

*Véronique Zanetti*

## Justice, Peace and Compromise

*Abstract:* Compromises are arrived at when, in spite of the efforts of those participating to mediate and defend their position in a rationally acceptable manner, each remains with his judgment while, at the same time, a decision must be made without further delay. What this means is that the parties agree to an option about which they are not, in their heart of hearts, entirely convinced. This article examines the notion of moral compromise, concentrating thereby on the case of political praxis. It asks whether, in view of the complexity and multiplicity of morally relevant decisions encountered in a pluralist society, it is at all realistic to expect much else from political institutions than what Rawls dismissively refers to as a *modus vivendi* and whether a conception of justice that is true or reasonable only given the reasonable pluralism of comprehensive doctrines is still a conception of justice, and not simply a compromise between the contending doctrines.

### 1. Introduction

At times, people refrain from doing what, for moral reasons, they consider the right thing to do, and settle instead for one or the other course of action they hold to be at best second-rate, on the grounds that it would be acceptable to others involved. This is what I call ‘moral compromise’. The aim of the present paper is to understand this phenomenon, both theoretically and in its application to what Rawls calls ‘the fact of pluralism’ within the sphere of real politics.

It is difficult to provide a theoretically coherent description of the attitude of a person who settles for moral compromise. Indeed, the case of moral compromise seems to require that moral demands be flouted for moral reasons: an apparently paradoxical circumstance. Conflicting parties who settle on a compromise do what, in their eyes, is the ‘wrong’ thing because given the situation in which they now find themselves, doing the wrong thing, as it turns out, amounts to doing the right thing.

The case of political praxis is just as difficult. In multicultural societies, pluralism gives rise both to a clash of interests and to conflicts of values. Given such discordance, one is obliged to ask whether it is at all realistic to expect much else from political institutions than what Rawls dismissively refers to as a *modus vivendi*. To be sure, if the ideal of justice in a non-ideal social reality remains beyond reach, and if the inefficacy of this idea threatens social reality

with devastating consequences, then peace, as a normative standard of social coexistence, may assume the form of an imperative ideal objective. Whereas justice, from a Rawlsian standpoint, ranks as the highest non-negotiable norm, peace, by contrast, is negotiable.<sup>1</sup> Whoever enters into negotiation is necessarily prepared to entertain compromise. And so long as the parties involved negotiate, dialogue and the search for a mutually sustainable solution will result.<sup>2</sup> From the standpoint of morality, however, the question as to what it takes for someone who bears responsibility to relinquish, or at least to bracket, his or her own moral commitments now presents itself. And why, for whatever reason, do they permit themselves to deviate from their moral course: for the sake of peace, out of respect for others, or, more pragmatically, to keep things running smoothly? At what point, then, does compromise become corruption and how stable is a moral compromise?

I will now provide a cursory review of the ideal of moral consensus as defined in contract theory. Politics must secure the terms of cooperation among parties who irremediably disagree about rights and wrongs. In a non-ideal world in which answers to conflicts revolving around substantial conceptions of the good, seldom, if ever, prove satisfactory to all parties involved, the ideal of one single vantage point shared by all and capable of rendering objectively valid our fundamental moral principles and convictions, may be a futile hope. Under this condition, the ideal of justice, which, following Rawls, should unfold its legitimate power in an overlapping consensus, might rather resemble compromise than consensus.<sup>3</sup> In short, we hope to find ways by means of which people will be prepared to agree, even if they remain unconvinced as to the issues. I intend to show that what we seek is, in reality, the achievement of *consensus* in the *pursuit of an aim* (social peace), and *moral compromise* regarding the *procedure* of decision-taking and its *content*. Thus, both concepts, the concept of overlapping consensus and of compromise, must be specified. I will now proceed to a more detailed discussion of this.

---

<sup>1</sup> According to Rawls, the assertion “justice is the first virtue of social institutions, as truth is of systems of thought” is so deeply rooted in our intuition that all other institutional norms pale by comparison, and, by extension, that as primary virtues of human action, “truth and justice are uncompromising” (Rawls 1971, 4).

<sup>2</sup> Richard Bellamy sees in the search for a compromise a core element of democracy, which he calls “democratic liberalism” (in distinction to “liberal democracy”): “Democracy plays a more demanding role than the standard liberal one of simply allowing people to advance their preferences and interests. It also involves citizens reasoning and seeking mutually acceptable solutions.” (Bellamy 1999, 116)

<sup>3</sup> In the case of a *consensus* several actors agree with respect to their convictions. Should one find a consensus, then previously differing positions have, as a rule, changed and have now arrived at a mutually held conviction. If, by contrast, we act according to a compromise, we then do something about which we are not entirely convinced. (I will return to this distinction later.) On the challenges to the accessibility of an overlapping consensus, see Bittner (1997). See also Schaub (2009).

## 2. Compromise and Consent

For there to be compromise, there must be conflict. In the simplest of cases, whereby party X advocates policy A, and party Y advocates policy B, each must concur on policy C in order to resolve the conflict. However, for solution C to constitute a compromise does not mean that each of the parties involved is convinced that C is the best solution for all: this would be a *consensus*. In such a case, actors who had previously occupied divergent positions arrive at an agreement as to their convictions, and are persuaded that the new position is well grounded (cf. Düwell 2002). In that it is based on a commonly held understanding, a consensus is not negotiated whereas a compromise is: if a mutually held conviction does not exist, should the parties involved remain at odds as to the solution of a conflict, or about the political measures, then—presupposing the desire to live with one another in peace exists—they are compelled to enter into a compromise. In other words, the compromise is the result of a negotiation in which at least two parties declare their readiness to be satisfied with less than the desired results, both because they cannot agree to the solution of the conflict, and because a continuation of the disagreement might otherwise have severe consequences for both parties. Hence, compromises are arrived at when, in spite of the efforts of those participating to mediate and defend their position in a rationally acceptable manner, each remains with his judgment while, at the same time, a decision *must* be made without further delay. Neither party alters its beliefs in a compromise in order to come to estimate C as being superior to A or B. Each party's support for C remains conditional on the other party continuing to advocate A/B (Lister 2007, 17).

What this means is that the parties agree to an option about which they are not, in their heart of hearts, entirely convinced. They are obliged to swallow the 'bitter pill' for no other reason than that there is no other choice: either because one party thereby seeks to dissuade their opponents from holding a position which would be even less acceptable as one negotiated through compromise, or because both parties know that the price each would otherwise have to pay—were they to insist on their positions—would be far higher than would a concession to the other. Should *one side* concede, while the other fails to respond in kind, then, in my opinion there can be no talk of 'compromise'. A compromise is testimony to the preparedness on the behalf of each of the parties to partially forego the full realization of their interest, even in cases in which the division does not necessarily fall out equally.

We may provisionally define a compromise as the following:

Def.: A compromise characterizes a process or the result of a decision or a negotiation, in which the parties involved modify the principle of their action or their objective in the face of otherwise diverging and irreconcilable convictions in a direction which, though acceptable to all parties, is not seen as being optimal for any of them.

For a compromise to be a *moral compromise*, it (a) should not originate under coercive conditions and (b) should not be concluded out of pure strategic calculation.

(a) By coercive conditions I mean conditions of asymmetry in power which aim both to worsen the other party's options for action to such an extent that it, in fact, becomes the only feasible action left to take. If, for instance, no better alternative is given to the slave aside from working a day longer so as to elude even more beatings, then he has not given his assent to a compromise, no more than has the social partner obliged to opt between being laid off, or reduced wages, without the employer having to delve into his pockets.

Without the awareness, one might object, that if some mutually acceptable arrangement cannot to be found coercive conflict is inevitable, and that there would be no reason for accepting a second-best solution. Hence, the coercive potential of the other party belongs to the constitutive conditions of compromise.<sup>4</sup> Asymmetry reinforces potential for coercion. Conversely, asymmetry of power is not a necessary condition for coercion. On the contrary, symmetry of power may even increase coercive potential, as the theory of balance of power shows.

I think both objections are right. We ought, however, to factor into the analysis the *motives* by means of which a settlement is reached, even if there is admittedly no way of identifying their quality empirically. The aspect of the motives links directly to the second element which I now will address.

(b) At this point I introduce a similar distinction to John Rawls', namely, between political stability for moral reason and the precarious stability of the *modus vivendi*. According to Rawls, a social consensus based upon a *modus vivendi* occurs when the parties concerned abide by the conditions of a contract solely on grounds of their interest and are ready to abandon the agreement as soon as they think they can do better, even at the expense of the others. In this case, no commitment exists as to common ends, which could be susceptible to survive occurring disruptions within society. The chances that a consensus affirmed on moral grounds is stable 'for the right reasons' are remote. According to Rawls, consensus is based on exercising the sense of justice, here regarded as an intrinsic collective good, which is worthwhile being pursued in the long run, and even at the cost of immediate individual benefit.

Remaining within the framework of compromise-finding in both instances, I distinguish between compromise as a result of an *offensive strategy*, or of a *peaceful strategy* (cf. Arnsperger/Picavet 2004, 172). The compromise is a result of an offensive strategy whenever each party aims to extract maximal surplus from negotiations. In such a case, agreement on the issue is based solely on the hope of achieving greater benefit as soon as new conditions permit, and this achieved by whatever means, including the threat of violence or coercive action. On the contrary, it is a result of a peaceful strategy when it is aimed at fostering peaceful cooperation in remaining disagreement. In such cases, it possesses a moral dimension where the compromise called for is accepted for what each party takes to be moral reasons, as opposed to personal wants or interests. Moral compromise may therefore be interpreted as standing on the threshold of

---

<sup>4</sup> I am thankful to a referee and to Pranay Sanklecha for this objection.

Rawlsian *modus vivendi* (acceptance of bargaining based on offensive strategy) and consensus (convergence by way of common acceptance of a new issue). It remains a compromise so long as the parties continue to disagree about the content of the issue, and it is a moral compromise so long as the parties agree to disagree for the sake of a common good, for example, for the sake of social peace.

Compromises can assume various forms. In a weak sense, the parties agree to a middle course. Whereas the one side wishes to invest public funding in the erection of an opera house, the others wish to see it invested in the construction of a multi-sports stadium. Should they agree to a small theatre-opera house and a football stadium, they meet in the middle ('they split the difference' (Benjamin 1990)). They show themselves as being prepared for a compromise. Should they meet in the middle they do something which is of little interest to a moral theorist. Even when, depending on the object, it may be difficult to ascertain the location of the middle, this difficulty is not a moral challenge, but a problem of distribution which, theoretically, can be solved. No party has made a concession that would seek to dissuade the other from their moral convictions. If, by contrast, compromise demands a balancing of morally non-negotiable norms, namely, of claims which cannot be realized at the same time, then we are concerned with a central moral problem, since the parties not only need to curtail their demands when asserting their own interests, but also in what they consider at all important. They have to do what, in their eyes, is the 'wrong' thing, because, in the given situation in which they find themselves, doing the wrong thing is, in fact, the right thing. This paradox must be unravelled and further elucidated.

The classic example of a genuine moral compromise is first-trimester abortion. Contemporary German jurisdiction provides women with the possibility to have an 'illegal though punishment-exempt' abortion within the first three months of pregnancy. The liberal, who contends that the question of abortion is a private affair to be decided solely by the parents and/or the woman in question, must, in this sense, concede to uphold the time limit; he must accept the obligatory consultancy which is oriented to the protection of life. On the other hand, the conservative must depart from his categorical prohibition of abortion. Even though the latter must make greater concessions—since for him it is a question of life and death—this solution, considered from a purely consequentialist standpoint, is better than radical prohibition, which, in turn, simply induces women to have an abortion either abroad or else under hygienically sub-optimal conditions within their own country. Conversely, this solution, praised by many as the 'third way', has been condemned by many others as legally inconsistent (Merkel 2002), because it both approves a widespread practice while at the same time declaring it illicit—and, in so doing, undermines the sense of justice. This is because, based on article 1§1 (protection of human dignity) and article 2§2 (basic right to life), constitutionally the court affirms that the state is committed to protect all human life, including that of the embryo, and thus considers abortion as fundamentally illegal (cf. Merkel 2001). This example shows that in this case, one cannot find a middle ground, without at the same time having to retract

from the level of principles which, in turn, result in contradiction: if an embryo is a bearer of dignity, and if the dignity of man is inviolable, then it cannot be killed, even at an early stage in its development. Nevertheless, purely from the consequentialist point of view, the solution can be praised as a balanced and thus successful settlement of conflicting interests since, in this sense, it depends solely on whether the results of a compromise are better than if each party insists on pursuing its aim. From a deontological standpoint, however, this solution is painful, although one must ask whether it is at all morally supportable or else rather bears testimony to moral weakness or intellectual confusion.

To restate the problem once again: readiness to compromise demands of both parties that they make concessions to their principles in favour of a common solution by modifying them enough for a mutually acceptable solution to be found.

At this point one may argue that the difference between a consensus and a moral compromise becomes blurred because the parties arrive at a compromise for what looks like consensus-based reasons: they share the same underlying conviction that social peace is of greater importance than is the enforcement of their own position.<sup>5</sup> Indeed: a moral compromise, unlike an offensive strategic compromise, only has a few elements in common with the consensus. Indeed, it might not share more than the principle that in such situations one should seek moral compromise rather than remain in the state of conflict. Such a compromise is based on the realistic insight that people (unfortunately, but not unreasonably) hold very different views (Lister 2007, 16), as well as on the conviction that there is no better way than to find compromise. What is at stake here is not 'peace' in the Kantian sense of the suppression of any cause of potential conflict, but a peace which is far more modest: it is the suspension of conflicting requests for the sake of living without violence.<sup>6</sup>

In summarizing the foregoing issues, we can now claim that a compromise constitutes a *moral compromise* if (a) the subject-matter of the conflict involves questions of principle, and (b) if the parties support the solution found for what they take to be moral reasons rather than strategic interests. By contrast, a compromise is an *offensive strategic compromise* whereby each party shows a readiness to waive its present claim so as to ensure an increase in its chances in the near future. Under this condition, the asymmetry as well as the symmetry of power may have a significant impact on the readiness of the parties to accept a compromise. What moral compromise shares with consensus is a minimal underlying conviction either with regard to the procedure required for solving the dispute, or the search for social peace. It differs, however, from a consensus due to the fact that the opponents maintain their convictions, and regret that they were unable to obtain that which they consider the best option. Consequently, the challenge for moral theory is to explain how the parties concerned may reasonably believe that moral reasons require them to accept a solution not entirely rational according to the criterion of their morality. Moreover, we will

<sup>5</sup> I thank a referee for making clear that I must consider this argument separately.

<sup>6</sup> As we will see, it may even express, in a more extended form, the mutual respect for rationality of the respective parties as well as the will to overcome disputes.

have to show that the regret the parties feel need not be irrational. Before returning to both problems at a later stage in the discussion, I will now turn to the application of moral compromise to political praxis from the point of view of the contract theory.

### 3. The Problem of Moral Contractualism

What the various contractualist conceptions of morality or the political legitimation of government share in common is that, for want of an apriori valid principle, they consider norms legitimate only when the interest of *all* relevant parties is taken account in the appropriate way. This means that the legitimacy of a norm refers to principles to which everyone could reasonably agree (Kant, Rawls), or else no one could reasonably reject (Scanlon). In both forms, however, all parties concerned should have a reason for endorsing the existence of this norm. Should this not be the case, such a norm consequently exercises coercive constraint over the latter to act or refrain from acting in a certain way: it threatens those involved with sanctions to do or else refrain from doing whatever appears as falling beyond the compass of its interests. Hence, according to the theory, a norm is justified when the addressees of the norm give their rational consent to it in the absence of any external compulsion. The justification of a norm is, therefore, tightly bound to its acceptability.

As is known, this scenario constitutes the foundation of the ideal theory. The idealisation operates on two levels: firstly on the level of the procedure, and secondly on the level of the result. I will now address each of these two drawbacks in turn, in an attempt to show what happens to them once the ideality of the initial situation has been dispensed with.

#### 3.1 Compromises about the Procedure

Contractualist theory makes use of idealisation in its quest for valid conditions of legitimate contractual decisions. The contractual partners are expected to be capable of freely opting in favour of the contractual conditions, and they must be on equal footing. Consequently, a just contract ought not to come into existence under asymmetric conditions of power, and, furthermore, it would presuppose cooperating members. However, the first drawback becomes apparent at this juncture owing to the fact that moral assumptions are inherent both in the characterisation of those individuals alone designated as authorised to determine the principles of coexistence, as well as in the conditions of the procedure itself. In the final analysis, contract theory is thereby abandoned, if we consider that moral presuppositions have already become part of the characterization of those individuals entitled to choose the principles of cooperation. Furthermore, several critics argue that this idealisation, in so far as it abstracts from the existing balance of power, leads to falsified guidelines for action.<sup>7</sup>

---

<sup>7</sup> Liam Murphy shows that the real problem with ideal theory is that it makes unfair

Should the contract guarantee the validity of normative demands without recourse to ungrounded normative premises, then *the criterion according to which the moral or political norms have been justified must itself be grounded*. In other words, the question as to whether in order to acquire legitimacy a moral norm must be in the interest of *all* or only in the interest of the majority (and how this majority should be), whether it must be something no one could reasonably reject, this question *itself must be procedurally decided*. The normative act is itself the result of a procedural act.

Normative justification requires a meta-norm, and this higher-level norm results from the contract. As Peter Stemmer convincingly remarks: “A society of people must desire this norm, and bring it into existence.” (Stemmer 2004, 490) In other words, a society of people should decide if the requirement of legitimacy which it seeks should be the highest (everyone should agree reasonably to the norms) or should be at a lower level (the norms should be in the interest of the majority). Should a society opt for a unanimity requirement as the sole justified criterion for the legitimacy of norms, then many norms required for reasonable order in social life (such as the imperative of not inflicting physical injury, raping or stealing from others) would remain unjustifiable—should, that is, the unanimity requirement be unreachable, which, understandably enough, could not be desirable to anyone. In view of this, one may not assume that the members of a society will desire that all, and only those, norms are valid which comply with the requirements of unanimity. However, should the requirements of unanimity not be fulfilled, then the members of a given society may concede to a procedure, which would incorporate a *majority proviso*, and this in the name of a higher good. In other words, they would agree to the establishment of a peaceful provision for coexistence. The majority proviso is not that which *should, ideally*, be valid. While, it may only be the second-best solution, it is the best among the non-ideal conditions of the contract.

In short: the question as to which criterion for normative legitimacy, as well as the decision about where the limit of the majority proviso should be set, is reserved for those parties involved, and may not be presupposed at the outset of the contract. The point of interest here is that in the interest of a ‘higher good’, which facilitates a common life, the participants must be prepared to arrive at a *compromise* as to the level of the demarcation, or rules of procedures determining the higher level norm according to which the other norms are aligned.<sup>8</sup> Negotiating between parties as to the extent of the boundaries borne by the desire to reach a mutual goal, remains indispensable in the absence of an existing a priori moral norm. Where the parties involved show a readiness to negotiate, where they opt for the priority of social peace over stronger criterion for moral norms, they *consent to a common good*. A *compromise* must, however, be reached *as to the procedure* required regarding the legitimacy of moral or political norms as

---

demands on people who comply within a world of non compliance. Cf. Freyenhagen/Schaub 2010.

<sup>8</sup> “In that it concerns the question as to the more or less—then the norm of unanimity should be more or less limited—then it makes sense to agree to a compromise in order to find a *modus vivendi*.” (Stemmer 2004, 495)

well as to their *content*. Herein lies the second drawback as mentioned above, and to which I now turn.

### 3.2 Compromises about the Principles

“Politics as we know it is a matter of differential choice: opting for A *rather than* B. Thus politics is not about doing what is good or rational or beneficial *simpliciter*—it is not even obvious that that is an internally coherent thought at all—but about the pursuit of what is good in a particular concrete case by agents with limited powers and resources, where choice of one thing to pursue means failure to choose and pursue another.” (Geuss 2008, 30–1)

Politics is a matter of coordination of actions under suboptimum conditions: under constraints of power (who can do what to whom?); under limitation of time (what is the order of temporal priority?) and limitation of knowledge. One hardly has to go as far as to admit that “people are rarely more than locally consistent in action, thought, and desire [...]” (Geuss 2008, 3). Rationally motivated political actors are frequently compelled to make decisions under time constraints, with limited information and under pressure by the opposition. However, while acknowledging the place of the non-ideal factor in the conditions of decision-making, this finding is not of primary interest here. Of greater interest is the diagnosis which may be derived from moral and political pluralism, namely, that in view of the complexity and multiplicity of morally relevant decisions encountered in a pluralist society it may well be impossible to provide an answer considered as correct by all. In other words, one may be uncertain as to the enduring existence of a fundamental, comprehensive principle which yields a hierarchy for the single principles, in such cases as when these contradict one another. Entertaining epistemological reservations does not compel one to become an advocate of relativism, and to maintain that conflicting norms may both be true.

The thesis I would characterize as epistemic underdetermination is less emphatic than that of incommensurability. According to the latter thesis, there is no value conflict capable of being rationally solved since the antagonistic principles are incommensurable with one another, and a comprehensive principle is not indicated. By contrast, whoever argues in favour of epistemic underdetermination is not, perforce, a moral sceptic. One may settle for the less forceful definition that in *certain cases* “no common currency” exists by means of which the value conflicts can be resolved (cf. Williams 1981, 77). The fact that in pluralist societies moral judgments among members often deviate from one another is taken seriously; and that one may assume that there is no consensus about the way in which moral principles can be justified at all since, as has just been shown, the dispute about an appropriate concept of justification for morality is itself an element of moral pluralism. In other words, one takes seriously the fact that rational actors not only assign various norms in the ranking order in the scale of values, but that they cannot agree to any standard, or

rule or higher principle on the basis of which some norms are to be evaluated as higher than others (cf. Willigenburg 2000). Accordingly, compromise would be an inevitable consequence of the fact that sometimes incompatible demands cannot be reconciled (there is no way of ‘splitting the difference’) and cannot even conclusively be ranked under higher-order value.

It is well-known that Rawls’ attempt to conciliate different views comprehended within pluralist societies into a political stable society is operated by way of an ‘overlapping consensus’ on constitutional essentials, which rests both on the exclusion of real politics and on the separation between the state and civil society. Consensus will not work without involving preliminary pre-political conditions of validity. It otherwise runs the risk of being no more than a contingent and temporary balance of group-interests. A stable regime, on the contrary, requires broad agreement on a core set of substantive political norms (Bellamy 1999, 45ff.). Overlapping consensus requires a ‘reasonable pluralism’ as opposed to simple pluralism (Rawls 1996, XVII; hereafter as ‘*PL*’). It must contain “unreasonable and irrational, and even mad, comprehensive doctrines [...] so that they do not undermine the unity and justice of society” (*PL*, XVI–XVII).

From what has been said regarding the formation of the contract, it becomes clear that overlapping consensus thrives on the idealisation of political agreement. To this idealisation belongs (a) the assumption that due to shared intuition and a coherent prevailing political culture, conceptions of justice admit of reduction to a common denominator; (b) the assumption that the political sphere—the sphere of the conception of justice—can be kept free of world views, in which comprehensive conceptions of the good could be incompatible with one another. And yet, to focus the gaze on our political culture is not enough in order to justify the hope of a fundamental political consensus (Bittner 1997, 43; also Freyenhagen/Schaub 2010, 462ff.). Should one extend the horizon to other cultures, then the hope of common ground becomes all the more obscure. Should the construction thus restrict itself to ‘well considered’ conceptions, and to filtering out the other ‘non-reasonable’ conceptions—even if the determination of that which is supposed to be considered reasonable is purposely held vague<sup>9</sup>—by doing so it sells consensus as a sham package, since compatibility is already anticipated through the criteria. Furthermore, the coherent or well-considered judgement—as an additional filter of the admitted convictions – is still not a sufficient criterion for the filtering of non-liberal ideologies. Nationalist or militarist ideologies for example may be coherent, and from the point of view of their advocates, their judgements are well-considered (Freyenhagen/Schaub 2010, 463; Bittner 1997, 43ff.).

With respect to the separation of the political sphere from the sphere of a comprehensive conception of the good, Rawls’ estimation of this situation is, also in this connection, no less overly optimistic. The core of this conception of political and social justice pivots on the assumption that, to the extent they do not conflict with those of other citizens, all ethical-cultural moral concepts deserve respect. One cannot demand agreement on particular moral concepts. Other

---

<sup>9</sup> Rawls, *PL*, 58ff. On the distinction between a restrictive and a broad reading as to that which is to be considered “reasonable”, cf. Schaub 2009, 226ff.

citizens may orient themselves on values one may consider erroneous. The key to communal life in pluralist society is to respect difference; the toleration of “the otherness” of the other. “In applying the principles of toleration to philosophy itself it is left to citizens individually to resolve for themselves the question of religion, philosophy and morals in accordance with the views they freely affirm.” (Rawls 1987, 15) In short: a well-functioning, stable and just society is one in which mutual respect exists between the different substantial moral conceptions, and such that citizens may agree to the fundamental principles of the political. The sphere of the good life, as a substantial part of morality is, in Rawl’s view, relevant only for the way in which individuals desire to form their private lives. The state should maintain neutrality with respect to ideas of the good life. Public authority ought to be restricted to norms, basic rights and the distribution of social goods, which are justified by reasons acceptable to all citizens.

However, is the separation between private and public, between the good and the just viable? As Hart has convincingly shown, not only will those persons with different conceptions of the good life *de facto* prefer a different hierarchy between conflicting freedoms.<sup>10</sup> Indeed, in many circumstances individuals might rationally consider that the advantages of the exercise of a given liberty are outweighed by the negative effects on them by the general practice of others. The point is that the conception of the good life impacts upon the particular stand we take with respect to the validity of the freedom we should have in political discourse, and the extent to which it should be institutionally protected. The conservative religious position, for instance, would not advocate the view that gays and lesbians should have the right to extend their sexual freedoms to the right to found a family and the adoption of children. Most likely they would not agree that the right of freedom of opinion also be extended to constitutionally protect pornography. And when, in public discourse concerning the demarcation line between women’s rights to what happens to their bodies and abortion on the one hand, and the protection of the embryo as a divine creation on the other, they will be disinclined to accept that such a decision belongs to the private sphere of moral conviction. Concepts about specifically which ideas of freedom should be protected can diverge to such an extent that the various parties are incapable of seeing eye to eye as to the appropriate political measures of guarantee. The sphere of the political cannot be separated offhand from the sphere of the conception of the good. When concerning fundamental decisions about legal questions, the prospects of consensual agreement as to procedural regulations are very limited. And not for political-pragmatic considerations: not because it is unrealistic to expect that the opponents would be prepared to in part forego their respective claims; but rather because the consensus of those concerned—or several among them—demand the readiness to make an ethical compromise.

Two questions present themselves in this connection: the question of the ‘where’ and the ‘how’. The ‘where’ question runs: what is the common denomi-

---

<sup>10</sup> “[...] Other conflicts between basic liberties will be such that different resolutions of the conflict will correspond to the interests of different people who will diverge over the relative value they set on the conflicting liberties. In such cases, there will be no resolution which will be uniquely selected by reference to the common good.” (Hart 1975, 241)

nator for interests of representatives of the conservative party and the ‘gay’ and lesbian movement whereby a decision has to be made as to whether the latter may be permitted to adopt children? Where do representatives of the church or opponents of biotechnology and their respective liberal adversaries meet when it is a question of abortion or the distribution of funding for genetic research; or where do ultra-orthodox Jews and adherents of the ‘peace-now’ movement meet with respect to the dissolution of the settlements in West Bank and restoration of the occupied territories?

The ‘how’ question not only concerns the ‘location’ of the compromise, but its theoretical possibility. Hence, if two parties are prepared to make concessions to their principles of which they are morally convinced in favour of a socially satisfactory solution, they then demonstrate their preparedness to accept other principles now considered more appropriate under prevailing conditions. Let us remain with the example of the social attitude to embryos and embryo research. One could say that the proposed compromise of a first-trimester abortion is not deserving of the name. A compromise does not take place because only one position, the conservative one, requires morally significant concessions. Furthermore, one could say that there is a second reason why a compromise is not affected, since the party representing the conservative position in no way recedes from its moral principle (it maintains its importance), but relegates it below another higher principle, which, in this case, is meant to take precedence. It considers, for example, social peace or the principle of tolerance as a priority. Even if it adjudges the other positions as being fundamentally false, it considers it probable that their respective representatives have carefully thought about the fact that they are themselves also rational actors in a moral discourse, and therefore also deserve to be taken into account. In which case, we are no longer concerned with a compromise, but with a change of principle (peace or freedom of opinion are more important than the unconditional protection of human life). The original position may be harmonised with the mutually adopted one, or can at least be placed on an ordinal scale and introduced into a lexicographical order of preference. Were it fundamentally possible to superordinate and subordinate such duties within a hierarchical structure, then no compromise is required.

Are compromises theoretically impossible?

#### 4. The Psychological Problem of Regret

To be able to talk of a moral compromise one condition has to be fulfilled: conscious of having done their utmost under given circumstances, both parties must have a sense of regret and that this regret may not appear as irrational and inappropriate. But it would have been inappropriate were the new principle to have suppressed its predecessor (the parties would have changed their opinion or have ‘learnt something more’), or if the parties were of the conviction that what was valid according to the new principle was the most important. It may well be—and this is the answer to the first objection, that this does not involve a compromise in which only one side should make concessions—that one of the

two parties must make more far-reaching concessions than the others. To the conservative, the acrid taste of the first-trimester abortion apple is far bitterer than it is to the liberal. However, neither does the latter reach all the objectives he sets out to attain. The point at which the distribution has been reached, where power struggle passes over into a 'difference-splitting', and where one of the two parties is not given a choice, is a question difficult to determine empirically. Limits must be set to the preparedness for compromise: there are lazy compromises, concessions which one is unable to maintain. If one takes the morally prohibited step in the unwanted direction, either one is morally weak, mentally confused or coerced into making a decision. However, should the compromise not be lazy and possible to honour, then by responding with a sense of regret when principles must be abandoned one had assumed should not be annulled by no means represents a contradiction. Duties lose nothing of their fundamental validity; they are to be regarded only under these particular conditions. Here, regret stems from the impossibility of acting properly in a given situation other than subordinating one principle to another. What does not become an object of regret, in so far as one is convinced of one's decision, is the act itself, or the agreed compromise. By remaining with the example that has served as an outline in the present discussion, we could then say that the conservative who has brought himself to agree to the tri-semester abortion has perhaps realised that the costs for the individual (for pregnant women who have abortions under suboptimum conditions) and for society (which is capable of violent reactions) do not coincide with the objective (the protection of human life). In other words, by consenting to the compromise, the conservative gives precedence to the principle of tolerance and social peace over the principle of unconditional protection of human life. However, he continues to hold that the principle of the protection of life is right 'under all other conditions' while at the same time, and with a sense of rightness about his decision, he has a feeling of regret.

## 5. Compromises and Peace

In one of the few articles on the theme of compromise entitled 'Compromise as Political Ideal' (1944), John H. Hallowell, as representative of political idealism, argues against the realistic view of politics as a place of negotiation over interests and compromises:

"Politics, many contemporary students of politics declare, is concerned with the conflict of power-seeking interest groups. And politics is the art of getting as much as you can by mediation and compromise for the interest group you represent." (Hallowell 1944, 157)

In the explosive political context of the Second World War, Hallowell challenged thinkers who were of the opinion that "the only alternative to compromise as the animating and self-sufficient principle of democratic politics [...] is dictatorship in the manner of a Hitler or a Stalin" (158). Counter to an attitude of com-

promise, beneath which is either concealed the intention to make a pact with the enemy (and thus preparedness to compromise one's self), or to enter into an audacious business in which each party jostles for a better position whatever the issue of debate may be, Hallowell argues,

“It is essential that we have some standards with which to measure the limits of what, in specific situations, can be safely conceded.” (159) “A compromise is not good in itself; it is good only if it leads to good results. But one can know if it will lead to good results only by subjecting the substance of the compromise to the test of some ideal goal one hopes to attain.” (163)<sup>11</sup>

In other words, compromise must be carried by a mutually held ideal, which all parties must be in a position to desire. ‘Compromise’ must not simply be the name for the maintenance of the *modus vivendi* behind which only strategic motives lurk.

The warning sounds familiar, invoking the return to a moral ideal of politics which we have apparently abandoned. In truth, however, we have not left it; since we do not hold the view that the diagnosis of realism represents the only alternative to normative politics.<sup>12</sup> My objection to Rawls is directed at the idealisation of his construction of a social consensus, which presupposes the adequacy of the institutions of justice and their conditions of validity as given. Not only are the results of this idealisation unfounded. Morally they are even politically questionable; this is owing to the fact that idealisation flirts with a consensus by leaving out positions capable of endangering it.<sup>13</sup> Parties finding themselves excluded from this may respond with a feeling of inferior recognition that can lead to resentment, to a radicalisation of extremes, and even to an escalation in violence. Beyond the public debate and the exchange of arguments, such positions become entrenched in their respective dogmatisms. The best way to avoid this result is to allow individuals and groups to voice their opinions. “For democratic procedures ideally attempt to ensure all relevant groups get a hearing so as to reach a mutually acceptable decision. But this solution places the basic liberties squarely within the political realm of negotiation and compromise, rather than at a metapolitical level of overlapping consensus where Rawls wishes to remove them.” (Bellamy 2010, 53)

Here one may object that compromise originates in the mutual understanding that social peace stands higher than the assertion of one's own moral conviction. In this case, there would not be compromise but the establishment of a new hierarchy of norms. We would simply accept that the imperative of peace overrides other moral considerations. I have already dealt with this objection in

---

<sup>11</sup> For an extended analysis of the structure and examples of rotten compromises, see Margalit 2010.

<sup>12</sup> In his review of Geuss, Menke warns of a simplification in the presentation of politics: according to Geuss, “the forced alternative between selfish interests and normative principles is unsuitable for comprehending the reality of political action” (Menke 2010, 140).

<sup>13</sup> Rawls not only excludes comprehensive religious “and philosophical doctrines” but also “theories of general equilibrium, say, if these are in dispute” (PL 224–5; my italics).

the above: the prioritisation of peace does not imply that the opposing parties abandon their convictions—and why should they when these concern fundamental and well-considered convictions?<sup>14</sup> Prioritisation of peace means that the parties involved are aware of the fact that, perhaps unfortunately, differing moral and political views are unavoidably and irreconcilably involved, and that these views impact upon social institutions, which define the political sphere, and thus a peaceful coexistence offers a second-best solution to the desired priority. Consensus is not realisable, but a peaceful coexistence may well be.

Where the rational process of exchange runs up against limits because the opposing parties cannot be convinced, then the existing differences of opinion cannot be traced back to unreasonableness or irrationality of the rivals. In this case, the preparedness to agree shows both the mutual respect for rationality of the respective participants and the will to overcome disputes. Even though the solution found may not be morally right for either party, it is, in view of the fact that a decision *must* be made, the second best. It may appear similar to a consensus solution, an agreement about a higher placed principle in the hierarchy. However, it is not, since it is decided upon in the consciousness that, ‘in principle’ it is the right one. The readiness to compromise is an act of tolerance, and “tolerance implies respect of the *epistemic and moral autonomy* other, though not of necessity, the relativisation of one’s own convictions from an ethical point of view should differences of opinion emerge.” (Forst 2000, 141)

However, compromise as integrative politics is more than a *modus vivendi*. A political conception of justice, according to Rawls, is not one “that strikes some kind balance of forces” between existing doctrines as does the *modus vivendi* (*PL*, 39). Such a conception would make the understanding of justice dependent on “the existing balance of political power between comprehensive doctrines” or would “strike a compromise between the more dominant ones” (*PL*, 142). Weaker groups might be forced to accept compromises which are not in their interests. But this understanding of ‘compromise’ would not be what we would represent here as a positive and constructive element of liberal democracy. Even if the parties are not in possession of a common denominator for their convictions, and are thus unable to arrive at an agreement in the form of a consensus, but must conclude a second best solution, they still feel themselves beholden to their political institutions. Everyone is aware that the second best solution originates in a serious effort to take the demands of all parties seriously. From this there emerges a mutual trust and readiness for cooperation because the citizens of the reciprocal views assume that one should refrain from designing policies and institutions on the basis of one’s own viewpoint, so long as the others do not unreasonably persist in their own.<sup>15</sup>

Readiness for compromise, though, does acknowledge ‘lower limits’; this is because tolerance becomes repressive as soon as it acknowledges unreasonableness.

<sup>14</sup> “How could an atheist Marxist not think it unfortunate that belief in God will persist among otherwise intelligent, well-meaning individuals? How could women with orthodox Catholic beliefs not think it unfortunate that many people have lost touch not just with the true faith but with religion altogether?” (Lister 2007, 24)

<sup>15</sup> “The principle of respect for persons overrides other values because reasonable people will, unfortunately, remain deeply divided about these other values.” (Lister 2007, 21)

And this occurs where the result of a moral compromise causes the contempt of the rights of the parties involved, or if it is achieved at the expense of one group whose justified claims must be ignored when implemented. In such a case, one says that the compromise entered into is rotten (cf. Margalit 2010). The representatives of a religious conservative attitude towards human life would say that the first trimester-abortion is an example of such a rotten compromise because through it the lives of those parties involved who never have the chance to voice their opinion fall victim to other interests. If, by force of argument, the representatives of such a position remain incapable of convincing the other members of society that embryos are god-created and are thus creatures to be protected, or that there is only one permissible criterion for human personality, namely, “the biological membership to the family of man” (Spaemann 2001, 49), then what remains to him—unless he wishes to turn to violent means—is only the understanding of the finitude of reason, namely, the understanding of the epistemic under-determination of morality.

## Bibliography

- Arnsperger, C./E. B. Picavet (2004), More than Modus Vivendi, less than Overlapping Consensus: Towards a Political Theory of Social Compromise, in: *Social Science Information* 43(2), 168–204
- Bellamy, R. (1999), *Liberalism and Pluralism. Towards a Politics of Compromise*, New York
- Benjamin, M. (1990), *Splitting the Difference*, Kansas
- Bittner R. (1997), Die Hoffnung auf politischen Konsens, in: Hinsch, W. (ed.), *Zur Idee des politischen Liberalismus: John Rawls in der Diskussion*, Frankfurt, 39–51
- Düwell, M. (2002), Kompromiss, in: Düwell, M./C. Hübenhal/M. Werner (eds.), *Handbuch Ethik*, Stuttgart–Weimar, 399–404
- Forst, R. (2000), Toleranz, Gerechtigkeit und Vernunft, in: Forst, R. (ed.), *Toleranz. Philosophische Grundlagen und gesellschaftliche Praxis einer umstrittenen Tugend*, Frankfurt, 119–143
- Freyenhagen F./J. Schaub (2010), Hat hier jemand gesagt, der Kaiser sei nackt? Eine Verteidigung der Geusschen Kritik an Rawls' idealtheoretischem Ansatz, in: *Deutsche Zeitschrift für Philosophie* 58(3), 457–477
- Geuss, R. (2008), *Philosophy and Real Politics*, Princeton
- Hart, L. A. (1975), Rawls on Liberty and Its Priority, in: Daniels, N. (ed.), *Reading Rawls*, Oxford, 230–252
- Lister, A. (2007), Public Reason and Political Compromise, in: *Canadian Journal of Philosophy* 37(1), 1–34
- Hallowell, J. H. (1944), Compromise as a Political Ideal, in: *Ethics* 14(3), 157–173
- Margalit, A. (2010), *On Compromise and Rotten Compromises*, Princeton
- Menke, C. (2010), Neither Rawls nor Adorno: Raymond Geuss' Programme for a 'Realist' Political Philosophy, in: *European Journal of Philosophy* 18(1), 139–147
- Merkel, R. (2001), Rechte für Embryonen, in: Geyer, C. (ed.), *Biopolitik. Die Positionen*, Frankfurt, 51–64
- (2002), *Forschungsobjekt Embryo. Verfassungsrechtliche und ethische Grundlagen der Forschung an menschlichen embryonalen Stammzellen*, Munich
- Murphy, L. (2003), *Moral Demands in Nonideal Theory*, Oxford

- Rawls, J. (1971), *A Theory of Justice*, Cambridge/MA
- (1987), The Idea of an Overlapping Consensus, in: *Oxford Journal of Legal Studies* 7(1), 1–25
- (1997), *Political Liberalism*, Cambridge/MA
- Schaub, J. (2009), *Gerechtigkeit als Versöhnung, John Rawls' politischer Liberalismus*, Frankfurt–New York
- Spaemann, R. (2001), Gezeugt, nicht gemacht, in: Geyer, C. (ed.), *Biopolitik. Die Positionen*, Frankfurt, 73–81
- Stemmer, P. (2004), Die Rechtfertigung moralischer Normen, in: *Zeitschrift für philosophische Forschung* 58, 483–504
- Williams, B. (1981), Conflicts of Values, in: Williams, B., *Moral Luck*, Cambridge
- Willigenburg, T. Van (2000), Moral Compromises, Moral Integrity and the Indeterminacy of Value Rankings, in: *Ethical Theory and Moral Practices* 3, 385–404