

COMPROMISE, PEACE and PUBLIC JUSTIFICATION

POLITICAL MORALITY BEYOND JUSTICE

Fabian Wendt



Compromise, Peace and Public Justification

Fabian Wendt

Compromise, Peace and Public Justification

Political Morality Beyond Justice

palgrave
macmillan

Fabian Wendt
Department of Philosophy
Bielefeld University
Bielefeld, Germany

ISBN 978-3-319-28876-5 ISBN 978-3-319-28877-2 (eBook)
DOI 10.1007/978-3-319-28877-2

Library of Congress Control Number: 2016941753

© The Editor(s) (if applicable) and The Author(s) 2016

This work is subject to copyright. All rights are solely and exclusively licensed by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

The publisher, the authors and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publisher nor the authors or the editors give a warranty, express or implied, with respect to the material contained herein or for any errors or omissions that may have been made.

Cover illustration: © Peter Haigh / Alamy Stock Foto

Printed on acid-free paper

This Palgrave Macmillan imprint is published by Springer Nature
The registered company is Springer International Publishing AG Switzerland

To Anita

Acknowledgments

I started writing this book when I was a visiting scholar at the University of Arizona in Tucson from August 2013 to July 2014. This was a great and productive year, and I thank Steve Wall for inviting me. The German Research Foundation (DFG) provided a generous research fellowship that made my visit possible. About two years later, the book was the subject of a wonderful manuscript workshop in Tucson in September 2015. I thank Tom Christiano, Guido Pincione, and Steve Wall for their insightful commentaries, Dave Schmidtz for offering to host a workshop for me, and the John Templeton Foundation for its funding. (The opinions expressed in this book are those of the author and do not necessarily reflect the views of the John Templeton Foundation.) An earlier version of the book was submitted as my habilitation thesis at the University of Hamburg in February 2015. Thomas Schramme and John Horton were the examiners for it, and I thank them for their detailed and generous reports. I also thank Thomas Schramme for his support and encouragement during my years at the University of Hamburg. Besides the already mentioned, several other persons read and commented on (parts of) the manuscript and thereby helped to make this a better book: I thank Christoph Bressler, Jerry Gaus, Andrew Lister, Michael Moehler, Julian Müller, Frodo Podschwadek, Élise Rouméas, Ronen Shnayderman, Manon Westphal, and all participants of the manuscript workshop in Tucson, including Sameer Bajaj, Danny Shahar, and Robert Van't Hoff.

Many others helped by discussing the topics of this book with me on various occasions. Special thanks go to John Horton and Ulrich Willems (et al.) for inviting me to a great conference on *modus vivendi* in Münster in July 2015 and to a panel on pluralism in Montreal in July 2014, and to the colleagues in Copenhagen for organizing two excellent conferences/workshops on compromise in May 2015 and August 2014.

Chapter 9 is based on Wendt, Fabian 2013: *Peace beyond Compromise. Critical Review of International Social and Political Philosophy* 16: 573–593. Used by permission of Taylor & Francis. Some very few passages in Chap. 17 overlap with Wendt, Fabian 2016: *On Realist Legitimacy. Social Philosophy and Policy* 32: 227–245. Used by permission of Cambridge University Press. Some very few passages in Chaps. 3 and 11 overlap with Wendt, Fabian 2016: *The Moral Standing of Modus Vivendi Arrangements. Public Affairs Quarterly* (forthcoming).

Contents

1	Introduction	1
Part I	Compromise	11
2	What Compromises Are	13
3	Two Levels of Moral Evaluation	21
4	Consent	35
5	Types of Compromises	47
Part II	Peace	69
6	Peace and Modus Vivendi Arrangements	71
7	The Value of Peace	85
		ix

x	Contents	
8	Peace and Justice	91
9	Peace and Non-interference	107
	Part III Public Justification	117
10	Public Justification: The Basic Idea	119
11	Rawls, Stability and Public Justification	129
12	Respect and Public Justification	149
13	Community and Public Justification	165
	Part IV Compromising for Peace and Public Justification	185
14	Peace and Public Justification as Second-Level Values	187
15	The Deontic Morality of Compromising	201
16	Compromise and Liberal Institutions	221
17	Compromise and Legitimacy	237
18	Conclusion	247
	Bibliography	251
	Index	273

1

Introduction

‘All government [...] is founded on compromise and barter,’¹ as Edmund Burke reminds us. Compromises are made whenever two or more political players design a piece of legislation, coordinate in international politics, or prepare a new constitution in some country. But while compromises are pervasive in politics, the moral issues involved in compromising have not been studied in sufficient depth and detail in political philosophy. At least since the publication of John Rawls’s *A Theory of Justice* in 1971, the main focus of political philosophy has been on justice. An impressive amount of research is devoted to theorizing distributive, retributive, and corrective justice, both on the level of abstract principles and on the level of more specific applications. But although justice is, without a doubt, a highly important moral value, it is not all that counts in politics. If we understand ‘political morality’ as the set of moral considerations that applies to politics, then justice does not exhaust political morality. In this book, I will argue that peace and public justification are values that provide moral reasons to make compromises in politics, including compromises that establish unjust—or not fully just—laws or institutions.

¹ Burke 1775/1908: 130–131.

Peace is a surprisingly neglected value in political philosophy, and public justification is rarely considered in the context of compromising. In exploring the morality of compromising, the book thus provides some outlines for a map of political morality beyond justice.²

The Model Politician Making Compromises

Imagine a ‘model politician’ who has good reason to believe to have sound views on justice.³ You can also imagine that the model politician actually *has* sound views on justice. I will not say anything about what sound views on justice are.⁴ I would like to speak to liberal egalitarians, libertarians, socialists, and conservatives at the same time. The guiding question of the book is what reasons the model politician has to make compromises that establish unjust laws or institutions. Whether you are a liberal egalitarian, a libertarian, a socialist, or a conservative: the question whether you have moral reasons to make such compromises is relevant from each of those perspectives. I argue that the model politician often has moral reasons to compromise and, in particular, that peace and public justification are moral values that provide the model politician with moral reasons to compromise.

Take the case of a model politician in government who is preparing a proposal for a tax reform. Because being our model politician, she has sound views on justice and is justified in believing to have sound views on justice, and she has a justified belief about which bundle of tax laws would be most just. She also deliberates about compliance problems, and comes to develop a view about what her favorite bundle of tax laws would be. Yet many of her fellow politicians in government and in parliament, many leaders of influential organizations and interest groups in society, and even more of her fellow citizens disagree with her about the justice of her proposed tax laws, and some passionately oppose it. The disagreement can be rooted either in different views about what the correct or

² On theories as maps, see Schmidtz 2006: 21–28.

³ Here I follow Wall 1998: 30–31.

⁴ I say something in Wendt 2016d.

sound conception of justice is (in the abstract) or in different views about the proper application of an agreed-upon abstract conception of justice to the case of tax laws. Under such circumstances of disagreement, she might not be able to get her favorite proposal through, at least when some of the disagreement comes from people she has to directly coordinate with, like the finance minister or the chairman of her parliamentary group. If she cannot get her favorite proposal through, she obviously is forced to compromise, that is, to agree on a proposal that she thinks is a mere second-best (if she does not want to withdraw altogether). In addition, I will argue in this book, she might also have *moral* reasons to compromise in light of the disagreement on justice she faces. If it turns out that her original favorite proposal is not publicly justifiable—that some do not have sufficient reasons to accept it, then this is morally relevant. If she refrains from implementing just tax laws because they are not publicly justifiable, then she makes a compromise for moral reasons.

Another model politician finds himself in a commission that is to design a constitutional reform for a country that went through a civil war among several religious groups. He is about to propose an electoral system that grants those different religious groups some representation in parliament. He does not think that the system is just. He is a convinced democrat and thinks that every vote should count equal, and that parliament should as clearly as possible mirror the number of votes a party or person received. But he knows that it would undermine peace to not grant representation to each religious group, and so he agrees to an unjust electoral system for the sake of peace. He makes a compromise for moral reasons.

It may sound as if the notion of ‘compromise’ is not quite accurate to describe what I am after. While our model politicians will have to agree to a proposal that they do not regard as the most just one, it may not seem clear that they have to agree to an overall second-best. If there is a plurality of values, and justice is but one of them, then of course all values have to inform the model politician’s position on, for example, tax laws or electoral systems. Values have to be balanced against each other. But there is no ‘compromise’ involved, because the model politician does not accept the tax laws or the electoral system as a second-best, but as the best proposal, given the circumstances. I do not think that is right. Peace and public justification are values, but they are not values that inform the

model politician's position on what the best tax laws and the best electoral system would be. The model politician will think: 'If only my fellow politicians and citizens were smarter, or morally less corrupt, or less hostile towards each other, they would agree that my favorite proposal really is the best one, but unfortunately they do not. Under these circumstances, I will have to accept this other proposal and, of course, this is the best proposal given these circumstances. But I still think that the proposal I originally came up with is the best one.' Alternatively, the model politician may think: 'I can see that my fellow politicians and citizens have reasonable views, but still they are wrong. Under these circumstances, I will have to accept this other proposal and, of course, this is the best proposal given these circumstances. But I still think that the proposal I originally came up with is the best one.' In that sense, the model politician agrees to a second-best in our two examples, and hence is making a compromise.

Realism and Non-ideal Theory

Because I am interested in political thinking beyond justice, I share some of the concerns of 'realist' political theorists and philosophers.⁵ The book is about the need to compromise in light of persistent conflict and, in particular, in light of disagreement on justice, which nicely fits most realists' (and agonists') emphasis on the conflictual nature of politics.⁶ In contrast to (some) realists, though, I do not mean to say that there is something wrong with theorizing justice, or that theorizing justice is not about politics.⁷ I do not say anything here about *how* theorizing justice should proceed, but I certainly assume that there is a sound theory of justice and that justice is a value that properly applies to politics and should guide the deliberations of model politicians and citizens. More generally, realists sometimes oppose an 'ethics first' approach to politics.⁸ They think it is misguided to apply moral principles or values to politics. I do

⁵ For an overview of realism, see Galston 2010 and Rossi and Sleat 2014.

⁶ See Waldron 1999: 1–4, Mouffe 2005, Sleat 2013: chs. 2–3.

⁷ See Waldron 1999: 3, Sleat 2013: 8–9.

⁸ Mouffe 2005: 5, Williams 2005: 1–3, Geuss 2008: 6–9.

not believe that one can give up an ‘ethics first’ view without giving up normative or evaluative political thinking.⁹ Ethics encompasses political morality, even though of course some moral values and principles apply specifically to politics. Accordingly, while I deal with political morality beyond justice, I will make straightforward moral claims. In that sense, the book may not be considered ‘realist’ in spirit.

Because I am interested in political morality beyond justice, it may also seem that I am engaged in ‘non-ideal theory.’¹⁰ Yet there are many different issues at stake in the debate about ideal and non-ideal theory, and it should be helpful to briefly relate my work to these issues. Laura Valentini writes in her overview: ‘[T]he debate on ideal and non-ideal theory has for a large part revolved around Rawls’s theorizing about justice, and this article is no exception. That is, much of my discussion will focus on ideal and non-ideal theorizing about *justice* in particular.’¹¹ If the debate is about how theorizing justice should proceed, then I am engaged neither in ideal theory nor in non-ideal theory, because I do not theorize justice at all. If the categories of ideal and non-ideal theory are to apply to my project, they have to apply to theories of political morality more generally, not theories of justice. Following Valentini, one can distinguish three debates within the debate about ideal and non-ideal theory: one is about the relevance of feasibility constraints, one is about the assumption of full compliance, and one is about the need of an ‘end-state’ theory that sets the goal for social reform.

If ideal theory is normative political theory without certain kinds of feasibility constraints (e.g. set by human nature), while non-ideal theory accepts such feasibility constraints,¹² then I am arguably doing neither ideal theory nor non-ideal theory, because I will not be making many *normative* claims at all (Chap. 15 is an exception). Instead, I mostly talk about moral *values* and their foundation, and so feasibility concerns do

⁹See Erman and Möller 2015 for an argument to this conclusion. See also Wendt 2016b and 2016c: 241–242. Some realists, though, are skeptical about the very distinction between the normative and the descriptive (Geuss 2008: 16–17).

¹⁰For an overview of the debate about ideal and non-ideal theory, see Valentini 2012. On realism and non-ideal theory, see Sleat 2014.

¹¹Valentini 2012: 2.

¹²Estlund 2008: ch. 14, 2011.

not directly apply to my project. Moral values should inform the model politician's thinking about normative matters, of course, but values are not normative by themselves. They first of all guide *evaluative* judgments. What the model politician should do, in a certain situation, what tax laws or electoral system he or she should support and enact, for example, is a normative question that is to be decided in light of the evaluations provided by all relevant values. But a theory about what some value *is* does not have direct normative implications. At least it does not imply that we have a moral duty to implement that value at any price. If thinking about moral values, so understood, means engaging in ideal theory,¹³ then I am engaged in ideal theory.

If ideal theory presupposes full compliance with justice, while non-ideal theory asks about how to deal with injustice,¹⁴ then obviously I am not engaged in ideal theory here: I think about situations where the model politician has reasons to agree to unjust arrangements, and such situations would not easily come up if everyone would comply with justice. In that sense, then, I am doing non-ideal theory. I also do not presuppose compliance with any of the normative principles (beyond justice) that I set out in this work (although, again, for the most part, I am not even concerned with normative principles, but with moral values).

If ideal theory means elaborating the goal for social reform by painting a picture of a 'well-ordered society,' while non-ideal theory means thinking about the means to bring the real world closer to that goal,¹⁵ then I am doing neither ideal theory nor non-ideal theory. I do not paint a picture of a well-ordered society, either in an abstract way or on the institutional level, and I do not reflect on the transition to a well-ordered society. If non-ideal theory is normative and evaluative political theory without a presupposed specific picture of the well-ordered society,¹⁶ then I am doing non-ideal theory here.

¹³ Cohen 2003: 244–245, 2008: 307, Stemplowska 2008: 330, Swift 2008: 364.

¹⁴ Rawls 1971: 8, 245, 351, 2001: 13, Simmons 2010.

¹⁵ Rawls 1971: 245–246, 1993/1996: 285, 1999: 89, 2001: 13, Simmons 2010.

¹⁶ Sen 2009, Schmidtz 2011, Wiens 2012.

Public Justification and Peace as Distinct from Justice

The main claim of the book is that peace and public justification are moral values that provide the model politician with moral reasons to make compromises, including compromises that establish unjust laws or institutions. Obviously, then, I take peace and public justification to be values that are distinct from justice. This is not clearly common sense, so let me explain.

I treat public justification as a value of its own. (It may be more accurate to speak of ‘public justifiability’ as a value, but as the term ‘public justification’ is more common, I will stick to it.) Public justification is not identified with justice, nor do I presuppose any close connection between public justification and justice. I want to leave open how justice is to be conceived and argue that public justification sometimes gives the model politician moral reasons to agree to unjust arrangements, whatever justice is. There is one account of justice that draws a close connection between justice and public justification, namely, contractualism. Contractualist understandings of justice assume that justice is the subject of an agreement in an appropriately designed choice situation that models equality or impartiality, like most prominently Rawls’s original position. In a sense, then, a conception of justice is to be publicly justifiable, from a contractualist point of view. But even if contractualists are right about this, public justification could still be considered as a value of its own, at least if public justification is applied to other subjects besides conceptions of justice as well. Thus what I say about public justification should be compatible with contractualist understandings of justice. Of course, it is also compatible with natural rights libertarianism or luck egalitarianism, for example. I will argue later that this disentanglement of public justification and justice can also be found in the work of major public reason liberals like John Rawls and Gerald Gaus.

As I regard public justification and justice as two distinct values, it is clear that public justification is to be considered as one value among others. This, I think, naturally leads to the claim that the model politician can be justified in his or her views about the morally best tax laws or the morally

best electoral system, even when these tax laws or this electoral system is not publicly justifiable. This puts me into opposition with public reason liberals who uphold a principle of public justification, that is, take public justification as a strict requirement for the moral justification of, for example, constitutional essentials, laws, or moral rules. Because I conceive of public justification as one value among others, it becomes also possible to understand it as providing reasons to compromise on what the morally best tax laws or electoral system would be.

In contrast to public justification, peace is a value that has been surprisingly neglected in contemporary political philosophy. As with public justification, I emphasize that peace and justice are distinct. I argue against conceptions of peace that conceptualize peace as subsuming social justice or as requiring radical non-interference, against views that regard justice as necessary for achieving sufficiently stable peace, and against views that see peace as a mere precondition for achieving justice and not a value of its own. My concept of peace is a rather modest one. Peace is basically understood as the stable absence of violence based on *modus vivendi* arrangements.

An Overview

I now provide a brief summary of the chapters that are to come. In Part I, I develop a picture of what compromises are. Basically, compromises are agreements among two or more parties in which the parties accept some arrangement they regard as a mere second-best (Chap. 2). When they agree to something they regard a *moral* second-best, they make a ‘moral compromise.’ The notion of a moral compromise suggests a distinction between two levels of moral evaluation (Chap. 3): one that determines what one regards as morally best, and one that determines what one should be willing to agree to when others disagree about what is morally best. In a moral compromise, one agrees to an arrangement that is a second-best from the perspective of the first level of evaluation. Second-level values provide moral reasons to make moral compromises. I also discuss what genuine agreement or consent is (Chap. 4), and I distinguish different kinds of compromises: principled and pragmatic compromises, rational and irrational compromises, fair and unfair compromises, and

‘rotten’ compromises (Chap. 5). These distinctions are helpful for the discussion of the ‘deontic morality of compromising’ (Chap. 15).

Peace and public justification are two values that provide us with moral reasons to make compromises in politics. This is the main claim of this book. In Part II, I introduce my account of peace. I argue that peace should be understood as the stable absence of violence based on *modus vivendi* arrangements (Chap. 6). I also debate why peace should be considered a value (Chap. 7), I discuss the relation between peace and justice, and I critically discuss more demanding notions of peace (Chaps. 8 and 9). In Part III, I introduce the notion of public justification, which can basically be understood as multi-perspectival acceptability (Chap. 10). The details of a conception of public justification depend on what one regards as the source of its value, though, and so I devote large parts to a discussion of that issue. I argue that stability (Chap. 11), respect (Chap. 12), and community (Chap. 13) are all considerations that explain the value of public justification, although they point to different directions regarding the more precise conceptualization of public justification. I also argue that they cannot justify a strict principle of public justification. Public justification, I conclude, should be considered as one value among others. (Although the book is about compromises, note that Parts II and III can also be read in abstraction from that context, as contributions to debates about *modus vivendi* and public justification, respectively.)

In Part IV, I bring all threads together. I discuss several topics related to compromises made for peace and public justification. I start by defending the claim that peace and public justification are indeed values on the second level of moral evaluation and not on the first (Chap. 14). They provide us with moral reasons to compromise on what is morally best. (I do not claim that there are no other values on the second level.) I then defend some claims in what I call the ‘deontic morality of compromising,’ that is, the theory of the moral duties and obligations politicians have in and after compromising (Chap. 15). I test the plausibility of some claims by spelling out what they imply for compromises made for peace and public justification. Next, I ask whether compromises made for peace and public justification tend to establish liberal institutions or even liberal institutions of a specific kind (Chap. 16), and I discuss the relation between state legitimacy and compromising (Chap. 17).

Part I

Compromise

2

What Compromises Are

The main claim of this book is that peace and public justification are values that provide moral reasons to compromise in politics. Before being able to argue for this claim, I have to develop a reasonably precise conception of compromises. This is what I aim to do in this and the next three chapters.¹ The core of the notion of a compromise, I suggest, is that two or more parties agree to an arrangement which they regard as a mere second-best.

Agreeing on a Second-Best

Compromises are, first of all, something agreed to by two or more parties.² What the parties agree to is the content of the compromise. Compromises can concern a variety of things, from the choice of a restaurant for dinner to the design of a piece of legislation. I will call the content of a compromise an ‘arrangement.’ But not all agreements on some arrangement are

¹ This book is an exercise in systematic political philosophy. I do not engage very much in the history of ideas. For a conceptual history of compromise, see Fumurescu 2013.

² Jones and O’Flynn 2013: 119–120.

compromises. What is distinctive about compromises is that all parties regard some *other* arrangement—not the one agreed upon—as the optimal solution. Thus in a compromise, we have dissent on what would be the best arrangement, but we have consent that the arrangement agreed upon is better than having no arrangement at all. It is something all parties can live with as a *second-best*.³ (They can also accept it as a third-best or fourth-best, of course.) This, I think, is a truism about compromises.

What if some parties regard the arrangement as the best one and some regard it as a second-best? We then have a compromise from the perspective of some parties, and not a compromise from the perspective of other parties. I think that this result is not surprising. Indeed, when one gets one's first-best option, one does not make a compromise. The same arrangement can thus be a compromise from the perspective of some, but not from the perspective of others. But to simplify matters, I will usually assume that a compromise is an arrangement that is a second-best from the perspective of all parties. We then have a compromise 'tout court,' a compromise from the perspective of all the parties.

Moral Compromises and Non-moral Compromises

Compromises are made against a background of conflict. When all parties agree about what the best arrangement would be, no compromise is needed. They can just implement that arrangement. Compromise is necessary against a background of conflict. The conflict can either be a conflict of interests or a conflict based on incompatible moral convictions. I will refer to the latter as a 'moral conflict.' The notion of a moral conflict is to be understood in a broad sense, but it is not to cover conflicts based on incompatible altruistic interests. Interests can be altruistic without being conceived as a moral concern, as Amartya Sen makes clear by distinguishing between 'sympathy' and 'commitment': 'If the knowledge of torture of others makes you sick, it is a case of sympathy; if it does

³ The notion of a 'second-best' is not to be understood in the technical sense as discussed in economics (Lipsey and Lancaster 1956–1957).

not make you feel personally worse off, but you think it is wrong and you are ready to do something to stop it, it is a case of commitment.’⁴ Moral conflicts are conflicts based on incompatible ‘commitments’ in Sen’s sense. For the realm of politics, Richard Bellamy distinguishes between ‘conflicts of interests for limited resources, ideological conflicts involving rival rights-claims and the collision of opposed identities each seeking recognition.’⁵ In my taxonomy, the first are conflicts of interests, the second are moral conflicts, and the third are usually also moral conflicts (because seeking recognition will usually be a commitment).

In a conflict of interests, all parties regard some other arrangement as better serving their interests, although they may agree that the arrangement agreed on is a fair compromise, given the partially conflicting circumstances. In a moral conflict, they regard some other arrangement as morally better. A compromise that emerges from a moral conflict can be called a *moral compromise*. In a moral compromise, one accepts an arrangement that one thinks is a *moral* second-best.⁶ A compromise that emerges from a conflict of interests can be called a *non-moral compromise*. In a non-moral compromise, one accepts an arrangement that is a second-best from the point of view of one’s interests.

Sometimes it is suggested that a moral compromise has to be accepted for moral reasons.⁷ I do not see a reason to assume this: one can accept a moral second-best for non-moral reasons, and one can accept a non-moral second-best for moral reasons. The former happens when one accepts a moral second-best because it is in one’s interest to do so. This does not seem to be very uncommon. The latter happens, for example, when you do not like Chinese food, but nonetheless accept a Chinese restaurant for dinner because your dinner guest loves Chinese food and you think that there is a moral imperative to accommodate her preferences.

⁴ Sen 1977: 326. Harsanyi’s distinction between ethical and subjective preferences is related (1955), although ‘ethical preferences’ are much more narrowly defined than Sen’s ‘commitments’; they are necessarily based on impartial considerations (Sen 1977: 336–337). For an extensive discussion of the distinction between conflicts of interest and conflicts of value, see Willems 2015: chs. 1–5.

⁵ Bellamy 1999: 103.

⁶ Benjamin 1990: 12, 23, May 2011: 583, Archard 2012: 404.

⁷ Lister 2007: 2, Zanetti 2011: 428.

Two Accounts of Consent

As said, compromises are something agreed to. Sometimes the content of a compromise, the arrangement agreed upon, is fixed in a legal contract. At other times, compromises take the form of more informal agreements, comparable to ‘mutual promises,’ where two or more parties promise to each other to stick to the terms of an arrangement. J. Patrick Dobel speaks of ‘co-promises,’ for that reason.⁸ A conception of compromise, therefore, has to say something on what it means to give consent or to agree to something. I will here introduce some basic ideas and say more on consent in Chap. 4.

There are two accounts of what consent (or agreeing) is. Alan Wertheimer calls them the ‘subjective’ and the ‘performative’ view.⁹ According to the subjective view, consent is a mental state or a mental act.¹⁰ According to the performative view, consent is a certain kind of public act, observable and understandable by others.¹¹ I will here adopt the performative view. The mental act or mental state of consent is better called ‘acceptance.’ Compromise requires consent, not acceptance.

There are two reasons for this. First, compromises are something made by two or more persons together. A mere mental act, in contrast, is something that is not visible to others. It is something one does alone. Confusingly, the notion of ‘compromise’ is sometimes used in single-person cases as well, but in a different sense: one can ‘compromise one’s values’ without interacting with other persons.¹² Integrity is an issue that bridges the two senses of ‘compromising,’ because one can compromise one’s values in making compromises with others.¹³ But here, I want to focus on what intersubjective compromises are.

The second reason is that compromises are morally binding for the parties. By making a compromise, the parties impose moral obligations

⁸ Dobel 1990: 8.

⁹ Wertheimer 2003: 144.

¹⁰ Hurd 1996, Alexander 1996.

¹¹ Simmons 1979: 83, Archard 1998: 4, Wertheimer 2003: 144–152.

¹² See May 2011: 583, Lepora 2012. One can also compromise one’s interests without interacting with other persons.

¹³ See Benjamin 1990.

on themselves to stick to the terms of the compromise, and they generate moral rights to have the others stick to the compromise. Consent, as relevant in compromises—but also in promises or in consent to sexual relations or to medical treatment, for that matter—is ‘morally transformative’: it creates moral obligations and rights the parties did not have before. (More on these moral obligations in Chap. 15.) This morally transformative power of consent can only be explained by the performative view of consent, as Wertheimer makes clear: ‘*B*’s consent is morally transformative because it changes *A*’s reasons for action. If we ask what could change *A*’s reasons for action, the answer must be that *B* performs some token of consent. It is hard to see how *B*’s mental state can do the job.’¹⁴ A compromise thus requires publicly recognizable consent to accept some arrangement, by at least two parties, not a mere mental act or mental state of acceptance.

Hence, when I say that the parties ‘agree’ or ‘consent to’ a compromise, I always have the performative view in mind. Usually, when the parties agree to a compromise, they will of course also accept it (as a mental act), and expect the others to accept it, too. But agreeing and consenting on the one hand, and accepting on the other hand, are different things. Mere acceptance does not make a compromise.

What Compromises Are Not (or Need Not Be)

There are four other properties that are sometimes brought up as additional necessary conditions for the existence of a compromise. First, it is sometimes assumed that compromises are always made out of self-interest. Second, it is sometimes argued that compromises always reflect the balance of power among the parties. Third, it seems quite natural to assume that a certain process of ‘compromising’—which involves bargaining and the making of mutual concessions—must precede the agreement that constitutes the compromise. Fourth, and in tension with the first and second points, some have argued that compromises cannot be ‘mere’ balances of power or ‘mere’ bargains, but involve a more cooperative mindset.

¹⁴ Wertheimer 2003: 146.

First, compromises need not be made out of self-interest. It can be non-moral reasons that motivate people to accept some particular compromise, but it can also be moral reasons. This is so in both conflicts of interests and moral conflicts. As long as an arrangement is agreed to as a second-best, we have a compromise. We can keep silent on the kinds of reasons for making a compromise.

Second, compromises need not mirror the distribution of power among the parties, no matter how ‘power’ is conceived.¹⁵ The stronger party can abstain from exploiting her power and decide to bargain on equal terms. She could do so for moral reasons, for example, but still regard the arrangement as a second-best. But even in compromises made for non-moral reasons, there is no conceptual necessity that stronger parties try to use their power to get the best possible outcome for themselves.

Third, must compromises be the outcome of a process of compromising, that is, of bargaining and making mutual concessions? Of course, typically compromises are based on a process of bargaining which leads to an explicit agreement that is fixed either in a contract or in a more informal way. But this is not necessarily so. One can agree to something as a second-best without any such process having taken place.¹⁶ This is quite obvious in the case of tacit consent, but even explicit consent to a second-best need not be preceded by bargaining. There are other methods to pick one out of several options and to agree on that option (as a second-best): collective choice is one such option, spontaneous coordination another.¹⁷

Fourth, and in contrast to the first two points, some philosophers distinguish compromises from ‘mere’ balances of power or ‘mere’ bargains. Of course, they do not claim that compromises never mirror the distribution of power or are never made out of self-interest. Still they think there is something more to compromises. The main idea—which can be spelled out in different ways—is that people have a cooperative mindset in compromises, while they have a purely strategic mindset in mere balances of

¹⁵ Physical strength, financial resources, and military strength are not always the most important assets (Schelling 1960: Ch. 2).

¹⁶ Accordingly, Benjamin distinguishes compromises as an outcome and compromising as a process (1990: 4–8). Some, though, understand compromise as ‘essentially procedural’ (Gaus 1990: 353, see Golding 1979: 7–8).

¹⁷ See Gaus 2011a: 393–409.

power or mere bargains.¹⁸ I see no reason why agreements that are made with a purely strategic mindset should not be regarded as compromises. As we use the term in ordinary language, at least, there certainly are compromises between parties that have a purely strategic mindset. This is not to say that the distinction between compromises made with a strategic mindset and compromises made with a more cooperative mindset is not important. It will be a major topic in what I call the ‘deontic morality of compromising.’ But the distinction does not mark a difference between compromises and something else.

Summary

In a compromise, two or more parties agree to an arrangement—the content of the compromise—but they regard the arrangement as a mere second-best. In moral compromises, they agree to what they see as a moral second-best; in non-moral compromises, they agree to a second-best from the point of view of their interests. Agreement or consent is to be understood as performative, not as a mental act or mental state. Compromises need not be agreed to for reasons of self-interest, they do not have to mirror the distribution of power, no process of bargaining must precede a compromise, and the parties need not have a cooperative mindset.

¹⁸ See Golding 1979: 16–19, Benditt 1979: 26–27, Benjamin 1990: 5, Bohman 1995: 268, Weinstock 2006: 244, Lister 2007: 17–18, Margalit 2010: 39–41, also Gutmann and Thompson 2012: 16–17, 101–117. Skeptical about the distinction between compromises and mere bargains are Jones and O’Flynn 2013: 120.

3

Two Levels of Moral Evaluation

In this chapter, I distinguish two levels of moral evaluation. The distinction is necessary if we are to understand the conceptual possibility of making moral compromises for moral reasons. Later in the book, I will defend the claim that there indeed are moral reasons to make moral compromises (namely, reasons provided by the values of peace and public justification). The distinction between two levels of moral evaluation therefore is at the heart of this book.

Can One Make a Moral Compromise for Moral Reasons?

There are many different kinds of reasons to agree to a compromise, depending on the circumstances. This is true of both moral and non-moral compromises. As explained in the previous chapter, in moral compromises, one agrees to an arrangement that is a moral second-best, and in non-moral compromises, one agrees to an arrangement that is a second-best from the point of view of one's interests. One can have moral reasons to make a non-moral compromise, one can have non-moral reasons to