



The Procedural Value of Compromise

Élise Rouméas

► To cite this version:

Élise Rouméas. The Procedural Value of Compromise. Social Theory and Practice, In press, <https://pdcnet.org/soctheory>. International Colloquium on Global Ethics of Compromise, CESPRA, EHESS, Mar 2019, Paris, France. <hal-03112364>

HAL Id: hal-03112364

<https://hal.science/hal-03112364v1>

Submitted on 16 Jan 2021

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

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



HAL Authorization

The Procedural Value of Compromise¹

Forthcoming in Social Theory and Practice (April 2021)

Dr Élise Rouméas

Political Philosophy, University of Groningen/Campus Fryslân - Netherlands
e.roumeas@rug.nl

Abstract: Compromise is a valuable decision-making procedure. This paper argues that its value lies in the norms of reciprocity and consent. Reciprocity structures the practice of concession-giving. Compliance with this tacit rule expresses an ethos of mutual concern and achieves a shared sense of fairness. Consent is a useful safeguard against asymmetric deals and makes compromise morally binding. The procedural value of compromise gives us important reasons to choose this method for resolving conflicts.

Keywords: Compromise; Reciprocity; Consent; Decision-making; Procedure.

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

1. Introduction

Compromise is one procedure among others to make collective decisions.² Much of recent discussions has focused on the morality of compromise and on its justification.³ This paper contributes to the latter debate by arguing that compromise has procedural value. The argument contrasts with a purely instrumental account of the value of compromise, focusing exclusively on the consequences it brings about.⁴ It corroborates and builds on several attempts to identify the principles that compromise embodies such as mutual respect and reciprocity (Bellamy and Hollis 1998, Gutmann and Thompson 2014). The procedural value of compromise gives us important reasons to choose this particular way of making decisions. We value and choose procedures for a number of reasons, ranging from the expected quality of their outcome to the merits of the procedure itself (Waldron 2013). Among other things, we want our procedures to express the right norms and principles. This is rather evident when it comes to majority rule, praised for being a “respectful procedure” giving equal say to everyone (Waldron 1999, 108-116). A similar knowledge of the specific normative properties of compromise is most needed.

What makes compromise a valuable method of making decisions? The answer lies in the specific norms underlying compromise, that is, reciprocity and consent. When agents hold incompatible claims, compromise is a way of addressing the conflict through a practice of reciprocal sacrifice aiming at securing the consent of all involved. The norm

² While there has been extensive discussion about some procedures, such as majority rule and deliberation, the literature on compromise is more modest. Alin Fumurescu, author of a conceptual genealogy of compromise, depicts this topic as the “most neglected by political theorists” (Fumurescu 2013, 3). Yet there has been increasing interest in the last decades. Specifically, Richard Bellamy presents compromise as a response to the pluralism of value pervading modern societies (Bellamy 1999). Amy Gutmann and Dennis Thompson adopts a more empirically-grounded approach to reflect upon the obstacles to compromise in contemporary democratic politics, in particular the United States Congress (Gutmann and Thompson 2014). For a recent overview of the scholarship on compromise, see Rostbøll and Scavenius (2018) and Knight (2018).

³ Avishai Margalit examines what makes some compromises morally abhorrent, rotten to the core (Margalit 2010). Chiara Lepora and Robert Goodin explore what is lost morally from the standpoint of the compromisers engaged in joint wrongdoing (Lepora and Goodin 2013). Authors such as Simon May, Daniel Weinstock, Fabian Wendt, Federico Zuolo and Giulia Bistagnino discuss pragmatic and principled reasons to compromise in the face of political and moral disagreement (May 2005, Weinstock 2013, 2017, Wendt 2013, 2016, Zuolo and Bistagnino 2018).

⁴ This my reading of May’s claim that the justification for moral compromise can only be pragmatic, as opposed to principled—the agent concedes in order to achieve a particular goal, rather than in virtue of principles.

of reciprocity structures the practice of concession-giving. Compliance with this tacit rule expresses an ethos of mutual concern and achieves a shared sense of fairness. Compromise distributes the burdens in a way that is deemed acceptable by the parties. They consent to an agreement which becomes morally binding.⁵

This paper begins with a conceptual account of compromise. The second section explains the idea of procedural value. The last two sections delve into the two norms at the core of compromise, reciprocity and consent, and show their interrelated normative force.

2. Compromise as a Decision-making Procedure

Compromise is a decision-making procedure based on reciprocal concessions. It is essentially a method to reach agreement. In the academic literature, the term compromise is used to refer to both a *process* and an *outcome*.⁶

Compromise as process is a mutual exchange of concessions between two or more parties. It is quite common to situate compromise somewhere in between bargaining and deliberation.⁷ The key difference between bargaining and compromise lies in the attitude of the parties, a strategic attitude in the former case and a more cooperative attitude in the latter (Benditt 1979). Bargainers do not share a single joint strategy, but seek to maximise their individual interest. By doing so, they may reach an agreement on a joint strategy. Although bargaining is a non-cooperative process, cooperation can stem from it (Gauthier 1986, 129). By contrast, compromisers seek a mutually satisfactory solution, rather than the sole triumph of their vested interest. Even when given the opportunity of an overwhelming victory, they refrain from taking full advantage from it. This can be justified by both principled and pragmatic reasons, from the respect owed to one's political opponent to the practical necessity of maintaining a long-term nonconflictual

⁵ The norms of reciprocity and consent are not special to compromise. Other decision-making procedures embody them too, such as arbitration (Rouméas 2020). What is special about compromise is that the reciprocal sacrifice is negotiated directly by the agents themselves.

⁶ For the distinction between compromise as process and compromise as outcome, see Goldin (1979, 7).

⁷ The clearest formulation of the tryptic can be found in Leydet (2006).

relationship. Cooperation is not merely the outcome of compromise, instead compromise is a cooperative process.

Compromise also differs from deliberation, at least when the latter is narrowly construed as an exchange of reasons aimed at rational consensus. In simple terms, the success of a deliberation depends on the willingness of deliberants to change their mind. When deliberants realise that their premise was mistaken or that their argument does not survive rational scrutiny, they should revise their position accordingly or adopt an alternative view. Through a process of revision and correction, deliberation may lead to consensus. The consensus reflects each participant’s now preferred position. There is no loss to lament, as everyone improved their views.

Compromise works differently. Compromisers do not change their mind, but concede on their initial aspirations. They may remain stubborn about the correctness of their initial position, while yielding part of their claim in the hope of securing an agreement. Concessions follow a logic of give-and-take. I offer to give up on this aspect that matters to you if you accept to integrate this element that matters to me. A complex balancing exercise goes on until a mutually-acceptable agreement is reached. Ultimately, compromisers have losses to lament. They perceive the agreement to be inferior to their initial aspiration—they haven’t changed their mind about what is best—, but prefer the “second-best” outcome to an ongoing conflict.

Both deliberation and compromise involve reason-giving and rational persuasion. Yet a crucial difference lies in the type of reasons that is being exchanged and what they are aiming at. Deliberants exchange first-order reasons, namely reasons that bear on the merits of their position and aim at convincing others to change their view. Compromisers, on the other hand, exchange second-order reasons, namely reasons that bear on whether one should hold on to one’s position and aim at convincing other to make concessions.⁸ While deliberants explain, defend, and criticise substantive views, compromisers must convince each other that it is reasonable to lose a little by accepting the deal rather than to lose a lot by ending the discussion and remaining in conflict. To this end, they must also

⁸ Simon May distinguishes between reasons for moral compromise and reasons for moral correction as follows: “It may be helpful to think of reasons for moral correction as first-order reasons that concern the merits of a position itself, and reasons for moral compromise as second-order reasons that concern how firmly one should hold to a first-order position in the face of moral disagreement (May 2005, 319).”

put forward convincing arguments. Both practices are indeed about reason-giving, but what is given, and why, differs.

However useful the threefold distinction between bargaining, compromise and deliberation is, it should not be overblown. Compromise does borrow features from the two other models. On the one hand, compromise can be construed as a thinly moralised version of bargaining, where parties share a cooperative attitude instead of a merely strategic one. On the other hand, compromise can be interpreted as a “realistic” subtype of deliberation that allows for more pragmatic concerns and ways of communicating.⁹ Broadly construed, both bargaining and deliberative practices can accommodate compromise as a sub-species. Yet given its hybrid nature and distinctive traits, compromise deserves a label of its own.

While compromise as process refers to the mutual exchange of concessions, *compromise as outcome* refers to a decision situated in the zone between the conflict point and the aspiration point of at least two parties. Technically, a compromise arrangement does not have to be negotiated, but could stem from the decision of a third party (Benjamin 1990, 5). For the sake of conceptual clarity, I suggest narrowing the definition of a compromise outcome to the end-result of a compromise process. A third-party arbitration that would find a middle ground arrangement between the claims of contestants would thus not strike a compromise in this narrow sense.

One could argue, however, that a third-party arbitration could work as a compromise, if resorting to this procedure involves a concession on each side. More generally, choosing a decisionmaking procedure, be it voting or lottery, may involve an underlying compromise, as parties “agree to disagree”, give up the idea of reaching a rational consensus, and abide with the outcome of the commonly agreed method. My view on these types of cases is that any procedure can be chosen by an initial compromise. As a result, a compromise outcome can well be another procedure.

What makes a compromise special, and distinct from a consensus, is how it is perceived as a second-best by the parties who adhere to it. If an agreement reflects a

⁹ Daniel Weinstock blurs the distinction between compromise and deliberation by referring to the process of compromise as a deliberative practice. He argues that compromise is a better end-goal to deliberation than consensus, but that deliberation aiming at compromise differs in kind with deliberation aiming at consensus. My view does not really diverge from Weinstock’s, except that I speak of “compromise as process”, as opposed to deliberation aiming at compromise (Weinstock 2013).

convergence of interests or if it is based on a common ground, it is likely to be sustained by a consensus rather than a compromise. A compromise also differs from a *modus vivendi* as defined by John Rawls, namely a fragile equilibrium of antagonistic interests based solely on prudential reasons (Rawls 2005, 458459). A compromise is typically sustained by some moral reasons. Strategic bargaining may produce *modus vivendi*.

I am interested in the normative frame of the compromise process—the set of rules that structures the practice. I call this procedure. There might be some intuitive resistance in calling compromise a procedure. As a matter of fact, compromise is an unusual procedure, insofar as it relies much on informal rules and practices. Compromisers do not explicitly agree in advance of a compromise to be bound by its outcome. Instead, they often enter the conversation determined to win an argument, and leave it embarrassed by the concessions made. Yet informal does not mean unstructured or trivial. Our day-to-day informal interactions with strangers obey strict conventions of politeness and are constrained by interpersonal rules of morality. Much of what regulates our words or behaviours belongs to the realm of the tacitly known. Whether we abide by these rules or not distinguishes a pleasant conversation from a rude interaction. Similarly, whether an informal agreement really is a compromise depends on compliance with some basic norms, crucially reciprocity and consent. They give compromise its normative value.

3. A Valuable Procedure

Uncovering the specific normative properties of compromise gives us some reasons to choose this method for resolving conflicts. It also incites us to trust the quality of compromise outcomes, at least in a *pro tanto* way. Compromise outcomes may be *all things considered* wrong in light of procedure-independent criteria, say unfair to a third-party, or immoral. This section clarifies what is meant by procedural value and the connection between procedure and outcome value.

Our evaluation of compromise is generally outcome-oriented. We judge compromises by what they achieve or fail to achieve. At the very least, we want a compromise to offer a resolution to an ongoing conflict. Criteria of assessment for what counts as a good or a

bad compromise vary. We praise some compromises for being stable¹⁰, or mutually beneficial, while critiquing others for being unfair, or morally “rotten”.¹¹ Different criteria lead to conflicting evaluations. A disproportionately asymmetric deal can achieve a stable resolution of conflict. A morally dubious agreement can nevertheless improve the situation of all parties involved. Context matters in the evaluation. Over time, the perception of a compromise can evolve from a disappointing second-best to a celebrated consensus.

Compromise arrangements can be assessed independently from their nature as compromise. Similar standards of effectiveness, fairness, or morality could well apply to voting and deliberative outcomes. Although the evaluation of a compromise may be procedure-independent, one promising line of inquiry assesses the intrinsic quality of compromises as resulting from an exchange of concessions.¹² Which quality do we expect decisions to have insofar as they result from concessions-giving? Which merits of the method translate into qualities of the outcome? What a compromise achieves very much depends on its genesis, the way it was shaped by conflicting preferences and came to be perceived as a realistic response to a conflictual deadlock.

This is precisely what the idea of procedural value captures. There is something intrinsically valuable in the compromise method which generates specific reasons to choose it. This layer of value somehow translates into the quality of the outcome. An arrangement is partly valuable by virtue of having been made by compromise.

To illustrate, consider a conflict over child custody.¹³ A decision by compromise seems intuitively appealing, especially compared with the most plausible alternatives of a one-sided decision or a third-party arbitration. Suppose that the exact same arrangement—a specific time share—could be reached with the three methods. There are good reasons to choose a decision made by compromise, insofar as it stems from a

¹⁰ A compromise may fare better in terms of stability than a “winner-takes-all” solution, given that it secures the agreement of all parties involved. Empirical research on non-majoritarian forms of democracy, such as consociational or consensus democracy, challenges the conventional view that majoritarian democracies are necessarily better at governing. A comparison between majoritarian democracies and consensus democracies also shows that the latter produces policies that are “kinder and gentler”, on criteria such as social expenditure and incarceration rate (Lijphart 2008).

¹¹ On compromise and fairness, see Wendt (2018) and Jones and O’Flynn (2013). On rotten compromises, see Margalit (2010). On “good compromises”, see Van Parijs (2011).

¹² Wendt adopts this approach in his reflection on the intrinsic fairness of compromise (Wendt 2018).

¹³ For a reflection on allocative disputes and child custody, see Elster (1989).

reciprocal and consensual process. A one-sided decision could ignore altogether the autonomous decision-making of one of the parties. A thirdparty arbitration demands consent—consenting to be bound by the decision of the arbitrator prior to the adjudication—, but the decision is made independently of their ongoing approval. In contrast, reciprocity in compromise ensures a mutual consideration of interests. Consent regulates the design of the solution itself and makes it morally binding. Compromisers carefully weigh their losses, adjust their expectations, and consent to an arrangement they co-create. Before delving into the specific merits of reciprocity and consent in compromise, it is possible to grasp their intuitive appeal in generating a decision about child custody.

The way a decision is made matters, and compromise offers a compelling method for distinctive normative reasons—which boil down, in my view, to the norms of reciprocity and consent. This does not mean, however, that compromise is the best way to reach decisions *all things considered*. Should there be a significant asymmetry of power between the parents, the exchange of concessions could be corrupted by the underlying inequality. In such case, a third-party arbitration may fare better in ensuring a fair outcome. The nature of compromise seems to demand an initial compromising position of rough equality. There are good reasons to choose a reciprocal and consensual process, but competing considerations might override them, such as the demand of fairness in a context of inequality.

Compromise remains an “impure procedure” (Rawls 1999). The value of its outcome is not a mere reflection of a rightly conducted procedure.¹⁴ As seen earlier, compromises can be assessed with a diversity of procedure-independent criteria. A compromise decision about child custody may have been adopted under the auspice of reciprocity and yet be strikingly unfair to one of the parents, due to an underlying inequality. A good procedure does not guarantee a good outcome. At best, a good procedure gives us *pro tanto* reasons to accept its outcome, which can be *all things considered* wrong on other substantive criteria.

¹⁴ By analogy with the Rawlsian category of “pure procedural justice”, this means that (1) there is no independent standard of value to assess compromise arrangements; (2) a “valuable” procedure produces “valuable” results (Rawls 1999).

No doubt that some compromises are plainly wrong. Avishai Margalit famously defines a rotten compromise as “an agreement to establish or maintain an inhuman regime, a regime of cruelty and humiliation, that is, a regime that does not treat humans as humans” (Margalit 2010, 2). According to Margalit, rotten compromises are the “don’ts” of political morality (Margalit 2010, 118). Any government, any political entity shall abide to the precept: “Thou shall not commit a rotten compromise, come what may (Margalit 2010, 113).” Margalit presents such unconditional rule as a very minimal one. Political compromises are generally desirable, or at least they deserve a case-by-case evaluation. Some of them might well be underpinned by detestable motives and trade invaluable goods, but they are not systematically ruled out in Margalit’s view, as long as they do not authorise the atrocious synthesis between cruelty and humiliation—a state of affairs which is inhuman, in the sense of “unfit for humans”(Margalit 2010, 89). The wrongness of compromise need not be confined to compromise arrangements, it can also pervert the process; there is something inherently wrong about compromising on slavery.

Procedures can be wrongly conducted or employed to serve wrong ends. In *Political Theology*, Carl Schmitt mocks liberalism for addressing fundamental issues, such as the terrible question “Christ or Barabbas?”, with a committee of investigation (Schmitt 2005, 62). For Schmitt, there is something inherently blasphemous in choosing the wrong procedure for making such a critical decision. The mere fact of putting the problem under collective scrutiny highlights a misunderstanding of what really is at stake. The practice of compromise is filled with unfortunate decisions, as is the practice of voting or deliberating. Some compromise processes are corrupted, some outcomes are rotten, but this does not contradict the idea of the procedural value of compromise. The next sections endeavour to describe this value.

4. The Practice of Reciprocal Sacrifice

The value of compromise *qua* procedure is grounded in reciprocity and consent. In my account, a compromise should be reciprocal. Given that not all reciprocal actions are valuable—retribution, for example, can be wrong and harmful— the question is what makes the reciprocity involved in compromise valuable. I begin by giving an account of

the reciprocity at work in compromise before highlighting its value and the way it relates to consent. Let us bear in mind that reciprocity and consent do not function independently in the economy of compromise. The norm of reciprocity demands that concessions be voluntary and in search for the other’s consent. Reciprocity implies consent.

Reciprocity crucially differs from both unilaterality and mutuality. Unilaterality refers to a onesided action, for example when only one camp is willing to be flexible and accommodating. A unilateral concession can be a generous gesture or a shameful surrender, but it does not constitute, properly speaking, a compromise. Unlike unilaterality, reciprocity demands that each one involved contributes.

Mutuality also fails to capture the normative core of compromise. It only captures part of the picture, namely that the action of conceding is carried out by each party vis-à-vis one another. A mutual action is simultaneously conducted on both sides, but need not be coordinated. Without coordination, mutual acts of self-sacrifice can have unexpected consequences, as O. Henry’s short story “The Gift of the Magi” powerfully illustrates.¹⁵ In this story, a poor married couple aspires to buy each other’s Christmas gifts. Given their state of deprivation, they are willing to make significant sacrifices. The young wife secretly decides to cut her long hair to buy a chain for her husband’s watch. Meanwhile, her husband resolves to sell his watch to buy a comb for his wife’s hair. Non-coordinative mutual sacrifice sadly results here in a collective loss—and a tragic irony. Unlike mutuality, reciprocity includes *coordination* and *conditionality*: “I concede because you concede”.¹⁶¹⁷

The social norm of reciprocity governs the way we respond to other people’s actions, whether positive or negative, beneficial or harmful (Becker 1986). It structures a great deal of social practices, such as the logic of gift giving, solidarity, trade, retribution, etc. Reciprocity works because it creates moral expectations and feelings of indebtedness. Who has given expects to receive in return. Who has received feels she must return the favour. Yet reciprocity does not pervade all moral reasoning. In fact, non-reciprocation

¹⁵ Quoted by Golding (1979, 12).

¹⁶ I rely here on David Gauthier’s definition: “a practice is co-ordinative if each person prefers to conform to it provided (most) others do, but prefers not conform to it provided (most) others do not.” (Gauthier 1986,

¹⁷)

sometimes appears as a hallmark of higher morality. Consider the precept of the New Testament that exhorts to turn the other cheek (Matthew, 3:38). Being merciful and forgiving implies to stand above what crude reciprocity demands. The beauty of such gestures, if any, resides in the active refusal to return evil for evil. Reciprocity can serve ambivalent ends, and some moral actions involve the active refusal to reciprocate. This has very much to do with the moral content of what is returned. Returning a harm appropriately may not repair the harm done, but create further harm.

The general concept of reciprocity calls for a “fitting and proportional” response to what has been received (Becker 2005). Whilst the general social norm remains rather indeterminate, specific conceptions of reciprocity spell out various standards defining what an appropriate response is (Becker 2005). For instance, a specific conception determines whether reciprocity demands a strict equivalency between goods received and returned, or a relation of proportionality (White 2003, Becker 2005, Gould 1988). The specific rule of proportionality that reciprocity-in-compromise demands ought to remain largely undefined. Specifying a guiding ethical principle that compromisers should follow to ensure fairness in compromise would betray the very nature of the social practice. Through progressive adjustments, trial and error, and reshaping of their expectations, compromisers reach an appropriate and proportionate solution, for which each appears to have conceded sufficiently. They work out what reciprocity demands. The norm of reciprocity cannot be fully specified outside of the practice. In fact, specifying it fully would make the practice itself redundant.

Two key features of reciprocity-in-compromise can be identified. The first feature is its subjective metric. The “exchange rate” of concessions, to use the crude language of voluntary transactions, depends on the relative value agents attribute to what they are yielding and is therefore internally generated. Specifically, it depends upon two sets of evaluations: each party’s respective evaluation of their loss and each party’s respective evaluation of the other parties’ loss. The standard is “agent-relative” (Becker 2005, 26). What is being exchanged does not have equal value in absolute terms, but different agent-relative values. When it comes to its metric, the practice of compromise does not differ from business transactions in general. There is no “just price”.

The second feature of reciprocity-in-compromise is the nature of what is being exchanged. Compromisers return loss for loss, sacrifice for sacrifice. Reciprocity is the norm that regulates the tentative adjustment of these losses. A compromise begins with one party making a concession that has a self-inflicted cost. Following the norm of reciprocity, the other party makes a concession to respond appropriately to the sacrifice made by the first agent. What is lost can be construed in terms of “opportunity costs”, aspirations that are foregone as a result of choosing the path of compromise (Becker 2005, 28).

The appropriate concession is likely to differ from both equal and in-kind returns. Given the subjective nature of the assessment, some might in fact lose more than others in absolute terms. As such, compromise need not be about strict equivalency between concessions made, as the expression “splitting the difference” seems to entail. Concessions may greatly differ in kind—I concede to give more of my time, while you concede to give more money. What matters is that the appropriate return approximates the self-inflicted loss of the other party according to an agentrelative evaluation.

The norm of reciprocity is at work in different types of compromise. Consider a scenario where compromisers divide and allocate a disputed resource amongst themselves, be it a piece of land, a number of seats, or perhaps less typically, time share in space. An original example of time-sharing compromise was indeed struck on March 1, 1998 between radio astronomers from the US-based National Astronomy and Ionosphere Center, and the satellite operator Motorola Inc.¹⁸ There was, at the time, a fear that a cellular telephone system called Iridium could interfere with the science of radio astronomy, creating a clash between commercial and scientific interests. After what was described as “five years of sometimes bitter negotiation”¹⁹, it was agreed that radio astronomers would benefit from protected hours (from 10 pm to 6 am Eastern Time) for conducting their observations, while they would refrain from scientific activity during peak telephone hours. This agreement was perceived by many as “a fair solution to the conflict between commercial communication interests and science”.²⁰

¹⁸ “Motorola and Astronomers Agree to a Time Share in Space”, *The New York Times*, March 20, 1998.

¹⁹ Ibid.

²⁰ Ibid.

In this example, the reciprocal element is decisive in the perceived fairness of the solution. It is because each party agreed to make a concession, refraining their use of space in specific hours, that the distribution of burdens seems fair. Note that the time-sharing is not equal, as radio astronomers only enjoy eight protected hours of observation. A compromise need not split the difference equally. What matters is that the parties estimate that they have reached an approximation of their self-inflicted costs. In relative terms, the distribution of burdens is perceived as roughly equivalent.

Consider now a second scenario in which compromisers reconcile seemingly antagonistic demands in a collective solution, be they conflicting ideological claims, rationales of justice, or the unlikely architectural combination between a medieval Gothic style with Baroque palazzo.²¹ St Paul’s Cathedral in London was described as the product of a “good old English compromise” which “ensures that, even if no one is ecstatically happy, at least no one is notably unhappy”.²² In more political terms, many laws are the product of unlikely alliances and integrate conflicting ideological inputs. A law legalising abortion can nevertheless deny it public funding. A law enforcing compulsory education can leave a large space for home schooling. Such provisions in the law can be rationalised in terms of justified limitations, but *de facto* they often result from the business of compromise, the back and forth of discussions and revisions, which produces legislative bills looking like normative patchworks.

Reciprocity is present in this scenario as well. Each party must bear with the intrusion of an undesired element in the agreed-upon solution. The reciprocal sacrifice is about not having it all, and accepting a hybrid arrangement which reflects the cooperative effort of welcoming the unwanted. This effort should be perceived as roughly equivalent or at least proportionate.²³

Perhaps less intuitively, reciprocity is also at work in a third scenario, in which an alternative solution is substituted to the parties’ initial claims—what has been called “substitutive compromise” (Weinstock 2013). Not all conflicts allow for a fair division of resources or an innovative combination of ideas. In some cases, parties fiercely oppose

²¹ Jonathan Glancey, “A very English Compromise”, *The Observer*, June 28, 1999.

²² *Ibid.*

²³ Concession need not be equal in objective terms, but roughly equivalent or proportionate in subjective terms.

any input from the other side. When no half-measure and no perfect blend is available, a “third way” can offer a plausible alternative to the parties’ initial claims. For example, secular wedding vows can work as a compelling option for an interreligious couple, not ready to surrender to the other’s religious tradition nor willing to organise an ecumenical ceremony. A somewhat similar strategy was adopted in the city of Outremont, in Canada (Bouchard and Taylor 2008, 50). On October 10, 2000 a resolution was adopted to substitute the traditional prayer of the town hall council with “a secular invocation”. This change of procedure followed a complaint of the *Mouvement laïque québécois* (MLQ) and aimed at transcending the sectarian practice of a religious prayer, while keeping a public ritual adapted to a pluralistic context. It was agreed that the prayer will now consist in the mayor publicly reading a text about prudent government. However, this “secular prayer” did not work as a compelling substitute for very long. In January 2017, the idea was abandoned and replaced by a minute of silence so that everyone “can refer to their own way of looking at things in this new solemn moment”.²⁴

A substitutive compromise involves a reciprocal sacrifice insofar as it works as a “second-best” for the parties in presence. In the example of the marriage vows, each partner would presumably rank first being married in one’s own religious faith. An ecumenical ceremony, mixing elements of the two traditions, is ranked last. The secular wedding vows appear as the second-best. In the example of the substitutive prayer, the minute of silence could presumably be a second-best in relation to sectarian traditional prayers, the latter being ranked first by individuals of various faiths. We can venture that the “secular invocation” did not work because it was in fact ranked first by secular participants. To meet the reciprocal demand, the second-best option must involve a roughly equivalent or proportionate sacrifice on the part of each party. Reciprocity-in-compromise trades sacrifices in light of an endogenous exchange rate. Whether parties are seeking the equalisation of burdens or a relation of proportionality is context-dependent.

Now that I have provided a general account of the underlying norm at work in a common social and political practice, I ought to say more about what makes reciprocity in

²⁴ I translate. Frédéric Lacroix-Couture, “Une minute de silence en début de Conseil à Outremont”, December 22, 2016.

compromise valuable. Surely, it is not merely about tit-for-tat, otherwise there would be no way to distinguish a commercial bargain with a reluctant yet generous exchange of concessions.

The value of reciprocity-in-compromise is first and foremost expressive. Reciprocity is underpinned by an ethos of mutual concern and the willingness to take seriously the other’s perspective and judgement (White 2003). The very exercise of self-inflicted losses and mutual evaluation demands an active engagement with the other’s standpoint and involves a cooperative mindset. Being ready to compromise means being willing to accommodate at least some aspects of the other person’s views or being willing to discount one’s aspirations in light of conflicting demands. The willingness to concede indicates a degree of moral acknowledgment of the opponent, as well as a level of trust: any concession, especially the first one, is a risk to take. Meeting the demand of reciprocity involves a cooperative game, in which parties successively run the risk of a self-inflicted loss. In doing so, they persuasively express their concern for the interests of others.

In this sense, there is more to the practice of reciprocal sacrifice than mere tit-for-tat. Compromising has *intrinsic* value.

Reciprocal sacrifice also has instrumental value, which directly relates to the question of fairness.²⁵ The norm of reciprocity, which calls for an appropriate and proportionate return, gives normative guidance as to what constitutes a fair resolution. A breach of reciprocity would be the recipe for unfair deals—and would likely fail to secure the consent of the other parties. Reciprocity is by no means an infallible guide. Extrinsic considerations, such as the fairness of the initial compromising position, can corrupt the process and impact the outcome. A compromise can be unfair in light of a procedure-independent criterion of fairness. Within the procedure, however, reciprocity serves fairness. It is by following the guidance of this tacit norm that compromisers navigate the normative landscape of concessions-making. The procedure is highly imperfect and the outcome inevitably disappointing. Yet it can generate a shared sense that a “fair solution” was achieved, as in the example of the Motorola-astronomers agreement.

²⁵ On compromise and fairness, see Wendt (2018) and Jones and O’Flynn (2013).

Finally, the relationship-building aspect of reciprocity has been praised and constitutes a valuable side effect of compromise. Aristotle believed in the cohesive virtue of reciprocity, that could hold a city together (Aristotle, Bartlett, and Collins 2011, 99). Alvin Gouldner argued that reciprocity contributes to the initiation and stabilisation of relationships (Gouldner 1960). In the specific case of compromise, the expectation of reciprocity is an incentive to take the initiative of conceding. The return of concession is not only useful to settle a conflict, but also to maintain a political relationship. In contrast, failures to reciprocate generate bitterness and resentment and endanger relationships. Free-riding, a breach of reciprocity, is widely frowned upon as expressing a lack of respect (White 2003, 62). The choice of a procedure structures the political relationship beyond one single decision.

A reciprocal sacrifice is valuable because of what it expresses—mutual concern, the willingness to cooperate and to be other-regarding—, and for what it achieves, a shared sense of fairness and relationship-building. One crucial ingredient of reciprocity is the norm of consent. Reciprocity implies consent, which has a twofold role in compromise, namely regulating the process and normatively grounding the outcome.

5. The Role of Consent

Within the norm of reciprocity, consent aims to regulate the exchange of concessions. The expectation of consent structures the realm of feasibility. In deliberating about the claims and concessions to make, each party has in mind that they must obtain the consent of others. They may be tempted to exaggerate their claims in order to minimise their loss. But they know that they cannot ask for the sun, moon and stars, as unreasonable expectations are unlikely to be well received (and they might endanger the trust of other parties). A breach of reciprocity is likely to engender a failure to generate consent. Although concessions do not have to be strictly equivalent, consent is a useful safeguard against highly asymmetrical deals (although not infallible).

The role of consent appeared very vividly in the difficult negotiation between the Obama administration and the Catholic Bishops over contraception coverage. In 2012, the United States Conference of Catholic Bishops rejected President Obama’s compromise

plan on the coverage of birth control for employees of Catholic organisations, such as hospitals and universities.²⁶ The proposal appeared rather favourable to freedom of conscience, as it exempted religious organisations from covering birth control for their employees. Women would instead get access to coverage through insurance companies. While the Bishops initially acknowledged “a first step in the right direction”²⁷, they later deplored that the compromise plan had not been properly discussed and was presented as “a fait accompli”.²⁸ Whatever the generosity of the concession made, the norm of reciprocity was not respected, and the Bishops felt disregarded. As a result, they withdrew their consent. About a year later, they rejected the proposal another time, challenging this time the significance of the concessions made, especially in the specific case of secular businesses whose owners have a religious objection against contraception coverage.²⁹ As Archbishop Chaput expressed, “The White House has made no concessions to the religious conscience claims of private businesses, and the whole spirit of the ‘compromise’ is minimalist”.³⁰ Again, consent is withdrawn because the sacrifice made by the other side fails to convince. Whether the Bishops themselves were indeed ready to concede remains to be seen.

Consent authorises and blocks, but it also obliges us. In some circumstances, consent functions as “a normative rope whereby one binds oneself to another (Kleining 2009)”. Consenting to a deal is not merely acquiescing to it. Rather, it is an act of will that obligates the parties to one another. Their joint decision to bind themselves restricts their future options, as they are now bound to perform what has been agreed upon. Compromise etymologically means joint promise—a copromise (Fumurescu 2013, 4). The modern meaning of the term differs from its Latin origin, which referred to a dispute arbitrated by an impartial third-party, a *compromissarius* (Fumurescu 2013, 4). Yet the emphasis on promissory obligations remains relevant today, and accurately describes the conventional meaning given to compromise as a social practice.

²⁶ Laurie Goodstein, “Catholic Bishops Reject New Plan on Contraception”, *New York Times*, February 12, 2012.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Robert Pear, “Bishops Reject Birth Control Compromise”, *New York Times*, February 8, 2013.

³⁰ Ibid.

One account of promissory obligations appeals to a general moral principle according to which promises ought to be fulfilled when they have been made under certain specified empirical conditions. This is the approach endorsed by Thomas Scanlon (1998). In this view, the obligations arising from making promises and the wrongs of violating them fall into a wider category of moral duties, namely “what we owe to other people when we have led them to form expectations about our future conduct (Scanlon 1998, 296)”. The social practice of promise-making is merely “the means for creating such expectations (Scanlon 1998, 296)”. The normative force of a promise lies in moral principles that exist prior to any explicit or implicit agreement, such as the duty not to deceive. For instance, Scanlon’s Principle F (“principle of fidelity”) spells out conditions of voluntariness and mutual knowledge that a promise, or any form of agreement-making, should satisfy (Scanlon 1998, 304). If the conditions are fulfilled, it is wrong for one party to unilaterally rescind their commitment.

This normative account of agreement-making has implications for theorising consent in compromise. In other words, if one endorses the idea that the moral force of compromise-making stems from a general moral principle akin to Principle F, it becomes necessary to specify the conditions that need to be obtained for consent to be valid. To acquire its moral force, certain empirical conditions must be satisfied (Kleining 2009). For examples, agents must be deemed competent to consent. Consent must be voluntary, free from coercion. Agents must be appropriately informed about the decision they make. Each condition opens a large discussion— for instance, what forms of social pressure counts as coercion? Which omission counts as deceit?

Voluntariness and informational requirements are particularly relevant to the context of compromise. Unfair background conditions cast doubt on whether concessions were freely made. When asymmetries of power are high, subordinated agents may have little choice but to accept the deal of the powerful. If an agent deliberately omits a crucial information in negotiating a deal, an apparent compromise can turn out to be a case of deceit. In both cases, the very definition of the arrangement depends upon the validity of consent. Should consent be found invalid, the deal should not be labelled a “compromise”, as consent is essential to the definition of a compromise.

To say that consent should be valid does not mean that a theory of compromise should only accommodate one specific conception of consent. I see my account of compromise as compatible with a range of normative conceptions. A more demanding definition of consent implies a narrower definition of compromise.

Another account of promissory obligations relies on the notion of joint commitment and diverges from the latter view (Gilbert 1989, 1993, 2018). Margaret Gilbert’s theory of promise and agreement as “joint commitments” compellingly explains why compromise is mutually binding.³¹ In her theory, the genesis of a promise is a collective act of will. Promisor and promisee, or parties to an agreement, co-construct the decision that bind them to one another. This collective commitment is not made of a simple aggregation of two or more simultaneous promises; rather, it is a jointly designed and agreed upon decision, defining a commonly defined set of obligations. Parties to an agreement are directly obligated vis-à-vis one another. They cannot rescind their commitment unilaterally.

One need not appeal to a pre-existing general moral principle to embrace this view of promises and agreements as *sui generis* normative phenomena. A crucial upshot is that one is *de facto* obligated by a promise—and, by extension, by a compromise. A compromise obligates insofar as it stems from a collective act of will that defines a joint commitment.

Yet the question of whether one is morally required to fulfil obligations set by a compromise is analytically distinct from the question of whether one is bound by it. There can be several reasons why, *all things considered*, morality can demand that we unilaterally relinquish a joint commitment. For instance, it might be the case that one has agreed to an immoral compromise, for instance a compromise that involves harming a third party. Immoral compromises give countervailing reasons for not fulfilling one’s obligations vis-à-vis other parties to a compromise. As stated earlier, even a rightly conducted procedure does not guarantee that the outcome will be acceptable on procedure-independent grounds. Yet a joint commitment gives us powerful *pro tanto*

³¹ Margaret Gilbert is skeptical of the tendency among philosophers to interpret agreements as “mutual promise”. But she insists that promises and agreements are “close cousins” and they can both be accounted for in terms of joint commitment (Gilbert 1993, 2011).

reasons to abide by the terms of the agreement. Consent makes compromises morally binding.

Reciprocity and consent thus endow compromise with a thin, but effective normative frame. Reciprocity expresses an ethos of mutual concern, and allows for a fair resolution of conflict. It also contributes to relationship-building. The way we treat our political opponent today matters for the continuation of our relationship. Within reciprocity, consent works as a crucial safeguard against both unreasonable claims and disproportionate concessions. It generates mutual obligations that can become the basis of legal norms.

6. Conclusion

Compromise is indeed a valuable way of making decisions. We have compelling reasons to choose to compromise in face of political and moral disagreement. By doing so, we express a concern for the other's perspective and interest, a readiness to meet their demands half-way (or at least somewhere on the way), and an openness to integrate some of their claims in an innovative combination. The sense that the burdens of cooperation have been fairly shared reconciles us with the bastard nature of the compromise solution. Our joint commitment binds us together and frames our relationship in a cooperative way. What makes compromise so valuable, I have argued, is the tacit norms that regulate concessions-giving, the norm of reciprocity and its corollary, consent.

References

- Aristotle, Robert C. Bartlett, and Susan D. Collins. 2011. *Aristotle's Nicomachean ethics*. Chicago, Ill. ; London: University of Chicago Press.
- Becker, Lawrence C. 2005. "Reciprocity, Justice, and Disability." *Ethics* 116 (1):9-39. doi: 10.1086/453150.
- Becker, Lawrence C. 1986. *Reciprocity*. London ; Boston: Routledge & Kegan Paul.
- Bellamy, Richard. 1999. *Liberalism and pluralism : towards a politics of compromise*. London: Routledge.

- Bellamy, Richard, and Martin Hollis. 1998. "Consensus, neutrality and compromise." *Critical Review of International Social and Political Philosophy* 1 (3):54-78.
- Benditt, Theodore. 1979. "Compromising Interests and Principles." In *Compromise in ethics, law, and politics*, edited by J. Roland Pennock and John W. Chapman, xiv, 212 p. New York: New York University Press.
- Benjamin, Martin. 1990. *Splitting the difference : compromise and integrity in ethics and politics*. Lawrence, Kan ; London: University Press of Kansas.
- Bouchard, Gérard, and Charles Taylor. 2008. *Fonder l'avenir. Le temps de la conciliation*. Commission de consultation sur les pratiques d'accommodement reliées aux différences culturelles.
- Elster, Jon. 1989. *Solomonic judgements : Studies in the limitations of rationality*. Cambridge: Cambridge University Press.
- Fumurescu, Alin. 2013. *Compromise : a political and philosophical history*. Cambridge: Cambridge University Press.
- Gauthier, David P. 1986. *Morals by agreement*. Oxford: Clarendon Press.
- Gilbert, Margaret. 1989. *On social facts, International library of philosophy*. London: Routledge.
- Gilbert, Margaret. 1993. "Is an Agreement an Exchange of Promises?" *The Journal of Philosophy* 90 (12):627-649. doi: 10.2307/2940815.
- Gilbert, Margaret. 2011. "Three Dogmas about Promising." In *Promises and agreements : philosophical essays*, edited by Hanoch Sheinman, 80-108. New York ; Oxford: Oxford University Press.
- Gilbert, Margaret. 2018. *Rights and demands : a foundational inquiry*. Oxford: Oxford University Press.
- Golding, Martin. 1979. "The Nature of Compromise: A Preliminary Inquiry." In *Compromise in ethics, law, and politics*, edited by J. Roland Pennock and John W. Chapman, 3-25. New York: New York University Press.
- Gould, Carol C. 1988. *Rethinking democracy : freedom and social cooperation in politics, economy, and society*. Cambridge: Cambridge University Press.

- Gouldner, Alvin W. 1960. "The Norm of Reciprocity: A Preliminary Statement." *American Sociological Review* 25 (2).
- Gutmann, Amy, and Dennis F. Thompson. 2014. *The spirit of compromise : why governing demands it and campaigning undermines it*. Princeton: Princeton University Press.
- Habbib, Allen. Spring 2018. Promises. In *Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta.
- Jones, Peter, and Ian O'Flynn. 2013. "Can a compromise be fair?" *Politics, Philosophy & Economics* 12 (2):115-135. doi: 10.1177/1470594x12447773.
- Kleining, John. 2009. "The Nature of Consent." In *The Ethics of Consent: Theory and Practice*, edited by Franklin Miller and Alan Wertheimer, 3-22. Oxford: Oxford University Press.
- Knight, Jack. 2018. *Compromise, Nomos ; LIX*. New York: New York University Press.
- Lepora, Chiara, and Robert E. Goodin. 2013. *On complicity and compromise*. Oxford: Oxford University Press.
- Leydet, Dominique. 2006. "Pluralisme et compromis." In *Eloge du compromis: pour une nouvelle pratique démocratique* edited by Mohammed Nachi and Matthieu Nanteuil, 81-106. Louvain-la-Neuve: Bruylant-Academia.
- Lijphart, Arend. 2008. *Thinking about democracy : power sharing and majority rule in theory and practice*. London: Routledge.
- Margalit, Avishai. 2010. *On compromise and rotten compromises*. Princeton, N.J. ; Oxford: Princeton University Press.
- May, Simon Căbulea. 2005. "Principled compromise and the abortion controversy." *Philosophy and Public Affairs* 33 (4):317–348.
- Rawls, John. 1999. *A theory of justice*. Rev. ed. Oxford: Oxford University Press.
- Rawls, John. 2005. *Political liberalism*. Expanded ed. New York: Columbia University Press.

- Rostbøll, Christian F., and Theresa Scavenius. 2018. *Compromise and disagreement in contemporary political theory, Routledge innovations in political theory* ; 78. New York, NY: Routledge.
- Rouméas, Élise. 2020. "Religious Diversity in the Workplace: The Case for Alternative Dispute Resolution." *Political Studies* 68 (1):207-223.
- Scanlon, Thomas. 1998. *What we owe to each other*. Cambridge, Mass. ; London: Belknap Press of Harvard University Press.
- Schmitt, Carl. 2005. *Political theology : four chapters on the concept of sovereignty*. Chicago ; London: University of Chicago Press.
- Van Parijs, Philippe. 2011. "Qu'est-ce qu'un bon compromis? ." In *Les figures du compromis dans les sociétés islamistes*, edited by Mohammed Nachi, 85-96. Paris: Éditions Karthala.
- Waldron, Jeremy. 1999. *Law and disagreement*. Oxford: Clarendon Press.
- Waldron, Jeremy. 2013. "Political Political Theory: An Inaugural Lecture." *Journal of Political Philosophy* 21 (1):1-23. doi: doi:10.1111/jopp.12007.
- Weinstock, Daniel. 2013. "On the possibility of principled moral compromise." *Critical Review of International Social and Political Philosophy* 16 (4):537-556. doi: 10.1080/13698230.2013.810392.
- Weinstock, Daniel. 2017. "Compromise, pluralism, and deliberation." *Critical Review of International Social and Political Philosophy* 20 (5):1-20.
- Wendt, Fabian. 2013. "Peace beyond compromise." *Critical Review of International Social and Political Philosophy* 16 (4):573-593. doi: 10.1080/13698230.2013.810394.
- Wendt, Fabian. 2016. *Compromise, Peace and Public Justification: Political Morality Beyond Justice*. Palgrave Macmillan.
- Wendt, Fabian. 2018. "In Defense of Unfair Compromises." *Philosophical Studies* (online first).
- White, Stuart Gordon. 2003. *The civic minimum : on the rights and obligations of economic citizenship*. Oxford: Oxford University Press.

Zuolo, Federico, and Giulia Bistagnino. 2018. "Disagreement, Peerhood, and Compromise." *Social Theory and Practice* 44 (4):593. doi: 10.5840/soctheorpract201891848.

Acknowledgements

I would like to thank the following for their helpful comments on previous versions of the article: Aurélia Bardon, Jessica Begon, Paul Billingham, David Birks, Ian Carroll, Jean-Marie Donegani, Renaud-Philippe Garner, Sophie Guérard de Latour, Cécile Laborde, Maxime Lepoutre, Ask Neve, Ruairí Maguire, David Miller, Pasquale Pasquino, Andrei Poama, Anthony Taylor, Katy Wells, Daniel Weinstock, and Annette Zimmermann. I would also like to thank audiences at the EHESS Paris conference “Global Ethics of Compromise” (March 7-8, 2019), the Blavatnik School of Government, University of Oxford, “Priority and Practice Workshop” (May 10, 2018) and at the University of Copenhagen conference “Compromise and Representation” (Dec. 1214, 2017). I am grateful to three anonymous reviewers for their comments.