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# Compromise and Ethics in Teaching Abortion: A Personal Experience

*The aim of this study is to analyse the concept of compromise through a discussion of teaching ethics in class. The discussion opens with some reflection on compromise. Next the complexity of abortion is addressed and I discuss my personal experience in teaching this issue in the United States. Some ideas are offered on strategies to teach complex ethical issues in class and the paper ends with some question marks for further debate.*

Keywords: Compromise, ethics, abortion, teaching

## On 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'. The settlement may be achieved by consent reached by mutual concessions. It can be reached without any external interference or assistance, or by arbitration. In arbitration, the parties take their conflict to a third party, conceived by them as impartial, who tries to resolve the conflict through agreement. Here we may distinguish between *voluntary* and *compulsory* arbitration. Sometimes parties in conflict will decide to seek arbitration on their own initiative, e.g. a couple who wishes to separate outside the courts and seek arbitration to settle their dispute. In other times parties may commit themselves to arbitrate certain categories of issues. It fits into a previously established framework, and the parties may not choose whether or not to be included. They automatically find their case in arbitration (Schellenberg 1996: 195). This is the case, for instance, when a person buys a property with the obligations and the arbitration framework of the

previous owner.

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. Here I refer to the underpinning foundations of every democracy: the norms of respecting others and of not harming others. When divergences become so fundamental that they can no longer be compounded, then no compromise can be reached (Sabatier and Jenkins-Smith 1993). There is simply nothing to talk about.

## Fundamental background rights

A favourable condition for compromise is mutual respect. In compromise, interests are accommodated rather than regulated, and this accommodation should be inspired by the respect we feel for the autonomy of the other. When we are sensitive to the rights of the other, then we will prefer settlement to coercion, and we will be more willing to acknowledge the need for concessions in order to reach an agreement. Different types of conflict will generate different sorts of compromise, according to the nature of the diversity at issue, the content and context of the dispute, and the complexion of the groups involved. 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 (Bellamy 1999: 103-104).

The norm of respecting others is derived from the Kantian-deontological school, while the norm of not harming others is derived from the Millian school. Both were largely adopted by liberal democracies. Respect for a person means conceiving of the other as an end, rather than as a means to something. As Kant explains, rational beings are designated 'persons' (to be distinguished from 'things') because their nature indicates that they are ends in themselves. Such beings are thus objects of respect and, so far, restrict all arbitrary choice. Such beings are not merely subjective ends whose existence as a result of our action has a worth for us, but are objective ends, that is, beings whose existence in itself is an end. No other end can be substituted for such an end (Kant 1969: 52-53).

The Kantian ethics is based upon reflexive self-consciousness. It speaks of respecting people as rational beings, and of autonomy in terms of self-legislation. The ability to be motivated by reason alone is called by Kant the autonomy of the will, to be contrasted with the

'heteronomy' of the action whose will is subject to external causes. An autonomous agent is someone who is able to overcome the promptings of all heteronomous counsels, such as those of self-interest, emotion and desire, should they be in conflict with reason. Only an autonomous being perceives genuine ends of action (as opposed to mere objects of desire), and only such a being deserves our esteem, as the embodiment of rational choice. The autonomy of the will, Kant argues, 'is the sole principle of all moral laws, and of all duties which conform to them; on the other hand, heteronomy of the will not only cannot be the basis of any obligation, but is, on the contrary, opposed to the principle thereof, and to the morality of will' (Kant 1883: 169; Scruton 1982: 65).

The notion of obligation instructs us how to behave. According to Kant, an action has moral worth only if it is performed from a sense of duty (see Brandt 1964: 374-93). Duty rather than purpose is the fundamental concept of ethics. It is the practical unconditional necessity of action and, therefore, it holds for all rational beings. For that reason it can be a law for all human wills. Duty commands us to accept moral codes because they are just, regardless of the other's attitude toward them. This deontological ethics proscribes a set of actions, with the effect of constraining our range of options, not because the results will be useful, but because this set of actions is incompatible with the concept of justice. Transgression of the rights of others intends to make use of them merely as means, without considering that, as rational beings, they must always be esteemed at the same time as ends (Kant 1969: 54-55).

#### **Respect for autonomous human beings**

Thus the defence of personal liberties is founded on the assertions that we ought to respect others as autonomous human beings who exercise self-determination to live according to their life plans; we respect people as self-developing beings who are able to develop their inherent faculties as they choose, that is, to develop the capability they wish to develop, not every capability that they are blessed with. A person, for instance, may have the faculties to become someone like Florence Nightingale, but it is against her interest to develop them (Cohen-Almagor 1994: 40). A talented teacher who is married to a successful businessman with three children may decide to compromise and give up her job and becomes a housewife upon realising that for various reasons she better stay at home for the sake of her family. She is knowingly sacrificing her job realising that raising her children is more important to her than keeping her teaching interest.

In turn we respect people in order to help them realise what they want to be. Each individual is conceived as a source of claims against

other persons, just because the resolution of the others is theirs, made by them as free agents. If we pursue the idea to its logical extreme, then to regard others with respect is to respect their decisions, because they are their decisions, regardless of our opinions of them. We simply assume that each of us holds that our own course of life has intrinsic value, at least for the individual, and we respect the individual's reasoning. This recognition may lead us to compromise when conflicting interests are at stake.

Ronald Dworkin regards political morality as resting on the single fundamental background right of everyone to human dignity and to equal concern and respect. By background rights, Dworkin means rights that provide a justification for political decisions by society in the abstract, without connecting them to any specific political institution. Dworkin implies that some rights are better viewed as universal, as applicable to every political framework, because they are essentially derived from the conception of people as human beings. Such is the right for equal concern and respect (Dworkin 1975: 1069-1071). This right may be morally applicable to any society, but Dworkin would agree that this right may not necessarily be morally convincing. That is, it may not necessarily be one that every society would wish to adopt. Indeed, the Respect for Others Argument can be said to underlie a liberal-democratic society and not just any society.<sup>1</sup>

#### **Treating people with respect**

Treating people with concern means to treat them as human beings who may be furious and frustrated, who are capable of smiling and crying, while to treat them with respect is to treat them as human beings who are capable of forming and acting on intelligent conceptions of how their lives should be lived.<sup>2</sup> That is, respect for human beings involves the presupposition that others should be allowed to make their own decisions, based on their conception of what is good and just. Respecting a person results when you give credit to the other's ability for self-direction, acknowledging the other's competence to exercise discretion when deciding between available options. Accordingly, each person is viewed as speaking from that person's point of view, having perceived interests in his or her own way. We may be asked to give our opinion, or decide to express our view anyway; nevertheless, we recognise the other's right to make choices. We recognise that the final decision rests with the agent. This so long as persons operate within the area of tolerance, so long as they do not harm others. We accept the idea that every person should be respected and treated as a moral agent whose views can be discussed and disputed, as a person who is capable of changing opinions if rational grounds are provided.

The Harm Principle which qualifies the Respect for Others Argument holds that every person should be able to pursue that person's conception of the good as long as the person does not harm others. Liberals often accept this principle and see it as necessary for prescribing limitations on tolerance. Here they follow J. S. Mill's theory as formulated in his *On Liberty* (Mill 1948).

Mill argued that as human beings should be free to form opinions and to voice them without reserve, so freedom of action is a precondition for the development of individuality. Without liberty of action we are not able to choose between different paths of action, nor can we experiment with different plans of life: 'As it is useful that while mankind are imperfect there should be different opinions, so it is that there should be different experiments of living' (ibid: 114-115).

Mill assumed that we can evaluate the rightness and wrongness of an action by considering its consequences, believing that the morality of an action depends on the consequences it is likely to produce (Mill 1973: 386; Cohen-Almagor 1997a: 141-176; Cohen-Almagor 1997b: 131-152). Since we are to judge before acting, then we must weigh the probable results of our doing, given the conditions of the situation. The general usage of 'harm' includes in its reference any or all of a miscellany of disliked mental states (disgust, shame, hurt, anxiety etc.) (Feinberg 1985: 1-26). Individuals should not harm one another unless they do it for a justified reason: self-defence.

#### **Individual at the centre of liberal ideology**

Liberal ideology places the individual at the centre: all liberal reasoning derives from seeing the individual in the focus of analysis, and all its reasoning is aimed at the advancement and development of the individual which, in turn, would result in the progress of society. The tradition evolving from the philosophical thought of John Locke (1632-1704), Thomas Paine (1737-1809), Alexis de Tocqueville (1805-1859), John Stuart Mill (1806-1873) and, in our time, John Rawls and Ronald Dworkin, places the individual, in contrast to the collective, in the centre of analysis, viewing the state as a mere instrument to serve the interests of the individual. The liberal state is conceptualised as a means of protecting society from external attacks, a framework regulating the implementation of the law for the prosperity of the citizens, a sophisticated tool to ensure individual rights.

Thus my concern is with liberal democracies which perceive human beings as ends and which respect autonomy and variety. The arguments are relevant to other countries, but because non-democratic countries do not accept the basic liberal principles, because their principles do not encourage autonomy, individualism,

pluralism, and openness, and their behaviour is alien to the concepts of human dignity and caring, one can assume that the discussion will fall on deaf ears. Non-liberal societies, based on authoritative conceptions and principles, deserve a separate analysis. Their willingness to compromise is highly constricted. If at all they opt for tactical compromises, without giving up their real ends (Cohen-Almagor 1994: 37-38).

It should be further noted that a fundamental question of moral legitimacy precedes the act of compromise. The issue is whether compromise is compatible or incompatible with integrity and with justice in some sense. Compromise should be considered and reached according to the content of the demands, with regard to their substance and meaning. One contested and heated issue for which some people in the United States are even willing to kill is abortion.

#### **Abortion: the issues**

When the United States Supreme Court grappled with the highly intricate issue of abortion, it seems the justices wished to make a genuine compromise between the pro-life camp and the pro-choice camp. Writing for the court, Justice Blackmun argued that the right of personal privacy includes the abortion decision, but this right is not unqualified and must be considered against important state interests in regulation. The court's decision leaves the state free to place increasing restrictions on abortion as the period of pregnancy lengthens. For the stage prior to approximately the end of the first trimester, the abortion decision must be left to the medical judgment of the pregnant woman's attending physician. For the stage subsequent to approximately the end of the first trimester, the state, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health. Finally, the court argued, for the stage subsequent to viability, the state in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother (*Roe v. Wade* 1973).

However, abortion is one of those issues on which it might be extremely difficult, even impossible, to reach a compromise. *Roe v. Wade* 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, euthanasia and capital punishment. People who take issue with this position may seek a compromise, trying to persuade the opponent to recognise some considerations that, to their mind, play a major part in such grave decisions. For instance, with regard to 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 euthanasia 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. And regarding capital punishment they may argue, quite persuasively so they think, that when vicious serial killers are concerned, and where ample and unmistakable evidence from different sources is available to prove the killer's guilt beyond a reasonable doubt, then capital punishment may be considered as an option. To push the point further, they would ask the sanctity-of-life believer to consider the case of S.S. officers who brutally murdered Jews and gypsies during World War Two. Would you then see that even your staunch principle has exceptions?

Yet it might be the case that all arguments would fail to persuade the sanctity-of-life believer. Sanctity of life is conceived in absolutist terms, i.e., it means for her 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.

To explicate this further, suppose that a suffering patient asks her doctor to terminate her life; however, the doctor belongs to those who believe in the sanctity of life and is unable to comply. His sense of duty, in Kantian terms, prescribes medical ethics that prolongs life which, in turn, negates respect for the patient's autonomy. All he can offer is palliative care. Again, no compromise is possible in this case. The patient will continue to live and will not see palliation as a solution, certainly not as some form of compromise, but as something that is imposed on her, for she feels life as such is imposing on her (Cohen-Almagor 2002: 111-126). Therefore, we need to recognise that it is not possible to reach a compromise on all issues. Some issues for some people are black and white, or in computer language 1 and 0, and there is nothing in between, no bridges, no scales, no meeting grounds.

#### Personal Experience

A few years ago I taught a graduate seminar titled 'The right to live in dignity and the right to die in dignity' at an American school of law.

The first part of the seminar dealt with beginning of life issues, mainly with abortion. The second part dealt with end of life issues, mainly with euthanasia. At that point of time I have been teaching this course for eight years at two Israeli law schools. I was well aware of the sensitivity of the issues, and of the possibility that one or more of the students in the class might have personal experience that might obscure their ability for careful reasoning. A student who had to undergo abortion can be expected to have strong feelings about the issue, and justifiably so.

Teaching abortion in that specific American law school was different from any previous experience I had. Reading included the following: *Roe v. Wade, op. cit.*; Thomson (1971: 47-66); Dworkin (1993); Finnis (1973: 117-145); Sumner (1974: 163-181); Wertheimer (1973: 67-95). But despite my candid efforts to present the complexities of the issue, the atmosphere in class was one-sided as five strong-minded, articulate feminist women dominated the conversations (there were 16 students in the seminar). They advanced pro-choice reasoning and dismissed all counter-arguments as 'fundamentalist', 'religious' and/or 'illiberal'.

For them, abortion was a woman's right and any reason was good for the act even at advanced stage of pregnancy. Thus having a Caribbean cruise overrides pregnancy and if a woman is determined to go on a scheduled cruise she has the right to terminate unexpected pregnancy that interferes with the joyful plan. Interestingly, the men in the class took a silent backseat position and hardly contributed to the discussions. To somewhat balance this one-sided voice in class I assigned a couple of students to present the main controversies. A female student (I shall call her Judy) was supposed to present John Finnis's conservative arguments in class, and a male student (Rick) to present Judith Jarvis Thomson's feminist arguments.

When the presentation time came, Judy rose to speak and to my surprise she began to explain what Thomson had argued. I thought at first that Judy was using Thomson as a point of departure, to better understand the context in which Finnis's arguments were made. But no, this was not the case. Judy started with Thomson and finished with Thomson. When I realised that Judy had no intention to present Finnis it was too late to stop her, so I had to let her complete her presentation. Then Rick rose to speak and he presented Finnis. This switch was done without consulting with me, without my prior knowledge or consent.

After class, I called Judy and Rick and asked for some explanation; maybe they did not understand my instruction. Well, they perfectly understood but, as Judy explained: 'I began to read Finnis and could not stand him. Therefore,

I phoned Rick and suggested that we switch the reading. Rick did not mind.' Indeed, Rick confirmed that he did not mind. Well, I did, a great deal. The entire purpose of the assignment was for Judy to at least comprehend Finnis's arguments and not simply to dismiss the other side as 'chauvinist' or 'ridiculous'. Judy did not have the mental energies or the will to deal with views that were contradictory to hers. Should have I insisted that Judy would assume upon herself another assignment in which she had to present pro-life stance? I did not wish to enter into even more troubled water and decided to avoid such a confrontation. Rick, I should say, was very passive also in this exchange, like most, if not all, men in class when abortion was at stake.

### Presenting propaganda

I then decided to present my students a film called *Silent Scream*, a propagandist plea prepared by a pro-life organisation.<sup>3</sup> This film is highly tainted, does not pretend to present both sides of the controversy and consequently it attracts lots of critique. But it shows an actual abortion and I thought that people who advocate abortion so easily should at least know what it involves. I asked the Law School Library to order the film but to my complete astonishment the head librarian declined my request on the ground that the film lacks educational merit. I contested this ruling and provided counter arguments regarding the importance of the First Amendment and academic freedom, to no avail. The scope of tolerance does not extend to a pro-life ideological film at this school of law. I should clarify that limitation of resources was not an issue. In my orientation tour of the library I was told the memorable sentence, which I have never heard before (and hope to hear in the future): 'We don't have any shortage of resources.'

Some time later I told of this exchange with the head librarian to two prominent First Amendment scholars, Ken Karst and Robert Post. Both could not believe that an American law school library refused to order a film for class instruction on such grounds. In Israel, a country that does not have First Amendment, Bill of Rights or even a special law that protects free expression, this had never happened to me. Since 1985 I have been teaching in several universities and none to date had ever refused to order an item to the library because it lacked educational merit. The assumption always is that I have valid reasons behind my requests.

I was able to find a copy of *Silent Scream* and to show it in class after providing a warning about its highly tainted content and allowing students who wished not to watch it to exit the classroom. All students chose to remain in the room and most of them did not appreciate my efforts to counterbalance the discussion with this

film, and subsequently asked me to show a pro-choice film in class. I said that the class is pro-choice anyway, and I do not see any point showing such a film, given that we have a tight schedule and the pro-choice stance was presented in elaborate fashion for several weeks. A compromise was reached that I would organise for those who were still interested to see the film a room with the necessary equipment (TV and VCR) immediately after the seminar. As expected, the wide majority of those who remained to watch the film appreciated, even enjoyed, the pro-choice message.

When the semester was over, I told my host at the law school of my experience in teaching bioethics in his institution. He caught his head and said: 'I should have warned you. There are three issues that a white male professor should not teach in American law schools: abortion, pornography and race.' A female professor may teach the first two; an African-American may teach the third.

### Conclusion

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 with regard to its aims, in deciding how to allocate the available means and in determining priorities. 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, conflicting 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 making a decision.

If conducted in the genuine sense of the word, compromise yields two winners, i.e. the two sides to the dispute. Compromise lasts as long as the parties communicate and maintain trust and good will between them. They need not feel that they sacrificed part of their autonomy. I compromised by showing the pro-choice film after class. Was it a satisfactory compromise? Should I have shown it as part of class to satisfy my students' wishes? Was it a good idea to insist on showing *Silent Scream*, knowing that the film might spark negative reactions? Maybe I should have compromised more with my pedagogic conscience and left the contentious film outside the class.

Yet I am still convinced that liberal democracies should enhance and promote civic education — which includes discussions on the merits of

tolerance, based on respect for others, and of compromise, based on mutual genuine concessions between different groups of society.

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#### Notes

- 1 I am not suggesting that currently widespread agreement exists in constitutional democracies that all people should be accorded the same rights and opportunities. Unfortunately this is not the case. I think, however, that this is one of the major ideas of liberalism and that liberal-democracies should strive to apply it. I add, sharing Jean Hampton's view, that we have an obligation as philosophers committed to arguing with, and thus respecting, our fellow human beings to persuade opponents of this idea and thus to change their minds: c.f. Hampton (1989: 813).
- 2 Dworkin's terms 'concern' and 'respect' signal the values of well-being and autonomy, respectively: we ought to show equal concern for each individual's good and equal respect for the individual's autonomy: c.f. Buchanan (1989: 879).
- 3 <http://www.silentscream.org/>, accessed on 29 May 2005.

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