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## Genuine, Principled and Tactical Compromise\*

*Kompromis autentyczny, pryncypialny i taktyczny*

### ABSTRACT

This essay addresses the concept of compromise. When compromise takes place between two or more parties, reciprocity must be present; that is, the concessions are mutual. Genuine compromise is based on mutual respect and on genuine concessions between the parties. First, the concept of compromise is explained. Next, a relevant distinction is made between principled and tactical compromise. A principled compromise refers to a mutual recognition by each side of the other's rights, which leads them to make concessions to enable them to meet on a middle ground. It is genuinely made in good faith and both sides reconcile themselves to the results. To illustrate I consider the need for compromise regarding praying area for women at the Western (Wailing) Wall, considered the holiest site in Judaism. The article proceeds by considering the notion of tactical compromise that reflects temporary arrangement reached as a result of constraints related to time. Here, in fact, agents do not give up any of their aims. They do not act in good faith and do not intend to meet their counterpart on a middle ground. Instead, they simply realize that the end could not be achieved at a given point of time, and they aim to reach it stage by stage. The essential component of compromise, namely mutuality, is lacking.

**Keywords:** arrangement; concessions; genuine, principled and tactical compromise; good faith; the Western (Wailing) Wall

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## INTRODUCTION

Abe is a Jehovah's Witness. His son was involved in a serious car accident and was rushed to hospital. Abe arrived at the hospital shortly thereafter and is told by the physicians that his son needs blood transfusion or he will die. Abe explains that his religion prohibits taking or giving blood transfusion and that his son would rather die than be denied a place in heaven. Can Abe compel the medical team, and his son, to follow his conception of the good? Is there a possible compromise between Abe's stern religious convictions and the physicians who wish to save life?

The aim of this paper is to analyze the concept of compromise. Groups employ compromise in their dealings with other groups as well as in their dealings with members of their own groups. In politics, there are constant bargaining and compromises between different groups and organizations as well as between government and citizens. In liberal democracy, the need for compromise is a constant necessity. When compromise is perceived as the preferred strategy, tolerance plays a major role in the decision-making process.

I shall draw a distinction between principled and tactical compromise. I speak on the need to promote co-existence through compromise, based on mutual respect and genuine concessions between different fragments of society.

## COMPROMISE

According to the *Oxford English Dictionary*, "compromise" is a "settlement of a dispute by which each side gives up something it has asked for and neither side gets all it has asked for".<sup>1</sup> Every compromise requires a *quid pro quo*. Following deliberation and discussion, a settlement is agreed upon by consent. Through scrutiny of the *quid pro quo*, agents deliberate the nature and amount of concessions required of them.<sup>2</sup> The parties explore the margins of appreciation and look for a space where they can share their positions with others.

Compromise entails flexibility and foregoing rigidity. The settlement may be reached through direct negotiations without any external interference or assistance, or by various forms of mediation, facilitation or arbitration that involve a third party who is not a disputant. Mediators need to maintain equitable treatment of the adversaries and drive forward a process by which gaps are bridged and agreements replace division. Unlike mediation, facilitation does not focus so much on substance

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<sup>1</sup> See s.v. *compromise*, [in:] *Oxford Advanced Learner's Dictionary of Current English*, New York 2000.

<sup>2</sup> C. Lepora, *On Compromise and Being Compromised*, "Journal of Political Philosophy" 2012, vol. 20(1), p. 7.

but on enhancing the understanding of perceptions, interests and needs of the disputants or on preparing the negotiations and generating an amicable atmosphere conducive to making compromises. Facilitators need to ensure that the negotiating parties are treated equitably and have equal representation at the negotiation table. The team leaders need to be in the same or very similar ranking.

Arbitration is a contract-based dispute resolution mechanism where parties to a dispute agree to appoint an impartial third party for resolution to adjudicate and find a solution. It is essential that the third party is acceptable by all parties to the dispute, and that it is not coerced or imposed on one or more of the sides.

Negotiation is the art of compromise. Communication is essential. When compromise takes place between two or more parties, the emphasis is on reciprocity, that is, the concessions are mutual. The parties need to have mutual respect, listen actively and acknowledge what is being said. Mutual respect involves the acceptance of common procedures. Mutuality is derived from the endorsement of autonomy and our enshrined belief in the dignity of the person. It guides us to make concessions in order to make living together possible. Compromise is made when each side values more the things that can be achieved than the things they are required to give up. People give up the desirable for the necessary, acknowledging the social, cultural, moral and/or political constraints.

Good faith is essential. We respect each other as autonomous human beings who exercise self-determination to live according to our life plans. In turn, we respect each other in order to help realize what we want to be. Each individual is a bearer of rights and a source of claims against other persons, just because the resolution of the others is theirs, made by them as free agents.<sup>3</sup>

Compromise has preconditions. The discussion presupposes that some forms of communication and cooperation take place between the involved parties (notice that compromise requires some kind of cooperation, but not all forms of cooperation require compromise), and that the parties speak the same language, in the sense that they share some basic norms which form the grounds for potential understanding. When divergences become so fundamental that they can no longer be compounded, then no compromise can be reached.<sup>4</sup> There is simply nothing to talk about. Thus, to reach an agreement or some form of understanding, an appeal to common norms has to be made. Sides to a given dispute may recognize the force or sincerity of the opponent's view and – while not agreeing with their position – they still accept their right to hold it.

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<sup>3</sup> S. Darwall, *Two Kinds of Respect*, "Ethics" 1977, vol. 88(1), pp. 36–49; idem, *Honor, History, and Relationship: Essays in Second-Personal Ethics II*, Oxford Scholarship Online, January 2014.

<sup>4</sup> *Policy Change and Learning*, eds. P.A. Sabatier, H.C. Jenkins-Smith, Boulder 1993, chapters 2–3.

Conflicts are sometimes deep and bitter to the extent that parties do not recognize each other and are unwilling to sit together for negotiations. For instance, sovereign democracies often are unwilling to negotiate directly with terrorist organizations. The divides and gaps seem to be too wide and the parties opt to continue fighting each other. Thus, sitting at the negotiation table should not be taken for granted. This act in itself shows willingness to make concessions.

When parties negotiate, it is important to distinguish between the underlying interests and other considerations. "Other considerations" might be "noise": excuses, rhetoric that the parties employ to promote their cause, immaterial arguments, diversions and other forms of tactics deemed practical in pursuing the ends. Consider the following. Suppose that you wish to send your children to the best school while your spouse is worried about the children's coping in a highly competitive environment and prefers to send them to the local community school. Both parties should explain why they wish to send the children to a particular school and what are the worries and concerns if this were to happen. Reasoning that involves distance of school from home, traffic, school uniform, expenses, etc. might be raised but they are immaterial. If and when they are raised, they only distract the conversation rather than focusing on the real interests of the parents.

Fisher and Ury bring another example. Two men argue in a library. One wants the window open while the other wants it closed. They bicker back and forth about how much to leave it open. The librarian asks one why he wants the window open. "To get some fresh air", he answered. She then asks the other guy why he wants it closed. "To avoid the draft", he replied. The librarian opened a big window in the adjacent room, bringing in fresh air without a draft. The librarian could not have reached that solution if she had focused only on the men's positions. Instead, she observed their underlying interests in fresh air and no draft. The difference between positions and interests is crucial.<sup>5</sup>

Some suggestions for compromise are reasonable and acceptable whereas others are not. The act of compromise needs to be directly related to the end the parties wish to achieve. Xi-Sun loves the yellow dress. Her husband prefers the light blue dress. They compromise on a third, turquoise dress. This compromise might be reasonable and acceptable to both sides. Another example concerns an American Supreme Court case in which religion and security came into conflict. Gregory Holt, a Muslim prison inmate also known as Abdul Maalik Muhammad, wished to grow a beard as required by his faith. The prison objected on the ground that beards might be used to hide contraband, such as SIM cards, and because of potential identity problems when inmates grow and shave their beards. Holt suggested a compromise: to allow him to grow a half-inch beard. This compromise

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<sup>5</sup> R. Fisher, W. Ury, *Getting to Yes: Negotiating Agreement Without Giving In*, London 1991, p. 41.

would address security concerns and would enable Holt to live according to his religion. However, prison officials denied his request, and the warden told Holt: “[Y]ou will abide by [Arkansas Department of Correction] policies and if you choose to disobey, you can suffer the consequences”.<sup>6</sup> Holt thought that the warden was unreasonable and appealed all the way to the Supreme Court. The Court, *per* Justices Alito, Sotomayor and Ginsburg, accepted Holt’s compromise and ordered the prison to allow Holt to grow a small beard. While acknowledging the prison’s compelling interest in staunching the flow of contraband into and within its facilities, the Court was not convinced that this interest would be seriously compromised by allowing an inmate to grow a half-inch beard. It was “almost preposterous to think that [petitioner] could hide contraband” in such a short beard.<sup>7</sup> The Court also noted that the prison authorities did not demand that inmates have shaved heads or short crew cuts, thus it is easier to hide contrabands in the hair than in a half-inch beard.<sup>8</sup> Furthermore, the Court dismissed the potential identity problem claim by pointing out that the prison did not enforce restrictions on growing mustaches, head hair, or quarter-inch beards for medical reasons. The Court failed to understand why Holt’s request evoked security concerns whereas head or other facial hair did not raise serious security concerns.<sup>9</sup>

I agree with the Court’s decision. Holt’s suggestion reasonably balanced between his religious commitment and justified security considerations. He would have liked to have a full beard. Holt said that although he believed that his faith required him not to trim his beard at all, he proposed a solution that would make the prison’s security claims irrelevant. Accommodating Holt was justified as his dignity as a believer was at issue. Holt felt he was obliged to fulfill a divine commandment. The warden’s stubbornness was misplaced. I should also note that Justice Ginsburg, in her concurring opinion, said that accommodating Holt’s request “would not detrimentally affect others who do not share petitioner’s belief”.<sup>10</sup>

Now consider unreasonable suggestions for compromise. A couple who are deliberating in 2016 the destination of their summer vacation. Aleksander prefers Israel whereas Viagem prefers Turkey. Compromising on war-torn Syria on the grounds that it is geographically situated between Israel and Turkey would be unreasonable and unacceptable to both Aleksander and Viagem. Or suppose that a person, Jan, suffers from a kidney failure. His brother Louis (Lo in short) would be the perfect match donor but he refuses to sacrifice one of his kidneys to save

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<sup>6</sup> *Holt v. Hobbs*, 574 U.S. 352, 135 S. Court 853 (2015).

<sup>7</sup> *Ibidem*.

<sup>8</sup> *Ibidem*.

<sup>9</sup> *Ibidem*. For further discussion, see B. Hutler, *Compromise and religious freedom*, “Law and Philosophy” 2020, vol. 39, pp. 180–185.

<sup>10</sup> *Holt v. Hobbs*, 574 U.S. 352, 135 S. Court 853 (2015).

his brother. Instead, Lo is willing to donate another organ: his cornea. This is not reasonable or helpful compromise. It has nothing to do with Jan's condition and the end he wishes to achieve.

Political conflicts are usually divided into three categories: conflicts over scarce resources, ideological conflicts involving rival-rights claims and the collision of opposed identities, each seeking recognition. Whereas splitting the difference entails mutual concession, compromises over ideological and identity issues prove more challenging and require constructing a distinctive position to accommodate the various claims, values and ideals at stake.<sup>11</sup>

In politics, compromise suggests adapting to the realities of the situation at hand, meeting opponents somewhere in the middle, and promoting the public good by sacrificing certain demands or preferences.<sup>12</sup> However, there are some matters on which it might be extremely difficult, even impossible, to reach a compromise. I have mentioned blood transfusion for Jehovah's Witnesses. Another issue is male circumcision that is practiced in Jewish, Muslim and certain Christian communities. Yet another is abortion.<sup>13</sup> Some religious groups are vehemently opposed to abortion under any circumstances. In the United States, the Supreme Court precedent *Roe v. Wade*<sup>14</sup> attracted criticisms from both pro-life and pro-choice activists. The former argue that the decision effectively allows the murdering of innocent children, while the latter assert that the decision does not give due weight to wishes of the woman who is solely responsible for what is inside her body. The State should not interfere. Indeed, a person who believes in the sanctity of life no matter what would principally object to abortion and also to deciding the moment of one's death (euthanasia, suicide, assisted suicide and physician-assisted suicide). People who take issue with this position may seek a compromise, trying to persuade the opponent to recognize some considerations that, to their mind, play a major part in such grave decisions. For instance, regarding abortion they would try to persuade that abortion might be available if conducted at an early stage of pregnancy and when the reason is compelling, say rape. With regard to assisted suicide, they would insist that it should be available when the patient voluntarily asks for that, without any pressure, the prognosis for some recovery is nil, and the patient is suffering miserably.

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<sup>11</sup> R. Bellamy, *Liberalism and Pluralism*, London – New York 1999, pp. 103–104. For further discussion, see M. Benjamin, *Splitting the Difference*, Lawrence 1990.

<sup>12</sup> A. Carter, *Direct Action and Liberal Democracy*, London 1973, p. 144.

<sup>13</sup> S.C. May, *Principled Compromise and the Abortion Controversy*, "Philosophy & Public Affairs" 2005, vol. 33(4), pp. 317–348. For further discussion, see K. Kappel, *How moral disagreement may ground principled moral compromise*, "Politics, Philosophy and Economics" 2017, vol. 17(1), pp. 75–96.

<sup>14</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

Yet it might be the case that all arguments would fail to persuade the sanctity-of-life believers. Among orthodox religious groups sanctity of life is conceived in absolutist terms, i.e., it means exactly that: sanctity of life, period. This viewpoint upholds an unqualified ban on all forms of life termination. This issue is taken outside the realm of politics. The only power who may take life is the Almighty, he and he alone (vitalists will speak of nature instead of God). People should not decide for themselves such issues, and no considerations are ever compelling enough to persuade otherwise. If liberals insist on securing compromise, then they might find themselves in an undesirable situation in which they are pushed to concede infringement of basic human rights.

Compromise is not only a matter of two or more parties dealing with a common subject of concern or resources. Sometimes a compromise is made by one side regarding its aims, in deciding how to allocate the available means and in determining priorities. Compromise may mean a rational acquiescence in the fact that others are not yet prepared either to embrace new ideas or to change their ways of life in conformity to this new idea. The originator of the new idea shrinks from coercion and does not wish to force others to accept something they are not ready to embrace.<sup>15</sup>

Compromise, then, often is required between the different demands, needs, and ideas that are to be pursued and satisfied, and between what is believed in and the circumstances. In short, people compromise between the “ought” and the “is”, between what they aspire to, and what is given in reality. In this connection, the given circumstances, incompatible goals, scarcity of resources, uncertainty, complexity of the subject involved, availability of means, and pressure precipitated by time may induce a party to compromise in deciding. A relevant distinction is between principled and tactical compromise.

### PRINCIPLED COMPROMISE

When genuine compromise is reached, a sense of relief and of real achievement is shared by the parties to the agreement. A principled genuine compromise is a mutual recognition by the parties of each other's rights, which leads them to make concessions and to seek constructive solutions, possibly by meeting halfway. Principled compromise may mean the acceptance of compromise as a matter of principle and it may also mean compromise that results from a principled, moral position. Justice as fairness comes into play.

Fair compromise entails readiness of the parties in concern to make reasonable concessions, and not merely tactical concessions, in order to establish a common

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<sup>15</sup> J. Morley, *On Compromise*, London 1923, pp. 171–172.

ground that may satisfy all parties. Being reasonable in discussion means being open to listening to others, being open to changing one's mind, and taking part in a deliberative exchange in which people air ideas in civility, according due respect to other participants.

When parties craft justifications for their positions and concessions, the negotiations are deliberative. When parties are accepting the compromise as a matter of principle, they genuinely participating in the debate with their counterpart with the willingness to recognize the other's interests and together establish a common ground. Both sides respect the personal autonomy, or dignity, of their counterpart.<sup>16</sup> This, however, does not necessarily mean that compromise should only be on principled matters, or that the parties compromise only on principles. In this context, a further distinction is in order between changing one's mind on a given issue and adhering to the same position but conceding to accept a very different arrangement in a specific situation. Let me explain by considering the following examples.

In many cultures, the prevailing belief is that women's dignity is best preserved when they remain at home, taking care of housing chores. Batlan and Zofia are a married couple. Batlan likes to play video games. This is what he does all day, and he is quite good at it. Practice does matter to the extent that his friends call him "Number 1!", a title Batlan carries with pride. Zofia does not have the time to play video games. She is busy taking care of the house, of Batlan and of the children. She does not particularly like cooking, cleaning and ironing, but this is Batlan's expectation of her. She used to argue in the past. It did not go well. The arguments quickly escalated into abuse and sometimes included not only pouring verbal but also physical violence. Zofia knows that her situation is anything but just and fair. No compromise is possible with Batlan.

Now consider another married couple, Elda and Julia. Elda believes that one of the women's roles is to be in charge of cooking and of feeding the family. This is how he was brought up. Elda lived all his life in an environment where women cooked for their men and families. When he grew up he fell in love with Julia, a strong-minded feminist woman. After extensive debates with Julia, Elda had changed his mind. He came to realize that there is not a natural mechanism that tunnels women to kitchens, that there is nothing inherent, no sacred bond that connects women to cooking. Some women don't like to cook. Some men love to cook. And, in any event, if he wanted to connect his life with Julia's life, nothing

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<sup>16</sup> P. Dobel, *Compromise and Political Action*, Savage 1990, especially p. 80. For further discussion, see A. Kuflik, *Morality and Compromise*, [in:] *Nomos XXI: Compromise in Ethics, Law and Politics*, eds. J.R. Pennock, J.W. Chapman, New York 1979, pp. 38–65; A. Ford, *Third Parties to Compromise*, [in:] *Nomos LIX: Compromise*, ed. J. Knight, New York 2018, pp. 70–73; A.J. Cohen, *On Compromise, Negotiation and Loss*, [in:] *Nomos LIX...*, pp. 105–109; I.U. Dalferth, *Religion, Morality and Being Human: The Controversial Status of Human Dignity*, [in:] *Human Dignity in Context*, eds. D. Grimm, A. Kemmerer, Ch. Möllers, Munich 2018, pp. 55–106.

short of complete equality in allocating house chores will do. She made it very clear as a precondition for living together. Elda renounced his previous stance and accepts a new, equality-based position.

Finally, consider the case of Bur and Lena. Like Elda, Bur also grew up believing that one of many women's roles is to cook. Women, he always said, are made for cooking. It is one of their major rights and duties. He falls in love with Lena who has many qualities, but cooking is not one of them. In the first years of marriage, Bur insisted that Lena will cook no matter what. Lena had no strong feelings about the issue. She was willing to cook to the best of her limited abilities. Still, the result was fury, resentment and unhappiness: the kids constantly complained about the food; Bur had to force himself to eat the delicacies that Lena prepared. Lena was unhappy to receive all the complaints and nagging comments. After some time, Bur realized that a change should be made: for the sake of their home peacefulness he was willing to do take away, to hire a cook, and to find ways to keep Lena outside the kitchen. Lena, on her part, realizing the importance her husband assigns to "mom's cooking" said she will prepare breakfast during the weekends. Eggs and pancakes she can do. Unlike Elda, Bur still believes it is one of the women's roles to cook for their families, but this principle is not valid for his wife. Lena is simply unable to cook as he wants her to. He does not renounce his position. He acknowledged that it will not work in his specific family. But it should be the case for women in general.

In the first and second examples, Batlan and Zofia, Elda and Julia did not compromise. Zofia gave up fighting while Elda changed his mind. Bur and Lena, on the other hand, did compromise. Lena took upon herself a certain cooking responsibility. Bur did not revoke his previous stance and found himself required to make accommodations in order to continue living with the woman he loves and with his family. Bur still believed in his cherished principle that the kitchen is made for women. The cooks he hired were all women. He compromised with Lena realizing that the principle will not do for their family. Bur and Lena continued to believe that the agreed upon course of action was suboptimal, but each accepted that resolving the problem provided enough reason to accept the suboptimal outcome.<sup>17</sup> The compromise was made in good faith and both sides reconciled themselves to the results.

Let me now discuss compromise that results from a principled, moral position. This kind of compromise is not conditional. It does not depend on circumstances. It is made in good faith and both sides reconcile themselves to the results. The parties have respect for each other, and they acknowledge the reasonableness and legitimacy of the other side's argument while insisting that their own argument is entitled to enjoy a comparable consideration. Thus, for instance, while a religious

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<sup>17</sup> See B. Hutler, *op. cit.*, p. 181.

minority may respect the majority's religion, it expects similar recognition of its own way of life.

May makes three further points. First, principled reasons for moral compromise are usually thought to arise only when moral disagreement is reasonable.<sup>18</sup> Second, principled reasons for compromise are thought to have normative significance for everyone as they offer a common ground for reconciliation.<sup>19</sup> This is especially true when different sides accept the maxim of peaceful "Live and Let Live". Third, not all intrinsic appeals to moral disagreement are used as reasons for moral compromise.<sup>20</sup> Parties to a debate may hold a different understanding of the concept of justice and/or of a community and/or group rights and would appeal to common features of what might be considered as a just solution. Weinstock adds that such compromises are morally necessary as a result of the shortfalls that separate democratic institutions from democratic ideals, and they express a desirable form of democratic community.<sup>21</sup> Of course, principled compromises designed to promote a certain moral value may also consider circumstances and likely outcomes of the compromise so as to optimize the extent that compromise is required.

A true story, shared by my friends, D and J, may serve as an example for principled compromise. D was brought up in a traditional Catholic family in Israel. J was brought up in a Jewish family in the United States. They met in Israel, fell in love and decided to marry. Neither D nor J wanted to convert to another religion. They could not marry in any of the Israeli religious courts as those insist that the couple must be of the same religious denomination. They agreed to marry in a civil ceremony in Cyprus, as civil marriage is not allowed in Israel. A civil ceremony abroad is the only legal option for a mixed couple in Israel. Israel recognizes and registers such ceremonies based on international law principles. But for D and J it was also important to start their lives together with respect for and acceptance of each other's traditions and beliefs, and to give their families an opportunity to share in their marriage, taking into consideration their feelings and concerns. D and J understood that the future would require complicated decisions regarding how to raise their children and how to navigate between two cultures and religions, so a good start would establish trust and begin to build good relationships with both families. After long deliberations, D and J decided to have two additional, subsequent wedding celebrations: a blessing ceremony in a Christian church in

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<sup>18</sup> S.C. May, *Principled Compromise...*, p. 321.

<sup>19</sup> *Ibidem*, p. 322.

<sup>20</sup> *Ibidem*. For further discussion, see P. Jones, I. O'Flynn, *Can a compromise be fair?*, "Politics, Philosophy & Economics" 2012, vol. 12(2), pp. 115–135.

<sup>21</sup> D. Weinstock, *On the possibility of principled moral compromise*, "Critical Review of International Social and Political Philosophy" 2013, vol. 16(4), pp. 537–556. See also *Compromise and Disagreement in Contemporary Political Theory*, eds. C.F. Rostbøll, T. Scavenius, London 2017.

Jerusalem, with family and friends and another ceremony with a Jewish Reform rabbi in Florida, where J's home-bound mother resided.

Both D and J had to undergo a challenging process. They reached their joint decisions after much deliberation and soul searching, looking for satisfactory solutions with which they could live. The priest who conducted their Christian ceremony chose the wording with the couple, including phrases from the Catholic traditional ceremony, and also some Hebrew and Aramaic hymns. The Reform rabbi delivered a Biblical blessing revered by both traditions. D and J received support from their families as well as from two clerics, the Christian priest and a modern Orthodox rabbi who provided guidance. They made compromises and accommodations based on mutual respect because they were bound together by their mutual love, for which they have been paying a price as the environment in which they lived is not always tolerant with regard to intermarriage, and also because they shared responsibility for the successful pursuit of their goal to live together as a couple and to raise their children together. Both D and J understood this was a test for them as a couple, one of many, as their bond was likely to attract attention and criticism from many who object to such inter-religious bonding.

Principled genuine compromise should be sought in many social matters. On some matters, it might be extremely difficult, even impossible, to reach a compromise that would be acceptable to all sides of the dispute. But we should appreciate the genuine attempt on part of participants to reach some sort of compromise, of workable formula that will answer some of the demands and interests of the proponents as well as of the opposition.

May argues categorically that moral compromise in political life is only ever warranted for pragmatic reasons.<sup>22</sup> As a student of politics, I concede that political decisions are motivated first and foremost by interests. However, I disagree that all decisions are always divorced from moral considerations and are made solely for partisan interests. Decisions that have to do with welfare, housing, human rights, women's rights, and minority rights, among others, are not merely pragmatic. I have worked with politicians in Israel, the United States and the United Kingdom and can testify that some of them are motivated, at least on some issues, by a genuine desire to do good to others. In those instances, their own good was secondary. Kantian considerations of viewing people as ends, of respecting others, of affinity and sympathy, and of egalitarianism do play a part.

At times, parties that push for an egalitarian agenda need to compromise as a result of resource constraints, considerations that have to do with maintaining a coalition among other pragmatic reasons, and also because their agenda comes

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<sup>22</sup> S.C. May, *Principled Compromise...*, p. 317. See also eadem, *Moral compromise, civic friendship, and political reconciliation*, "Critical Review of International Social and Political Philosophy" 2011, vol. 14(5), pp. 581–602.

into conflict with other values that are deemed of importance to the negotiation parties. For instance, one party may push for expanding liberties of minorities while another promotes societal security. Both sides respect the moral position of the other: promoting minority rights for one and the safeguarding of life and limb for the other. The compromise should be made in good faith and both sides agree to accept the results. The parties acknowledge the reasonableness and legitimacy of the other side's demands while insisting that their own agenda is entitled to have a comparable consideration. The compromise they seek to secure promotes certain moral values and is also prudential, acknowledging that it is better to meet halfway than to stick to the existing policy.<sup>23</sup>

Consideration for the other may dictate refraining from opening non-Kosher shops that sell pork in Jewish-orthodox districts as well as from placing billboards advertising provocative images of bathing suits in the same districts. Public roads that pass solely through such religious neighborhoods should be closed during Shabbat, the Jewish day of rest. The case is much more complicated when public roads pass through religious and secular neighborhoods. Then there is a need to strike a fair balance between competing interests, aiming to reconcile between the religious desire to keep those roads closed during Shabbat as well as during hours of prayers on other days of the week, and the free movement of the secular residents.<sup>24</sup>

## THE WESTERN WALL

Another area of contention concerns the Western (known also as the Wailing) Wall, the *Kotel Maaravi*. Since 1988, a group called Women of the Wall is fighting for the introduction of a new, pluralistic and equal section of the Western Wall, which is one of the holiest places for Jewish prayers.<sup>25</sup> Unlike the current separated men's and women's prayer sections, they demand that this section should not be administered by the orthodox rabbi of the *Kotel*. The pluralistic section would be governed under the auspices of a group of leaders from all Jewish denominations,

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<sup>23</sup> For another example, see D. Weinstock, *op. cit.*, p. 553. See also M. Mangini, *Toward a Theory of Reasonableness*, "Ratio Juris" 2018, vol. 31(2), p. 214.

<sup>24</sup> A case in point is H.C. (High Court of Justice) 5016/96, 5025/96, 5090/96, 5434/96, *Horev v. Minister of Transport* (Jerusalem, April 1997) (Hebrew). Another interesting case concerns the opening of shops in Tel Aviv during Shabbat. While striking a balance between competing interests – honouring the Shabbat v. freedom of occupation, the Supreme Court decided that merchants should be free to open their shops on Shabbat. See H.C. 3660/17, *Association of Merchants and the Self-Employed v. Minister of the Interior* (Jerusalem, October 2017) (Hebrew).

<sup>25</sup> The Wall, known as the Western Wall and the Wailing Wall is the only structure remaining from the Holy Temple, rebuilt in glorious style and splendour by King Herod, and destroyed by the Romans in 70 A.D.

with fair representation for women. The mission of Women of the Wall is to achieve the social and legal recognition of their rights, as women, to wear prayer shawls (*tallit*) and *Tefillin* (Jewish phylacteries), pray (*Tefillah*), and read from the Torah collectively and out loud at the Western Wall.<sup>26</sup> After a long struggle, the women were able to secure rights to *tallit*, *Tefillin* and *Tefillah* but they are unable to read at the *Kotel* from a Torah scroll. As the *Kotel* is the most unsuitable place in the world to wage religious rivalries, a compromise needs to be found so all Jews, notwithstanding their interpretations of *Halacha* (Jewish Law), will be able to pray freely in accordance with their beliefs. Instead, these women were verbally and physically attacked by men who think that the “defiant” women overstep their assigned boundaries.

The case was considered by the Supreme Court several times but divisions within the Court prevented the raising of a clear voice in support of women’s equality in this delicate religious affair. In the final hearing with an expanded panel of nine justices, the Court held that the Women of the Wall were entitled to pray in the manner of their choice in the Western Wall compound but in order to prevent injury to the sensitivities of other worshippers, the Court suggested a compromise according to which the government would plan for them in another prayer area at an adjacent site called Robinson’s Arch. The Women of the Wall were opposed to this proposal as they wish to pray in the manner they see appropriate at the women’s section, adjacent to the men’s section in front of the Western Wall.<sup>27</sup> In 2016, the Israeli government passed a resolution that authorised the construction of a new plaza built where men and women can pray together at the Western Wall in Jerusalem’s Old City. Two other sections will remain segregated by gender. This decision meant that, for the first time ever, men and women would have been able to pray side-by-side at Judaism’s holiest site.<sup>28</sup> However, the Orthodox and

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<sup>26</sup> Women of the Wall, [www.womenofthewall.org.il](http://www.womenofthewall.org.il) [access: 20.04.2021]; Y. Jobani, N. Perez, *Women of the Wall: Navigating Religion in Sacred Sites*, Oxford 2017; R. Haut, *Women of the Wall: Fighting for the Right to Pray*, “The Jofa Journal” 2012, vol. 10(2), pp. 9–10; F. Raday, *Claiming Equal Religious Personhood: Women of The Wall’s Constitutional Saga*, [in:] *Religion in the Public Sphere: A Comparative Analysis of German, Israeli, American and International Law*, eds. W. Brugger, M. Karayanni, Berlin 2007, pp. 255–298.

<sup>27</sup> H.C.J. 1025/89, 955/89, 699/89, *Anat Hoffman v. The Jerusalem Municipality and Others*, P.D. 48(1), 678; H.C.J. 257/89, *Anat Hoffman v. Commissioner of the Western Wall*, P.D. 48(2) 265; H.C.J. 3358/95, *Anat Hoffman v. Director General of Prime Minister’s Office*, P.D. 54(2) 345; H.C.J. 4128/00, *Director General of Prime Minister’s Office v. Anat Hoffman*, P.D. 57(3) 289; R. Cohen-Almagor, *Israel and International Human Rights*, [in:] *Encyclopedia of Human Rights*, ed. F.P. Forsythe, New York 2009, pp. 247–257; F. Raday, *Women of the Wall*, <http://jwa.org/encyclopedia/article/women-of-wall> [access: 10.03.2021].

<sup>28</sup> P. Goldman, *Israel to Build Area for Men, Women to Pray Together at Wailing Wall*, NBC News, 1.02.2016, [www.nbcnews.com/news/world/israel-build-area-men-women-pray-together-wailing-wall-n508551](http://www.nbcnews.com/news/world/israel-build-area-men-women-pray-together-wailing-wall-n508551) [access: 20.02.2021].

ultra-Orthodox immediately voiced their protest against the decision, saying that it only created conflict and dispute. Clashes, at times violent, between Women of the Wall and Orthodox and ultra-Orthodox opposition are recurrent.

The feminists challenge the Orthodox establishment. Their fight is just and reasonable. It is also most difficult. On each and every issue that is regarded as “men’s domain”, be it praying rituals, membership in religious bodies or the ordination of women rabbis, women are facing strong resistance as they challenge intricate and complex web of entrenched norms that for the Orthodoxy define Jewish identity.<sup>29</sup> While we can discern some progress in religious gender equality in education, prayer rituals, public leadership and domestic family abuse, the success is modest. Powerful religious sectors still do not appreciate women’s creativity, spirituality, intelligence and engagement, and wish to minimize their role in society.

In March 2013, the Attorney General issued a scathing report against the phenomenon of gender segregation and the exclusion of women. Its unequivocal conclusion was that these discriminatory practices undermine the very foundations of Israeli democracy which recognizes the inherent value of every human being. Tolerance must be shown toward lifestyles of different communities. Exclusion of women as equal participants in civil life is unacceptable. The report also dismissed the Haredi argument that maintaining segregated arrangements in the public sphere is required for the preservation of its unique character.<sup>30</sup> The Attorney General instructed municipalities, religious services, bus companies, health clinics and public institutions to take active steps to ensure gender equality. While some services have changed their practices and stopped gender segregation and discrimination, others are slow to respond.<sup>31</sup> This divide between the foundations of Israeli democracy and the practice of religious communities harms women and undermines Israeli democracy.

## TACTICAL COMPROMISE

Because disputes frequently involve conflicts of personality, of character, and of distinct interests, settlements might turn out to be no more than a temporary arrangement, reached as a result of constraints related to time. This type of compromise is not the result of an effort to bridge the gap between rival groups. In-

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<sup>29</sup> L. Shakdiel, *Women of the Wall: Radical Feminism as an Opportunity for a New Discourse in Israel*, “Journal of Israeli History” 2002, vol. 21(1–2), pp. 126–163; Y. Israel-Cohen, *Between Feminism and Orthodox Judaism*, Leiden 2015, pp. 49–78. For further discussion, see V. Bryson, *Feminist Political Theory*, London 2016, pp. 268–297.

<sup>30</sup> O. Erez-Likhovski, R. Shapira-Rosenberg, *Excluded, for God’s Sake*, Jerusalem 2013–2014, pp. 7–8.

<sup>31</sup> *Ibidem*, pp. 23–26, 29–31, 33–41, 51–58, 75–81.

stead, it is a compromise which at least one side is forced to accept under given circumstances or is driven to accept believing no further gains could be achieved in the given circumstances. There is no genuine willingness to give up part of the interests involved but only to postpone the deadlines for their achievement. If any compromise occurs here, it is within one party, and not between different parties. The essential component of compromise, namely mutuality, is lacking.<sup>32</sup>

Here a distinction can be made between tactical compromise that still respects the rights of the opponents, and tactical compromise that is based on deceit. As for the first type, political partisans make tactical compromises all the time. That does not mean they fail to respect their negotiating partners, only that they deem their ultimate goals too important to surrender. Thus, for example, minority groups make tactical compromises, accepting less sweeping legislation than they desire about, say, the level of their representation in local and national parliaments, hoping that later they can win enough votes to pass a more comprehensive voting reform.

The second type of tactical compromise is unethical. It involves one side that does not respect the partner for negotiation as rights-bearers. That side would have no qualms about violating the common understanding and trying to gain a further advantage at the expense of its opponent should a proper opportunity occur. This is what I call deceitful tactical compromise, to which agents resort without giving up any of their aims. It is not reached in good faith. In other words, deceitful tactical compromise lacks respect for the other and it is a form of a lie in the sense that the deceitful person will break the terms of the bargain when the right occasion presents itself.

In international relations, possibly the best example for deceitful tactical compromise is the 1938 Munich summit. In March that year, Austria was declared a province of Germany and Hitler marched into Vienna. Then he set his eyes on Czechoslovakia. Part of that country, the Sudetenland which bordered Germany, was populated mostly by Germans who resented living under Czech officials and police, many of whom spoke poor German. They were excited over Austria's absorption into Germany and demanded political equality and autonomy. The Czechoslovakian government rejected their demands. Hitler wished to rescue the Sudeten Germans, and war between the two countries seemed inevitable. Mussolini responded to an appeal to mediate in order to forestall war, and on September 29, 1938, Mussolini, Hitler, Britain's Prime Minister Neville Chamberlain, and France's premier, Edouard Daladier, agreed to meet in Munich. President Edvard Beneš of Czechoslovakia was not invited to the summit. Munich is the destructive symbol

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<sup>32</sup> May speaks of goal-based pragmatic compromise where people compromise and concede as much as they need to secure a certain goal. This compromise is instrumental and strategic. Furthermore, pragmatic reasons for compromise only have normative significance for those sympathetic to the goals the compromise facilitates. See S.C. May, *Principled Compromise...*, p. 320.

of deceitful tactical compromise and illustrates the danger that lies when one side is willing to make genuine concessions while the other is stealing for time.<sup>33</sup> While Chamberlain and Daladier thought they reached a compromise with Hitler, the latter was deceitful. Hitler led Chamberlain and Daladier to believe that he was willing to make concessions when in fact he did not.

On crucial matters, it is enough to make one such deceit to gain a reputation of someone who cannot be trusted. After that, those deceitful persons would find it difficult to regain other's respect. Mnookin speaks of "devils" with whom people find it difficult to negotiate because people are not able to trust those "devils", fear that they might harm them, or unable to verify the "devils'" good faith in fulfilling their said obligations.<sup>34</sup> Margalit terms agreements that cause harm or injustice to one of the sides rotten compromises.<sup>35</sup> He argues that such compromises should be prohibited in all circumstances.<sup>36</sup>

An example might be the obligation of all public schools in England to teach English and the breaking of this obligation by some Jewish ultra-religious schools that were said to accept this obligation, like any other school, but with time reverted to teaching in other languages without informing the education authorities. It appears that the leaders of the schools were insincere in accepting the terms of the British board of education.<sup>37</sup> They were said to accept a compromise in order to enable them to open their schools but it is questionable whether they acted in good faith, with the intention to abide by the terms. It seems that all they did was to make a tactical compromise. The compromise was between them and themselves. With time, they abandoned what was agreed upon.

Sometimes compromise is made through the use of coercion. Again, this is not a genuine compromise as one of the sides to the agreement lacks the ability

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<sup>33</sup> For further discussion, see D. McIntosh, *Coercion and International Politics: A Theoretical Analysis*, [in:] *Nomos XIV: Coercion*, eds. J.R. Pennock, J.W. Chapman, Chicago – New York 1972, pp. 243–271; R. Jarvis, *Bargaining and Bargaining Tactics*, [in:] *Nomos XIV...*, pp. 272–288; E. Beerbohm, *The Problem of Clean Hands*, [in:] *Nomos LIX...*, pp. 1–52.

<sup>34</sup> R. Mnookin, *Bargaining with the Devil*, New York 2011.

<sup>35</sup> A. Margalit, *On Compromise and Rotten Compromise*, Princeton 2010.

<sup>36</sup> *Ibidem*, p. 3. Margalit speaks of "sanguine compromise" which is an agreement that involves painful recognition of the other side, a giving up of dreams, making mutual concessions that express recognition of the other's viewpoint, and is not based on coercion. "A sanguine compromise is not necessarily the proverbial compromise of meeting halfway, yet it does mean splitting the difference not too far from some central value". See eadem, *Indecent Compromise, Decent Peace*, 2005, [https://tannerlectures.utah.edu/\\_documents/a-to-z/m/Margalit\\_2006.pdf](https://tannerlectures.utah.edu/_documents/a-to-z/m/Margalit_2006.pdf) [access: 20.05.2021]. Principled compromise, discussed above, is somewhat similar.

<sup>37</sup> S. Fenton, *Illegal Jewish schools: Department of Education knew about council faith school cover-up as thousands of pupils 'disappeared'*, "The Independent", 3.04.2016, [www.independent.co.uk/news/uk/home-news/illegal-jewish-schools-department-of-education-knew-about-council-faith-school-cover-up-as-thousands-a6965516.html](http://www.independent.co.uk/news/uk/home-news/illegal-jewish-schools-department-of-education-knew-about-council-faith-school-cover-up-as-thousands-a6965516.html) [access: 20.03.2021].

to resist. This situation happens when the two sides are unequal in power. The majority in a given society may reach an agreement with a minority culture that the latter would forfeit an important asset, declared to be of national importance, without proper compensation. The majority simply exercised its power over the weak minority. There were so-called negotiations between the two sides, but they were a façade. The result leads to anger and frustration among the minority group that feels deprived of something that is very important to them. In this instance, questions arise about the moral legitimacy of the action. The issue is whether such a coerced compromise is compatible with integrity and with justice in some sense. Compromise should be considered and reached according to the content of the demands, regarding their substance and meaning, and with due care to the interests of both sides. If the values at stake contradict basic rights, and/or inflict harm on society or part of it, then the term “compromise” is a mere euphemism. A better term to describe the situation is “exploitation”. The fact that power is engaged with the making of forced compromises does not imply that might makes right. A majority may resort to exploitative conduct and the mere fact that a considerable number of people are involved does not make their actions just. It only makes the situation more terrible.

Democracy is not simply a matter of counting heads. It is about free discussion, a willingness to recognize the other’s rights, and respecting differences of opinion. It is a way of administering discussion between different persons who hold different interests. The aim is not to secure complete agreement on every question, though democracy certainly welcomes crystallization of consensus and agreement. If, however, unanimous agreement cannot be reached regarding a certain decision, then relevant minorities can bring about their considerations as to why they should not consent or comply with these directives. This process has to be done through the deliberative mechanisms of democracy: free exchange of opinions, and open, mutual criticism. When majority and minorities are engaged in discussion, the breadth of opinion is further broadened by the inclusion of new elements, or by the modification of old ones. Moreover, the understanding which induces minorities to make concessions to the prevailing views must be shared by the majority as well. From time to time, the majority too must make some concessions to the will of minorities, so the sense of community that keeps majority and minorities together will not be dissolved. Therefore, the commonly accepted treaty is compromise, a principle whereby that which divides is rejected in favour of that which unites the people. This is not to say that compromise is a self-sufficient principle that can be divorced from moral or other considerations. Compromise between two or more groups is not to come at the expense of the rights of others. Deliberation helps in the elucidation of interests and goals.

## CONCLUSION

I opened this paper with the example of Abe, the Jehovah's Witness who wishes to deny blood transfusion to his injured son. This example raises an ethical dilemma. On the one hand, we need to respect Abe's set of beliefs. On the other hand, physicians who are trained to save life would not be at ease in denying a patient a life-saving treatment when that treatment is readily available. The further complication is that Abe is not asking to deny treatment from himself but from his son. To what extent he has the power over his son and the physicians to compel them to live by his conception of the good? What would be a just and fair solution? Is Abe's demand reasonable? Can there be any compromise between the parties?

Abe is not simply demanding special recognition of his rights; he is rejecting a wide range of assumptions that underpin liberal democracies, first and foremost those concerning the dignity of the person, respect for human life, and the duty of physicians to save life and not stand idly by when they have the ability to help. Abe is not in the same discursive realm as liberals who seek to mediate disputes and foster compromise. In the framework of liberal democracy, the principles of respect for others and not harming others as well as the accepted medical norms that accentuate physicians' obligation to save life dictate helping Abe's son.<sup>38</sup> Humane medicine and just doctoring warrant blood transfusion for Abe's son. By contrast, an LGBTQ activist demanding equal access to healthcare and the recognition of gay marriage is making claims that fit squarely within – and, indeed, are derived from – the liberal democratic tradition of respect for others and not harming others. The potential for a reasonable discussion and compromise is therefore much greater.

The compromise process involves communication between the parties. It is a conscious process in which there is a degree of moral acknowledgement of the other party.<sup>39</sup> Both sides understand this is the right thing to do. Compromise may also be the result of expediency. The parties understand that they may gain more by the compromise than by entering into a prolonged state of conflict that would demand much more resources from them or may require an intervention of a third party that may impose on them a disliked state of affairs. The process should be perceived as fair and legitimate by all parties. Democracies are advised to enhance and promote civic education which includes discussions on the merits of tolerance, based on mutual respect for others, and of compromise, based on mutual genuine concessions between different groups of society.

When parties are unable to reach a compromise or when a compromise breaks down after agreement, sometimes one of the sides to a given dispute might resort

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<sup>38</sup> For a different perspective, see C. Kukathas, *Cultural Toleration*, "Nomos" 1997, vol. 39, pp. 69–104.

<sup>39</sup> M. Golding, *The Nature of Compromise: A Preliminary Inquiry*, [in:] *Nomos XXI*..., p. 16.

to coercion, aiming to force its perspective on the opponent. Other times, when coercion fails, the side who wished to coerce at first is pushed to make concessions and to compromise, realizing that coercion will not do. When coercion is preferred over compromise, the relationships are based on domination, on actions that repress autonomy rather than enabling it to flourish.

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## ABSTRAKT

W niniejszym artykule omówiono pojęcie kompromisu. Jeśli pomiędzy dwiema lub więcej stronami następuje kompromis, musi być wówczas wzajemność, tzn. ustępstwa powinny być po wszystkich stronach. Kompromis autentyczny opiera się na wzajemnym szacunku i na rzeczywistych ustępstwach między stronami. Najpierw wyjaśniono pojęcie kompromisu, następnie zaś dokonano istotnego rozróżnienia pomiędzy kompromisem pryncypialnym a kompromisem taktycznym. Kompromis pryncypialny oznacza wzajemne uznanie przez każdą ze stron praw drugiej strony, co prowadzi do dokonania ustępstw umożliwiających spotkanie się „w pół drogi”. Dokonuje się go w dobrej wierze, obie strony zgadzają się na jego wynik. Dla zilustrowania problemu rozpatrzono potrzebę kompromisu dotyczącego strefy wyznaczonej dla modlitwy kobiet przy Murze Zachodnim (tzw. Ścianie Płaczu) w Jerozolimie, uznawanym za najświętsze miejsce judaizmu. Następnie omówiono pojęcie kompromisu taktycznego, odzwierciedlającego tymczasowe porozumienie osiągnięte na skutek ograniczeń czasowych. W tym przypadku zainteresowani nie rezygnują ze swoich celów. Nie działają w dobrej wierze i nie zamierzają spotkać się „w pół drogi” z drugą stroną, natomiast po prostu stwierdzają, że w danym momencie cel nie może zostać osiągnięty, więc zamierzają dążyć do niego etapami. Brakuje istotnego elementu kompromisu, czyli wzajemności.

**Słowa kluczowe:** postanowienie; ustępstwa; kompromis autentyczny, pryncypialny i taktyczny; dobra wiara; Mur Zachodni (Ściana Płaczu)