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Dealing with Disagreement: Towards a Conception of Feasible Compromise

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A thesis submitted in partial fulfillment of the requirements for the Doctor of Philosophy degree in Political Science

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ABSTRACT

The goal of this dissertation is to specify the feasibility conditions of compromise. More specifically, the goal of this dissertation is to specify the conditions of *increasing* the feasibility of compromise. The underlying assumption here is that feasibility is a scalar concept, meaning that a socio-political ideal can be feasible to different degrees (Lawford-Smith 2013). In order to specify the *conditions* of increasing the feasibility of compromise, it is necessary to first identify potential feasibility *constraints*. The main chapters of this dissertation are devoted to this task.

My research identifies two kinds of feasibility constraints that compromise potentially faces: A *psychological* feasibility constraint on realizing *moral* compromise (i.e. compromise on moral issues) and a *structural* feasibility constraint on realizing *fair* compromise. The psychological feasibility constraint consists in what I call an “affective aversion” to compromise. Affective aversion designates a deep emotional reluctance to compromise on moral values, which, I propose, can be reduced by cultivating an affective attitude of respect for other persons. The structural feasibility constraint refers to the process through which a compromise is achieved. I argue that if a *fair* compromise is the goal, the process of compromising needs to be based on deliberation rather than on the negotiation or bargaining processes that are commonly associated with compromise. Based on these results, my research indicates a) that an affective cultivation of respect is a condition for increasing the feasibility of *moral* compromise; and b) that deliberation, not negotiation or bargaining, is a condition for increasing the feasibility of *fair* compromise.

KEYWORDS

Compromise, Disagreement, Scalar Feasibility, Ideal Theory, Deliberation, Moral Judgment, Emotions

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TABLE OF CONTENTS

ABSTRACT	i
ACKNOWLEDGEMENTS	ii
TABLE OF CONTENTS	iv
INTRODUCTION	1
Chapter summary	3
Chapter 1: Compromise in political theory	3
Chapter 2: On the practical possibility of compromise and overlapping consensus.	4
Chapter 3: Is moral compromise feasible?.....	5
Chapter 4: Why a fair compromise requires deliberation	7
References	8
CHAPTER 1: COMPROMISE IN POLITICAL THEORY	10
1.1. Introduction	10
1.2. Compromise vs. consensus.....	11
1.3. Different kinds of compromise.....	14
1.4. Who compromises?	18
1.5. Why compromise?.....	20
1.6. The limits of compromise.....	22
1.7. The case of moral compromise	24
References	27
CHAPTER 2: ON THE PRACTICAL POSSIBILITY OF OVERLAPPING CONSENSUS AND COMPROMISE	31
2.1. Introduction	31
2.2. Ideal theory and practical possibility.....	35

2.2.1.	Ideal and non-ideal theory.....	35
2.2.2.	Specifying practical possibility	37
2.3.	Evaluating the practical possibility of overlapping consensus.....	41
2.3.1.	Overlapping consensus and reasonable disagreement	41
2.3.2.	Two reasons why overlapping consensus scores low on practical possibility.....	43
2.3.3.	Overlapping consensus and the burdens of judgment.....	46
2.4.	Compromise as an alternative to overlapping consensus	56
2.4.1.	Why compromise can be desirable	56
2.4.2.	Why compromise scores higher on practical possibility than overlapping consensus	58
	References	62
	CHAPTER 3: IS MORAL COMPROMISE FEASIBLE?.....	66
3.1.	Introduction	66
3.2.	The affective aversion to compromise	68
3.2.1.	Emotional primacy	69
3.2.2.	Deontological primacy	71
3.2.3.	Defending what is right: the deontological aversion against compromise	74
3.2.4.	Differences in experiencing affective aversion.....	76
3.3.	Implications for the feasibility of principled and pragmatic compromise	79
3.3.1.	Why pragmatic compromise is unlikely to be feasible	80
3.3.2.	Respect-based principled compromise.....	83
3.3.3.	What kind of respect does compromise require?	86
3.3.4.	How can respect increase the feasibility of moral compromise?.....	89
3.4.	Conclusion.....	92

References	93
CHAPTER 4: WHY A FAIR COMPROMISE REQUIRES DELIBERATION.....	98
4.1. Introduction	98
4.2. Compromise vs. deliberation: A problematic dichotomy	99
4.3. A conception of fair compromise	104
4.4. Why deliberation is structurally necessary for achieving a fair compromise..	107
4.4.1. Understanding reasons	109
4.4.2. Evaluating stakes.....	113
4.4.3. Determining concessions	116
4.4.4. Possibilities of failure.....	120
4.5. How important is it that a compromise is fair?	121
4.6. Compromising and deliberating: analytically distinct activities?	124
References	129
CONCLUSION.....	133
References	140
VITA.....	143

INTRODUCTION

“The concept of compromise, I believe, should take center stage in micromorality (dealing with individuals’ interactions) as well as in macromorality (dealing with political units)”

Avishai Margalit, On Compromise and Rotten Compromises.

This dissertation addresses compromise as a solution to disagreement at the political level. More specifically, this dissertation addresses compromise as a solution to disagreements that have socio-political relevance – be it disagreements between citizens or their political representatives. Purely private disagreements, in contrast, are not the focus of this dissertation, even though the research results can be applied to the private sphere as well.

Discussing compromise as a solution to disagreement presumes that resolving disagreement is desirable in the first place. This need not necessarily be so: Disagreement can inspire progress and development or reflect the pluralistic spirit of democracy. But even though it is not desirable for all disagreements to be resolved, it is also clear that many disagreements require resolution. Disagreement resolution can be desirable to avoid violent conflict or to improve the status quo. The latter is particularly important if a disagreement is about unjust political regulations. In that case, not resolving the disagreement means to confirm the status quo, which is not desirable if the status quo reflects unjust practices.

This dissertation is concerned with compromise as a solution to those disagreements where a resolution is desirable for either of the above-mentioned reasons. More specifically, this dissertation examines potential difficulties in achieving desirable

compromise, with the goal of specifying the conditions for increasing the feasibility of compromise.¹ My research identifies two kinds of feasibility constraints that compromise potentially faces: A *psychological* feasibility constraint on realizing *moral* compromise (i.e. compromise on moral issues) and a *structural* feasibility constraint on realizing *fair* compromise.

The psychological feasibility constraint consists in what I call an “affective aversion” to compromise. Affective aversion designates a deep emotional reluctance to compromise on moral values, which, I propose, can be reduced by cultivating an affective attitude of respect for other persons.

The structural feasibility constraint refers to the process through which a compromise is achieved. I argue that if a *fair* compromise is the goal, the process of compromising needs to be based on deliberation rather than the negotiation or bargaining processes that are commonly associated with compromise.

In sum, my research indicates a) that an affective cultivation of respect is a condition for increasing the feasibility of *moral* compromise; and b) that deliberation, not negotiation or bargaining, is a condition for increasing the feasibility of *fair* compromise.

I do not claim that the research provided in this dissertation is exhaustive in the sense that it is considered to cover all possible constraints on the feasibility of compromise

¹ As I elaborate in chapter 2, this dissertation proceeds from a scalar understanding of feasibility, according to which a socio-political ideal, such as compromise, can be feasible to different degrees.

or all possible conditions for increasing the feasibility of compromise. On the contrary, this dissertation pursues a much more modest goal: To identify *some* (particularly important) conditions that can make compromise more feasible – and in doing so, this dissertation lays the groundwork for a conception of feasible compromise.

CHAPTER SUMMARY

This dissertation is an integrated-article dissertation and therefore each chapter develops a self-contained argument. More precisely, each chapter has a double role to fulfill. As a potential article, each chapter aims to contribute to a specific debate in political theory. And as a part of this dissertation, each chapter aims to clarify the conditions of increasing the feasibility of compromise. Since each chapter has been initially developed in article format, the respective arguments in each chapter are not always explicitly tied to the dissertation topic. Nevertheless, each chapter relates to the goal of this dissertation to clarify the conditions of increasing the feasibility of compromise. I explain in the following chapter summary (as well as in the conclusion to this dissertation) how each chapter contributes to this goal.

CHAPTER 1: COMPROMISE IN POLITICAL THEORY

The first chapter is a survey chapter about the state of compromise in political theory. As such, the first chapter is supposed to introduce the reader to general issues that arise for the topic of compromise. In this chapter, I specify the distinctive features of compromise (including the different forms that a compromise can take) and I present conflicting conceptions of compromise as a primarily intrapersonal and interpersonal phenomenon respectively. I furthermore review the debate on the question whether compromise can be

justified for principled or pragmatic reasons, as well as different approaches to the question when a compromise is not justified at all. The chapter concludes with a brief discussion of the features of moral compromise, including potential feasibility issues that can arise for this particular kind of compromise.

CHAPTER 2: ON THE PRACTICAL POSSIBILITY OF COMPROMISE AND OVERLAPPING CONSENSUS

The second chapter addresses the feasibility of compromise in a comparative manner. More specifically, this chapter evaluates whether John Rawls's endorsement of overlapping consensus as an ideal solution to reasonable disagreement is compatible with his claim that ideal theory has to be feasible (Rawls 2001).² This evaluation leads to a comparison of the feasibility of compromise and overlapping consensus, for the following reason.

I show in this chapter that overlapping consensus scores very low on feasibility, due to what Rawls has called “the burdens of judgment”, i.e. the diverse features that can impede proper judgment formation, such as complex empirical evidence, different normative considerations or conceptual vagueness (Rawls 2005, 56-57). More concretely, I argue that the burdens of judgment significantly reduce the feasibility of overlapping consensus, because they can a) impede our ability to form consistent positions and b) impair our ability to recognize a potential overlapping consensus.

² Rawls uses the terms “practically possible” and “practical possibility” instead of “feasible” and “feasibility”. In the chapter itself, I also use the terms “practically possible” and “practical possibility” in order to stay consistent with Rawls's terminology.

I suggest that because overlapping consensus scores low on feasibility, we are well advised to consider compromise as an alternative solution that we can aim for in those cases where overlapping consensus fails. This suggestion is based on a comparative analysis of the impact that the burdens of judgment can have on both kinds of agreement. My analysis shows that while the burdens of judgment significantly reduce the feasibility of overlapping consensus, they do not significantly impact the feasibility of compromise.

This chapter addresses the conditions of increasing the feasibility of compromise in a more indirect way, by showing that a potential feasibility constraint – the burdens of judgment – is in fact not a significant issue for the feasibility of compromise. In a sense then, this chapter identifies the *absence* of a potential feasibility constraint, which means that no specific measures are necessary to address the consequences that the burdens of judgment have on compromise.

CHAPTER 3: IS MORAL COMPROMISE FEASIBLE?

The third chapter addresses the feasibility of moral compromise specifically. In doing so, this chapter fills a gap in political theory, where moral compromise is primarily discussed as a normative matter. More precisely, the debate in political theory revolves around the question whether moral compromise is justified for principled or pragmatic reasons. But if moral compromise can indeed be justified – for either principled or pragmatic reasons – we should also be concerned with the question whether moral compromise is feasible.

Moral compromise is a form of compromise that accommodates moral disagreement, i.e. disagreement on moral issues. I suggest that moral disagreement is best

understood as a cognitive phenomenon, given that moral disagreement consists in conflicting moral judgments and moral judgments are based on cognitive processes. An analysis of the feasibility of moral compromise therefore has to be based on an in-depth understanding of moral judgment formation.

While moral judgment formation has been traditionally conceived of as a “rational” process without much emotional content (see Solomon 2008), I refer in this chapter to more recent research in cognitive science, which emphasizes that the emotions play a significant role in judgment formation processes. More specifically, I develop my argument with reference to three well-established approaches to moral judgment formation: Jonathan Haidt’s *Social Intuitionist Model* (Haidt 2001, 2012), Joshua Greene’s *Dual Process Model* (Greene 2008, 2013, 2014), and Jesse Prinz’s *Constitution Model* (Prinz 2006, 2007).

Based on these three models of moral judgment formation, I develop the idea that we are subject to a powerful emotional reluctance when it comes to compromising on moral issues. I call this emotional reluctance “affective aversion”. More specifically, I argue that affective aversion reduces the feasibility of compromise that is motivated by pragmatic reasons, but not (necessarily) of compromise that is motivated by principled reasons. Affective aversion does not necessarily reduce the feasibility of principled compromise, because principled reasons to compromise, especially respect, can constitute a reliable emotional counterbalance to affective aversion. This chapter therefore indicates that respect cultivation is a condition for increasing the feasibility of moral compromise.

CHAPTER 4: WHY A FAIR COMPROMISE REQUIRES DELIBERATION

In this chapter, I argue that the process of compromising needs to be deliberative if a fair compromise is the goal. A fair compromise is here understood as a compromise where each party's concessions are proportional to what is at stake for them in a specific disagreement.

In specifying the procedural conditions for achieving a fair compromise, this chapter questions the prevalent dichotomy between compromise and deliberation, which entails the view that the process preceding the achievement of a compromise is essentially a process of negotiating or bargaining and not deliberation.

I claim that negotiation or bargaining significantly reduce the feasibility of achieving a fair compromise. The main reason for this claim is that negotiation or bargaining processes fail to provide the participants with a mutual understanding of each other's position. More specifically, I argue that negotiation or bargaining processes fail to provide for adequate mutual understanding in terms of the following three steps, all of which, I argue, are necessary for the achievement of a fair compromise: 1) Negotiation or bargaining processes do not provide for an adequate understanding of the reasons that each party has for holding their respective position. 2) Negotiation or bargaining processes do not provide for an adequate understanding of what is at stake for each party in a specific disagreement. 3) Negotiation or bargaining processes do not provide for an adequate understanding of the reasons that each party has for proposing their respective concessions.

I argue that deliberation, in contrast, can provide for an adequate understanding in all three regards and I therefore conclude from this chapter that a deliberative process is a condition for increasing the feasibility of fair compromise.

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CHAPTER 1

COMPROMISE IN POLITICAL THEORY

1.1. INTRODUCTION

In its most basic sense, a compromise can be understood as a form of agreement that has the purpose of accommodating conflicting views or claims.³ As such, compromise is increasingly discussed in political theory as a legitimate approach to dealing with disagreement in politics and society (Bellamy 1999, 2012; Gutmann and Thompson 2012; Mansbridge et al. 2010; May 2005; Warren and Mansbridge 2016; Weinstock 2006, 2013). But aside from a general acknowledgment that compromise constitutes a legitimate approach to dealing with disagreement, the literature on compromise is characterized by significant differences and controversies – which is not surprising, given the complexity inherent in the topic of compromise. A systematic review of the state of compromise in political theory will therefore be useful not only for identifying major issues of dispute but also for understanding the complexity of compromise itself.

This chapter starts by distinguishing compromise from consensus, which at the same time serves the purpose of presenting those features of compromise that characterize it as a distinctive concept (section 1.2). The next section presents different forms that a compromise can take, thus further specifying the distinctive features of compromise

³ Thus understood, the term “compromise” designates the outcome of an agreement-seeking process. It should be noted that “compromise” can also designate the agreement-seeking process itself (Golding 1979; Lepora 2012; Weinstock 2013).

(section 1.3). Next, I present different views on the question whether compromise occurs primarily between persons or within a person's own head (section 1.4). After this, I survey different approaches to the controversial question whether compromise can be justified for principled or for pragmatic reasons (section 1.5). I then present different answers to the question: When is a compromise *not* justified? (section 1.6). The last section discusses the particular case of moral compromise, including the difficulties that arise for its realization (section 1.7).

1.2. COMPROMISE VS. CONSENSUS

This section distinguishes compromise from consensus. It is important to distinguish between both concepts because they have significant features in common and are therefore easily confused. Like consensus, compromise is a possible response to disagreement or conflict. And like consensus, compromise can be placed on the “solution side” within the spectrum of possible responses to disagreement. As potential solutions to disagreement, both compromise and consensus differ from responses that maintain the status quo of a disagreement (Bellamy et al. 2012).

But even though compromise and consensus both constitute potential solutions to disagreement, they are not the same kind of solution. The crucial difference between both solutions is that consensus requires the parties to a disagreement to change their minds on the controversial issue. If a consensus is achieved, this means that the disagreeing parties consider the agreement to be better than (or at least as good as) their initial views (Bellamy et al. 2012; Weinstock 2006, 2013). Compromise, in contrast, is characterized by the fact that the disagreeing parties hold on to their opposing views. As Daniel Weinstock puts it, “it does not count as a compromise when you change your mind” (Weinstock 2013, 540).

In a compromise, the disagreeing parties *agree to* partially concede their claims to the demands of the other party, but they do not *agree with* the other party's demands.⁴

It can therefore be said that consensus resolves disagreement in an *epistemic* sense, while compromise resolves disagreement in the *practical* sense that it can prevent the potentially negative consequences of a disagreement from occurring. For example, even though the parties to a compromise might continue to disagree on a controversial issue, their compromise might prevent that disagreement from spiraling into a full-blown conflict.

Compromise also differs from consensus in that the former characteristically involves a sense of regret. Since the parties to a compromise continue to believe that they are right and the other party is wrong, agreeing on a compromise means agreeing to a solution that partially realizes what one considers to be wrong. Compromise therefore tends to come with a sense of regret (Lepora 2012; Lepora and Goodin 2013). This is especially true for compromises on emotionally salient issues, as is typically the case for issues of moral or political significance. Consensus, in contrast, does not tend to involve regret. On the contrary, a consensus (at least theoretically) leaves all parties satisfied with

⁴ May introduces a distinction between first- and second-order reasons, which is useful for illuminating the difference between compromise and consensus. First-order reasons designate the reasons that we have for changing our minds on a controversial issue (thus first-order reasons apply to consensus), while second-order reasons designate the reasons that we have for accepting a compromise (May 2005).

a respective arrangement, given that all parties consider that arrangement to be superior to (or equally good as) their original point of view.

Some scholars therefore claim that consensus is more desirable than compromise. As Amy Gutmann and Dennis Thompson point out, “few doubt that consensus is desirable if it can be found, and most agree that it is usually preferable to the standard form of compromise, which leaves all parties dissatisfied” (Gutmann and Thompson 2012, 13). Indeed, Philippe Van Parijs claims that “even the best compromise (...) is still not quite as good as an (unconstrained) consensus” (Van Parijs 2012, 480).

Yet, even though *generally speaking* consensus might be more desirable than compromise, compromise can be more desirable than consensus *all things considered*. More specifically, compromise can be more desirable than consensus because, or so it is assumed, compromise tends to be more feasible than consensus when it comes to dealing with disagreement in real life (Bellamy et al. 2012; Gutmann and Thompson 2004, 2012). Furthermore, it has been pointed out that compromise is not merely more realistic than consensus, but it is also more likely to enhance creativity and problem-solving capacities (Al Ramiah and Hewstone 2012).

In addition to the argument from feasibility, compromise is also endorsed as an adequate response to what John Rawls has called “the fact of reasonable pluralism” (Rawls 2001, 4).⁵ The argument here is that compromise, but not consensus, can

⁵ The “fact of reasonable pluralism” refers to the idea that modern democratic societies are inherently characterized by a variety of religious, philosophical and moral doctrines that can be equally reasonable and yet irreconcilable (Rawls 2001).

accommodate the reasonable disagreements that are part of pluralistic societies. More specifically, in the case of reasonable disagreement, compromise, but not consensus, allows for equal concern and respect for all of the reasonable views that are in conflict (Bellamy et al. 2012). In addition, it can be argued that if all parties to a disagreement have equally reasonable (but conflicting) claims, consensus is less desirable than compromise, because consensus requires an unjustifiable change of mind from those who hold reasonable views. Compromise, in contrast, allows the disagreeing parties to keep their reasonable views, thus constituting a more desirable solution to reasonable disagreement than consensus does.⁶

1.3. DIFFERENT KINDS OF COMPROMISE

Compromise consists in mutual and voluntary concessions (Bellamy et al. 2012; Bohman 1996; Jones and O’Flynn 2012; Lepora 2012; Lepora and Goodin 2013; Margalit 2010; May 2013). As Van Parijs points out “a compromise is an agreement, but not just any agreement. Its distinctiveness resides in the mutual concessions involved” (Van Parijs 2012, 469). The concessions that each party makes can be of different kinds, leading to different kinds of compromise. Based on the kind of concessions on which a compromise is based, we can broadly distinguish between three kinds of compromise: Intersection

⁶ Note that rather than compromise, Rawls endorses the idea of an “overlapping consensus”, i.e. an agreement that all of the involved parties can endorse, but for different reasons (see Rawls 2005, lecture IV).

compromise, conjunction compromise and substitution compromise (Lepora 2012; Lepora and Goodin 2013).

Intersection compromise can be applied to cases where the parties to a disagreement hold partially overlapping principles.⁷ An intersection compromise is based exclusively on those overlapping principles – controversial principles are excluded from the agreement. For example, if party P1 holds principles A, B, C and party P2 holds principles A, D, E, an intersection compromise would be based exclusively on principle A, while principles B, C, D, and E would be excluded from the compromise agreement (Lepora 2012; Lepora and Goodin 2013).⁸

Disagreeing parties are, however, not always willing (or able) to base their agreement exclusively on their shared principles; or they might simply not share the relevant principles in the first place. In such cases, where no intersection compromise is possible, two other kinds of compromise are available. Both will be illustrated with reference to the following example.

⁷ The notion of “principles”, as it is used in this chapter, is understood to cover moral values rather than mere (monetary) interests. The distinction between principles and interests is discussed in more detail in section 1.7.

⁸ At a first glance, it might not be clear how an intersection compromise differs from an overlapping consensus, since both kinds of agreement are based on overlapping principles. The crucial difference is that intersection compromise, but not overlapping consensus, conceptually implies sacrifice (see below).

Valerie, a committed vegan for moral reasons, and her friend Nancy, a non-vegan, plan to have brunch together. Nancy desires to eat scrambled eggs (E) with bacon (B), while Valerie desires a plant-based breakfast (P) in a vegan location (L).

In this case, there is no overlap in principles on which Valerie and Nancy could base their compromise. Nancy's principles (E, B) and Valerie's principles (P, L) are mutually exclusive: You cannot have eggs and bacon in a vegan restaurant. Two kinds of compromise are available in this case.

One option is a conjunction compromise, which integrates some of each party's conflicting principles (Lepora 2012; Lepora and Goodin 2013).⁹ In the above example, a conjunction compromise could be a vegetarian (but not vegan) restaurant that offers vegan options. In this case, Nancy would be able to eat eggs, but she would have to refrain from eating bacon, while Valerie would have the option to eat vegan food, but in a non-vegan location (that, in her view, supports cruelty to animals by offering animal products such as eggs, milk or cheese). In this compromise, Valerie gets (P) while sacrificing (L), and Nancy gets (E) while sacrificing (B).

Another option to accommodate Valerie and Nancy's disagreement is a substitution compromise. This kind of compromise does not involve *any* of the principles that are at stake for each party but consists instead of principles that are not part of the original disagreement (Lepora 2012; Lepora and Goodin 2013). Substitution compromise "changes the subject", so to speak (Weinstock 2013, 545). For example, a substitution

⁹ Conjunction compromise has alternatively been called "integrative compromise" (Weinstock 2013).

compromise for Valerie and Nancy's disagreement could be to skip brunch altogether and have a glass of wine together in the evening instead. This solution still qualifies as a compromise, since neither party gets what they initially wanted; and it qualifies as a *substitution* compromise because neither party has to sacrifice the values that were initially at stake.

As was mentioned earlier, one of the distinctive features of compromise is the sense of regret that the participants tend to experience. It is therefore interesting to consider how the different kinds of compromise compare with regard to the sense of regret that compromise generally involves. At a first glance, it might seem as if an intersection compromise involves the least regret, given that neither party has to accept the partial implementation of principles that they reject.

But intersection compromise also implies that some of each party's principles are excluded from the agreement – and these might be principles that are *more important* to the parties than the overlapping principles on which the compromise is based. Therefore, while we might be inclined to measure regret in terms of the (unwanted) principles that a compromise *entails*, it is likewise important to consider the principles that are *excluded* from the compromise agreement. For intersection compromise specifically, to determine how demanding a compromise is in terms of the regret that it involves, it is crucial to compare the importance of the overlapping principles (that are part of the compromise) with the importance of the conflicting principles that are excluded from the compromise.

The same consideration applies to evaluating the demandingness of substitution and conjunction compromise respectively. This is to say that it depends largely on the value systems of the involved parties how much regret a particular substitution or

conjunction compromise involves. For example, the demandingness of the substitution compromise outlined above (having drinks in the evening instead of brunch mid-morning) depends on a variety of subjective factors, such as how important it is to Valerie and Nancy that they meet mid-morning rather than in the evening, or how important it is for both to eat together as compared to having drinks together, etc. Similarly, the demandingness of the conjunction compromise outlined above (having brunch in a vegetarian restaurant) depends on a range of subjective factors, such as how important it is for Nancy to have bacon in her breakfast or how much Valerie suffers from supporting a non-vegan venue.

1.4. WHO COMPROMISES?

Generally speaking, compromise can be conceived of in an *interpersonal* and an *intrapersonal* sense. In the interpersonal sense, compromise occurs between different persons who participate in a decision-making process (May 2013). As such, a compromise can be made between individual citizens or between their representatives, e.g. legislators or lawyers (Jones and O’Flynn 2012).¹⁰ In the intrapersonal sense, compromise occurs within a person’s own head. Intrapersonal compromise thus refers to the fact that a person also has to compromise with herself if she is to compromise with another person.

¹⁰ While a compromise between legislators or lawyers has binding consequences, compromise between citizens can be understood to serve the more informal purpose of ensuring continued cooperation in the midst of disagreement (see Bohman 1996). However, depending on how a compromise is reached, compromise between citizens can also have macro-political uptake – for example, if a compromise is reached through the venue of mini-publics. For an analysis of macro-political uptake through mini-publics, see Goodin and Dryzek (2006).

More specifically, a person compromises with herself in that she has to sacrifice some of her principles that are in conflict with other principles that she holds. As Chiara Lepora points out, “in the intra-personal case, the compromise is among principles all of which you harbour but not all of which can be simultaneously pursued” (Lepora 2012, 3). Thus understood, intrapersonal compromise pertains to the decision which of the conflicting principles to sacrifice. In addition, it can be argued that intrapersonal compromise also refers to the very decision whether or not to compromise at all. This would be the case if, for example, someone’s core principle is to never give up on his ideals – in other words, not to compromise on his values. In this case, the very decision to compromise is itself a compromise, because the person decides to compromise on his core principle not to compromise.

Some theorists claim that the standard meaning of compromise refers to the interpersonal sense, suggesting that the intrapersonal notion of compromise is “figurative and parasitic upon the standard notion of compromise as an interpersonal or inter-party matter” (Jones and O’Flynn 2012, 118).¹¹ Lepora, in contrast, claims that the intrapersonal sense of compromise is, in fact, the more fundamental of both senses in which compromise can be understood. More specifically, Lepora argues that intrapersonal compromise logically precedes the very possibility of achieving an interpersonal compromise: Interpersonal compromise requires a compromise of our own principles first (Lepora 2012).

¹¹ See also May 2013 for the view that compromise is essentially an interpersonal matter.

To this, one might object that interpersonal compromise is prior to intrapersonal compromise in that interpersonal compromise is the ultimate goal that sets the necessity for intrapersonal compromise in the first place. After all, there is hardly a need to compromise internally if there is no necessity for interpersonal compromise. However, in this case, it is not interpersonal compromise *as such* that is prior to intrapersonal compromise, but it is rather the *necessity for* interpersonal compromise (due to disagreement or conflict) that logically precedes intrapersonal compromise – and that, in fact, precedes interpersonal compromise as well.

1.5. WHY COMPROMISE?

The question “why compromise” can be understood in two different ways. First, it can refer to the question why someone would want to compromise, motivationally speaking. Secondly, it can refer to the normative question why, or for which reasons, we should compromise. This section addresses the question in the latter, normative sense. More specifically, the debate in political theory revolves around the question whether compromise can be justified for pragmatic or for principled reasons (Bellamy 2012; May 2005; Weinstock 2013).

We have pragmatic reasons to compromise if we prefer a specific compromise over the alternative of not compromising in terms of the consequences that either option yields. That is, if we agree to a compromise for pragmatic reasons, we assume that the compromise is necessary in order to achieve goals that are important to us (May 2005) and that the compromise will improve (or at least not worsen) the status quo (May 2013). Simon May has advanced the influential argument that compromise can *only* be justified

for pragmatic reasons of that kind. As he puts it, “moral compromise in political life is only ever warranted for pragmatic reasons” (May 2005, 317).

Other theorists, in contrast, argue that compromise can also be justified for principled reasons.¹² A principled reason for compromise that is frequently discussed in the literature is respect (Bellamy 1999, 2012; Bellamy et al. 2012; Dobel 1990; Weinstock 2013). Respect is considered to be a justified reason for compromise especially in situations of reasonable disagreement, where the conflicting principles are equally reasonable and at the same time irreconcilable. In other words, compromise can be justified if it is motivated by respect for the diversity of beliefs and values that are characteristic of pluralistic societies. Thus understood, compromise “is a kind of agreement *that does not deny the plurality of society*” (Bellamy et al 2012, 279; italics in original).

In addition, it has been argued that compromise can be an important mechanism for restoring equal respect for all citizens when democratic institutions fail to do so (Weinstock 2013). More specifically, Weinstock argues that deficits in securing equal respect and inclusion are inherent in democratic institutions: These deficits are “an institutional feature, rather than a real-world bug” (Weinstock 2013, 550) and therefore

¹² It should be emphasized that while May *categorically* rejects compromise for principled reasons, supporters of principled compromise do not categorically reject pragmatic compromise. Rather, they argue that compromise can *also* be justified for principled reasons.

require remedies other than institutional improvements – remedies such as principled compromise.

Further arguments in favor of principled compromise have been introduced by Weinstock as “the argument from epistemic finitude” and “the argument from embeddedness” (Weinstock 2013). The former relates to the idea that if we acknowledge the limits of our reasoning capacities, we have a principled reason to compromise, especially if we disagree with persons that we consider to be epistemic peers. In addition, according to the argument from embeddedness, we have a principled reason to compromise if we reject the idea of a “winner-takes-all” society. In this case, compromise allows us to express our dissatisfaction with this kind of society. Through compromise, we can incorporate the concerns of others, even if doing so is not necessary for pragmatic reasons.

1.6. THE LIMITS OF COMPROMISE

While compromise can be normatively desirable (whether for pragmatic reasons or principled reasons or both), there are also cases where compromise is not justified. The crucial question then is: What are the limits of compromise? That is, when is a compromise not justified?

Avishai Margalit’s “On compromise and rotten compromises” (2010) discusses this question at length. Margalit claims that “rotten compromises” are never justified, not even for the sake of securing international peace. Rotten compromises are agreements to establish inhumane regimes which exert humiliation and cruelty. Margalit argues that inhumane regimes are never justified because they erode morality and thereby the very

foundation of treating one another as fellow human beings. But he also emphasizes that rotten compromise is the only kind of compromise that warrants a categorical prohibition: “Only rotten compromises are bad enough to be avoided at all costs” (Margalit 2010, 160). Indeed, generally speaking, Margalit emphasizes that even morally questionable compromises (with the exception of rotten compromises) are often better than the alternative of not compromising, especially so if a compromise serves to secure peace.¹³

While the categorical rejection of compromise in Margalit’s account is restricted only to the case of rotten compromises, other theorists propose more narrow constraints. Weinstock, for example, claims that we need to hold our ground against unreasonable persons (Weinstock 2013).¹⁴ Similarly, Richard Bellamy argues that one should not compromise with those who put forward sexist or racist arguments or with fanatics who are not willing to justify their views and who do not respect the opinion of others (Bellamy 1999). Gutmann and Thompson also invoke disrespect as a potential reason for refusing a compromise. The authors suggest that signs of disrespect, such as threats or manipulation,

¹³ Morally questionable (but not rotten) compromises are, for example, compromises that are based on suspicious motives (“shady deals”); compromises that involve unfair exchanges (“shoddy deals”); or compromises that exploit a party’s vulnerabilities (“shabby deals”). See Margalit (2010, 3-4).

¹⁴ Weinstock cautions however against the temptation to consider those who disagree with us to be unreasonable, simply *because* they disagree with us. This warning needs to be taken seriously, especially given the evidence that disagreeing parties tend to perceive each other as biased, a perception that can easily lead to conflict escalation (Kennedy and Pronin 2008).

can warrant denying a compromise, even if that compromise would improve the status quo (Gutmann and Thompson 2012).

However, Gutmann and Thompson also caution against the ambition to devise general criteria for differentiating between desirable and non-desirable compromise. In their view, “it is a mistake to try to find unconditional principles that separate acceptable from unacceptable compromises” (Gutmann and Thompson 2012, 49-50). Instead, they suggest, we need to consider the specifics of each disagreement in order to determine the justifiability of a particular compromise. Margalit similarly urges a case-by-case evaluation of the merit of concrete compromises, emphasizing that abstract rules cannot cover all possible scenarios in which the normative evaluation of a compromise is necessary (Margalit 2010). Theodore Benditt similarly argues that the limits of compromise cannot be determined in advance through abstract criteria – an unfortunate situation that, as he claims, often leaves us in a quandary (Benditt 1979).

The quandaries pertaining to compromise do not only relate to its limits but also, as we will see in the following section, to its realization – especially so for the case of moral compromise.

1.7. THE CASE OF MORAL COMPROMISE

Compromise can accommodate different kinds of disagreement. An important distinction in this regard is between compromise that accommodates moral disagreement (“moral compromise”) and compromise that accommodates non-moral disagreement (“non-moral compromise”). The conceptual distinction between principles and interests serves as a

useful framework for addressing the difference between moral compromise and non-moral compromise.

Roughly speaking, moral compromise can be understood as pertaining to principles, i.e. beliefs and values that are based on moral convictions and that are often part of one's identity. Non-moral compromise, in contrast, can be understood as pertaining to mere interests. The notion of interests refers to material interests such as income and wealth (Gutmann and Thompson 2012), and to other goods that can be distributed, such as power (Benditt 1979).¹⁵ This section is concerned with compromise on principles, i.e. moral compromise. In this context, two significant questions arise: 1) Is moral compromise *theoretically* possible? And 2) is moral compromise *practically* possible?

Regarding the first question whether moral compromise is theoretically possible, the concern is whether it is theoretically possible to *partially* sacrifice values and beliefs, as moral compromise requires. That is, are moral principles not all-or-nothing matters that are either fully implemented or not implemented at all? Gutmann and Thompson hold a clear answer to this question: "A compromise on moral principles is theoretically possible

¹⁵ Admittedly, the distinction between principles and interests is somewhat fuzzy, especially since interests are often derived from moral principles (Gutmann and Thompson 2012). However, the crucial point here is not the distinction between principles and interests as such, but the fact that moral compromise (on principles) differs significantly from non-moral compromise (on interests). As Benditt remarks, however we draw the difference between principles and interests, the point remains that "there is undoubtedly a difference in the character of the conflict when principles and ideals are explicitly involved as opposed to when the parties see the conflict as between interests" (Benditt 1979, 32).

since principles are seldom realized only all or nothing – often one can realize one’s principles partially” (Gutmann and Thompson 2012, 77-78). Indeed, we only need to look at the way in which political ideals (such as justice, liberty, or equality) are realized in our societies and it becomes clear that the partial realization of ideals is not only theoretically possible but is, indeed, the default rather than the exception. There is, therefore, no reason to assume that moral compromise is theoretically impossible.

A different question is whether moral compromise is practically possible. The question here is whether it is realistic to expect the disagreeing parties to partially concede what they consider to be morally right, and to partially accept what they consider to be morally wrong.¹⁶ In addition, as Lepora emphasizes, not only does compromise require that we partially accept what we consider to be wrong as a theoretical matter, but it also requires that we partake in (what we consider to be) wrongdoing in practice. Therefore, as Lepora puts it, “from each party’s perspective, compromise necessarily involves interacting with, and sometimes contributing to, wrongdoing” (Lepora 2012, 2). Furthermore, as has been pointed out by Benditt, moral compromise can negatively affect one’s sense of self. If we accept a moral compromise, we might lose esteem not only for

¹⁶ Note that the realization of compromise is not considered to be a significant problem for non-moral compromise. As Benditt points out, “it is much easier to accept a compromise between competing interests – particularly when they are expressible in terms of a numerical scale like money – than between opposed principles which purport to be objectively valid” (Benditt 1979, 27-28).

the other party but also for ourselves (Benditt 1979) – we are compromised, as the saying goes.¹⁷

In conclusion, then, it is clear that moral compromise demands considerable sacrifice from the involved parties. But while the demandingness of moral compromise is largely acknowledged, the practical implications of this demandingness have not received sufficient attention. Further research is therefore required on the feasibility of moral compromise. More specifically, research is needed that identifies potential difficulties in realizing compromise on moral issues and that indicates solution strategies for reducing potential feasibility problems. Research of this kind is the necessary basis for developing compromise-based approaches to conflict resolution that will work in practice.¹⁸

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¹⁷ For a revealing genealogical analysis of the reasons why compromise has become such a “boo – hurray concept”, see Fumurescu (2013).

¹⁸ I address this point in chapter 3.

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CHAPTER 2

ON THE PRACTICAL POSSIBILITY OF OVERLAPPING

CONSENSUS AND COMPROMISE

2.1. INTRODUCTION

This chapter aims to lay the foundation of an ideal theory of disagreement resolution.¹⁹ For that purpose, two concrete solutions to disagreement are discussed: Overlapping consensus and compromise. More specifically, I evaluate whether John Rawls's idea of an overlapping consensus constitutes an ideal solution to reasonable disagreement, as Rawls suggests.²⁰ I will argue that overlapping consensus is not a reliable ideal and that an ideal theory of disagreement resolution should consider compromise as an alternative for those cases where overlapping consensus fails.

An overlapping consensus designates the idea that we can achieve a shared view on politically relevant issues, even while holding conflicting comprehensive doctrines, i.e. conflicting views regarding “the major religious, philosophical and moral aspects of

¹⁹ I am here primarily concerned with disagreement resolution as it pertains to the socio-political sphere, rather than the private sphere.

²⁰ Rawls, of course, discusses overlapping consensus as a solution to disagreement about justice in particular, while this chapter is concerned with solutions to disagreement about socio-political issues in general. There is, however, no reason why Rawls's idea of an overlapping consensus should not be discussed as a solution to issues other than justice as well.

human life” (Rawls 2005, 59). An overlapping consensus therefore designates an agreement that all parties can endorse from their respective views – they just endorse the agreement for different reasons.

Compromise, too, can be agreed upon for different reasons, but unlike overlapping consensus, compromise also requires that each party concedes something to the other party. Compromise always requires sacrifice, while overlapping consensus emerges from conflicting positions without concessions.

On the face of it, it might seem as if an ideal theory of disagreement resolution should exclude compromise as an ideal solution to disagreement, given the sacrifice that compromise inevitably entails. Instead, it seems that overlapping consensus is an ideal solution to disagreement, given that it is in accordance with the values that the disagreeing parties endorse through their comprehensive doctrines. Rawls, for one, therefore considers overlapping consensus to be an ideal solution to (reasonable) disagreement (Rawls 2005).

The case is, however, less clear than it might seem. More precisely, determining an ideal solution to disagreement becomes a more complex endeavor once we look at the notion of ideal theory in more detail. If we do, it turns out that it is, in fact, Rawls’s own conception of ideal theory that constitutes a problem for his endorsement of overlapping consensus as an ideal solution to reasonable disagreement. Rawls conceives of ideal theory as a “realistic utopia”, meaning that the goals of ideal theory do not only have to be normatively desirable but also *practically possible* (Rawls 2001, 4).²¹ However, Rawls

²¹ Note that in this chapter, I use the terms “practically possible” and “practical possibility” instead of “feasible” and “feasibility”. The reason for this terminological change is to stay

does not address the question of practical possibility for the ideal of an overlapping consensus, which is problematic in terms of the very conception of ideal theory that he endorses.

As I will show in this chapter, overlapping consensus scores very low on practical possibility, which can be explained with Rawls's own notion of the "the burdens of judgment", i.e. "the many obstacles to the correct (and conscientious) exercise of our powers of reason and judgment in the ordinary course of political life" (Rawls 2001, 35). According to Rawls, our judgments can, for example, be burdened by complex or conflicting empirical evidence; different weighing of relevant considerations (which is in turn conditioned by different life experiences); different interpretations of (vague) concepts; or by employing different kinds of normative considerations (Rawls 2005, 56-57).

I suggest that the low practical possibility of overlapping consensus – due to the burdens of judgment – makes it necessary to consider an alternative solution that we can aim for in those cases where overlapping consensus is not practically possible. I suggest that compromise constitutes such an alternative because compromise can be normatively desirable and it scores higher on practical possibility than overlapping consensus.

More precisely, my point is that an ideal theory of disagreement resolution should not rely on overlapping consensus alone, given its low practical possibility. Instead, an

consistent with Rawls's terminology, which is important since Rawls's conception of ideal theory (which postulates practical possibility as a requirement) provides the conceptual framework for this chapter.

ideal theory of disagreement resolution should propose compromise as an alternative for those cases where overlapping consensus is not practically possible. To be clear, the idea is not that compromise replaces overlapping consensus as an ideal solution to disagreement, but rather that compromise is a solution that we should aim for when overlapping consensus fails.

It should be noted that this chapter's analysis of the practical possibility of overlapping consensus and compromise does not claim to be exhaustive – the practical possibility of both kinds of agreement might also be affected by phenomena other than the burdens of judgment.²² But by addressing how the burdens of judgment can affect the practical possibility of overlapping consensus and compromise respectively, this chapter provides a deeper understanding of the ways in which the practical possibility of disagreement resolution can be impacted. This, in turn, constitutes a crucial insight for an ideal theory of disagreement resolution that aims to be realistically utopian. It is in this sense that this chapter lays the foundation of an ideal theory of disagreement resolution.

I develop my argument according to the following structure. Section 2.2 specifies the concepts of ideal theory and of practical possibility, both of which are particularly important for my argument. Section 2.3 evaluates the practical possibility of overlapping consensus, arguing that overlapping consensus scores low on practical possibility due to the burdens of judgment. Section 2.4 argues that compromise scores higher on practical

²² Another way in which this chapter's analysis is not exhaustive is the focus on compromise as an alternative to overlapping consensus. Further research is required on the practical possibility of other desirable solutions to disagreement, especially consensus.

possibility than overlapping consensus, because the burdens of judgment do not impact the practical possibility of compromise in the same way in which they impact the practical possibility of overlapping consensus. I conclude that if an ideal theory of disagreement resolution aims to be practically possible, it should endorse compromise as a solution for those cases where an overlapping consensus cannot be achieved.

2.2. IDEAL THEORY AND PRACTICAL POSSIBILITY

2.2.1. IDEAL AND NON-IDEAL THEORY

The literature on ideal theory has seen an impressive surge in the last decade, especially regarding the relationship between ideal and non-ideal theory.²³ While it is not my goal here to engage with the debate as such, the distinction between ideal and non-ideal theory serves as a useful background for identifying the distinctive features of ideal theory. Since this chapter is concerned with developing the foundations of an ideal theory of disagreement resolution, it is crucial to clarify what ideal theory is in the first place.

Generally speaking, ideal theory is supposed to identify what is normatively desirable – to “[chart] morally desirable social worlds”, as Pablo Gilabert and Holly Lawford-Smith put it (Gilabert and Lawford-Smith 2012, 819). Non-ideal theory, in contrast, is supposed to devise strategies for realizing the goals of ideal theory; in particular, non-ideal theory is supposed to accommodate noncompliance (Stemplowska and Swift 2012).

²³ E.g. Hamlin and Stemplowska 2012, Robeyns 2008, Simmons 2010, Stemplowska 2008, Swift 2008, Valentini 2009, 2012, Ypi 2010.

Rawls, who introduced the distinction between ideal and non-ideal theory, considers ideal and non-ideal theory to relate to each other sequentially: Ideal theory comes before non-ideal theory. Ideal theory has to come first because it enables non-ideal theory to follow in a meaningful way. More concretely, ideal theory fulfills two roles, an “urgency role” and a “target role” (Stemplowska and Swift 2012, 376). In its urgency role, ideal theory identifies what needs to be changed most urgently. For example, in the context of Rawls’s work, ideal theory identifies which existing injustices are the most severe.²⁴

In its target role, ideal theory identifies the targets at which non-ideal theory is supposed to aim. That is, ideal theory identifies what needs to change in the first place and which solutions are normatively desirable. As Rawls puts this point, “ideal theory (...) is a necessary complement to nonideal theory without which the desire for change lacks an aim” (Rawls 2005, 285). Thus understood, an ideal theory of disagreement resolution constitutes an important precursor to empirical research on conflict resolution. Before researching how we can implement resolution strategies, we first want to know which resolution strategies are the most ideal – in terms of both, desirability and practical possibility.

Rawls emphasizes that ideal theory is not only about setting the normative targets for non-ideal theory; ideal theory itself should also be *realistically utopian*. This means that the goals of ideal theory have to be not only desirable but also practically possible. In

²⁴ Even though Rawls is concerned with an ideal theory of justice specifically, it is understood that his conception of ideal theory can be usefully applied to other theories as well (Stemplowska and Swift 2012) – e.g. an ideal theory of disagreement resolution.

fact, Rawls claims that “probing the limits of practicable political possibility” is one of the crucial tasks of ideal political philosophy (Rawls 2001, 4).²⁵ This task is, however, difficult to fulfill, because the limits of practical possibility are often not set in stone – they are not, as Rawls puts it, always “given by the actual” (Rawls 2001, 5). Rather, what is practically possible often depends on features that can be changed, such as social, cultural and political institutions.

This chapter understands ideal theory in the Rawlsian sense of a realistic utopia, i.e. a utopia that is normatively desirable *and* practically possible. For an ideal theory of disagreement resolution, this means that possible solutions to disagreement need to be both normatively desirable and practically possible. Given that practical possibility is a crucial condition of ideal theory, it is necessary to specify the notion of practical possibility in more detail. This is the subject of the next section.

2.2.2. SPECIFYING PRACTICAL POSSIBILITY

Even though Rawls emphasizes the importance of practical possibility, he does not further specify the conditions of practical possibility. This conceptual gap has recently been filled by Mark Jensen who establishes four conditions of practical possibility. To be practically possible, an ideal has to be *logically consistent*; it has to *conform to physical laws*; it has to *presume our world history*; and it has to *reflect human abilities* (Jensen 2009, 172).

²⁵ The notion of *practicable* political possibility has alternatively been called “*practical* (political) possibility” (Jensen 2009, Rawls 1999, Stemplowska and Swift 2012). For the sake of conceptual consistency, I exclusively use the term *practical possibility* in this chapter.

The first three conditions are bivalent in the sense that they either apply or not – there is no middle ground in the sense that these conditions could apply partially. With regard to those three conditions, an ideal is either practically possible or not. The fourth condition (that an ideal has to *reflect human abilities*) is, in contrast, not (necessarily) bivalent in that sense. Human abilities tend to reduce (or support) the practical possibility of an ideal to different degrees rather than rendering an ideal practically impossible – which makes the fourth condition especially complex to evaluate. At the same time, the fourth condition is the condition that is the most significant for the purpose of evaluating the practical possibility of socio-political ideals, given that their realization usually relies heavily on human abilities. Therefore, according to Jensen, ideal (political) theory should focus on practical possibility as it pertains to human abilities (Jensen 2009).

An ideal theory of disagreement resolution is a case in point. The practical possibility of solutions to disagreement, such as overlapping consensus or compromise, does in fact, rely heavily on human abilities. The question then is: How can we evaluate the practical possibility of an ideal, the realization of which relies on human abilities? To address this question, it is useful to differentiate between hard and soft constraints.²⁶

²⁶ It is noteworthy that the classification of something as a constraint is highly context-dependent. Nothing is a constraint just by itself – what makes something (a feature of human nature or of the environment, say) a constraint is its impeding role in achieving a particular goal. For example, a wall can be a constraint if I want to move in the direction that the wall blocks; but it can also provide much-needed shadow in which I can rest. Therefore, whether or not a wall constitutes a constraint depends exclusively on the goals that I have – whether it is proceeding in a specific direction or resting in the wall's shadows.

Hard constraints are constraints that cannot be changed or overcome and thus correspond to the bivalent conditions of practical possibility (Gilbert and Lawford-Smith 2012). When an ideal-theoretical proposal faces a hard constraint, that proposal is not practically possible. The notion of hard constraints thus constitutes a useful conceptual category for evaluating the first three conditions of practical possibility (i.e. *logical consistency, conformity to physical laws, presumption of our world history*).

Soft constraints, in contrast, designate constraints that are malleable (Gilbert and Lawford-Smith 2012). As such, soft constraints do not exclude practical possibility. When an ideal faces a soft constraint, that ideal is still practically possible – we just need to find the right approach to overcome a respective soft constraint. Soft constraints therefore do not correspond to the bivalent conditions of practical possibility. Instead, they provide a useful category for analyzing constraints that pertain to human abilities.²⁷

More specifically, soft constraints pertain to what Holly Lawford-Smith has labeled “scalar feasibility”. Scalar feasibility means that an ideal can be practically possible to different degrees. As Lawford-Smith puts it, an ideal “is more feasible the less it clashes with the relevant soft constraints” (Lawford-Smith 2013, 258).²⁸ That is to say

²⁷ To be sure, human abilities *can* exclude the practical possibility of an ideal and thus constitute a hard constraint for that ideal. However, in the context of socio-political ideals, the category of soft constraint is more applicable to classifying human abilities.

²⁸ As mentioned above, for the sake of conceptual consistency within this chapter, I use the terms “practically possible” or “practical possibility” instead of “feasible” or “feasibility”.

that the less soft constraints an ideal faces, the higher its practical possibility; and the more soft constraints an ideal faces, the lower its practical possibility.

In addition, it would seem that the practical possibility of an ideal is not only affected by the *quantity*, but also by the “*quality*” of the soft constraints that the ideal faces. This is to say that not every soft constraint is equally difficult to overcome – for some soft constraints, solution strategies can be quickly developed, while it might take years to do so for others. I therefore suggest that the quality of soft constraints, thus understood, should also play a role when we evaluate the practical possibility of an ideal.

In sum, a conception of practical possibility in the scalar sense, as developed by Lawford-Smith, will allow us to differentiate between ideals with high or low practical possibility. This differentiation is crucial for the purpose of devising an ideal theory of disagreement resolution, for the following reason. If an ideal theory of disagreement resolution entails ideals that score low on practical possibility, these ideals, while remaining practically possible, are nevertheless not practically possible in a reliable manner – which is obviously highly problematic for the purpose of conflict resolution.

In fact, recommending ideals with low practical possibility seems to defeat the very purpose of conceiving of ideal theory as a realistic utopia in the first place. If practical possibility matters for ideal theory, we should also make sure that the respective ideals are practically possible in a reliable manner. This is not to say that an ideal should be excluded from ideal theory because it scores low on practical possibility. But if an ideal scores low on practical possibility, it will be important to include alternative options.

Employing a scalar understanding of practical possibility, I will argue in the following that overlapping consensus scores low on practical possibility and that therefore an ideal theory of disagreement resolution is well advised to recommend an alternative solution for those cases where overlapping consensus fails. I suggest that this alternative is compromise.

2.3. EVALUATING THE PRACTICAL POSSIBILITY OF OVERLAPPING CONSENSUS

2.3.1. OVERLAPPING CONSENSUS AND REASONABLE DISAGREEMENT

The fundamental assumption underlying the idea of an overlapping consensus is that persons with conflicting comprehensive doctrines can still endorse the same position on a specific issue – they just endorse the position for different reasons, i.e. those reasons that are derived from their comprehensive doctrines.

If disagreement consists in conflicting comprehensive doctrines that are all reasonable, we speak of reasonable disagreement. More specifically, Rawls understands reasonable disagreement as disagreement between reasonable persons (who, according to Rawls, only hold reasonable comprehensive doctrines). Reasonable persons are characterized 1) by a willingness to offer and abide by fair terms of cooperation (provided that others do so as well) and 2) by an acceptance of the burdens of judgment.²⁹

²⁹ Note that for Rawls, the notion of reasonableness does not necessarily refer to an epistemic quality. But even though, as he puts it, “being reasonable is not an epistemological idea”, it does have “epistemological elements” (Rawls 2005, 62). While Rawls does not further specify the way in which reasonableness has epistemological elements, we can infer a possible interpretation from Rawls’s assumption that reasonable persons “share a common human reason [and] similar powers of thought and judgment”

Rawls considers reasonable disagreement, understood as disagreement between reasonable persons thus characterized, to be an intrinsic feature of free, democratic societies. As Rawls remarks, “the political culture of a democratic society is always marked by a diversity of opposing and irreconcilable religious, philosophical, and moral doctrines” (Rawls 2005, 3-4). As a feature that is inherent in democratic societies, reasonable disagreement is, according to Rawls, best accommodated through overlapping consensus.

I agree with Rawls that an overlapping consensus is an ideal solution to reasonable disagreement.³⁰ If an agreement exists between reasonable positions and if those positions can potentially overlap in the same conclusion, an overlapping consensus is indeed a

(Rawls 2005, 55). This means that in Rawls’s view, reasonable persons have similar reasoning capacities, i.e. similar capacities to draw inferences or weigh evidence (Rawls 2005, 55). We might therefore conclude that reasonableness involves epistemic elements in the sense that reasonable persons are assumed to have similar reasoning powers.

³⁰ In my view, an ideal theory of disagreement resolution should not be restricted to reasonable disagreement, but should be concerned with the applicability of overlapping consensus to unreasonable disagreement as well. Unreasonable disagreement, according to Rawls, is based on “prejudice and bias, self- and group-interest, blindness and wilfulness” (Rawls 2005, 58). Addressing the applicability of overlapping consensus to unreasonable disagreement is, however, beyond the scope of this chapter. But if we are to address this point, it will also be important to compare the desirability between overlapping and regular consensus. If people disagree based on prejudice or bias, should we not rather aim for a regular consensus, i.e. try to change their mind, instead of finding an overlapping consensus?

desirable goal (provided, of course, that a solution to the disagreement is preferable to continued disagreement). In short, from a purely normative angle, there is not much to be said against the ideal of an overlapping consensus.³¹

However, as elaborated above, normative desirability alone is not sufficient for ideal theory. Ideals also have to be practically possible in a reliable manner. I will argue in the following that overlapping consensus scores low on practical possibility and is therefore not an ideal that we can rely on achieving.

2.3.2. TWO REASONS WHY OVERLAPPING CONSENSUS SCORES LOW ON PRACTICAL POSSIBILITY

I suggest that overlapping consensus scores low on practical possibility for two reasons. The first reason is that practical possibility presupposes theoretical possibility (and the theoretical possibility of an overlapping consensus is not always given); and the second reason is our reduced ability a) to form consistent positions and b) to recognize an overlapping consensus when one is theoretically possible. I will elaborate on both reasons in what follows.

Regarding the first reason, the idea is that in order to be practically possible, an overlapping consensus has to be theoretically possible in the first place. I suggest that an overlapping consensus is theoretically possible if conflicting positions can logically

³¹ There are, obviously, limits to the desirability of an overlapping consensus as well, in the sense that an overlapping consensus can be morally questionable – e.g. if an overlapping consensus is based on unreasonable positions. While this point is worthy of discussion, this chapter proceeds from the Rawlsian conception of an overlapping consensus as the best solution to *reasonable* disagreement.

overlap in the same conclusion. In this sense, theoretical possibility is a necessary condition for practical possibility. If conflicting positions cannot theoretically overlap in the same conclusion, an overlapping consensus cannot be practically possible either.

But theoretical possibility is only a necessary, not a sufficient condition for the practical possibility of overlapping consensus. In addition to being theoretically possible, an ideal must also be reliably achievable through human abilities. This brings us to the second reason why overlapping consensus scores low on practical possibility: Restrictions on human abilities. I suggest that two restrictions on human abilities are particularly problematic in this regard: Restrictions on our ability to form consistent positions; and restrictions on our ability to recognize a potential overlapping consensus if one is theoretically possible.

Both restrictions require further elaboration. Regarding the first restriction, the notion of a “consistent position” refers to the idea that a position is consistent with commonly shared values – e.g. the commonly shared value that lower intelligence does not constitute a reason to eat other living beings, such as children or mentally disabled persons (this specific commonly shared value will play a role in the example below – as we will see, we might currently endorse views that are, in fact, not consistent with this value).³²

³² To clarify: I henceforth refer to positions that are consistent with commonly shared values as “consistent positions”; and I refer to positions that are inconsistent with commonly shared values as “inconsistent positions”.

The second restriction (our reduced ability to recognize a potential overlapping consensus) can result from the first restriction but does not necessarily have to. We might not be subject to the first restriction at all, i.e. hold a perfectly consistent view on a contested issue, and might still not be able to recognize that our view can lead to the same conclusion as our opponent's view. In this case, the second restriction occurs independently from the first restriction. But it might also be the case that we are unable to recognize a theoretically possible overlapping consensus precisely *because* we proceed from an inconsistent position, i.e. a position that is inconsistent with commonly shared values. In this case, the second restriction is based on the first restriction, because it is the fact that our position is inconsistent with commonly shared values that prevents us from recognizing an overlapping consensus.

The following considerations proceed from the assumption that holding a consistent position increases the theoretical possibility of overlapping consensus. This assumption is based on the following reasoning. If conflicting positions are still consistent with commonly shared values, those shared values constitute the basis for a potential overlap between the conflicting positions. The theoretical (and hence practical) possibility of overlapping consensus is therefore increased if the parties to a disagreement hold positions that are consistent with commonly shared values. To be sure, this does not mean that inconsistent positions cannot under any circumstances lead to an overlapping consensus. But the chances of this to happen are low, as I will demonstrate in the example below.

2.3.3. OVERLAPPING CONSENSUS AND THE BURDENS OF JUDGMENT

I have suggested above that one reason why overlapping consensus scores low on practical possibility is our reduced ability a) to form consistent positions and b) to recognize an overlapping consensus when one is theoretically possible. I will now argue that the source of both reduced abilities are the burdens of judgment. If my argument is correct, this means that the burdens of judgment are, in fact, a fundamental reason for the reduced practical possibility of overlapping consensus – which is somewhat ironic since it is Rawls’s own notion of the burdens of judgment that reduces the practical possibility of his proposed solution to reasonable disagreement.

I propose that the burdens of judgment can reduce both, our ability to form consistent positions and our ability to recognize an overlapping consensus when one is theoretically possible. As such, the burdens of judgment can reduce the practical possibility of overlapping consensus in a direct and indirect manner. The burdens of judgment can *directly* impact the practical possibility of overlapping consensus by preventing us from recognizing potential overlaps in our conflicting views. And the burdens of judgment can *indirectly* impact the practical possibility of overlapping consensus by preventing us from forming consistent positions in the first place. The influence is indirect, since in this case the burdens of judgment reduce the practical possibility of overlapping consensus by reducing its theoretical possibility.

In what follows, I provide an example to illustrate the ways in which the burdens of judgment can reduce the practical possibility of overlapping consensus both directly and indirectly. Consider the following example of a disagreement in politics.

A national ethics commission is charged with the task to develop a proposal on how to treat non-human animals in their society.

The members of the commission are split into two camps. One camp (camp I) believes that non-human animals are intelligent ($A=I$) but not perceptive to pain. In addition, camp I believes that intelligence constitutes a reason not to be used as food ($I \} F$).³³

The other camp (camp P) believes that non-human animals are perceptive to pain ($A=P$) but are not intelligent. In addition, camp P believes that susceptibility to pain constitutes a reason not to be used as food ($P \} F$).

We can formalize each camp's position in the following way:

Camp I believes: ($A = I$): *Animals are Intelligent* and ($I \} F$): *Intelligence excludes usage as Food.*

Camp P believes: ($A = P$): *Animals are susceptible to Pain* and ($P \} F$): *Susceptibility to Pain excludes usage as Food.*

Is it practically possible for the ethics commission to achieve an overlapping consensus on this issue?

³³ One might object that this position is not very plausible – who would assume that animals are not susceptible to pain? But the point here is not to portray specific positions that are prominently endorsed in our societies, but rather to develop an example of disagreement that can occur in politics and society. For that purpose, the exemplary disagreement does not have to reflect majority positions – disagreements that involve minority positions can require accommodation just as urgently as disagreements that involve majority positions.

Before evaluating practical possibility in terms of human abilities, it is necessary to first evaluate whether an overlapping consensus is theoretically possible. As elaborated above, practical possibility presupposes theoretical possibility. An overlapping consensus cannot be practically possible if it is not theoretically possible in the first place.

In the above example, it is indeed theoretically possible that both positions can result in an overlapping consensus, even though each position rejects the other. Both positions can theoretically lead to the conclusion that animals should not be used as human food (A } F).³⁴ An overlapping consensus on (A } F) is theoretically possible because it can be endorsed by both camps, even though for different reasons.

As for camp I, (A } F) is a logical consequence of their positions (A = I) and (I } F). If camp I assumes that intelligence constitutes a reason not to be used as human food, and if camp I further assumes that animals are intelligent, it follows that animals should not be used as human food.

As for camp P, (A } F) is a logical consequence of (A = P) and (P } F). If camp P assumes that susceptibility to pain constitutes a reason not to be used as human food, and if camp P further assumes that animals are susceptible to pain, it follows that animals should not be used as human food.

Since (A } F) is theoretically possible, we can now proceed to evaluate its practical possibility in terms of human abilities. Let us first consider which concrete human abilities are required so that an overlapping consensus on (A } F) is practically possible. Basically, the members of both camps have to be able to recognize that their respective positions

³⁴ Read: (A } HF): *Non-human Animals exclude usage as Food.*

logically imply (A } F). At a first glance, this requirement might seem fairly easy to comply with. The belief that animals are intelligent, combined with the belief that intelligence excludes usage as human food (and respectively the belief that animals are susceptible to pain, combined with the belief that susceptibility to pain excludes usage as human food), seems to quite effortlessly lead to the conclusion that animals should not be used as human food.

And yet, as plausible as this might seem, it does not reflect the reality of human abilities. Most of us, I would assume, endorse the belief that animals are intelligent or susceptible to pain (or both). And most of us, I assume, endorse the belief that intelligence or susceptibility to pain constitutes a reason not to use someone as human food. Most of us, then, can resonate with the position of camp I or camp P, or perhaps even both, meaning that most of us should be able to recognize (A } F) as well. And yet, (A } F) is not a position that most of us endorse – otherwise most of us would not eat meat.

This example illustrates how the burdens of judgment can *directly* impact our ability to recognize an overlapping consensus. In this case, our positions are consistent with commonly shared values and yet we do not conclude (A } F). To come back to the example of the ethics commission, let us assume that some members conclude (A } F) while others do not. I suggest that the burdens of judgment can explain why the members of the ethics commission arrive at different conclusions (despite holding consistent positions) – and thus why the practical possibility of achieving an overlapping consensus is significantly reduced in this case.

Some members of the ethics commission might, for example, struggle with the *empirical evidence* on the health affects of meatless nutrition – say, regarding the question

whether we can get enough protein without eating meat. Other members, in contrast, might be convinced by the empirical evidence that plant-based protein is more than sufficient to keep us healthy. Or, to use another burden of judgment, the members of the ethics commission might all proceed from the assumption that animal-based protein is easier to come by than plant-based protein and that some people might therefore not get sufficient protein without meat consumption. But even though all members might agree on this point, they might put *different weight* on it. Some members might consider this point important enough to recommend (A { F), while other members might put more weight on the well-being of animals than convenient protein coverage for humans and thus recommend (A } F).

In addition to directly inhibiting our ability to recognize an overlapping consensus, the burdens of judgment can also affect us indirectly. To illustrate this point, let us consider a slightly modified version of the above example. Camp P's position, let us assume, stays the same – the members of camp P endorse positions (A = P) and (P } F) and conclude (A } F). The members of camp I continue to endorse positions (A = I) and (I } F), but in this case, they do not conclude (A } F) due to the following change in their position.

Assuming (A = I), the members of camp I also assume that some animals have higher and some lower intelligence. So far so good. But, let us assume, while camp I generally endorses (I } F), they understand intelligence in this context only in terms of higher intelligence. Camp I therefore concludes that only higher intelligence constitutes a reason not to be used as human food (HI } F), while lower intelligence does not constitute such a reason (LI { F). Based on this position, the members of camp I do not endorse (A

} F), but instead conclude that only animals with higher intelligence should not be used as food (AHI } F), while animals with lower intelligence can be used as human food (ALI } F). This position is henceforth denoted as the position of camp I*.

Camp I*'s position can be formalized in the following way:

(HI } F): Higher Intelligence excludes usage as Food

(LI { F): Lower Intelligence includes usage as Food

(AHI } F): Animals with Higher Intelligence should not be used as Food

(ALI { F): Animals with Lower Intelligence can be used as Food

(HI } F), and likewise (LI { F), are, however, inconsistent positions in the sense that they conflict with other values that the members of camp I* most certainly endorse. If camp I* uses only higher intelligence as a reason not to eat animals, while lower intelligence is not considered to constitute such a reason, camp I* faces a dilemma when it comes to justifying why we should not use human animals with lower intelligence for food – e.g. children or mentally disabled persons. Obviously, the members of camp I* would not want to be associated with such an outrageous view. This outrageous view is, however, inherent in (ALI { F) and (AHI } F) respectively. If we believe that non-human animals with lower intelligence can be used as food, it is not clear why it is wrong to use human animals with lower intelligence as food as well.³⁵ Camp I*'s beliefs (HI } F) and

³⁵ In drawing this conclusion, my argument proceeds from a rejection of “speciesism”. The term speciesism designates “a prejudice or attitude of bias in favor of the interests of members of one’s own species and against those of members of other species” (Singer 1990, 6). In fact, Peter Singer explicitly ties speciesism to a view on non-human animals

(LI { F) are therefore deeply inconsistent with the commonly shared values that camp I* most certainly endorses.

Due to their inconsistent position, it is difficult for the members of camp I* to achieve an overlapping consensus with camp P. (HI } F) and (LI { F) lead to conclusions (AHI } F) and (ALI { F) – but not to conclusion (A } F), given that the latter implies that *no* animals should be used for food, no matter the level of intelligence. We can therefore assume that it is very unlikely for camp I* to achieve an overlapping consensus with camp P.

This case illustrates how the burdens of judgment can indirectly reduce the practical possibility of overlapping consensus. That is, the burdens of judgment can reduce our ability to form positions that are consistent with commonly shared values, and positions that are inconsistent in this way decrease practical possibility because they significantly reduce the likelihood that an overlapping consensus is even theoretically possible.

As with direct influence, the burdens of judgment can be used to explain our inability in this matter. Take, for example, the burden of judgment that is constituted by *vague concepts*. The concept of intelligence seems to fit the description of vagueness quite well and it is therefore not surprising that judgments involving evaluations of intelligence can be misguided. In the above example, the members of camp I* apply the implications

that corresponds to the position of camp I*. Singer asks: “If possessing a higher degree of intelligence does not entitle one human to use another for his or her own ends, how can it entitle humans to exploit nonhumans for the same purpose?” (Singer 1990, 6).

of low intelligence only to non-human animals, ignoring the implications that {LI { F} has for human animals. By restricting the application of low intelligence to non-human animals, the inconsistency of (LI { F) remains hidden. In fact, the very concept of an animal is vague to the degree where we tend not to consider humans to be animals in the first place – which further obscures the inconsistency of (ALI { F).

Or consider how *different normative weighing* can burden our judgment. Perhaps the members of camp I* *do* recognize that (LI { F) is problematic if applied to human animals, but they simply apply a double standard – (LI { F) applies to non-human animals, but not to human animals. But which specific burden ultimately impacts the judgment formation in this case is not important. The important point is that the burdens of judgment can negatively affect the formation of positions that are consistent with commonly shared values, which in turn reduces the practical possibility of achieving an overlapping consensus (by reducing the likelihood that an overlapping consensus is theoretically possible).

To be clear, I am not suggesting that inconsistent positions necessarily make an overlapping consensus theoretically impossible. In rare cases, even inconsistent positions that contradict shared values might, by chance, imply ideas that can lead to an overlapping consensus. But that is precisely the point. In the case of inconsistent positions, the theoretical possibility of overlapping consensus is only a matter of chance – and an ideal solution to disagreement should be more reliable than that.

Alternatively, one might suggest that an overlapping consensus can be theoretically possible if we can get those with inconsistent positions to change their views,

e.g. by pointing out that their views are inconsistent with other values that they all share.³⁶ But this presumes that someone detects the respective inconsistencies in the first place – which, I suggest, is another case where the burdens of judgment can strike. Just as the burdens of judgment can impede the formation of consistent positions, they can make it difficult to detect inconsistent positions as well. It is certainly true that it is often easier to detect inconsistencies in positions other than our own, and especially so if we are motivated to do so because we disagree with those positions. But it stands to reason that our ability to detect inconsistencies is still reduced by the burdens of judgment, even if we look at positions that we reject.

Still, it is certainly possible that people can be persuaded to change their inconsistent positions to consistent ones. If we proceed from this assumption, an overlapping consensus is *always* theoretically possible because we can assume that everyone can potentially be persuaded to adopt a position that can overlap with a conflicting position. But such a conception of theoretical possibility defeats the purpose of this argument. If we simply proceed from the assumption that theoretically everyone could change their views, no matter how unlikely that is in a specific context, we do not even have to think about disagreement resolution in the first place. Theoretically, agreement is always possible. In this chapter, the theoretical possibility of overlapping

³⁶ Note that the change of views here refers merely to a change from inconsistent to consistent views, but not to a change of views in the sense of agreeing with the other party's position – in that case, we would have a consensus, not an overlapping consensus.

consensus therefore presumes each party's positions as they are – it presumes that attempts to change inconsistent views have failed.

In sum, the previous considerations suggest that we should not take our ability to form an overlapping consensus for granted. Quite the contrary, the burdens of judgment can significantly reduce our ability to form an overlapping consensus, both directly and indirectly. The burdens of judgment can directly reduce the practical possibility of overlapping consensus in that we might not be able to recognize the way in which our positions can overlap with diverging views, even if an overlap is theoretically possible. And the burdens of judgment can indirectly reduce the practical possibility of overlapping consensus in that we might not be able to form consistent positions in the first place, which reduces the theoretical possibility of overlapping consensus and thus its practical possibility as well.

These results are important for the purpose of developing an ideal theory of disagreement resolution, for the following reason. As argued above, the ideal of an overlapping consensus scores low on practical possibility, meaning that overlapping consensus is not achievable in a reliable way. If, as I have suggested, reliability matters for the purpose of disagreement resolution, an ideal theory of disagreement resolution is well advised to include another ideal solution that we can aim for in those cases where overlapping consensus is not practically possible. In the following section, I argue that compromise constitutes such an alternative.

2.4. COMPROMISE AS AN ALTERNATIVE TO OVERLAPPING CONSENSUS

2.4.1. WHY COMPROMISE CAN BE DESIRABLE

Before evaluating the practical possibility of compromise, it is necessary to establish that compromise can be normatively desirable in the first place. After all, from an ideal-theoretical perspective, there is no need to evaluate the practical possibility of a solution that cannot be desirable from a normative perspective.

To start with, compromise is similar to overlapping consensus in that both kinds of agreement can be based on overlapping principles. This similarity might lead us to assume that compromise is normatively desirable in the same way that overlapping consensus is. However, both kinds of agreement differ in one important aspect that requires a separate normative evaluation of compromise. While an overlapping consensus constitutes an agreement that all parties fully endorse, compromise constitutes an agreement that involves sacrifice for each party.

More specifically, while a compromise can include principles that each party endorses, it also includes principles that each party rejects (otherwise we do not have a compromise, but a consensus or overlapping consensus). Alternatively, a compromise can consist exclusively in principles that are external to the original disagreement – but in this case, compromise also involves sacrifice because neither party can accommodate their original views. A compromise can also consist exclusively in principles that both parties agree on – overlapping principles so to speak. But even in this case, compromise requires sacrifice because the compromise does not involve the contested principles (which can be

the principles that are the most important to each party).³⁷ Given the necessity to sacrifice some of our principles when we agree to a compromise, we can say that compromise always involves a feeling of regret (Lepora 2012). This feeling of regret is not only caused by our own sacrifice of principles, but also by having to accept the partial accommodation of principles that we reject (at least that is the case for *conjunction compromise*).

But even though compromise involves regret, it can still be desirable from a normative perspective. The literature on compromise discusses two ways in which a compromise can be desirable: A compromise can be desirable for principled or for pragmatic reasons. A compromise can be desirable for pragmatic reasons if that compromise allows us to achieve important goals that we cannot achieve otherwise (May 2005).³⁸ And a compromise can be desirable for principled reasons if that compromise allows us to realize principles that are important to us, such as expressing respect for each other (Bellamy 1999, 2012; Bellamy et al. 2012; Dobel 1990; Weinstock 2013).³⁹ Assuming that compromise can be desirable – whether for principled or pragmatic reasons or both – we can now take a closer look at its practical possibility.

³⁷ These three kinds of compromise have been called *conjunction compromise*, *substitution compromise*, and *intersection compromise* respectively (see Lepora 2012, Lepora and Goodin 2013).

³⁸ According to Simon May, pragmatic reasons are the *only* kind of reasons that can warrant a compromise.

³⁹ For additional principled reasons to compromise, see Weinstock (2013). For a more detailed discussion of the debate between proponents of principled and pragmatic compromise, see chapter 3.

2.4.2. WHY COMPROMISE SCORES HIGHER ON PRACTICAL POSSIBILITY THAN OVERLAPPING CONSENSUS

I suggest that compromise scores higher on practical possibility than overlapping consensus because the consequences of the burdens of judgment are less inhibiting in the case of compromise. More specifically, I suggest that the burdens of judgment are less inhibiting precisely in those instances where they tend to reduce the practical possibility of overlapping consensus.

I have argued above that the burdens of judgment can reduce the practical possibility of overlapping consensus both directly and indirectly. The burdens of judgment can directly reduce the practical possibility of overlapping consensus by impairing our ability to recognize an overlapping consensus when one is theoretically possible. And they can indirectly reduce the practical possibility of overlapping consensus by impairing our ability to form consistent positions, which significantly reduces the likelihood that an overlapping consensus is theoretically possible. This, in turn, reduces the practical possibility of overlapping consensus, given that theoretical possibility is a precondition for practical possibility.

We are, of course, subject to the burdens of judgment whether we aim for overlapping consensus or compromise. But, or so I argue, the burdens of judgment do not significantly reduce the practical possibility of compromise. To corroborate this claim, let us consider again the case of camp I* where the burdens of judgment reduce the practical possibility of an overlapping consensus on (A } F).

To recapitulate the argument briefly, I have suggested that camp I* is not able to recognize that (A } F) constitutes a potential overlapping consensus with camp P because camp I* proceeds from a position that is inconsistent with commonly shared values. More specifically, I have suggested that camp I*'s position (LI { F) is inconsistent with the commonly shared value that lower intelligence does not constitute a reason to use human animals (with lower intelligence) for food.

I have further suggested that an overlapping consensus is very unlikely in this case, given that camp I*'s inconsistent position (LI { F) does not lead to the same conclusion that camp P can draw from their consistent positions (A = P) and (P } F). That is, while camp P's position leads to conclusion (A } F), camp I*'s position leads to conclusion (AHI } F). In this case, the burdens of judgment indirectly prevent both camps to achieve an overlapping consensus on (A } F), because they prevent camp I* from forming a consistent position in the first place, which reduces the theoretical and thus practical possibility of achieving an overlapping consensus with camp P.

In contrast, inconsistent positions do not pose a significant problem for the practical possibility of compromise. That is, compromise is always theoretically possible, even if we proceed from inconsistent positions. Returning to our example, let us assume that the controversy between camp I* and camp P revolves around the specific case of eating fish. Camp P holds that fish should not be used as human food (F } F), in line with their assumption that all animals feel pain and that therefore no animal should be used as human food. Camp I*, in contrast, holds that fish should be used as human food (F { F), in line with their assumption that only higher intelligence constitutes a reason not to be

used as food (and proceeding from the assumption that fish qualify as beings with lower intelligence).

Positions (F } F) and (F { F) are diametrically opposed and it seems that an overlapping consensus is not even theoretically possible on this matter. A compromise, in contrast, is theoretically possible in this case. For example, both camps could agree to recommend a policy that requires a reduction of fishing by half in, say, the next two years. This agreement constitutes a compromise for both camps because each camp can realize their position only partially. Camp I* agrees to less fish consumption than they desire, while camp P agrees to more fish consumption than they desire.

We can therefore establish that inconsistent positions do not reduce the theoretical possibility of compromise, which also increases the practical possibility of compromise. But, as argued above, the practical possibility of a solution to disagreement does not only presuppose theoretical possibility – it also requires the human ability to recognize a desired solution when it is theoretically possible.

I have argued above that the burdens of judgment can reduce our ability to recognize an overlapping consensus when one is theoretically possible. For the case of compromise, I suggest that even though the burdens of judgment can prevent us from recognizing a potential compromise, this does not significantly reduce the practical possibility of compromise. The reason for this claim is that compromise, unlike overlapping consensus, does not require us to recognize *one specific* outcome. Compromises can come in many forms – the above compromise to reduce fishing by half within the next two years is only one way in which both camps could compromise.

Alternatively, both camps could choose a different reduction rate (e.g. reduce fishing by two thirds rather than by half), or they could agree on a different timeframe for implementing the reduction (e.g. implement the respective reduction in three rather than two years). In fact, both camps do not even have to recognize this specific mode of compromising. Instead of recommending regulative policies, the members of both camps could choose a completely different route to reduce fish consumption, e.g. through educational programs or advertising. This is not to say that the burdens of judgment cannot reduce the practical possibility of compromise as well – they certainly can, but with a significantly lower likelihood than they reduce the practical possibility of overlapping consensus.

Before concluding this chapter, it will be useful to add a few remarks regarding the fact that the above considerations imply that a compromise is a desirable goal in the example of the ethics commission. It seems to me that a compromise in this case could be justified for both principled and pragmatic reasons. A compromise might be justified for principled reasons, in that it allows the members of the ethics committee to express their respect for each other, which can also form the basis for increased cooperation on disputed issues in the future. Or a compromise might be justified for pragmatic reasons, in that the compromise can be considered to be better for the fish than the status quo. Better to save the lives of half the fish than saving no fish.

In contrast to this, one might also argue against the desirability of a compromise on this matter. One might, for example, point out that a compromise is less desirable than continued disagreement in this case, because a compromise might leave the committee members complacent with the situation and thus less inclined to invest more effort in

reducing animal suffering. But whether or not a compromise is actually desirable in this specific example is not the point of this chapter – it is sufficient to note that compromise *can* be a desirable solution, to this disagreement and generally speaking.

In conclusion, then, this chapter’s analysis of the practical possibility of overlapping consensus and compromise suggests that an ideal theory of disagreement resolution should endorse both overlapping consensus and compromise. Given the sacrifice that compromise inevitably entails and that overlapping consensus avoids, we are right to prefer overlapping consensus to compromise from a purely normative angle. However, ideal theory is about more than just normative desirability. Ideal theory also has to be practically possible and, as I have argued in this chapter, compromise scores significantly higher on practical possibility than overlapping consensus. To be sure, we should aim to achieve an overlapping consensus if we can. But in those cases of reasonable disagreement where overlapping consensus is not practically possible, we should aim for compromise.

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CHAPTER 3

IS MORAL COMPROMISE FEASIBLE?

3.1. INTRODUCTION

“It seems that compromise is one of those values both necessary and impossible”

Avishai Margalit, On Compromise and Rotten Compromises.

This quote from Avishai Margalit (2010, 12) expresses the dilemma that motivates this chapter: If compromise is indeed both necessary and seemingly impossible, this is a cause for concern.⁴⁰ However, while the necessity of compromise is increasingly acknowledged in political theory, the question of its feasibility is seldom explicitly addressed.

The necessity of compromise is often justified with reference to its role in resolving moral disagreements that emerge naturally in pluralistic societies (Bohman 1996, Bellamy 1999).⁴¹ By resolving moral disagreement, compromise contributes to avoiding potential social strife, violent protest or even war – all of which are possible consequences of unresolved moral disagreement. Furthermore, it has been argued that

⁴⁰ The term “compromise”, as it is used in this chapter, refers moral compromise specifically. In particular, this chapter is concerned with moral compromise in civil society, i.e. compromise between citizens with conflicting moral values.

⁴¹ It should be noted that compromise “resolves” disagreement in a practical, not in an epistemic sense. In a compromise, the disagreeing parties continue to disagree epistemically, but they resolve their disagreement with regard to its potential consequences in practice, such as violent conflict.

compromise is necessary for avoiding stagnation in political decision-making. Political stagnation can easily result from unresolved disagreements, which is particularly problematic because political stagnation oftentimes preserves an unjust status quo (Gutmann and Thompson 2012). Finally, compromise is considered to be appropriate for accommodating reasonable disagreements, because it does justice to the fact that all sides to a disagreement have – at least from their own point of view – good reasons for their respective position (Bellamy 2012, Bellamy et al. 2012, Weinstock 2006, 2013).

While we might intuitively agree that compromise is necessary in pluralistic societies, Margalit's impression that compromise seems to be impossible might be counterintuitive. After all, why should we think that compromise is impossible if it is so significant for social peace and justice? If we are aware of the benefits of compromise in terms of avoiding war and injustice, it stands to reason that we are also motivated to compromise. I argue that while intuitively plausible, this view is mistaken. Instead, Margalit has a point in indicating a potential feasibility problem for (moral) compromise.

I suggest that the feasibility problem for moral compromise is based on a powerful emotional reluctance towards compromising on moral values. This emotional reluctance, which I call "affective aversion", is likely to overshadow the voice of consequentialist reasoning that might speak in favor of compromise. I argue that affective aversion tends to be our default position towards moral compromise, which potentially reduces its feasibility. I use the qualifier "potentially" because affective aversion can be addressed with the proper antidote. This antidote, I suggest, is an affective attitude of respect that we experience for each other by virtue of being fellow human beings.

In section 3.2, I develop the notion of affective aversion with reference to research in cognitive science on moral judgment formation. In section 3.3, I assess the implications of affective aversion for two dominant normative conceptions of compromise, principled and pragmatic compromise. I argue that moral compromise is more likely to be realized if it is motivated by principled instead of pragmatic reasons. This means that even if we agree that compromise can only be *justified* for pragmatic reasons (May 2005), our motivation to *realize* moral compromise in practice has to be based on principled reasons.

3.2. THE AFFECTIVE AVERSION TO COMPROMISE

In this section, I develop the argument that our attitude towards moral compromise tends to be characterized by an affective aversion to compromise on moral values. The term affective aversion does not merely designate the idea that it is hard to sacrifice one's values. Rather, the affective aversion to compromise is *fundamental* in that it results from the emotion-based, and to a large degree non-conscious, process of moral judgment formation.

The process of moral judgment formation is important in this context because moral disagreement is *constituted* by (conflicting) moral judgments. Thus understood, moral disagreement is essentially a cognitive phenomenon: We have a moral disagreement on, say, abortion or immigration policies, if we have conflicting moral judgments about whether abortion is morally right or wrong or whether immigration policies should be guided by liberal or conservative concerns.

In this sense, compromise is about accommodating the conflicting moral judgments of the parties to a disagreement. To resolve moral disagreement then,

compromise-oriented strategies need to take into account the psychological complexity of moral judgment formation. In what follows, I use research in cognitive science on moral judgment formation as a foundation for developing the notion of affective aversion.

It should be noted that two kinds of moral judgment are relevant in the context of compromise. The first kind of judgment pertains to concrete moral issues such as abortion, immigration, the environment, or animal rights. Conflicting judgments on such issues constitute moral disagreement. The second kind of judgment pertains to the decision on whether or not to compromise *on* the first kind of judgment. We might think of the first kind of judgment as “first-order judgments” and of the second kind of judgment as “second-order judgments”. As I will show, second-order judgments (on whether or not to compromise) are inherently linked to the emotional basis of first-order judgments on specific moral issues.

3.2.1. EMOTIONAL PRIMACY

I develop the concept of affective aversion in line with the growing consensus in cognitive science that moral judgments emerge primarily from emotional processes. While the list of researchers who endorse this view is long (e.g. Greene et al. 2001; Damasio 1994, 2003; Frijda et al. 2000; Helion and Pizarro 2015; Johnson 2014; LeDoux 1996; Lerner et al. 2015; Nichols 2004), I focus in this chapter on three well-established approaches to moral judgment formation: Jonathan Haidt’s *Social Intuitionist Model* (Haidt 2001, 2012),

Joshua Greene's *Dual Process Model* (Greene 2008, 2013, 2014), and Jesse Prinz's *Constitution Model* (Prinz 2006, 2007).⁴²

To start with, the “emotional primacy” in moral judgment formation has been prominently articulated in Jonathan Haidt's Social Intuitionist Model, according to which moral judgment is based on intuition by default.⁴³ A moral intuition, according to Haidt, emerges from automatic and non-conscious processes. This means that we are not aware of the processes that lead to an intuition, but only of the intuition as such, which we experience as an “affective valence”, such as a feeling of liking or disliking (Haidt 2001, 818).

Unlike moral intuitions, moral reasoning is considered to be slow, effortful and conscious. However, Haidt argues that rather than contributing to genuine judgment formation, moral reasoning serves primarily to justify the judgments that we have already made intuitively. Haidt labels this phenomenon “post hoc reasoning” (Haidt 2001, 818).

⁴² Each model, obviously, takes a slightly different view on the relation between the emotions and moral judgment. The details in which each model differs from each other is, however, not of concern for this chapter. The important point is that all three models overlap in the core assumption that the emotions play a significant role in moral judgment formation; and it is this core assumption that is relevant for my argument.

⁴³ It should be noted that Haidt's research focuses on intuition rather than on the emotions specifically, while the argument presented in this chapter is about emotion, not intuition. That being said, Haidt's research remains relevant for the purpose of my argument, since, in Haidt's understanding, emotions and intuitions share important cognitive features (Haidt 2012, 385). Hence, Haidt's research on what he labels “intuition” is, to a significant degree, also research on the emotions.

Since we cannot identify the non-conscious processes as the source of our judgments, we refer instead to cultural norms and values to develop post hoc justifications for our judgments.

As an example, consider a person – let us call her Ava – who believes that abortion is morally wrong. We might think that Ava holds this view *because* she believes (among other things) that life begins at conception. However, according to Haidt, Ava’s moral judgment would be better understood in the following way: Based on a variety of external (e.g. cultural) and innate (e.g. evolutionary) influences, Ava has developed the intuition that abortion is wrong. She then contrives the post hoc reason that life begins at conception *in order to justify her intuition* (see Haidt 2001, 817).

The emotional primacy in moral judgment formation is supported by considerable empirical evidence (Greene et al. 2001; Haidt et al. 1993; Schnall et al. 2008; Wheatley and Haidt 2005). For example, one study found that a large majority of study participants continued to condemn a fictive case of consensual incest between two siblings, even after the experimenters were able to refute all of the participants’ specific objections. Eventually, the study participants justified their condemnation with reference to their emotions, stating that they just *feel* that incest is wrong (Haidt 2012). Given the empirical evidence and the increasing consensus in cognitive science on emotional primacy in moral judgment formation, this chapter proceeds from the assumption that moral judgment formation is best understood in terms of emotional primacy.

3.2.2. DEONTOLOGICAL PRIMACY

Based on neuroscientific research on moral judgment formation, Joshua Greene has

formulated a Dual-Process-Model of moral judgment formation, according to which moral judgment can be based on both, automatic, emotional processes or controlled reasoning processes (Greene 2013, 2014). Greene claims that depending on which of the two processes a judgment is based, the judgment will emerge as a deontological or as a consequentialist judgment. More specifically, Greene claims that automatic, emotional processes tend to support deontological judgments while controlled reasoning processes tend to support consequentialist judgments. He calls this the “central tension principle” (Greene 2014, 699). In Greene’s conception, deontological judgments are characterized by a concern with rights and duties, while consequentialist judgments are characterized by a concern with the consequences that a moral judgment entails.

At this point, one might wonder if the weighing of consequences does not involve emotional processes as well. After all, how can we evaluate the harms and benefits of a specific judgment if we do not experience some kind of emotional feedback? If emotional feedback is necessary for consequentialist judgments, does it make sense to say, as Greene does, that consequentialist judgments are based on reasoning processes?

Greene addresses this concern by pointing out that controlled reasoning also involves the emotions (Greene 2008). But, according to Greene, controlled reasoning processes involve a different *kind* of emotions than automatic processes. In this context, he differentiates between emotions that are “alarm-like” and emotions that are “subtle”. Alarm-like emotions are like powerful commands that tell us “Don’t do it!” or “Must do it!” (Greene 2008, 64). The alarm-like kind of emotions is involved in automatic processes, which tend to cause deontological judgments. In contrast, subtle emotions are more like a “currency” for weighing the pros and cons of a decision. They tell us “such-

and-such matters this much. Factor it in” (Greene 2008, 64). The subtle kind of emotions is involved in controlled reasoning processes, which tend to cause consequentialist judgments.

In this chapter, I understand the difference between reasoned and automatic moral judgment in accordance with the differentiation proposed by Greene. That is, reasoned judgment is understood to involve subtle emotions while automatic judgment is understood to involve alarm-like emotions.

Now, if we accept both emotional primacy and the central tension principle, the logical consequence is what we might call a “deontological primacy”. That is, if moral judgment is by default based on automatic processes, in the sense that it is based on processes involving alarm-like emotions (emotional primacy) and if automatic processes lead to judgments that tend to be deontological (central tension principle), then, by consequence, moral judgments tend to be deontological by default.

In the context of moral disagreement, deontological primacy means that those involved in a disagreement will not necessarily opt for the solution with the best overall consequences. Instead, they will tend to act according to what *they* think is the morally *right* thing to do, even if that is in opposition to what is best for everyone involved in the conflict. What each person considers to be right will be based on their deontological perspective – which is oftentimes opposed to what might be considered to be right from a consequentialist perspective.

Indeed, I claim that the divergence between deontological and consequentialist conceptions of what is right constitutes a crucial reason why moral compromise is so

difficult to achieve. From a consequentialist perspective, compromise is the right thing to do if it leads to the best consequences, such as avoiding violent conflict or political stagnation. From a deontological perspective, however, the threat of violence or political stagnation is not necessarily considered to be a sufficiently good reason to compromise on what is (or what one considers to be) right. I explore this idea in more detail in what follows.

3.2.3. DEFENDING WHAT IS RIGHT: THE DEONTOLOGICAL AVERSION AGAINST COMPROMISE

I suggest in the following that deontological primacy implicates an affective aversion to compromise. More specifically, I suggest that if we morally disagree with another person, we are likely to consider it our moral *duty* to defend our judgments against being compromised. In what follows, I develop an explanation why we experience deontological primacy as a duty to defend, rather than to compromise, our values.

Jesse Prinz's Constitution Model of moral judgment formation, and his conception of self-justifying judgments in particular, are helpful for understanding why deontological primacy constitutes a problem for the feasibility of moral compromise. Prinz's Constitution Model holds that moral judgments are *constituted* by emotions. This means that what we believe to be right or wrong is determined by feelings of approbation or disapprobation respectively (Prinz 2007). Because they are constituted by feelings of approbation or disapprobation, moral judgments are *self-justifying*. More precisely, the feeling of approbation towards the values that we endorse in our judgments inherently conveys the impression that our judgment is justified (Prinz 2006).

According to Prinz, the emotions that constitute a moral judgment convey a sense of moral rightness, because “emotionally grounded moral judgments have a kind of perception-like immediacy that does not seem to require further support” (Prinz 2006, 37). In other words, when we make a moral judgment, we immediately experience a sense of rightness that is directed towards our own moral view and that negates the necessity for further justification. To illustrate this point, let us apply Prinz’s account of moral judgment to the example of Ava discussed earlier. According to Prinz’s model, if Ava holds the moral judgment that abortion is wrong, she believes at the same time that this judgment is justified because the feeling of approbation that constitutes her judgment also conveys a sense that her judgment is right.⁴⁴

These considerations allow us to understand why deontological primacy implicates an affective aversion to compromise. In a situation of moral disagreement, the felt deontological duty to do what is right translates into a duty to defend our moral judgment against being compromised, because we emotionally associate our judgment

⁴⁴ It should be noted that, for Prinz, a moral judgment can be constituted by both a disposition to experience an emotion and by the actual experience of an emotion. Prinz distinguishes in this context between emotions and sentiments, where a sentiment is the disposition to experience an emotion and an emotion is the actual feeling of bodily changes (Prinz 2006). This means that I can sincerely claim to consider sexism to be wrong, without necessarily experiencing the “perception-like immediacy” of a disapproving emotion (e.g. anger) while making that claim. However, to sincerely hold the moral view that sexism is wrong, I will have to feel anger (or another disapproving emotion) at least in some instances when I am confronted with sexism. Otherwise, if I never feel disapproving emotions in the face of sexism, I cannot truly hold the view that sexism is wrong (see Prinz 2006).

with moral rightness. For this reason, I argue, the second-order judgment on whether or not to compromise is intrinsically linked to the emotional basis of first-order judgments: The feeling of moral rightness that is inherent in first-order judgments emerges also at the level of second-order judgments – namely as the distinct impression that we must not compromise on what we *feel* is the right moral position. This means that the second-order judgment on whether or not to compromise will likely be in favor of defending rather than compromising on our values.

The analysis of affective aversion indicates that compromise is a very demanding strategy for resolving moral disagreement. Moral compromise requires that we sacrifice some of the values that we consider to be right and concede to the implementation of values that we believe to be wrong. Crucially, we believe the respective values to be right and wrong not merely at the (conscious) level of reasoning, but also at the (non-conscious) visceral level with all its motivational force.

3.2.4. DIFFERENCES IN EXPERIENCING AFFECTIVE AVERSION

I suggest that affective aversion is our default position towards moral compromise. This is so because affective aversion results from the emotions on which moral judgments are based by default. However, it is noteworthy that different persons will likely differ in the *degree* to which they experience an affective aversion to compromise. I propose that two factors are particularly decisive for determining the strength of affective aversion.

First, the degree of aversion will depend on the *stakes* that are involved for the parties to a disagreement. As Scott Atran and Jeremy Ginges point out, the stakes are especially high if the contested values are “fused” with one’s identity. For example, they

studied individuals that strongly identified with either a pro-life or pro-choice position on abortion and found that “the greater the fusion with those values, the greater the willingness to take extreme action” (Atran and Ginges 2015, 77-78). Their findings show that the higher the stakes involved, the stronger the urge to defend one’s values – and thus, I submit, the stronger the aversion to compromise.

A second factor that determines the strength of affective aversion pertains to individual differences in “visual” or “verbal” cognitive styles. A visual cognitive style is “inherently concrete” while a verbal cognitive style involves a high level of abstraction (Amit and Greene 2012, 862). That is, visual cognition is concerned with concrete images while verbal cognition is concerned with abstract meaning.⁴⁵

Eleanor Amit and Joshua Greene found that a pronounced visual cognitive style supports deontological judgments while a pronounced verbal cognitive style supports consequentialist judgments (Amit and Greene 2012). Amit and Greene explain this result by pointing out that individuals with a pronounced visual style are more concerned with the *means*, rather than the ends, that a moral decision entails. Importantly, the focus on means implies a focus on the *concrete* implications of a specific moral decision, such as the harm that is to be done in order to achieve a certain goal.

⁴⁵ For example, a person with a pronounced visual cognitive style will think of a chair in terms of a specific chair that she can envision in its particularities; e.g. a comfortable reading chair with soft, beige cushions, stable wooden legs and broad armrests. In contrast, a person with a pronounced verbal cognitive style will think of a chair in terms of its general constituents, e.g. four legs and a seat.

Applied to moral compromise, these findings suggest that when deciding on whether or not to compromise, individuals with a pronounced visual cognitive style will focus on the means necessary to achieve a compromise. This implies that the very idea of a moral compromise is met with an aversive mindset because the means necessary to achieve a moral compromise inherently entail the sacrifice of moral values. Individuals with a pronounced visual cognitive style are therefore likely to experience an increased aversion to compromise because they focus on the harmful means that are required *to achieve* a compromise rather than on the beneficial ends that can be *achieved by* a compromise.

Vice versa, individuals with a pronounced verbal cognitive style tend to focus on the ends or consequences rather than the means of their decision (Amit and Greene 2012). This means that individuals with a verbal cognitive style tend to experience a weaker aversion towards compromise because they focus on the beneficial ends that a compromise can achieve rather than on the sacrifice that a compromise requires.

Note that according to my argument, individuals with both verbal and visual cognitive styles will experience an affective aversion to compromise. This is so because affective aversion is based on emotional primacy, which applies to *first-order* judgments independent of whether someone has a visual or a verbal cognitive style. Different cognitive styles rather make a difference with regard to the *second-order* judgment on whether or not to compromise on a particular first-order judgment. That is, different cognitive styles make a difference with regard to whether (and to what degree) the emotional basis of first-order judgments *translates* into a compromise-aversive attitude at the level of second-order judgments.

More specifically, I suggest that different cognitive styles can make a difference for the strength of affective aversion in second-order judgments, because verbal and visual cognitive styles imply a difference in focus. As indicated above, individuals with a pronounced visual cognitive style tend to focus on the required sacrifice of moral values (meaning that they focus on the very source of affective aversion), while individuals with a pronounced verbal cognitive style tend to focus on what makes compromise desirable: The positive consequences in terms of avoiding conflict and strife.

In sum, I suggest that affective aversion will be experienced more strongly in individuals that have high stakes in a moral conflict and that have a pronounced visual cognitive style. And conversely, affective aversion will be experienced less strongly for individuals that have lower stakes in a moral conflict and that have a pronounced verbal cognitive style.

However, while theoretically a combination of “low stakes and verbal cognitive style” would increase the feasibility of moral compromise, it would be irresponsible to count on that combination to characterize those involved in a moral disagreement. Indeed, usually it is precisely because the parties to a moral disagreement experience the stakes to be high that the disagreement requires resolution in the first place: The higher the stakes in a moral disagreement, the greater the willingness to engage in violent conflict (Atran and Ginges 2015) – and the greater the need for compromise.

3.3. IMPLICATIONS FOR THE FEASIBILITY OF PRINCIPLED AND PRAGMATIC COMPROMISE

Much of the debate on moral compromise revolves around the normative question whether

compromise is justified for principled or for pragmatic reasons (Bellamy 2012; Jones and O’Flynn 2012; May 2005; Weinstock 2013). In this section, I contribute to this debate from the perspective of feasibility. I claim that principled compromise is more feasible than pragmatic compromise. More precisely, I argue that *if* a particular compromise is normatively justified – whether for principled or for pragmatic reasons – we are unlikely to realize that compromise in practice if we are motivated by pragmatic reasons alone. Instead, a principled endorsement of compromise that is based on mutual respect is more likely to provide a sufficiently strong counterweight to affective aversion.

3.3.1. WHY PRAGMATIC COMPROMISE IS UNLIKELY TO BE FEASIBLE

The term “pragmatic compromise” designates the normative view that we should agree to compromise only if we have pragmatic reasons to do so (May 2005).⁴⁶ According to Simon May, there is no intrinsic appeal to compromise, because compromise inevitably entails sacrifice: “[T]he simple fact that compromise involves some moral loss, however small, stands as an undefeated reason against those moral compromises that are not pragmatically necessary” (May 2005, 348). We therefore should, according to May, only compromise if doing so is advisable from an instrumental perspective; for example, if a compromise is necessary for achieving important moral goals that we cannot achieve otherwise. According to a pragmatic conception of compromise, the desirability of compromise is to be evaluated with regard to consequences, not with regard to principles.

⁴⁶ In a recent expansion of his argument, Simon May (2011) suggests that principled compromise can be justified in personal relationships, but that this does not contradict his argument in favour of pragmatic compromise between citizens.

I argue that even if we agree with May's normative justification of pragmatic compromise, we cannot rely on pragmatic reasons in practice. Pragmatic reasons involve the kind of consequentialist judgment that is unlikely to motivate moral compromise, for two reasons. First, the consequentialist reasoning that underlies pragmatic reasons is not likely to counterbalance our affective aversion to compromise. This is so because consequentialist reasoning involves only the subtle emotions – but in order to counterbalance affective aversion, alarm-like emotions are more promising. I will elaborate on this point below. Here, it is important to recall that, according to Greene's account of moral judgment formation, alarm-like emotions do not characterize pragmatic reasoning about consequences. Rather, alarm-like emotions characterize deontological reasoning, which, I have argued, implicates an aversion to compromise.

Secondly, moral opponents might not even recognize the pragmatic necessity of compromise in its entirety. When we evaluate whether or not to compromise, the pragmatic reasons that we might develop are more likely to be based on post hoc reasoning rather than on genuine reasoning about the necessity of compromise. As post hoc reasons, however, pragmatic reasons will tend to confirm rather than reduce the aversion to compromise.

This claim is based on Haidt's model of moral judgment formation as described earlier. According to Haidt, if we experience strong emotions towards an issue, reasoning takes the form of post hoc reasoning, which aims to confirm the rightfulness of whatever emotional experience we have (Haidt 2001, 2012). And in situations of moral disagreement, the salient emotion is likely an aversion to compromise.

Therefore, even though we might think that we pragmatically compare the costs and benefits of a particular compromise, we are in fact – and under the radar of our awareness – developing reasons that support our intuitive aversion to compromise. We might, for example, search more intensely for reasons against a particular compromise, or we might weigh those reasons more heavily than the reasons that speak in favor of the compromise. I therefore claim that moral opponents are unlikely to compromise on moral issues if they are supposed to be motivated by consequentialist reasoning alone.

The inefficiency of pragmatic reasons for motivating moral compromise is, however, largely underestimated in the literature on compromise. Recall Margalit's counterintuitive claim that compromise is at the same time necessary and impossible. I suggest that underestimating the motivational inefficiency of pragmatic reasons explains why we might consider Margalit's claim to be counterintuitive.

If we assume that a (normative) pragmatic reason *for* compromise also constitutes a (practical) reason *to* compromise, we will plausibly find it counterintuitive to assume that people can fail to compromise for the sake of peace. In that case, we should indeed be puzzled by the reoccurring phenomenon that, as Margalit puts it, “rational agents [can] fail to reach an intermediary compromise point rather than end in a bloody war” (Margalit 2010, 52). But the idea that compromise is both necessary and impossible is only counterintuitive if we assume that pragmatic reasons are sufficiently motivational for moral opponents to compromise. And, as I have argued above, this is very likely not the case.

In sum, I propose that pragmatic compromise, i.e. compromise that is based solely on pragmatic reasons, is unlikely to be feasible because 1) pragmatic reasoning is

characterized by subtle and not by alarm-like emotions (the latter of which, as I will argue in a moment, are more promising for reducing affective aversion); and because 2) pragmatic reasoning is likely to manifest as post hoc reasoning that supports our affective aversion to compromise. Rather than urging us to compromise then, pragmatic reasons are more likely to justify the emotionally salient aversion towards compromising on our values. In the following, I develop the argument that the feasibility of moral compromise increases if compromise is motivated by principled reasons of respect.

3.3.2. RESPECT-BASED PRINCIPLED COMPROMISE

The term “principled compromise” designates the normative view that compromise can be justified by principled reasons. A principled reason for compromise that is frequently discussed in the literature is respect. For example, Richard Bellamy states that “deep compromises need not just to *involve* principles but also to *be principled*, showing mutual respect for the views of others” (Bellamy 2012, 465).⁴⁷ In Bellamy’s conception, deep compromises aim to accommodate the concerns of others *as a matter of principle* and that principle is mutual respect. Similarly, Patrick Dobel claims that mutual respect “directs individuals to consider political compromises as the norm” (Dobel 1990, 80). According to Dobel, respect can justify compromise for a variety of reasons. For example, compromise allows individuals to respect the legitimacy of their opponents’ claims or to

⁴⁷ Peter Jones makes the interesting argument that respect for beliefs is ultimately respect for the persons holding the beliefs: “The ultimate objects of concern in the principle of respect for beliefs are not beliefs as such but the people who hold them” (Jones 1990, 421). I will argue later that for the purpose of achieving moral compromise, respect for persons rather than respect for beliefs is required.

empower underrepresented groups. A related defense of respect as a principled reason for compromise is developed by Daniel Weinstock, who argues that compromise constitutes a remedy to institutional imperfections regarding democratic respect. More precisely, Weinstock claims that compromise allows to “integrate the concerns of ‘losers’ in recognition of the fact that deliberative mechanisms often fail to embody full satisfaction of the principle of democratic respect and inclusion” (Weinstock 2013, 549).⁴⁸

The argument from feasibility as developed in this chapter supports these accounts of principled compromise in the following way. According to a normative account of principled compromise, respect justifies compromise because compromise allows to (partially) accommodate all of the conflicting positions. In this way, compromise provides an opportunity to express respect for persons with different moral views. According to a principled conception of compromise, a justified compromise therefore presupposes that the involved parties respect each other. A respectful attitude is, as I will show in the following, precisely the mindset that the argument from feasibility supports. To be clear, this chapter does not take a stance with regard to the question whether principled compromise is preferable to pragmatic compromise in a normative sense. Rather, my argument is that principled compromise is preferable to pragmatic compromise in the *practical* sense that principled compromise is more likely to be feasible. That is, even if a compromise is justified for pragmatic reasons, we have higher chances to realize that compromise if we have principled reasons to compromise as well.

⁴⁸ For a rejection of respect as a principled reason for compromise, see May 2005.

Amy Gutmann and Dennis Thompson also advance the view that compromise is more likely if the disagreeing parties respect each other. More specifically, Gutmann and Thompson claim that mutual respect is an essential feature of a “compromising mindset”, i.e. a mindset that supports a general willingness to compromise. According to Gutmann and Thompson, respect is essential for a compromising mindset, because respect constitutes an antidote to the mutual mistrust that makes compromise oftentimes difficult to achieve (Gutmann and Thompson 2012).

While I agree with their claim that compromise requires respect, I propose that respect has a more significant role to play than Gutmann and Thompson suggest.⁴⁹ Even though I do not object to Gutmann and Thompson’s argument that respect is important to overcome mutual mistrust, I believe that respect can also serve the – with regard to feasibility – more important function to overcome affective aversion. In what follows, I first clarify what kind of respect is required for increasing the feasibility of moral

⁴⁹ My understanding of a “compromising mindset” differs from Gutmann and Thompson not only with regard to the precise function of respect, but also with regard to their notion of “principled prudence”, which they consider to be a second feature of a compromising mindset (Gutmann and Thompson 2012, 16). According to Gutmann and Thompson, a mindset that is characterized by principled prudence supports compromise if compromise is preferable to alternative options in terms of the consequences that each option entails. Principled prudence thus requires the kind of consequentialist reasoning that, as I have argued, is unlikely to prevail against affective aversion. I therefore disagree with Gutmann and Thompson’s claim that principled prudence is an essential feature of a compromising mindset.

compromise and, based on the conceptual clarification, I proceed to explain why respect can increase the feasibility of moral compromise.

3.3.3. WHAT KIND OF RESPECT DOES COMPROMISE REQUIRE?

What kind of respect is required to increase the feasibility of compromise? The debate on principled compromise refers primarily to a form of respect that can be subsumed under the labels “appraisal respect” or “epistemic respect”.

The notion of appraisal respect derives from Stephen Darwall’s differentiation between recognition respect and appraisal respect. Recognition respect designates a form of respect that concerns a person’s moral status as a human being while appraisal respect designates a form of respect that concerns a person’s qualities of character or behavior (Darwall 1977).

With reference to Darwall’s conceptual distinction, May claims that recognition respect “has no bearing on principled compromise” (May 2005, 340), because disrespecting another person’s moral status constitutes an injustice that requires correction rather than compromise. Instead, May suggests that appraisal respect is conceptually more pertinent to compromise. As he puts it, appraisal respect is “the sense in play when it is argued that the value of respect generates principled reasons for moral compromise” (May 2005, 341). But May denies that moral compromise can be justified on the basis of appraisal respect because compromise is not the only way in which we can express respect for another person’s qualities of character (such as their reasonableness).

In a recent critique of May’s argument, Weinstock defends the relevance of respect for justifying principled compromise. He makes use of an epistemic conception of respect,

which holds that respect is due as a matter of respecting one's epistemic peers. That is, if we acknowledge that our reasoning capacities are limited, we ought to respect that others might be as justified in their judgment as (we think) we are. We are then compelled to compromise with those we disagree with "not in virtue of their moral status as fellow citizens, as moral agents, as ends in themselves, or whatever, but in virtue of their status as knowers and as moral reasoners" (Weinstock 2013, 547).

While Weinstock and May disagree about whether appraisal or epistemic respect can *justify* compromise, both seem to agree on a similar conception of respect to be *relevant* for discussing the justification of moral compromise. This is so because both appraisal and epistemic respect concern the reasonableness of moral opponents rather than their humanness.

I suggest, however, that for the purpose of increasing the feasibility of compromise, a different conception of respect is relevant. The problem is that neither epistemic nor appraisal respect is likely to characterize the mindset of those involved in a moral disagreement. On the contrary, research suggests that rather than to acknowledge the reasonableness of our moral opponents, "we see those who disagree with us as biased and incapable of objective reasoning" (Kennedy and Pronin 2008, 845). This speaks against the likelihood of epistemic or appraisal respect to emerge between the parties to a moral conflict. Rather, the very fact of disagreement will likely be considered to be a reason for epistemic *disrespect*.

One reason why we tend to see our moral opponents as biased is our tendency to assume that however *we* conceive of the world (and of what is right and wrong) reflects an objective reality. If we are objectively right, then whoever disagrees with us must be

wrong, or biased at the least. In this sense, we are “naïve realists” (Kennedy and Pronin 2008, 834). This view of naïve realism is also in accordance with Prinz’s conception of self-justifying judgments that I have presented earlier.

According to Prinz, “moral judgments are self-justifying because the emotions that we experience when we grasp those judgments are also responsible for making the judgments true” (Prinz 2007, 88). This means that we mistake the feeling of approbation that constitutes a moral judgment to be reflective of an objective reality. Hence, because we *feel* that we are right, we assume that someone with an opposing moral view must be mistaken. This contradicts the assumption underlying appraisal or epistemic respect that we acknowledge the reasonableness of other people’s judgments even if these contradict our own moral views.

I suggest that instead of appraisal or epistemic respect, a conception of feasible compromise has to rely on the very notion of recognition respect that both May and Weinstock reject as a relevant form of respect in the context of moral compromise. Recognition respect, or so I propose, is more promising in the matter of feasibility because it does not require moral opponents to respect each other in virtue of what the other person thinks, but simply in virtue of being human.

Recognition respect is therefore likely to persist in situations of disagreement where we disapprove of the other person’s moral outlook. That is, *even if* we disagree with someone on moral values that are important to us, we can still respect that person in virtue of being a fellow human being. In the following, I explain in more detail how recognition respect can increase the feasibility of moral compromise.

3.3.4. HOW CAN RESPECT INCREASE THE FEASIBILITY OF MORAL COMPROMISE?

The suggestion that a respectful mindset increases the feasibility of moral compromise is in line with the empirical work of Atran and Ginges, which indicates that displays of respect can increase the likelihood of compromise (Atran and Ginges 2015). However, according to Atran and Ginges, it is not yet clear why respect has this effect on the willingness to compromise. I propose the following explanation.

In a nutshell, I propose that respect increases the willingness to compromise because it involves a *shift of focus* away from contentious *moral judgments* and towards the *persons* involved in a disagreement. This shift of focus makes moral compromise more feasible because drawing attention away from conflicting moral judgments means to draw attention away from the very source of affective aversion. The shift of focus allows us to engage with our moral opponents in their capacity as fellow human beings, rather than as persons that hold – in our view – severely mistaken moral views.

One might object that it is not clear why we should assume that respect *can* shift our focus away from contested issues in the first place. Indeed, the question arises how this assumption would be different from assuming that consequentialist reasoning can shift our focus away from contested issues and towards desirable outcomes. Since I have argued that consequentialist reasoning is unlikely to be an effective counterweight to affective aversion, why would a respectful attitude be more effective?

I argue that respect is more powerful in shifting the focus of attention because it is an *affective* attitude. By this, I mean that respect is not an attitude that we can just decide to have. Instead, respect is better understood as an attitude that is *emotionally cultivated*.

This conception of respect as an affective attitude is similar to Karen Jones's conception of trust as an affective attitude (Jones 1996). Jones claims that because trust is affective, it cannot be adopted at will – but it can be cultivated if we focus on what makes us trust each other instead of focussing on reasons for distrust. Similarly, I propose that respect is an affective attitude that cannot be adopted at will, but that can be cultivated if we focus on what we respect in each other instead of focussing on reasons for disrespect.

Why does it matter that respect is affective? The guiding idea here is that an unwanted emotion is best counterbalanced with an “opposite” emotion. This idea has been recognized by influential thinkers such as Baruch Spinoza (Spinoza 2000) or William James (James 1890) and is supported by recent research in psychology that emphasizes the importance of the emotions in influencing (moral) judgments and attitudes (Haidt 2012, Lerner et al. 2015). In line with this research, I suggest that an effective remedy to the affective aversion to compromise is to cultivate an affective attitude of respect.

As an affective attitude, respect also increases the feasibility of moral compromise because it is not subject to choice. That is, we cannot simply *decide* to feel respect or disrespect in concrete situations. More precisely, if we have cultivated an affective attitude of respect, we cannot suddenly decide *not* to feel respect for someone else, in case that we disagree with that person's moral outlook.

Still, one might object that my argument neglects the possibility that we might experience a strong emotional reaction (such as fear) towards the *consequences* of not compromising. When we think about the potential violence and destruction that might result if we do not compromise in a moral conflict, will we not experience a strong motivation to compromise, even on dearly held values? In that case, pragmatic reasons

would constitute a powerful counterweight to affective aversion, which would question my earlier rejection of this claim.

As intuitively plausible as this objection might seem, it is not justified psychologically. If Greene's central tension principle is correct, thinking about consequences is inherently less emotional than thinking about means. This is so because the mental processes that we employ when we think about consequences do not involve the kind of alarm-like emotions that characterize our concern with means. A concern with consequences is therefore not likely to provide a sufficiently strong emotional counterbalance to affective aversion.

This point is supported by further empirical research. Atran and Ginges have shown that in situations of moral conflict, thinking about consequences does not significantly influence decision-making, even if the consequences *should* be emotionally salient. For example, they found that even "the prospects of crippling economic burdens and huge numbers of deaths do not necessarily sway people from positions on whether going to war or opting for revolution is the right or wrong choice" (Atran and Ginges 2015, 71). It therefore stands to reason that the affective aversion to compromise tends to persist in spite of potentially terrifying consequences of not compromising.

In sum, I suggest that respect, understood as an affective attitude that has been cultivated over time, is an emotion-based mental state that can guide our interactions with others independent of whether or not we disagree with their moral views. Therefore, even though we will still experience an affective aversion to compromise on moral issues, an affective attitude of respect makes moral compromise more feasible because it means that aversion is not the only behaviour-guiding emotion that we experience: Having cultivated

a respectful mindset, we also feel the pull of respect which, as a matter of principle, can lead us towards compromise.

3.4. CONCLUSION

This chapter has addressed the question whether moral compromise is feasible. Section 3.2 has shed light on potential feasibility problems for moral compromise that emerge from the emotional basis of moral judgments (i.e. the very judgments that are the subject of moral compromise). With reference to research in cognitive science on moral judgment formation, I have developed the argument that we are likely to experience an affective aversion towards compromising on moral values.

Section 3.3 has focused on the implications of affective aversion for the feasibility of principled and pragmatic compromise respectively. I have argued that pragmatic compromise is not likely to be feasible because the consequentialist reasoning on which it is based is unlikely to provide an effective counterweight to affective aversion. I have suggested that principled compromise, in contrast, can be feasible if it is motivated by an affective attitude of respect.

The conclusion of this chapter therefore is that whether (and to what degree) moral compromise is feasible depends on whether we aim to achieve a respective compromise with reference to pragmatic or principled reasons. This also means that whichever conception of compromise we prefer from a normative perspective, in practice, we are well advised to endorse a principled conception of compromise. May claims that “a willingness to engage in (...) moral compromise is best understood as a healthy pragmatism in the pursuit of a basic humanist commitment” (May 2005, 323). Ironically,

contrary to May's claim, in practice, healthy pragmatism consists in principled rather than pragmatic reasons for compromise.

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CHAPTER 4

WHY A FAIR COMPROMISE REQUIRES DELIBERATION

4.1. INTRODUCTION

This chapter argues that the process of compromising needs to be deliberative if a fair compromise is the goal.⁵⁰ My argument is structured in the following way. In Section 4.2, I explain why it is necessary to clarify the procedural nature of compromising. For this purpose, I illustrate a problematic dichotomy that is prevalent in the literature on deliberative democracy, which is the dichotomy between compromise and deliberation. This dichotomy entails the view that the process preceding the achievement of a compromise is essentially a process of negotiating or bargaining, which I claim should not be the case if a fair compromise is the goal. The reason for this claim is, in a nutshell, that negotiation or bargaining processes do not provide for an in-depth understanding of the reasons that each party has for holding their respective position. However, an in-depth

⁵⁰ The term “compromise” can be understood to designate both a process and an outcome. In this regard, Daniel Weinstock distinguishes between “compromise”, which refers to compromise as a process, and “a compromise”, which designates compromise as an outcome (Weinstock 2013, 554-555). Furthermore, Chiara Lepora introduces a third possible meaning of compromise: In addition to compromise understood as “the act of agreeing” and “the content of the agreement”, Lepora points out that compromise can also designate “the actions pursuant to the agreement” (Lepora 2012, 1). For the sake of conceptual clarity, I use the term “compromising” to designate the agreement-seeking *process* and I use the term “compromise” or “a compromise” to designate the *outcome* of that process.

understanding of each other's reasons, is, as I will show, a necessary condition for achieving a fair compromise. In Section 4.3, I propose a conception of fair compromise according to which a fair compromise requires that each party's concessions are proportional to what is at stake for the parties respectively. In Section 4.4, I use this conception of a fair compromise to develop the argument that deliberation is structurally necessary for achieving a fair compromise. From this argument follows the claim that the process of compromising needs to be deliberative if a fair compromise is the goal. Section 4.5 provides a short reflection on the question how important it is that a compromise is fair. Section 4.6 concludes the chapter with a critique of the recent argument by Peter Jones and Ian O'Flynn that compromising and deliberating are analytically distinct activities.

4.2. COMPROMISE VS. DELIBERATION: A PROBLEMATIC DICHOTOMY

One of the primary concerns for deliberative democrats is the question how we can legitimately accommodate moral disagreement in society and politics. As Amy Gutmann and Dennis Thompson state, "[t]he general aim of deliberative democracy is to provide the most justifiable conception for dealing with moral disagreement in politics" (Gutmann and Thompson 2004, 10). Traditionally, it has been assumed that disagreement is best addressed through a deliberative process that focuses on the common good and that eventually leads to consensus. According to Jane Mansbridge et al.

"[i]n the classic ideal [of deliberation], individuals enter a deliberation with conflicting opinions about what is good for the polity, but after voicing and hearing the reasons for different options, converge on one option as the best, for the same reasons. Ideally, the

deliberation is based on reason. It aims at consensus and the common good” (Mansbridge et al. 2010, 66).

This classic ideal is represented in the works of “first-generation” deliberative democrats, such as Jürgen Habermas and John Rawls (Elstub 2010, 291). Crucially for the purpose of this chapter, the classic ideal of deliberation excludes compromise as an acceptable outcome.⁵¹ Or as Jon Elster puts this point, “[n]ot optimal compromise, but unanimous agreement is the goal of politics on this view” (Elster 1997, 12). However, deliberative democrats increasingly acknowledge compromise as a legitimate solution to disagreement. Indeed, as Gutmann and Thompson point out, “many deliberative theorists now not only recognize but also insist on the need for, and value of, political compromise” (Gutmann and Thompson 2012, 84). For Gutmann and Thompson, compromise is a particularly desirable way to respond to fundamental disagreement that would otherwise persist at the expense of political progress and peace.

Other deliberative democratic theorists argue that the deliberative process can and should aim at compromise as a proper goal rather than merely as an alternative in case that a consensus turns out to be unrealistic. For example, Richard Bellamy states that “differences have to be continually and democratically negotiated with compromise not consensus as the goal” (Bellamy 2000, 216). Similarly, Daniel Weinstock argues that “compromise rather than consensus is the goal toward which political debates aim” (Weinstock 2006, 244). Here, the idea is that compromise can be a more adequate solution

⁵¹ See Mansbridge et al. 2010.

to disagreement than consensus, especially in cases of reasonable disagreement where all parties to the disagreement have valid claims.⁵²

The increasing acknowledgment of the importance of compromise for deliberative democracy involves, however, a problematic dichotomy. A default assumption in the literature on deliberative democracy is that deliberation is required only if we aim for consensus. If, on the other hand, we aim for compromise, non-deliberative processes such as negotiation or bargaining are considered to be more appropriate.⁵³ This view is represented, for example, in Philippe Van Parijs's statement that "*negotiation* can lead to a compromise that avoids the costs and risks of conflict, exit or arbitration, whereas *deliberation* can lead to a consensus about what is required for a fair solution" (Van Parijs 2012, 469; italics in original). In brief, the idea is that we achieve *consensus through deliberation* and *compromise through negotiation*.

This view is problematic because it indicates that deliberation and compromise are mutually exclusive phenomena, which, as I argue in this chapter, is not the case. On the contrary, I argue that deliberation and compromise are inextricably connected in that deliberation is a structural necessity for achieving a fair compromise. To be clear: I do not claim that the assumptions inherent in the dichotomous view are mistaken as such. Of course deliberation can and should lead to consensus; and clearly, negotiation and

⁵² For more detailed discussions of the reasons for including compromise in deliberative democracy, see Bellamy 1999, chapters 4 and 5; Bellamy 2012; Gutmann and Thompson 2004, chapter 1; Gutmann and Thompson 2012, chapter 1; Mansbridge et al. 2010; Warren and Mansbridge 2016; Weinstock 2006.

⁵³ Both terms, negotiation and bargaining, are used synonymously in this chapter.

bargaining can and should lead to compromise. My point, rather, is that we are mistaken to assume that negotiation or bargaining can reliably lead to a *fair* compromise.

I also do not claim that the importance of deliberation for compromise, generally speaking, has not been recognized before. The idea that compromise is connected to deliberation has been pointed out by several deliberative democrats. Gutmann and Thompson, for example, suggest that without deliberation, “we forsake the possibility of arriving at a genuine moral compromise” (Gutmann and Thompson 2004, 12). Similarly, Weinstock points out that “the attempt to arrive at a compromise is an exercise in moral deliberation rather than a simple exercise of ‘horse trading’” (Weinstock 2013, 540). Finally, Jones and O’Flynn state that “a substantively fair compromise is more likely to arise if the compromising process takes the form of deliberation rather than bargaining” (Jones and O’Flynn 2012, 127).

However, while these authors acknowledge the necessity of deliberation for compromise in general, their accounts do not demonstrate *why exactly* deliberation is required for achieving a fair compromise. In clarifying the procedural nature of compromising, this chapter aims to fill this gap, thereby supporting existing accounts that generally acknowledge the connection between deliberation and (fair) compromise and questioning those accounts that perpetuate the dichotomous view.

Before proceeding, the view advanced in this chapter needs to be distinguished from a proposal put forward by Mark Warren and Jane Mansbridge. Warren and Mansbridge have recently introduced the idea of a “deliberative negotiation”, which denotes a negotiation process that entails deliberative features, such as mutual justification, respect and a concern with fairness (Warren and Mansbridge 2016, 151). By

introducing this concept, the authors intend to do justice to the fact that negotiation processes can entail deliberative elements, which, in their view, has been largely neglected not only in theory but also in practice.

At a first glance, it might seem as if the idea of a deliberative negotiation already constitutes the required alternative to the dichotomous view that I have outlined above. However, deliberative negotiation constitutes a conceptual alternative to a different dichotomy than the one that I criticize in this chapter. More precisely, deliberative negotiation addresses the dichotomy between deliberation and *negotiation*, not between deliberation and *(fair) compromise*. That is, Warren and Mansbridge problematize the distinction between deliberation and negotiation by pointing out that negotiation processes can be characterized by distinctively deliberative features. But they still conceive of compromise, including fair compromise, as a possible outcome of (deliberative) *negotiation*. Hence, their account perpetuates the misperception that fair compromise is based on a process that is essentially characterized as a form of negotiation (even though it might entail deliberative features). This chapter, in contrast, argues that a fair compromise needs to be based on deliberation properly speaking, not on deliberative negotiation.⁵⁴

⁵⁴ As a side note: The very distinction between deliberative and non-deliberative negotiation seems questionable, because it is not clear how deliberative negotiation differs from deliberation as such (what Warren and Mansbridge call “pure deliberation”). More specifically, deliberative and non-deliberative negotiation processes do not seem to differ *in terms of the procedural features* that characterize them. Warren and Mansbridge state that deliberative negotiation is a form of negotiation that is “based on processes of mutual justification, respect, and reciprocal fairness” (Warren and Mansbridge 2016, 151). This,

4.3. A CONCEPTION OF FAIR COMPROMISE

Since the argument put forward in this chapter concerns *fair* compromise specifically, it is crucial to consider the sense in which a compromise may be said to be fair.

According to Jones and O’Flynn, a compromise can be fair with regard to its content or with regard to the procedure on which it is based. As a matter of *procedural* fairness, a compromise is fair if it is based on a fair process. As a matter of *substantive* (or *end-state*) fairness, a compromise is fair if it reflects a fair outcome (Jones and O’Flynn 2012).⁵⁵ This chapter is concerned with fair compromise in the substantive rather than the procedural sense. The question then is: What kind of outcome qualifies as a fair compromise?

however, seems to describe exactly the features that characterize “pure deliberation” as well.

⁵⁵ Van Parijs argues in this context that once the disagreeing parties consider an outcome to be fair, we no longer speak of a compromise, but of a consensus. He provides the following example: “Suppose a cake needs to be split between you and me in circumstances in which we would each like to eat the whole thing. There is no compromise, but rather a consensus if we both believe that cutting the cake in half is fair” (Van Parijs 2012, 470). I disagree. A fair compromise is still a compromise and not a consensus, because neither party gets what they initially wanted – which, in Van Parijs’s example, is the *whole* cake. Put otherwise, the parties have not changed their minds with regard to their initial desire to eat the whole cake. It is, however, precisely this change of mind that is required for speaking of a consensus. In Van Parijs’s example, even though the disagreeing parties might consider it to be a fair solution that each party gets half of the cake, they do not consider this agreement to be *superior* (or equally good) to getting the whole cake. Therefore, a fair compromise is still a compromise, not a consensus.

To start with, every compromise is characterized by mutual concessions (Bellamy et al. 2012; Gutmann and Thompson 2012; Jones and O’Flynn 2012; Lepora 2012; Margalit 2010; Warren and Mansbridge 2016). As Van Parijs points out, “[a] compromise is an agreement, but not just any agreement. Its distinctiveness resides in the mutual concessions involved” (Van Parijs 2012, 469). I therefore suggest that the fairness of a compromise is to be evaluated with regard to the concessions that each party makes. More precisely, I suggest that a fair compromise is characterized by a *proportionality of concessions*; and I further suggest that the proportionality of concessions is to be determined *in relation to the stakes* that are involved for each party to a disagreement.

This conception of a fair compromise is based on the “proportionality principle” that has been introduced by Harry Brighouse and Marc Fleurbaey. The proportionality principle holds that “[p]ower in any decision-making process should be proportional to individual stakes” (Brighouse and Fleurbaey 2010, 138; italics in original). To be sure, Brighouse and Fleurbaey’s primary concern is with the fair distribution of power in democratic decision-making processes, not with determining the fairness of compromise. But I suggest that the proportionality principle is well suited to determine the fairness of compromise as well, for the following reason.

Brighouse and Fleurbaey justify the proportionality principle by pointing out that a proportional distribution of power is better suited to implement equal respect than an egalitarian distribution of power.⁵⁶ The reason for this claim is that in those cases where

⁵⁶ Brighouse and Fleurbaey also propose two other justifications for the proportionality principle: They argue that the proportionality principle increases individual autonomy and

the stakes are not equal for all citizens and where those citizens with greater stakes are in the minority, an equal share of power often means that minority interests get buried under majority interests – even though it is the minority that has higher stakes in an issue. I suggest that the same reasoning applies to the context of compromise as well. We can hardly profess to show equal respect for two disagreeing parties if we require that both parties split their concessions equally, even though one party has much higher stakes involved in a disagreement. Thus understood, only a distribution of concessions that is proportional to individual stakes can manifest equal respect.

A fair compromise, as it is understood in this chapter, therefore requires that each party's concessions are proportional to what is at stake for them in a specific disagreement. More concretely, this means that the concessions should be lower if the stakes are high and vice versa the concessions should be higher if the stakes are low. Stakes are here understood to pertain to a person's interests and moral values that are affected by a disagreement. For example, a person can be said to have high stakes in a disagreement if the values in question pertain to her identity, or her conception of justice, or to general moral principles that play an important role in leading her life. Conversely, a person can be said to have low stakes in a disagreement if, for instance, she is merely interested in the topic of disagreement without having a deeper connection to the issue, in the sense that the values in question do not affect her sense of self or do not significantly violate

that it leads to the best social outcomes from a consequentialist perspective (see Brighouse and Fleurbaey 2010, 142). Here, I focus on their argument from respect.

moral principles that are important to her. I discuss the difference between high and low stakes more concretely in the next section.

4.4. WHY DELIBERATION IS STRUCTURALLY NECESSARY FOR ACHIEVING A FAIR COMPROMISE

In this section, I explain why deliberation is structurally necessary for achieving a fair compromise.⁵⁷ More specifically, I argue that the process towards achieving a fair compromise needs to be constituted by a deliberative structure from the beginning to the end.⁵⁸ As such, the process of compromising is characterized by a mutual exchange of reasons with the goal of mutual understanding and a fair accommodation of the claims in play – which means that the process of compromising is deliberative in nature.

The claim that deliberation is structurally necessary for achieving a fair compromise is based on the conception of a fair compromise that I have developed in the previous section (i.e. the idea that a fair compromise is characterized by concessions that

⁵⁷ Note that I merely claim that deliberation is *necessary*, not that it is *sufficient* for achieving a fair compromise. There are other factors, such as the mindsets of the persons involved, that can still prevent a fair compromise, even though the required deliberative structures are in place (see chapter 3).

⁵⁸ The term “structure” refers here to the way in which an agreement-seeking process is set up in terms of how the participants are supposed to interact with each other. It is, therefore, the procedural structure of an agreement-seeking process that enables or inhibits the participants to interact in a certain way. The structure of deliberation, for example, provides for a mutual exchange of reasons while the structure of negotiation provides for a mutual exchange of offers and counteroffers.

are proportional to the stakes that are involved for each party). I argue that if we accept this conception of a fair compromise, we also have to accept the claim that the process of compromising needs to be deliberative, from the beginning to the point where a compromise is agreed upon.

To develop the argument that compromising needs to be deliberative if a fair compromise is the goal, it is helpful to break the process of compromising down into three successive stages. All three stages are interrelated in the sense that each stage requires the previous stage. The first stage is to understand each other's reasons for holding a particular view. The second stage is to evaluate the stakes that are involved for each party. This second stage requires the previous reason exchange because what is at stake for each party is determined by the reasons that each party has for holding their view. The third stage is to determine the concessions that each party should make. This stage requires the previous evaluation of stakes because the concessions – if they are to be fair – need to be proportional to the stakes involved.

In what follows, I explain why deliberation is required for each of these three stages. I claim that for the purpose of achieving a fair compromise, all three stages need to be deliberative *and only deliberative* and that there is, therefore, no room for negotiation or bargaining in the process of compromising.⁵⁹

⁵⁹ Note that I use the term “compromising” or “process of compromising” as an umbrella term for the activity that spans all three stages.

4.4.1. UNDERSTANDING REASONS

One of the central characteristics – if not the most distinctive feature – of the deliberative process is the mutual exchange of reasons between the participants (Gutmann and Thompson 2004; Mansbridge et al. 2010; Thompson 2008; Weinstock 2013). By exchanging the reasons for holding their respective positions, the disagreeing parties come to understand each other’s position (and possibly their own position as well) at a deeper level than they do before participating in the deliberative process. Such an in-depth understanding of each other’s reasons is provided by the structure of deliberation, whereas that is not the case for the structure of bargaining or negotiation processes.

Quite to the contrary, negotiation and bargaining structurally support the ideal of “winning” rather than the ideal of reaching mutual understanding. The ideal of winning that characterizes negotiation processes also involves the use of deception, lies, and threats. In a survey article on negotiation, Leigh Thompson et al. point out that “[g]iven the mixed-motive nature of negotiation, it is tempting for negotiators to use deception to maximize their personal gain” (Thompson et al. 2010, 501).⁶⁰ Similarly, Van Parijs characterizes bargaining as a process “whereby each party uses threats and bluff in order to extract as many concessions from the other as it can get away with” (Van Parijs 2012, 472).

⁶⁰ The phrase “mixed-motive nature of negotiation” refers to the idea that the participants to a negotiation process are usually characterized by two conflicting motives, cooperation and competition. See Thompson et al. 2010, 499.

To be sure, negotiation can also be viewed in a more positive light. A good example of a more benevolent perspective on negotiation is what David Luban calls the “PPP Paradigm.”⁶¹ According to the PPP Paradigm, “negotiation is appeal to standards rather than psychological manipulation, it seeks joint rather than individual gains, and the opposite party is treated as a collaborator rather than an adversary” (Luban 1985, 399). But even if negotiation is collaborative in the sense that it appeals to standards and that it seeks joint gains: The point remains that negotiation is structurally inapt to enable the kind of in-depth understanding that is required for achieving a fair compromise. As Gutmann and Thompson formulate this contrast between deliberation and bargaining: “When citizens bargain and negotiate, they may learn how better to get what they want. But when they deliberate, they can expand their knowledge” (Gutmann and Thompson 2004, 12).

More specifically, negotiation only provides for what I call “first-level understanding” but not for “second-level understanding”. In a nutshell, first-level understanding pertains to understanding *that* someone holds a particular position, while second-level understanding pertains to understanding *why* someone holds a particular position. In what follows, I illustrate the difference between first- and second-level understanding with reference to an example of a disagreement on abortion (an example to which I will refer throughout this section).

Let us assume that a person, Ann, believes that abortion is morally right (R) and should therefore be legal (L), whereas another person, Bert, believes that abortion is

⁶¹ “PPP” is short for Positive-sum games, Pareto-optimality, and Principled bargaining. See Luban 1985, 399.

morally wrong (W) and should therefore not be legal (NL). Ann and Bert therefore disagree on (R) vs. (W) and correspondingly on (L) vs. (NL). Let us further assume that Ann and Bert are unable to find a consensus on their disagreement and therefore aim to find a fair compromise.⁶² Ann and Bert, as citizens who engage in a public agreement-seeking process, now have two options. They can try to find a fair compromise by negotiation or by deliberation.

If they negotiate, they can achieve *first-level understanding*. At this level of understanding, Bert understands *that* Ann wants (L) (and Ann understands *that* B wants (NL)).⁶³ First-level understanding is thus a minimal form of understanding, which is however sufficient for the purpose of negotiation because it enables the participants to comply with the structural requirements of negotiation. That is, first-level understanding enables Ann and Bert to each propose offers and counteroffers of what they are willing to concede.

The question is whether such a negotiation process can lead to a fair outcome in the sense that Ann and Bert's concessions are proportional to their stakes in this

⁶² Ideally, if a fair compromise is agreed upon by citizens in a public setting, their compromise will affect macropolitics, e.g. by influencing political agenda setting or even legislation. An increasingly discussed venue for deliberative processes with macropolitical "uptake" are so called mini-publics. Mini-publics can have macro-political uptake in different ways, even though macro-political influence is not guaranteed (see Goodin and Dryzek 2006).

⁶³ For the sake of space, in the following I only refer to the case of Bert understanding Ann, but my argument applies in the same way to Ann understanding Bert.

disagreement. This, I claim, is highly unlikely, because negotiation processes do not provide for second-level understanding, which, as I will show, is necessary for evaluating stakes in the first place. Instead, in a negotiation process, Ann and Bert make offers and counteroffers that are *independent of the reasons* that the other party has for holding their respective position. If Ann and Bert negotiate, their interaction is characterized by a willingness to mislead and deceive rather than to understand each other.

In contrast to first-level understanding, *second-level* understanding means that Bert understands the *reasons why* Ann wants (L). That is to say, Bert understands that Ann wants (L) because she believes (R) and he also understands why Ann believes (R). It might, for example, turn out that Ann is a feminist who considers abortion to be right primarily from a feminist perspective: As a feminist, Ann believes that no one should have a say in what happens to a woman's body but the woman herself.

To gain this second-level understanding of Ann's reasons, Bert needs to be structurally required to listen to Ann, while Ann needs to be structurally enabled to explain her reasons (e.g. by attributing specific time slots for reason exchanges of this kind). And it is deliberation, not negotiation, that can enable the parties to a disagreement to exchange their reasons in his way and thus to develop a second-level understanding of the other person's view.

This is significant because second-level understanding is necessary for evaluating stakes and thus, ultimately, for achieving a fair compromise. The reason why this is so will become clear in the subsequent argument. But in a nutshell, the idea is that second-level understanding is a necessary precondition for a meaningful evaluation of stakes because it is the reasons that each party has for holding their position that determines what

is at stake for them. And evaluating mutual stakes is, in turn, the precondition for determining fair concessions, because a fair compromise requires that each party's concessions are proportional to the stakes that each party has in a disagreement.

In sum, the second-level understanding that is the foundation for achieving a fair compromise can only be achieved through deliberation, but not through negotiation. This puts the deliberative process in a unique position to enable a fair compromise, while negotiation structurally fails in this regard.

4.4.2. EVALUATING STAKES

Second-level understanding, through deliberation, is the first of three stages towards achieving a fair compromise. As indicated above, second-level understanding is the precondition for evaluating what is at stake for each party. This is so because what is at stake for each party is determined by each party's deeper reasons for holding their respective views.

To continue with the above example, we have established that Ann supports (L) for feminist reasons. Indeed, let us assume that Ann has been identifying with the feminist movement for several years and that she has invested a significant amount of her time in advancing the cause. Feminism has therefore become an important part of Ann's identity. Thus, given that the disagreement on abortion directly pertains to feminist values, Ann can be said to have high stakes involved in this disagreement.

As for Bert, let us assume that Bert is currently enjoying the relaxed days of retirement and he realizes that he finally has enough time to engage with topics of political interest. Even though Bert has never given much thought to the topic of abortion, when

he comes across the argument that abortion is murder, this image immediately sticks with him and he finds himself appalled by the idea of abortion. Bert therefore wants (NL).

Now let us assume, for the sake of the argument, that in this case of disagreement between Ann and Bert, the stakes are much higher for Ann than they are for Bert.⁶⁴ In this scenario, a fair compromise requires that Bert recognizes that Ann has higher stakes involved in the disagreement than he does. But, or so I propose, if Ann and Bert negotiate, it is highly unlikely that Bert can adequately assess Ann's stakes. This is so because, as elaborated above, negotiation processes do not *intend* for the participants to evaluate each other's stakes. By its very structure, negotiation has no room for stake evaluation – which makes sense: After all, why would I be interested in knowing what is at stake for you, if what matters, in the end, is that I win against you?

In contrast to negotiation, deliberation allows for an evaluation of stakes because it structurally provides for a meaningful exchange of arguments. This is necessary not merely at the first stage of understanding each other's reasons, but also at the stage of evaluating stakes, for three reasons.

⁶⁴ I should emphasize that the disagreement between Ann and Bert is meant to be purely hypothetical. For the purpose of my argument, it does not actually matter whether Ann's stakes are indeed higher than Bert's. The purpose here is only to show that deliberation is necessary for evaluating mutual stakes; the purpose is *not* to develop an actual assessment of the stakes that can be involved in a disagreement on abortion. This means that "real-life Ann and Bert" could well agree on an evaluation of stakes that is contrary to the one that I propose in this chapter. Whatever the outcome of deliberation on abortion can be, the crucial point is that deliberation, not negotiation, is needed for evaluating stakes.

First, to evaluate what is at stake for Ann, Bert will need to learn more about how the abortion question pertains to Ann's identity as a feminist and perhaps also how abortion relates to other values that are important to Ann. To broaden his understanding in this way, Bert will need to deliberate, not negotiate, with Ann.⁶⁵

Secondly, the process of evaluating stakes is not only deliberative in the sense of clarifying emerging questions, but also in the sense of discussing the other's evaluation of one's own stakes. For example, Bert might initially suggest that Ann has only *slightly* higher stakes, an assessment that Ann would disagree with. A deliberative process allows Ann to express her disagreement with Bert's assessment and to explain why, in her view, she not only has slightly higher, but *much* higher stakes. This process of explaining and justifying one's views is fundamentally deliberative.

Thirdly, the deliberative process of exchanging and justifying reasons might not only enable Bert to evaluate what is at stake for Ann, but it might also enable him to develop a clearer picture of what is at stake for himself. He might, for example, realize that he has overestimated the importance that the issue of abortion plays in his own life.

⁶⁵ It is worth pointing out that even though Bert will have to engage deliberatively *with* Ann in order to evaluate what is at stake for her, a large proportion of the evaluative process occurs in Bert's own head. This does not make the process of evaluating stakes any less deliberative. Indeed, as Robert Goodin argues, interpersonal deliberation has an indispensable internal dimension. Goodin points out that "it remains significant how very much of the work of deliberation, even in external-collective settings, must inevitably be done within each individual's head" (Goodin 2000, 81). For an in-depth discussion of the intrapersonal aspect of compromising specifically, see Lepora 2012.

Alternatively, deliberating with Ann and learning about her feminist perspective, Bert might realize that a pro-life view does not fit with other values that he endorses, such as the empowerment of women. So, even though Bert continues to believe in the fetus's right to life, he might hold that belief less strongly, given that it contradicts other values that are important to him.

4.4.3. DETERMINING CONCESSIONS

Let us assume that Bert and Ann have agreed, through deliberation, that Ann has higher stakes in their disagreement on abortion than Bert. Let us further assume that they have also agreed that Ann has *much* higher stakes involved, not only slightly higher stakes. But this is still a vague agreement and it is not at all clear how this agreement will translate into fair concessions for both. A distinct stage in the process of compromising therefore consists in determining fair concessions that are proportional to the stakes that are involved for each party. Importantly, the process of determining fair concessions also needs to be deliberative, because Ann and Bert have to exchange their reasons why their respective stakes should translate into the concessions that they propose.

Let us further assume that Bert agrees to concede to Ann's primary claim that abortion should be legal (L). He does so because he acknowledges that Ann has much higher stakes in the disagreement on abortion than he does.⁶⁶ But despite Bert's

⁶⁶ To emphasize this again: The point here is not to argue that Bert should (or would) necessarily react to Ann's arguments in this way. Rather, the point here is to show that deliberation is necessary for *enabling* Bert to react to Ann's arguments in a meaningful way, i.e. in a way that is based on second-level understanding. Whether the deliberative structures in place will actually lead Ann and Bert to deliberate in this way depends on

acknowledgment that Ann's stakes are much higher than his own, this is still a major concession on Bert's part – after all, he continues to believe in the fetus's right to life. Bert might therefore argue that since he concedes to Ann's primary claim (L), Ann should concede more in terms of her minor claims, such as, for example, the specific conditions under which abortion should be legal. Bert might propose, for example, that abortion should not be legal after the first trimester, or that there should be a certain amount of mandatory consulting sessions, etc. – all of which, let us assume, Ann opposes.

Ann, on her part, believes that because she has much higher stakes than Bert, her view on the conditions of abortion should also have more weight than Bert's. In this hypothetical scenario, the need for further deliberation arises, because it needs to be clarified whether Ann's claims regarding the specifics of abortion regulation should indeed also weigh more heavily than Bert's claims in this regard. After all, even though both have agreed that Ann has much higher stakes in the disagreement than Bert, both have also agreed that Bert has at least some stakes involved that need to be accommodated if the compromise is to be fair. Determining fair concessions therefore continues to be a deliberative process.

The question then is: Can negotiation structurally enable the determination of fair concessions? The answer, I submit, is once again “no.” First of all, it seems rather unlikely, psychologically speaking, that Ann and Bert would even want to negotiate at this stage.

other factors as well. Indeed, as I elaborate in the next section, in some situations of disagreement, it might well be possible that “real-life Bert and Ann” are not able to agree on a fair compromise at all.

That is, after having achieved the mutual agreement that Ann has much higher stakes involved in their disagreement, it seems very unlikely that Bert would suddenly switch into “winning mode” and try to get away with as less concessions as he can. But, for the sake of argument, let us assume that at the stage of determining mutual concessions, Ann and Bert indeed start negotiating, with the goal of enforcing their claims as best as they can, regardless of fairness concerns.

That is, Bert will negotiate for (NL) and Ann will negotiate for (L). This not only means that the preceding deliberative process becomes meaningless (since, as I have argued, second-level understanding and stake evaluation do not play a role in negotiation processes); but it also means that the outcome of Ann and Bert’s negotiation will reflect factors that are independent of fairness concerns, especially factors that are related to power.

A primary source of power in negotiations that is widely recognized is BATNA, i.e. a negotiator’s “best alternative to a negotiated agreement” (Thompson et al. 2010, 494). Research has shown that negotiators with attractive alternatives are significantly more assertive in negotiations than negotiators with less attractive BATNA. The influence of power on negotiation outcomes is particularly detrimental for the purpose of achieving a fair compromise (in the sense discussed in this chapter), because a fair compromise requires a distribution of concessions according to stakes, not according to power.

Indeed, the fact that negotiation outcomes tend to be influenced by BATNA-based power differences puts negotiation in an *inverse* relation to fairness, because negotiators with attractive BATNA have, by definition, also less at stake in a disagreement. Put differently, if you have attractive alternative options to a specific agreement, you do not

have high stakes involved, because high stakes imply that you rely on that agreement to work. The influence of BATNA-based power differences on negotiation outcomes therefore means that precisely those negotiators with the lowest stakes will have the most weight in determining the outcome, which is diametrically opposed to what is required for a fair compromise – namely that those with the lowest stakes should have the *least* weight in determining the outcome.

Gender has been found to be another crucial factor in determining power differences in negotiation, with a negative effect for female negotiators. Female negotiators are at a disadvantage especially if gender stereotypes operate at an implicit level. As Thompson et al. state in this context, “[g]ender salience might thus operate like a low-power state, preventing women from acting assertively. In [a] study, women did, in fact, get worse outcomes than did men in mixed-gender negotiations, when an implicit gender stereotype was subtly activated” (Thompson et al. 2010, 496).⁶⁷ In addition to BATNA- and gender-based power inequalities, we can easily think of other fairness-averse factors or skills that can determine negotiation outcomes, such as rhetorical skills, experience in negotiating, or the ability to keep one’s nerve in stressful situations.

⁶⁷ The authors suggest that gender-based power inequality can be reduced by explicitly counteracting gender stereotypes, in the sense of saying: “Well, unassertive behavior and accommodation may be the cultural stereotype of women, but it is surely not me!” (Thompson et al. 2010, 496). However, it seems to me that this strategy of explicitly counteracting gender stereotypes cannot reliably avoid the problem of gender-based power inequality in negotiations, because female negotiators actually have to explicitly activate and oppose gender stereotypes, which is certainly not something all women can or want to do.

Therefore, unlike deliberation, negotiation processes advantage whoever has more power in terms of BATNA or gender, or whoever has more of the skills that make you a successful negotiator generally speaking. To be sure: By chance, negotiation might result in a fair outcome – but do we want to rely on chance when our moral values are at stake?⁶⁸

4.4.4. POSSIBILITIES OF FAILURE

Finding a fair compromise on issues of moral or political disagreement is a delicate process, even more so since each stage of the process is vulnerable to failure. At the first stage, the participants can fail to adequately convey their reasons to each other – mutual understanding might simply not emerge. If that is so, finding a fair compromise is doomed to failure because the following two stages require the first stage of mutual understanding to be successful. But even if mutual understanding is successfully established, compromise can still fail at the next stage, in that the participants might not be able to agree who has higher stakes involved. They might understand each other's reasons, but they disagree on what these reasons mean in terms of what is at stake for each other. Failure at the second stage would, again, ruin the chances of achieving a fair compromise,

⁶⁸ In this context, Jones and O'Flynn describe the example of two parties with equal bargaining strength that – due to their equality in bargaining strength – agree on a compromise that consists in equal concessions. If splitting the difference equally is actually what a fair outcome consists in, these parties have indeed arrived at a fair compromise; but they did so, and this is the crucial point, without having *aimed* at a fair outcome. The fairness of a compromise that is based on bargaining or negotiation is therefore only a matter of chance (Jones and O'Flynn 2012, 121).

because the next stage of determining fair concessions requires an agreement on stakes. And even if the first two stages are successful, achieving a fair compromise can still fail at the third stage, because the disagreeing parties might have incompatible views on how their respective stakes should translate into concessions.

In this sense, deliberation is a necessary, but not a sufficient condition for achieving a fair compromise. Much depends on contextual circumstances, such as the participants' mindsets, including their willingness to understand each other and to find a fair agreement. But, and this is the crucial claim of this chapter, without deliberation, finding a fair compromise is doomed to failure, because only deliberation provides the structure that enables the participants to (at least potentially) understand each other's reasons, evaluate each other's stakes and determine concessions that are proportional to the stakes involved.

4.5. HOW IMPORTANT IS IT THAT A COMPROMISE IS FAIR?

Given the multiple possibilities of failing to achieve a fair compromise, the question arises: How important it is that a compromise is fair? If the participants to a process of compromising fail at either of the three stages, what is to be done? After all, a compromise, even though in that case an unfair one, is still on the table. For example, in case that the parties to a disagreement fail to agree on a fair compromise deliberatively, they might alternatively start to bargain or they might simply decide to split the difference. However, as I have argued in this chapter, neither option is likely to result in a fair outcome. The question then is: Should the disagreeing parties still compromise, even if the outcome is not fair? Put differently, how important is it that a compromise is fair? While a satisfactory

answer to this question is beyond the scope of this chapter, it is worthwhile to outline a few thoughts on this matter.

To start with, in some cases of disagreement, fairness might not be the most important aspect of achieving a compromise. Whether and to what degree fairness matters depends to a significant degree on the context of a disagreement. For example, if a buyer and a seller on a farmers' market disagree on the price of a pound of apples, a fair outcome of their negotiation, even though desirable, is likely not of paramount importance.⁶⁹ Indeed, it seems somewhat inadequate that fairness should be a major concern for both parties, given that they would have to engage in a deliberative process, aiming at second-level understanding of each party's reasons why a pound of apples should cost a little more or less, and, based on that second-level understanding, they would have to evaluate what is at stake for each other etc. – which seems excessive for the purpose of finding a compromise on the price of a pound of apples.

But I submit that fairness should be of paramount importance for compromises that affect socio-political cooperation, such as compromises on moral disagreements that occur in civil society or between legislators. For one thing, a fair compromise in these situations can be a manifestation of mutual respect, which makes (fair) compromise an indispensable feature of democracy (Bellamy 2012, Weinstock 2013). And for another thing, compromises at the socio-political level are often a means to avoid undesirable

⁶⁹ Note that in those cases where fairness is not of importance, negotiation is an appropriate way to find a compromise. As I have emphasized previously, negotiation is only inappropriate if we aim for a fair compromise.

consequences, such as social strife or stagnation in passing legislation. In both cases, the affected parties will want to make sure that the compromise lasts. This, in turn, is much more likely if both sides consider their compromise to be fair, whereas an unfair compromise is not likely to be stable over time.

Indeed, seen from a long-term perspective, an unfair compromise can be worse than no compromise at all, in case that the parties to that compromise become aware of the unfairness of their agreement after the compromise has been made. In that case, the feeling of deception can exacerbate the initial conflict – for example, if the deceived party feels justified in their initial judgment that the other party is morally unreliable. The other party is then likely considered to be unreliable not merely with regard to their judgment, but also as a matter of character. The negative personal perception that is in this case added to the initial disagreement will likely make it harder to resolve the disagreement in the future.⁷⁰

Thus, if a compromise is desired in terms of socio-political cooperation or stability, a fair compromise should be the goal. And, as I have argued in this chapter, to achieve a fair compromise, we need to deliberate rather than negotiate.

⁷⁰ See Kennedy and Pronin (2008) for the argument that the perception of one's opponent as biased is a crucial reason why disagreements escalate into full blown conflicts rather than be resolved.

4.6. COMPROMISING AND DELIBERATING: ANALYTICALLY DISTINCT ACTIVITIES?

The relationship between deliberation and compromise has also been addressed in the recent work of Jones and O’Flynn. My account of the relationship between compromise and deliberation is generally sympathetic to theirs, but there are also important differences. Based on the arguments advanced in this chapter, this final section addresses the ways in which my account differs from theirs.

To start with, Jones and O’Flynn emphasize that deliberation is more appropriate than bargaining or negotiation for achieving a fair compromise and I certainly agree with that statement, generally speaking.⁷¹ However, my account differs from theirs with regard to the *specific justification* why deliberation is more appropriate for the purpose of achieving a fair compromise. As I will show, this difference in justification entails other important differences between our accounts, especially a different understanding of the way in which deliberation relates to compromise.

When arguing that deliberation is more appropriate for achieving a fair compromise than bargaining or negotiating, Jones and O’Flynn emphasize the different attitudes that characterize the participants of both processes respectively. Participants to

⁷¹ More precisely, Jones and O’Flynn argue that deliberation is necessary for achieving *substantive* fairness, whereas *procedural* fairness can also be achieved through negotiation: “People can bargain and negotiate under fair conditions, so that their eventual compromise can intelligibly count as fair because it has been arrived at under those fair conditions” (Jones and O’Flynn 2012, 124).

deliberation are, according to Jones and O’Flynn, actually interested in a fair outcome: “[A] substantively fair compromise is much more likely to emerge *if the parties aim for one*. For that reason, a substantively fair compromise is more likely to arise if the compromising process takes the form of deliberation rather than bargaining” (Jones and O’Flynn 2012, 127; italics added). More specifically, according to Jones and O’Flynn, the participants to a deliberative process tend to exhibit an impartial mindset: “[D]eliberation requires the parties to be impartial in a way that bargaining and negotiation do not” (Jones and O’Flynn 2016, 7). Hence, for Jones and O’Flynn, deliberation is more likely than bargaining or negotiation to result in a fair compromise because the participants to a deliberative process tend to exhibit an impartial mindset.

While Jones and O’Flynn’s account focuses on the advantages of deliberation in terms of the participants’ attitudes, my account emphasizes the structural necessity of deliberation, thus adding a different justification why deliberation is necessary for achieving a fair compromise. But the different focus in justifying the necessity of deliberation also implies a different conception of the procedural nature that compromising should take (if a fair compromise is the goal). That is, since Jones and O’Flynn do not focus on the *structural* necessity of deliberation, they advance a conception of the procedural nature of compromising that is different from the one that I have proposed in this chapter.

More concretely, in contrast to my argument that, if a fair compromise is the goal, the process of compromising needs to be deliberative, Jones and O’Flynn claim that compromising and deliberating are “analytically distinct activities” (Jones and O’Flynn 2016, 1; henceforth I refer to this claim as “ADA”). What makes both activities

analytically distinct, in their view, is that the activity of deliberating is characterized by an exchange of reasons with the goal to “arrive at an agreed view on what is right or best” (Jones and O’Flynn 2016, 1), while the activity of compromising is considered to be more akin to the activity of bargaining or negotiating. Indeed, Jones and O’Flynn suggest that “when parties bargain or negotiate, they make offers and counter-offers so that their activity has the same character as compromising” (Jones and O’Flynn 2016, 6).

My account takes issue with ADA. In particular, my account takes issue with the claim that compromising has the same character as negotiating. More precisely, I disagree that ADA is true when a *fair* compromise is the goal. This objection is based on my previous argument that all three stages of compromising (from understanding reasons to evaluating stakes to determining concessions) need to be deliberative if a fair compromise is the goal. Otherwise, or so I have argued, a fair compromise will be hard to achieve. From this argument, it follows that if a fair compromise is the goal, the activity of compromising needs to be *essentially* the same as the activity of deliberating. This means that if we aim for a fair compromise, the analytical boundaries between compromising and deliberating merge.⁷²

In line with the assumption that deliberating and compromising are analytically distinct activities, Jones and O’Flynn suggest that deliberation is a process that can “facilitate compromise”, but that remains different from the process of compromising as

⁷² To be clear, I do not disagree with ADA in general: ADA certainly makes sense for those cases where the fairness of a compromise is not of paramount importance. This is to say that compromising can certainly be analytically distinct from deliberating, if the goal is to achieve just any kind of compromise, except a fair one.

such. More specifically, Jones and O’Flynn propose that “deliberation can facilitate compromise by reducing the gap between the conflicting parties” (Jones and O’Flynn 2016, 13). This can happen in three different ways. First, it can happen in a substantive sense, where deliberation can enable the disagreeing parties to see some merit in the other party’s arguments. The parties might still disagree in general, but through deliberation, they accept that the other party might be partially right. Secondly, deliberation can enable the disagreeing parties to clarify their preferences, i.e. to clarify what their ideal outcome would be and how they would rank possible alternatives in relation to that ideal outcome. This way, even if this clarification process does not affect their disagreement as such, at least now “they disagree along the same dimension” (Jones and O’Flynn 2016, 4). And thirdly, deliberation can lead to an agreement on what a fair outcome is.

The idea that deliberation can in this sense facilitate (fair) compromise is, however, problematic because it is based on ADA. More precisely, the three ways in which deliberation can facilitate fair compromise imply that compromising is a process that can *result from* or set in *after* deliberation. That is, according to Jones and O’Flynn, the process of compromising *can follow* from a process of deliberation, while, importantly, deliberation is “not part of the process of making a compromise” (Jones and O’Flynn 2016, 17). Therefore, in Jones and O’Flynn’s understanding, the process of compromising starts only after a deliberative agreement is reached: “Having reached an agreement, [the

participants] could *then go ahead* and compromise in that way (they could ‘*enter into*’ the *compromise*, as we put it)” (Jones and O’Flynn 2016, 10; italics added).⁷³

To be sure, if we accept ADA, it makes perfect sense to assume that compromising can follow deliberation – if both are distinct activities, they can also designate different kinds of processes. But if we reject ADA, which, I have argued, we should in the context of fair compromise, then the idea that deliberating and compromising are successive processes does not make sense. This is so because rejecting ADA means to accept that the whole process of compromising is characterized *exclusively* by a deliberative activity.

Furthermore, even though Jones and O’Flynn do not specify the nature of the compromising process that is supposed to set in after deliberation, it is plausible to assume that they refer to bargaining or negotiation processes, given their statement that bargaining and negotiation have the same character as compromising (Jones and O’Flynn 2016, 6). If so, this means that Jones and O’Flynn consider bargaining and negotiation to be appropriate for achieving a fair compromise after all – at least to some degree. That is, even though the authors claim that bargaining or negotiation (alone) are inadequate for achieving a fair compromise, they do not reject the appropriateness of bargaining or negotiation if these processes occur after deliberation.

This, however, is problematic, because it is not clear why bargaining or negotiation processes that occur after deliberation are not subject to the same concerns that caused Jones and O’Flynn to consider each process by itself to be inappropriate for achieving a

⁷³ Similarly, for Mansbridge et al. the deliberative process merely “sets the stage for a decision by non-deliberative methods” such as negotiation (Mansbridge et al. 2010, 68).

fair compromise. More concretely: If, as Jones and O’Flynn argue, a lack of impartiality (including a lack of concern for fairness) in the participants is a crucial reason why bargaining and negotiation processes are not adequate for achieving a fair compromise, the question arises why a lack of impartiality does not pose a problem for bargaining or negotiation processes that occur after deliberation.

But even if it can be argued that impartiality loses its normative importance for negotiation or bargaining processes that occur after deliberation (which I doubt), the point remains that the structural function of deliberation cannot be replaced by any other agreement-seeking process, least of all negotiation or bargaining. On the contrary, as I have argued throughout this chapter, in the process of achieving a fair compromise, there is no room for bargaining or negotiation *at all*. Rather, the process of compromising is deliberative from the beginning until the point where a compromise has been determined. And thus understood, compromising *is* deliberating.

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CONCLUSION

The goal of this dissertation was to specify the feasibility conditions of compromise. More specifically, the goal of this dissertation was to specify the conditions of *increasing* the feasibility of compromise. The underlying assumption here was that feasibility is not a binary concept in the sense that a socio-political ideal is either feasible or not. Rather, in line with the scalar understanding of feasibility as proposed by Lawford-Smith (2013), this dissertation has presumed an understanding of feasibility according to which a socio-political ideal can be feasible to different degrees. In order to specify the *conditions* of increasing the feasibility of compromise, it is necessary to first identify potential feasibility *constraints*. The main chapters of this dissertation have been devoted to this task.

Chapter 2 has focused on the burdens of judgment as a potential feasibility constraint on compromise. I have argued that while the burdens of judgment significantly reduce the feasibility of overlapping consensus, they do not significantly reduce the feasibility of compromise. However, even though the burdens of judgment do not significantly reduce the feasibility of compromise, compromise faces other constraints that can significantly reduce its feasibility.

More specifically, this dissertation has shown that feasibility constraints apply to specific kinds of compromise, namely *moral* compromise and *fair* compromise: Moral compromise faces a feasibility constraint in the form of affective aversion (chapter 3), while fair compromise faces a feasibility constraint in the form of negotiation or bargaining processes (chapter 4).

These results suggest the following conditions for increasing the feasibility of moral and fair compromise respectively. To increase the feasibility of moral compromise, we have to counterbalance affective aversion, which, I have suggested, can be done by cultivating an affective attitude of respect. And to increase the feasibility of fair compromise, we have to use a deliberative process instead of negotiation or bargaining processes.

As elaborated in chapter 2, feasibility constraints can be both hard and soft constraints. As hard constraints, they *exclude* the feasibility of an ideal. As soft constraints, they *reduce* the feasibility of an ideal. As such, soft constraints imply a scalar understanding of feasibility. That is, an ideal can be more or less feasible, depending on how many soft constraints that ideal faces (Lawford-Smith 2013).

But the feasibility of an ideal does not only depend on the quantity of soft constraints that it faces. As I have pointed out in chapter 2, the quality of soft constraints matters as well. By this, I mean that each soft constraint can reduce the feasibility of an ideal to different degrees. While some soft constraints can significantly reduce the feasibility of an ideal, others might barely have any impact on that ideal's feasibility. Affective aversion, for example, can significantly reduce the feasibility of moral compromise, while the burdens of judgment barely impact the feasibility of compromise, generally speaking.

And of course, the very notion of a constraint is context dependent – something is a constraint only in relation to a specific ideal. What constitutes a soft constraint on one ideal might not be pertinent to another ideal at all. For example, while the burdens of judgment significantly reduce the feasibility of overlapping consensus, they do not

significantly reduce the feasibility of compromise. Or take the case of affective aversion. Affective aversion reduces the feasibility of moral compromise, but we can assume that affective aversion does not apply to the ideal of overlapping consensus, given that overlapping consensus does not require concessions from each party.

In addition, each soft constraint can differently affect the feasibility of an ideal depending on how difficult it is to overcome a respective constraint. A soft constraint might, for example, be easy to overcome, because we can easily devise effective strategies for addressing it. In that case, even if a soft constraint would significantly reduce the feasibility of an ideal due to its relation to that ideal, it might in fact not be a severe soft constraint because we can easily overcome it.

I have suggested that if a soft constraint significantly reduces the feasibility of an ideal (and if we cannot easily overcome the constraint), that ideal becomes unreliable. I have furthermore suggested that this is the case for the ideal of an overlapping consensus. More specifically, I have argued that the burdens of judgment reduce the feasibility of overlapping consensus to such a degree that overlapping consensus is not a reliable ideal. Unreliability does, of course, not pertain to normativity. That is, just because overlapping consensus is not a reliable ideal, this does not mean that its desirability is minimized in a normative sense.

However, if an ideal such as overlapping consensus is unreliable, we have to consider alternative solutions that we can draw on when the unreliable ideal fails. For the case of an ideal theory of disagreement resolution, I have suggested that compromise is a good alternative to overlapping consensus since compromise can be desirable and it scores higher on feasibility than overlapping consensus does.

At this point, one might wonder whether compromise does, in fact, score higher on feasibility than overlapping consensus does. After all, even though the feasibility of compromise is not significantly restricted by the burdens of judgment, compromise faces its own feasibility issues, especially when it comes to moral and fair compromise. A comprehensive comparative analysis of the feasibility of compromise and overlapping consensus is, however, more than I can deliver in this conclusion. Here, a few notes on this topic will have to suffice. Together with the analysis provided in this dissertation, the following considerations can serve as a starting point for a more in-depth comparative analysis of the feasibility of compromise, overlapping consensus, and perhaps other desirable solutions to disagreement as well, such as consensus.

To start with, all three constraints in question, the burdens of judgment (for overlapping consensus), affective aversion (for moral compromise) and negotiation and bargaining (for fair compromise), are soft constraints. None of these constraints make the respective ideal impossible and they all can be potentially overcome. However, it seems that the constraint that is constituted by the burdens of judgment is the constraint that is the most difficult to overcome. To be clear, to increase the feasibility of overlapping consensus, we do not have to overcome the burdens of judgment as such. Rather, we would have to counter the *consequences* of the burdens of judgment in terms of impairing our ability to recognize a potential overlapping consensus and to form consistent positions.

Our best bet to tackle the consequences of the burdens of judgment seems to be mutual assistance in uncovering inconsistent positions or in recognizing a potential overlapping consensus. Mutual assistance of this kind is, however, tainted by the burdens of judgment as well. As I have pointed out in chapter 2, the burdens of judgment pertain

to our capacity to detect inconsistencies or to recognize a potential overlap in controversial positions, even if we assess the respective issues from an external perspective.

In comparison to the constraint that is constituted by the burdens of judgment, the negotiation constraint is relatively easy to overcome. To recapitulate briefly, the analysis of chapter 4 indicates that the feasibility of fair compromise is significantly reduced if we use bargaining or negotiation processes. But even though bargaining or negotiation constitute a significant constraint on the feasibility of fair compromise, these constraints can be overcome by using deliberative processes instead. And research on deliberative processes is abundant, especially in the literature on deliberative democracy.⁷⁴ To be sure, research on deliberative processes is usually associated with the goal of achieving consensus rather than compromise. But there is no reason why research on deliberative processes cannot be fruitfully applied to a different kind of agreement as well.

As for the constraint that is constituted by affective aversion, I have suggested that an affective cultivation of respect can be an effective antidote to this constraint. But in contrast to research on deliberation, research on respect cultivation is basically nonexistent. And even if at some point we have research results on respect cultivation, it will take time and effort to implement respect cultivation strategies. It therefore seems clear that it is more difficult to reduce affective aversion than it is to overcome the negotiation constraint. Still, it seems that affective aversion is less difficult to overcome

⁷⁴ The work of Robert Goodin (Goodin 2005, Goodin 2012), Carolyn Hendriks (2006, 2016), and Simon Niemeyer (Niemeyer 2011) might be particularly interesting to explore in this context. For survey articles pertaining to the topic of deliberative processes, see Bächtiger et al. 2010, Delli Carpini et al. 2004, Owen and Smith 2015, Thompson 2008.

than the constraint that the burdens of judgment constitute for overlapping consensus – at least for affective aversion we have an antidote, while the same cannot be said for the burdens of judgment.

If so, this would validate the conclusion from chapter 2 that compromise scores higher on feasibility than overlapping consensus. But a final judgment on this matter requires a more thorough analysis than is possible at this point. Such an analysis would also have to evaluate the ways in which the burdens of judgment might impact the achievement of a fair compromise. Since, as I have argued, fair compromise requires a deliberative exchange of reasons, the burdens of judgment might reduce the feasibility of fair compromise as well.

But whether either way, the fact of the matter remains that as of yet, we do not have an effective strategy for cultivating respect. In what follows, I provide some ideas for further research on this topic, given the importance of respect cultivation for increasing the feasibility of moral compromise. The following ideas are purely suggestive at this point and are not meant to be exhaustive in any way.

To start with, by requesting that we should cultivate respect as an affective attitude, I am referring to recognition respect, i.e. respect for each other in virtue of being fellow human beings (as opposed to epistemic respect, i.e. respect in virtue of the views that we have on controversial issues). I have argued in chapter 3 that in the face of disagreement, recognition respect is both more fundamental and more stable than epistemic respect. Recognition respect is more fundamental in the sense that it entails powerful emotional components – we might even say that the emotional basis of recognition respect is at the core of human cooperation and progress. And recognition respect is more stable in the

face of disagreement because, unlike epistemic respect, recognition respect does not require us to respect each other in virtue of precisely those features that are at the core of disagreement: Our conflicting views on a contested issue. The stability of recognition respect also has to do with the fact that cultivating recognition respect as an affective attitude is inherently a long-term process. As an affective attitude that has been cultivated over time, recognition respect comes naturally to us and can prevail even in the midst of disagreement.

A good start for research on respect cultivation might be to refer to existing research on related topics such as trust building. Trust has, in fact, been explicitly linked to facilitating compromise and seems therefore to be especially relevant in this context (Gutmann and Thompson 2012, Margalit 2010, Weinstock 1999). Trust might, of course, constitute in itself an approach to reduce affective aversion, which opens up yet another area for further research. But in addition to that, existing research on cultivating trust might be used to develop analogous strategies for cultivating respect, given that, as I have argued, respect is similar to trust in that both can be considered to be affective attitudes.

It might furthermore be useful to consult research on choice architecture (Thaler and Sunstein 2008), given that this kind of research pertains to influencing emotional reactions.⁷⁵ As Jennifer Lerner et al. have pointed out, “choice architecture provides a promising avenue for reducing the impact of unwanted emotions” (Lerner et al. 2015,

⁷⁵ The idea of choice architecture has raised concerns about paternalism, which would have to be addressed in this context as well. For a discussion of choice architecture and paternalism, see for example Hausman and Welch 2012.

814). If that is so, research on choice architecture might be doubly useful. If choice architecture can be used to reduce unwanted emotions, it might likewise be used to create *wanted* emotion-based attitudes such as respect. In addition to that, choice architecture might be used to reduce the unwanted emotion of affective aversion independent of respect cultivation.

Another way to cultivate respect might be the promotion or institutionalization of meditation. While existing research has not yet focused on the relation between meditation and respect specifically, two recent studies have shown that meditation can cultivate compassion and consequentially increase altruistic behavior (Condon et al. 2013, Weng et al. 2013). Given these results, meditation might be an interesting venue to explore for the purpose of cultivating respect as well.

Either of these approaches might be effective for cultivating respect, by itself or in combination with each other. More research venues might come to the fore once we start engaging with the topic of respect cultivation. But whichever research venue we explore first, it is important that research on respect cultivation gets underway. Because ultimately, identifying effective strategies for cultivating respect opens the door not only for increasing the feasibility of moral compromise, but also for living together more peacefully in the first place.

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