of procedure within the various institutions—law courts, parliaments, councils, political parties, and others. The members of any society, and the citizens of any state, at any time and anywhere, normally expect that the conflicts in which they are involved should be settled in accordance with the rules recognized within that particular society or that particular state” (2000, p. 54).

It follows from this that the exact requirements of procedural justice for a particular society can never be universal, but, rather, always “are matters of historical contingency” (2000, p. 18) and that these requirements, then, will “vary immensely in different places and at different times in virtue of local customs and rules” (p. 55). The only thing that these procedures have in common at all, according to Hampshire, is that they allow for what is seen as some sort of “a fair hearing to the two or more sides in a conflict” and that the institutions, which incorporate these procedures “must have earned, or be earning, respect and recognition from their history in a particular state or society” (p. 55). As a result, in order to determine what is a fair or just way of resolving any particular conflict among conceptions of the good in society, one must always “refer to the social situation and beliefs and traditions of the particular society at the particular time” (pp. 55-56).

Of course, there is always an understandable temptation for those who have been brought up in the customs of a particular society to imagine somehow that the culturally contingent rules and institutions of procedural justice that this society has happened to
develop must have a general or universal application to human beings in all societies at all times. However, this attempt to generalize from our local experience is fraught with problems, because, as Hampshire puts it, “there is no rational necessity about the more specific rules and conventions determining the criteria for success in argument in any particular institution, except the overriding necessity that each side in the conflict should be heard putting its case. ... There is no prescribed procedure.” (2000, p. 18). Indeed, for Hampshire,

The cardinal error, the trap, is to project the more stable and widespread habits and conventions of a particular time and place into an abstract model and then to call this ‘human nature.’ This abstract model of human nature may for a time be roughly adequate for ordinary planning purposes, representing, as it may, the general run of shared moral attitudes up to the present time. ... The error is to take the abstract model as the entire and literal truth, or to suppose that it corresponds to the many diverse actual feelings, attitudes, and conventions in the observed world (2000, pp. 58-59).

Furthermore, in stressing the virtues of social practices of procedural justice, we should also recognize that the particular institutions and rules that we end up using to adjudicate conflict among ourselves will never be seen as perfect by all parties and will, themselves, then, be subject to ongoing contest and change. As Hampshire observes, “procedures of conflict resolution within any state are always being criticized and are always changing and are never as fair and as unbiased as they ideally might be” (2000, p.
“No state will realize a perfect fairness in the representation of the conflicting moral outlooks within it” because “procedural justice tends of its nature to be imperfect and not ideal, being the untidy outcome of past political compromises” (pp. 31-32). We should not be surprised, therefore, that, as Hampshire observes, “the specific forms of argument and negotiation, and the arenas in which the conflicts are to be fought out, are often themselves subjects of dispute” and that they can be “expected to change as the untidy upshot of regular political conflicts” (2000, pp. 28-29).

Nor should we suppose here that, just because practices of procedural justice tend to reduce the use of violence, procedural justice is, therefore, a norm to which we must adhere in all possible circumstances. To claim this would be to claim too much. It would be to assert procedural justice as the supreme or monist value that trumps all others and, in doing so, it would be to deny the very reality of the value conflict that we seek to settle through institutions of procedural justice. We must, therefore, recognize, as does Hampshire, that procedural justice is not a principle that “must override all other moral considerations in everybody’s mind” and accept that “there may be exceptional circumstances” in which “considerations of procedural justice ... ought to be overridden in order that some other essential value, which is dominant in their morality, may be protected, such as the avoidance of widespread misery or the preservation of life” (2000, p. 36), or, perhaps, “to defeat an incipient tyranny that would clearly lead to greater injustice” (1989, p. 140). Procedural justice is simply a duty that arises because, as Hampshire puts it, “men and women need to live together in societies and states of some kind” and because they “encounter persons with contrary moral concerns and with
incompatible conceptions of the good, both beyond the actual frontiers of their society and within them” (1989, 140).

Moreover, while the norm of procedural justice seems to be widely shared among different societies at different times as a means of resolving value conflict without violence, it would be a mistake to conclude from this that the notion of procedural justice necessarily springs from of any basic human need for fairness. Indeed, if anything, precisely the opposite would seem to be true. As Hampshire points out, we learn how to reason about moral and other issues, not in a Cartesian manner as a result, as it were, of “solitary meditation by the stove” (p. 11), but rather by observing and learning from, at an early stage in life, the various social institutions that we have come to use in adjudicating and deliberating about the various conflicts that arise among different individuals and groups within the communities or societies in which we happen to live. To use Hampshire’s words, “mental processes in the minds of individuals are to be seen as the shadows” of “publicly identifiable procedures that are pervasive across different cultures” (2000, p. 7). As he puts it,

we learn to transfer, by a kind of mimicry, the adversarial pattern of public and interpersonal life onto a silent stage called the mind. The dialogues are internalized, but they still do not lose the marks of their origin in interpersonal adversarial argument. Viewed in this way, the mind is the unseen and imagined forum into which we learn to project the visible and audible social processes that we first encounter in childhood: practices of asserting, contradicting, deciding,
predicting, recalling, approving and disapproving, admiring, blaming, rejecting and accepting, and many more (2000, pp. 11-12).

Consequently, “the habit of argument within the solitary soul ... is modeled on the habit of argument within assemblies, committees, and law courts” (Hampshire, 2000, p. 72). Even the words that we use when we are dealing with personal choices about issues of justice and fairness, such as “deliberating,” “judging,” “reviewing,” “examining,” are appropriated from the social procedures that we use to adjudicate conflicts between different individuals and groups. According to Hampshire, “we have to borrow the vocabulary that is to describe the operations of our minds from the vocabulary that describes the public and observable transactions of social life. The picture of the mind that gives substance to the notion of practical reason is a picture of a council chamber, in which the agent’s contrary interests are represented around the table, each speaking for itself” (1989, p. 51). In Hampshire’s words, “in describing the operations of the mind, we are driven to use transferred terms and metaphors, taken from the public realm of objects and of commonly observed operations. Many of these transferred terms in their literal employment refer to government and to social relations” (1989, p. 182). Consequently, “discussions in the inner forum of an individual mind naturally duplicate in form and structure the public adversarial discussions” (Hampshire, 2000, p. 9).

Finally, from a postmodern perspective, in arguing for the historical usefulness of a general norm of procedural justice in setting conflicts among rival conceptions of the good, it is important to emphasize that we do not have to assert procedural justice as a universal or absolute value. It is true that Hampshire himself frequently seems to assert
such universality, as when he asserts, for example, that “it is reasonable to be universalist in the cause of reasonableness in the regulation of human conflict (‘hear the other side’)” and that “fairness and justice in procedures are the only virtues that can reasonably be considered as setting norms to be universally respected” (2000, pp. 52-53). However, even Hampshire concedes that there have been accepted institutions for settling disputes that have not involved adversarial reasoning as when he observes, for example that, “at a less thoughtful level, and without the civility of argument, a duel fought to resolve a quarrel can be fair, in virtue of its procedures” (2000, p. 18).

Regardless of Hampshire’s own views on this issue, we can simply argue here that the practice of procedural justice through a process of adversarial reasoning is a useful habit or custom that a great many cultures, including our own, have happened to pick up in the process of trying to avoid or, at least, limit violence in resolving human conflict and, moreover, that this is a practice that can be particularly useful in the postmodern condition. Richard Rorty clearly appreciates this when he notes that the postmodern condition of cultural diversity is “just the sort of situation that the Western liberal ideal of procedural justice was designed to deal with,” but that “one does not have to accept much else from Western culture to find the Western liberal ideal of procedural justice attractive” (1991, p. 209). He argues that, in recommending procedural justice as an ideal, one need not recommend “a philosophical outlook, a conception of human nature or of the meaning of human life” but, rather, simply “point out the practical advantages of liberal institutions in allowing individuals and cultures to get along together without intruding on each other’s privacy, without meddling with each other’s
conception of the good” (p. 209). As he puts it, “ideals may be local and culture-bound, and nevertheless be the best hope of the species” (p. 208).

**PROCEDURAL JUSTICE AND AMERICAN CONSTITUTIONALISM**

If we accept, therefore, that even our “local and culture-bound” norm of procedural justice can be helpful in resolving conflicts among competing moralities or conceptions of the good, then, it is quite reasonable for us, as either American writers or practitioners of public administration, to draw upon our own customary ideas and practices of procedural justice in thinking about how we might cope with value conflict in the postmodern condition. Obviously, prominent among these are the ideas and practices of American constitutionalism. James Madison, it must be admitted, was neither a postmodernist nor, for that matter, a value pluralist. Nonetheless, in designing the Constitution, Madison clearly appreciated the political dangers posed by conflicts among different conceptions of the good. He worried about “the effects of the unsteadiness and injustice, with which a factious spirit has tainted our public administrations” (Wills, 1982, p. 43). While it is quite true that Madison emphasized conflicts among economic interests or factions, he also fully appreciated that

A zeal for different opinions concerning religion, concerning Government and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions,
have in turn divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other, than to cooperate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions, and excite their most violent conflicts (p. 44).

Furthermore, while committed to a constitutional democracy, Madison certainly understood that majority rule alone would never be sufficient to control such factionalism and, in fact, could easily become an instrument by which particular interests and sects would seek to dominate and exploit others. He worried that, “when a majority is included in a faction, the form of popular government . . . enables it to sacrifice to its ruling passion or interest, both the public good and the rights of other citizens” (Wills, 1982, p. 45). In this respect, Madison frankly seemed to appreciate quite as well as do our contemporary postmodern theorists the potential dangers of what Catlaw terms “a presumptive We” (Catlaw, 2006, p. 265) and he recognized, to use Lyotard’s words, that “majority” can mean “great fear” (Lyotard & Thébaud, 1994, p. 99). He would have understood, as did Michel Foucault, nearly two centuries later, that “the power that one man exerts over another is always perilous” (2000, p. 452). In Madison’s own words, “a dependence on the people is no doubt a primary control on the government; but experience has taught mankind the necessity of auxiliary precautions” (Wills, 1982, p. 262).
Madison, as is well-known, sought to contain the problem of factionalism in majority rule by creating an extended federal republic, one in which he hoped there would be a “multiplicity of interests” and a “multiplicity of sects” that would serve “to guard one part of the society against the injustice of the other part” and, in doing so, would “provide security for civil rights” (Wills, 1982, p. 264). He argued that “in the extended republic of the United States, and among the great variety of interests, parties and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good” (p. 265). Madison also sought to protect citizens against abuse by their rulers by creating a separation of powers between different branches of government that would give to those who “administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others” so that, in this way, “ambition [might] be made to counteract ambition” (p. 262).

Through the development of these types of constitutional institutions, Madison, as well as his fellow founders, sought to provide what were essentially a series of veto points that would help limit the ability of any particular group to impose its will within government by force upon others and, in doing so, would encourage groups, as they sought their own particular ends through government, to accommodate themselves, by means of negotiation, to others seeking different ends. In other words, the founders sought a constitutional system that would provide a significant measure of procedural justice by increasing the number of opportunities for “hearing the other side” in conflicts among different groups in society. Robert Dahl recognized the tendency of our constitutional checks and balances to do just this when he argued, while “not the very
pinnacle of human achievement, a model for the rest of the world to copy,” Madison’s constitutional design had, in fact, helped to encourage the development of a “markedly decentralized system” of government in which “decisions are made by endless bargaining; perhaps in no other national political system in the world is bargaining so basic a component of the political process” (1956, p. 150). According to Dahl, it is a system which, “with all its defects, ... does nonetheless provide a high probability that any active and legitimate group will make itself heard effectively at some stage in the process of decision. This is no mean thing in a political system” (p. 150).

To appreciate more fully the role that our constitutional system of government plays in handling conflicts among different and conflicting conceptions of the good, particularly, in the postmodern condition, it is helpful to understand the origins of the liberal tradition of thought and practice from which it drew. In particular, these origins are to be found, in significant part, in the problems raised by religious conflicts, that is to say, conflicts over rival conceptions of the good, which often broke out into violence. Stephen Lukes recognizes this when he observes.

Liberalism was born out of religious conflict and the attempt to tame it by accommodating it within the framework of the nation-state. The case for religious toleration was central to its development; and out of that there developed the crucial but complex thought that civil society is an arena of conflicts, which should be coordinated and regulated by the constitutional state. In part that conflict is ... a result of scarcity and conflicting claims that arise out of selfishness and competing interests. But, more deeply, it also arises out of conflicting moral
claims, which raise the problem of how to treat these justly within a framework of social unity and mutually accepted laws and principles of distribution (1989, p. 139).

In light of their history in dealing with religious conflict, therefore, the liberal ideas and practices of procedural justice that have evolved within our particular historical culture, while certainly not providing any guarantees of success, would seem especially well fitted to the problem of resolving contemporary conflicts among different conceptions of the good and to protecting a broader range of such conceptions of the good than would be possible in their absence. This is, in no way, to minimize the suffering, the atrocities, such as the protection of slavery and segregation and the mass relocation of native populations, which have occurred, sometimes, in the name of procedural justice and American constitutionalism. As emphasized above, no state, even those such as ours that emphasize the norm of procedural justice, will achieve perfect fairness in the representation of conflicting moral outlooks. The institutions of procedural justice will often, if not always, be the result of past shabby political compromises. The best that can be expected is what Hampshire terms “a continuing approximation to contemporary ideals of fairness in resolving conflicts, and new institutions that tend to redress the more blatant inequalities” (2000, p. 32). In this regard, all we can claim perhaps is that, in comparison to monistic types of states, whether they be of the religious or secular variety, our historically contingent liberal state, by encouraging a process of continual adversarial argument among conflicting and incommensurable conceptions of the good, at the very least, leaves more open for us the
possibilities for continual change in our moral outlooks. In other words, by allowing conflict, our practices of procedural justice also allow for moral change. As Hampshire puts it,

That there should be a conflict between reflective desires, unreconciled outside an ideal world, is itself a condition of continuing moral development, both of the individual and of the species. If there is no valid theory to serve as the ground of a choice between irreconcilable dispositions, different choices will tend to be made by different men; and this vagary of choice will have an effect, being a form of experiment, in the development of the species (1978, p. 44).

**IMPLICATIONS FOR PUBLIC ADMINISTRATION**

Far from representing simply yet another metanarrative to be discarded, American constitutionalism, therefore, provides a set of practices of procedural justice for helping to resolve conflicts among rival conceptions of the good, practices that would seem especially well suited to deal with the type of value pluralism characteristic of the postmodern condition. This is, in no way, to seek to ground either American constitutionalism or procedural justice in an abstract or an absolute sense. It is simply to draw our attention to them as habits, which we have acquired in the practice of resolving our differences in a way that limits the use of violence, and to suggest simply that such habits may well have their usefulness in our particular postmodern political culture. Such habits of practice are important because it is these habits of practice, rather than abstract
ideas of procedural justice, that provide what Farmer terms a “moral grip on our behavior” (1995, p. 81).

If the foregoing is accepted, then there is some merit, as John Rohr (1986) and others have suggested, in seeking normative guidance for public administration by means of a constitutional approach. A constitutional approach to public administration is useful precisely because it directs our attention to the historically contingent practices that we have developed to deal with conflicts among values and it encourages us to think about ways in which public administration might help to protect and enhance such practices. In this regard, while it is beyond the scope of this paper to advance specific prescriptions for administrative actions, there is much to recommend for the idea that administrators should think about ways in which processes of procedural justice, or opportunities for hearing the other side, be fostered and promoted both within their organizations and in their dealings with citizens.

However, at the same time, we should not expect too much from a constitutional approach to public administration. Some of us have looked to our Constitution in an effort to provide some sort of enduring legitimacy for the modern administrative state. However, seeking legitimacy for public administration in the Constitution can be problematic because, as discussed earlier, the particular institutions or practices that we happen to employ in resolving conflicts among rival conceptions of the good are often themselves “the subject of political conflict and negotiation” (Hampshire, 2000, p. 29). We can expect, therefore, as Hampshire argues, “no finality or conclusiveness in this historical process” of “disputes about the just and fair political procedures and institutions” (2000, p. 97). With respect to our own constitutional practices, in particular,
we should recognize, as Hampshire reminds us, that “although many of the procedures of political conflict resolution are laid down by law in the American written constitution, it is evident that some procedures of conflict resolution do in fact significantly change from decade to decade as a consequence of the political conflicts, and also because of changing circumstances” (p. 97). It follows that attempts by public administration writers to legitimate public administration in our constitutional practices will always be contestable, in significant part, precisely because these constitutional practices themselves are always contestable or open to dispute. As Bernard Williams puts it more generally in regard to the practices of a liberal society, “part of our ethical practice consists precisely in this, that people have found in it resources by which to criticize their society. Practice is not just the practice of practice, ... but also the practice of criticism” (2005, pp. 35-36). While a rapprochement between postmodern public administration and constitutionalism is certainly possible, therefore, we must accept that it often will be an uneasy one.

Nonetheless, if nothing else, a better understanding and appreciation for our constitutional practices can alert us in public administration to the fact that, whatever our own particular conceptions of the good happen to be, conflict in society is not an aberration or, as Hampshire terms it, “the sign of a vice, or a defect, or a malfunctioning” or “a deviation from the normal state of a city or of a nation” or “a deviation from the normal course of the person’s experience” (p. 33). It reminds us, rather, that conflict is something quite normal and that there is virtue in seeking to resolve it by processes of adversarial argument rather than violence. This is important since much of our field tends to be dominated by an instrumental rationalist mind-set that constantly draws our attention towards questions about how best to pursue given ends but, in doing so, draws
away our attention from questions about how to reconcile our conflicting and incommensurable ends. Our constitutional practices, with their multiple opportunities for adversarial argument, serve to remind us, to use Hampshire’s words, that “we should look in society not for consensus, but for ineliminable and acceptable conflicts, and for rationally controlled hostilities, as the normal condition of mankind; not only normal, but also the best condition of mankind from the moral point of view, both between states and within states” (1989, pp. 189). As he puts it, “conflict is perpetual: why then should we be deceived?” (2000, p. 48).

REFERENCES


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