

Principled Compromise and
the Abortion Controversy

It is a common observation that moral compromise is a pragmatic necessity in the political life of a democracy. All societies are characterized by moral disagreement and it is naïve, if not dangerous, to eschew any form of compromise in the face of such disagreement. Some theorists have tried to make a virtue of this necessity. They claim that we often have principled reasons to engage in moral compromise, particularly when we disagree with sincere and reasonable people. Since the abortion controversy is a paradigm of reasonable moral disagreement, it has been claimed that we ought to pursue some form of principled compromise between the pro-choice and pro-life camps. My primary aim in this article is to repudiate this claim. Moral disagreement about abortion, however reasonable it may be, generates no principled reason to compromise on abortion policy. Because many of the arguments I consider are not specific to the abortion case, my secondary aim is to cast doubt on the very idea of a principled compromise. The more general conjecture of the article is that moral compromise in political life is only ever warranted for pragmatic reasons. It is quite enough that moral compromise is accepted as a necessity without its being revered as a virtue.

In Section I, I define principled and pragmatic compromises, and distinguish them from some related phenomena. In Section II, I set out an egalitarian pro-choice position as well as two proposals for how it could be modified in a moral compromise: George Sher's rejection of public

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funding for abortion, and Amy Gutmann and Dennis Thompson's suggestion that public subsidies for abortion only be drawn from the tax contributions of pro-choice supporters.¹ In Section III, I defend the original egalitarian pro-choice position against these specific proposals for moral compromise on the public funding of abortion. In Section IV, I criticize four arguments in defense of some sort of principled compromise on abortion: arguments from complexity, respect, accommodation, and reciprocity. The failure of these arguments means that there is no obvious reason why any sort of principled compromise on abortion should be sought. In Section V, I conclude by way of a generalization of my arguments about the abortion controversy. If there is no principled reason to pursue a moral compromise on abortion, there are good grounds to believe that there is no principled reason to pursue a moral compromise on any political question.

I. MORAL COMPROMISE

A

Political compromise occurs when a political agent invokes the fact of disagreement as a reason to accept an alternative that she perceives to be worse on its own merits than her initial position. Although prudential compromises can arise between political agents motivated purely by their self-interest, my concern is with moral compromise, which occurs when disagreement is invoked as a reason to accept a political position otherwise perceived to be morally inferior. Moral compromise can vary in degree from relatively mild forms of accommodation to the complete sacrifice of fundamental principles. Moral compromise is quite distinct from moral correction or rectification, although both involve the modification of political positions. If an agent is persuaded to correct her political position, she comes to see it as morally inferior on its own merits to the new alternative. Moral correction involves the recognition that one's earlier commitments were mistaken. But if the agent comes to accept an alternative as a moral compromise, she still views her initial position as morally superior (setting aside the relevance of the fact of

1. George Sher, "Subsidized Abortion: Moral Rights and Moral Compromise," *Philosophy & Public Affairs* 10 (1981): 361-72; Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, Mass.: Belknap Press, 1996).

disagreement). Moral compromise involves no recognition of any error. There is a corresponding distinction between reasons for moral correction and reasons for moral compromise (which I understand to be exclusive). The former are reasons to think an initial position morally worse than an alternative, whereas the latter do not undermine the position itself. It may be helpful to think of reasons for moral correction as first-order reasons that concern the merits of a position itself, and reasons for moral compromise as second-order reasons that concern how firmly one should hold to a first-order position in the face of moral disagreement.

It can very often be a good thing for political agents to engage in moral compromise. First, political parties representing competing interest groups may grudgingly strike a moral compromise that happens to be a closer approximation of fairness than any party's conception of justice. Second, political parties championing competing values may agree on a compromise position that happens to be the best balancing of the relevant values. But neither of these good consequences of moral compromise translates as a good second-order reason for moral compromise. Instead, they are both good first-order reasons for moral correction. If an agent were to accept them as reasons for any sort of modification of her views, she would be committed to *correcting* her initial political positions accordingly. Since the final positions are morally superior to the initial positions, the agent ought to recognize that her earlier commitments were in error. The good thing about the final positions has nothing to do with the fact that they emerged as moral compromises, and everything to do with the independent fact that they are simply the best positions.

B

Reasons for compromise are brought into focus if we consider a politician (call her Jane) who endorses a position that is, in actual fact, the best balancing of values and interests on an issue (although perhaps only after a long period of philosophical reflection, practical experience, and political deliberation). Assume that the issue remains the subject of intractable moral disagreement in her society. This fact of moral disagreement does not give rise to any reason for moral correction, since we are assuming that Jane already endorses the best position on the

issue. But if the distribution of beliefs and power is such that Jane is unlikely to realize any of her goals without some modification of her position then she has a pragmatic reason to accept a moral compromise. Pragmatic compromise involves an extrinsic appeal to disagreement: moral disagreement gives rise to a reason for compromise, not in itself, but only insofar as it is contingently connected with a logically independent consideration, in this case the threat posed to the realization of Jane's goals generally.

Three further points about pragmatic compromise and moral disagreement should be noted. First, Jane has a pragmatic reason to compromise whether or not the disagreement about the issue is reasonable, since unreasonable moral disagreement can impede the realization of important goals just as much as reasonable moral disagreement. Second, pragmatic reasons for compromise only have normative significance for those sympathetic to the goals the compromise facilitates. Sometimes parties to a dispute do share an underlying goal that is incidentally threatened by continued discord, as when no party has a majority of votes but all have an interest in reaching a decision expeditiously. But political parties will usually differ in their pragmatic reasons for compromise given their different aims. Third, not all extrinsic appeals to moral disagreement give rise to reasons for moral compromise. Sometimes the existence of moral disagreement can be invoked as a contingent indicator of a good reason for moral correction. For instance, one could point to moral disagreement about sexuality to argue that, despite the prevailing orthodoxy to the contrary, homosexual relationships can be forms of the good life. This appeal to disagreement is extrinsic, since it is not the presence of disagreement that is relevant in itself, but rather the independent ethical fact that it brings to light. This fact counts as a first-order reason to correct positions predicated on heterosexist assumptions, rather than a second-order reason to compromise them.

C

In contrast with pragmatic compromise, principled compromise involves an intrinsic appeal to disagreement: reasonable moral disagreement gives rise to a reason for compromise in itself, aside from any impediment to other goals it may incidentally generate. Thus, even if Jane were in a position to successfully implement her political position

in its entirety, say after leading her political party to a decisive electoral victory, some think she may still have principled reason for moral compromise with the dissenting minority independent of any pragmatic consideration of future political fallout. Patrick Dobel remarks that “principled compromise can occur for good reasons separate from a sheer concern with another’s power [since] individuals can compromise because they respect the personal autonomy or dignity of other citizens.”² In a similar vein, Richard Bellamy and Martin Hollis write that “liberals have principled as well as pragmatic reasons for embracing compromise [as] it goes together with a democratic politics informed by duties of mutual respect and a concern for the collective good.”³ In addition, Joseph Carens suggests that a “commitment to union” can support the view that “in a democracy people should make concessions to their opponents even when the concessions are not needed to create a majority.”⁴ Colin Bird writes that the “imperative to compromise . . . derives from the moral norm of mutual respect, not from prudential calculation.”⁵ Stephen Macedo claims that when faced with intractable moral disagreement, “the most reasonable thing may well be mutually to moderate our claims in the face of the reasonable claims of others, to balance, and split at least some of our differences.”⁶ And David Wong claims that “a willingness to bridge differences” forms the basis of a principled inclination towards compromise and accommodation.⁷

Three further points correspond to those about pragmatic compromise above. First, principled reasons for moral compromise are usually thought to arise only when moral disagreement is reasonable (or else when it satisfies some similar minimal moral criterion). The

2. Patrick Dobel, *Compromise and Political Action: Political Morality in Liberal and Democratic Life* (Savage, Maryland: Rowman and Littlefield, 1990), p. 80.

3. Richard Bellamy and Martin Hollis, “Consensus, Neutrality and Compromise,” in *Pluralism and Liberal Neutrality*, ed. Richard Bellamy and Martin Hollis (London: Frank Cass & Co., 1999), pp. 54–79, at p. 76; Richard Bellamy, *Liberalism and Pluralism: Towards a Politics of Compromise* (London: Routledge, 1999), p. 114.

4. Joseph Carens, “Compromise in Politics,” in *Nomos XXI: Compromise in Ethics, Law, and Politics*, ed. J. Ronald Pennock and John Chapman (New York: New York University Press, 1979), pp. 123–42, at p. 135.

5. Colin Bird, “Mutual Respect and Neutral Justification,” *Ethics* 107 (1996): 62–96, p. 92.

6. Stephen Macedo, *Liberal Virtues: Citizenship, Virtue, and Community in Liberal Constitutionalism* (Oxford: Clarendon Press, 1990), p. 71.

7. David Wong, “Coping with Moral Conflict and Ambiguity,” *Ethics* 102 (1992): 763–84, p. 779.

unreasonable disagreement of white supremacists and the like with liberal democratic practices generates no principled reason for moral compromise. Arthur Kuflik writes that in “seeking a compromise, each acknowledges the reasonableness of the other side’s view while insisting on comparable recognition for its own.”⁸ Second, since the parties to a reasonable disagreement should be able to recognize their mutual reasonableness, principled reasons for compromise are thought to have normative significance for everyone, regardless of their particular pragmatic interests. The idea of principled compromise can therefore be seen as offering the possibility of a stable common ground for citizens otherwise divided by their political views; principled reasons for compromise can be shared by all when there is no fortuitous convergence of pragmatic reasons for compromise, and when reasons for correction fail to persuade. Third, not all intrinsic appeals to moral disagreement are used as reasons for moral compromise. For instance, one way (but by no means the only way) to defend state neutrality about questions of the good life is to invoke the fact of reasonable moral disagreement.⁹ This does not count as compromising an otherwise superior liberal pluralist or perfectionist position since the standard political liberal claim is that no such position can be consistently defended: state neutrality is a first-best position. There are reasons to doubt the cogency of intrinsic appeals to moral disagreement in general, but my present target is simply the idea of a principled compromise.

D

The conjecture that there are only pragmatic reasons for moral compromise is compatible with talk of principled compromise in three additional and quite different senses. First, a pragmatic compromise can be said to be principled or *morally acceptable* because, although it involves some moral loss, it violates no fundamental moral principle.¹⁰ Second, a

8. Arthur Kuflik, “Morality and Compromise,” in Pennock and Chapman, pp. 38–65, at p. 51.

9. John Rawls, *Political Liberalism*, paperback ed. (New York: Columbia University Press, 1996); Charles Larmore, *Patterns of Moral Complexity* (Cambridge: Cambridge University Press, 1987).

10. Before the first democratic elections in South Africa in 1994, a compromise between the major parties led to the inclusion of a Government of National Unity provision in the interim constitution: all parties registering more than 10 percent of the vote were to be

pragmatic compromise can be principled or *morally binding* insofar as parties ought to remain faithful to the pact they have made, even if they entered into it for pragmatic reasons. Once agreed upon, moral compromises, like other kinds of deals, may acquire a normative status that they would not otherwise have. Third, a pragmatic reason for moral compromise can be said to be principled or *morally constrained* because it only arises given a commitment to moral constraints on one's political activity, such as a commitment to democratic decision making. Parties can have a principled commitment to majoritarian ground rules of political decision making without being committed to any form of moral compromise beyond that necessary to secure a majority. Accepting only pragmatic reasons for compromise within these moral constraints does not entail any Leninist commitment to disenfranchising one's political opponents at the earliest convenient opportunity. It should go without saying that reasons for compromise ought to be morally constrained, and that compromises ought to be morally acceptable and at least to some extent morally binding. But these truisms have no bearing on whether there are ever principled reasons for forging moral compromises as I have defined them.

The claim that there are only pragmatic reasons for compromise is compatible with the intuitive idea that those who refuse to compromise are potentially dangerous political actors. Political conflict is a cause of much human suffering. Reasonable political actors should avoid ideological fundamentalism and strive to resolve those political disputes that threaten such misery as best they can. Indeed, a commitment to improving the lot of the most vulnerable should be the principle that trumps all other ideologies. But a willingness to engage in this sort of moral compromise is best understood as a healthy *pragmatism* in the pursuit of a basic humanist commitment. Pragmatic reasons for compromise are sometimes the weightiest moral reasons a politician has. We do not need to underscore this point by introducing the idea of a principled reason for moral compromise.

represented in the cabinet. This compromise was morally acceptable since coalition government violates no fundamental democratic principle. In contrast, the U.S. slavery compromises of 1820 and 1850 were morally unacceptable since they permitted the practice of slavery in Missouri and the New Mexico territory seized in 1848. Perhaps there was no way for abolitionists to eliminate slavery before the Civil War, but that would make the compromises unavoidable, not morally acceptable.

II. THE ABORTION CONTROVERSY

A

Jane endorses an egalitarian pro-choice policy on abortion, (A), that comprises a number of more particular positions:

- (r) Women have the *right* to an abortion for any reason during the first two trimesters;
- (n) The state should be *neutral* about whether abortion is unethical;
- (f) Abortion ought to be publicly *funded* (commensurate with similarly significant healthcare needs) from money accumulated through the standard involuntary taxation procedures;
- (w) Consultations and *waiting* periods that aim to promote reflection about the decision to abort should not be required; and
- (j) The *judiciary* may enforce (r), whereas (n), (f), and (w) are matters for the legislature to decide.

(A) can be expanded to include positions on other abortion-related matters, for instance whether minors may have abortions without parental consent, but for the present discussion it is unnecessary to present a comprehensive version of the policy. It is naturally an open question whether there are any reasons for correction that imply that (A) is not the best position on abortion. Pro-life proponents argue that the fetus's right to life grounds a reason for correction that defeats (r). Similarly, a pro-choice majoritarian who rejects judicial review of legislation would not accept (j), and could instead argue that (r) should be directly implemented by the legislature. Although I take it that (A), or something quite like it, really is the best position on abortion, focusing on the second-order issue of moral compromise requires setting aside the first-order issue of moral correction, other than to note that it is a difficult moral problem about which reasonable people disagree. The claim that there are no principled reasons for moral compromise on abortion is compatible with quite different policies, even pro-life positions.¹¹ It is

11. It is worth emphasizing this point. If the pro-life position were to be correct then, on the argument advanced here, there would be no principled reason to forge a compromise that permitted (at least elective) abortion. It does not follow from this that intransigent pro-life proponents are acting justifiably when they refuse to compromise in a

nevertheless useful to assume a specific, reasonably plausible view on abortion. It is a mistake to think that arguments against principled compromise on abortion must themselves be scrupulously neutral between all reasonable positions, as this may be to rule out in advance the best arguments about what (egalitarian, pro-choice) Jane has reason to do.

An advocate of a more extreme pro-choice position, a proponent of the permissibility of infanticide for example, could reject (A) as insufficiently permissive, either because it restricts the right to abortion to the first two trimesters, or because it does not positively endorse abortion as ethically unproblematic. (A) is not, therefore, the most extreme pro-choice position available. Defending an uncompromising pro-choice position, however, does not count as defending an extreme pro-choice position. That would be to confuse second-order intransigence about compromise (how one holds to a position) with first-order extremism about content (the substance of the position held). Sometimes moderate pro-choice positions on abortion are described as compromises between the value of autonomy and the sanctity of life. But this mistakes a balancing of values, warranted by reasons for correction, with a moral compromise between opposing viewpoints. For instance, Ronald Dworkin's position on abortion might resemble a possible moral compromise between pro-life and pro-choice camps in that it emphasizes the sanctity of life in addition to women's autonomy.¹² But Dworkin only argues that these camps have, as a matter of fact, more in common than might otherwise be thought, not that there is any principled reason to find common ground in a moral compromise. Dworkin offers his position as the right answer on its own merits, not as the best compromise given the existence of intractable moral disagreement.

position of advantage. Those who refuse to compromise unjustifiable positions are acting improperly, not because they refuse to pursue principled compromises, but because their positions are unjustifiable from the beginning. The error lies at the first order, not the second. This means that the moral stakes are high when we come to a conclusion about the moral permissibility of abortion, the justifiability of a military conflict (see n. 40 below), or any other profoundly controversial moral question. Some may prefer a less daunting approach. But why should we accept a philosophical analysis that made our moral dilemmas seem any easier or less consequential than they actually are?

12. Ronald Dworkin, *Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom* (New York: Alfred A. Knopf, 1993).

B

Sher claims that the fact that there are good considerations on both sides of the abortion question means that one must in all sincerity admit that one could be mistaken about the correctness of the view one espouses. Jane should accept that her endorsement of (A) is fallible in a way in which the view that children ought not to be tortured for fun is not. "But once this acknowledgment is made, such considerations as respect for one's opponent and the value of mutual accommodation may permit (or even require) adjustments in behavior that would otherwise be inappropriate."¹³ Jane has reason to moderate her position on abortion, so that conflicting duties of conscience do not commit each side to permanent acrimony and antagonism. Gutmann and Thompson's reasoning is similar. They believe that fair terms of social cooperation ought to be mutually justifiable to citizens. When citizens defend arrangements and policies, the ideal of deliberative reciprocity requires that they practice an economy of moral disagreement in which they accommodate, as far as possible, the reasonable views of others. Although moral accommodation can occasionally occur if opposing sides find they already have sufficient points of congruence between their initial positions, "moral compromise may sometimes be permitted or even required by principles of accommodation."¹⁴ The abortion controversy is one of the clearest examples of a deliberative disagreement, that is, a disagreement "in which citizens continue to differ about basic moral principles even though they seek a resolution that is mutually justifiable."¹⁵ This means

13. Sher, p. 369.

14. Gutmann and Thompson, p. 88. That moral accommodation often involves moral compromise is indicated by the language that Gutmann and Thompson use: pro-choice advocates should "move a small but significant way towards accommodating pro-life concerns" and should support policies "even if they would otherwise place those policies significantly lower on their own list of political priorities" (*ibid.*, pp. 87–89). In this way, moral accommodation usually involves some moral loss. Gutmann and Thompson are clear though that moral accommodation does not warrant "compromising one's moral convictions solely in the interests of agreement," which I take to be a rejection of morally unacceptable compromises, not moral compromise *per se* (*ibid.*, p. 85). See also Amy Gutmann and Dennis Thompson, "Democratic Disagreement," in *Deliberative Politics: Essays on Democracy and Disagreement*, ed. Stephen Macedo (New York: Oxford University Press, 1999), pp. 243–79, esp. p. 266.

15. Gutmann and Thompson, *Democracy and Disagreement*, p. 73.

that the best resolution of the abortion problem ought to accommodate, as far as is morally acceptable, both pro-life and pro-choice convictions.

The arguments advanced by Sher and Gutmann and Thompson are appeals to disagreement, because if there were no abortion controversy, Jane would have no opponents to accommodate or respect, and hence no reason to modify (A). They are not offering first-order reasons for moral correction, since the values they cite do not ground any argument that (A) is flawed on its own merits. (A) is not incoherent in the way in which the political liberal claims that liberal perfectionism is ultimately unstable on its own terms. So they are offering second-order reasons for moral compromise. The abortion controversy has obviously led to significant social strife (including murder) and has the potential for a good deal more. Although this may ground a separate, pragmatic reason for moral compromise, it is clearly not the focus of their arguments. The values they cite would not cease to operate in a situation where Jane's party could implement its political agenda without damaging side effects. So the reasons offered for moral compromise are principled rather than pragmatic; the appeal to moral disagreement is intrinsic rather than extrinsic.

C

The abortion controversy is the stock example of proponents of principled compromise, but few actually suggest what an appropriate compromise on abortion should look like, beyond vague exhortations to moderation.¹⁶ This is not entirely improper, since whether a compromise

16. Dobel writes that nowhere is the need for moral compromise "more evident than in the continuing conflict over abortion [but] I would not even attempt to suggest a compromise . . . [except that any compromise should involve] respecting the need for an autonomous time of decision . . . as well as recognition of interests in protecting the potential person in the fetus" (Dobel, pp. 87–88). Bellamy and Hollis write simply that "there are a host of middling positions between those who oppose abortion of any sort and those who believe it should be freely available on demand up to 26 weeks or beyond" (Bellamy and Hollis, p. 75). Macedo does briefly suggest that Jane should revise (r) and drop (w): "legalized abortion, perhaps, but only up to a certain point in the pregnancy, and only with consultations that help insure that the decision to abort is carefully considered" (Macedo, *Liberal Virtues*, p. 72). But no elaboration is offered. Bird advocates setting viability as the point after which abortion should no longer be legal (Bird, p. 94). The reason for this is that neither conception nor birth could serve as points that would enjoy the support of both pro-life and pro-choice camps. Bird also suggests that the beginning of the second trimester might be a reasonable compromise criterion (*ibid.*, p. 91).

proposal is a good one depends on its being the realistic object of a reasonably broad consensus, which can be a difficult empirical question.¹⁷ Yet this cannot be the only criterion of a good principled compromise, since it does not offer one any moral guidance on how compromising one should be to reach such a consensus. Obviously, no reason for moral compromise can demand unconditional capitulation, but neither can it be satisfied with purely cosmetic concessions that fail to incorporate any of one's opponents' substantive views. As such, if principled reasons for moral compromise are to be something more than otiose rhetoric, they must be followed up with principled reasons in (at least tentative) support of specific proposals. The compromises that Sher and Gutmann and Thompson offer are supported in precisely this way. The proposals would require Jane to relinquish the public funding policy, (f). In its place, Sher suggests:

- (h) Elective abortion, though legal, should not be publicly funded (akin to the *Hyde* Amendment).

Sher proposes (h) in part because he denies that women have any moral right to be provided with abortion. The state could fulfill basic welfare and self-determination rights with financial support to struggling mothers and an effective adoption program for women who simply do not wish to raise children. Sher believes that it is more plausible to think that utilitarian rather than rights-based considerations support public funding. But utilitarian considerations are much easier to override than rights. Although there may be some utilitarian costs to (h), the values he cites in support of principled compromise should be able to trump them. Since public subsidies amount to an implicit state endorsement of abortion, and since they "place conservatives in a position of actively supporting abortions rather than reluctantly tolerating their perfor-

17. Martin Benjamin qualifies his endorsement of a restriction of (r) to the first trimester with the observation that pro-life proponents may simply never be able to agree in good conscience to any compromise permitting abortion. Given the deeply religious identity of most pro-life proponents, one cannot "persuade them to compromise without changing them into different people" (Benjamin, p. 169). Nevertheless, Benjamin is optimistic that there may be political and philosophical ways to circumvent this obstacle. Benjamin also seems to suggest that (j) may be weakened or dropped entirely: "it might be best, if historical conditions were to make it possible, to shift the focus [of the abortion issue] from the Supreme Court to Congress" (ibid., p. 166).

mance by others," public funding of abortion is inappropriate, however utilitarian it may be.¹⁸

Sher's position faces a serious difficulty, since all government-funded programs place those who dissent in the position of supporting policies with which they disagree. This cannot mean that all such programs ought to be compromised, however. Sher acknowledges this difficulty in a footnote, where he claims that his point "applies only to cases in which public policy is contested on moral grounds [and where] the principles underlying the disagreement [are] both supported by reasonable arguments and serious enough to justify extra-legal activity."¹⁹ Yet, this does not provide an acceptable criterion to distinguish cases where compromise on public funding is appropriate from cases where it is not. I take it that moral and religious pro-life arguments against abortion are no more reasonable than moral and religious pacifist arguments against war, at least in any significant way. If pacifists were right that all wars are unjust forms of mass slaughter, civil disobedience campaigns and other forms of extra-legal activity would presumably be justified. But this does not provide a good reason to curtail defense spending, unless the antecedent of the hypothetical is accepted. Nor is the depth of feeling about the abortion controversy a good criterion, since many may feel just as strongly that abortion services should be publicly funded as those who reject abortion outright. Measuring the strength of emotions is never particularly fruitful in political theory. It is unclear whether there is any more plausible criterion to identify moral controversies where compromise on public funding is appropriate. Even if there is, Sher's position is subject to other criticisms.

Gutmann and Thompson reject Sher's argument that (h) would not violate women's rights. In subsidizing childbirth but not abortion "the government literally makes an offer the indigent women cannot afford to refuse."²⁰ Even if abortions are publicly funded, however, Gutmann and Thompson claim it should be possible to substitute (f) with a more accommodating policy. Three options are suggested by their discussion:

18. Sher, p. 371.

19. *Ibid.*, n. 6.

20. Justice Brennan, writing in dissent in *Harris v. McRae*, 448 U.S. 297 (1980) at 334, quoted in Gutmann and Thompson, *Democracy and Disagreement*, p. 99.

- (o) Abortion ought to be publicly funded, but only if there is a conscientious *objection* clause exempting sincere pro-life proponents from some portion of their mandatory tax liability (presumably an amount proportionate to the percentage of public expenditure directed to abortion services).
- (v) Abortion ought to be publicly funded, but only with *voluntary* donations from pro-choice taxpayers made in excess of their mandatory tax liability.
- (m) Abortion ought to be publicly funded, but only with that portion of their *mandatory* tax liability that pro-choice taxpayers specifically authorize for the purpose.

Gutmann and Thompson reject (o) and seem to suggest (m), but without clearly distinguishing it from (v). They use two quite different examples to illustrate the idea of funding abortion services from pro-choice contributions: Colorado's income tax form check-off boxes and the Presidential Campaign Fund box on the federal 1040 income tax form.²¹ The Colorado check-off boxes are equivalent to (v): "all state check-off contributions are voluntary donations from a taxpayer's refund, not a redirection of his or her liability."²² The Presidential Campaign Fund contribution, however, is the equivalent of (m): checking the box does not increase one's tax payments or reduce one's refund.²³ Naturally, some combined version of these policies could be implemented. Nevertheless, it is instructive to consider all three possibilities separately.

III. PUBLIC FUNDING OF ABORTION

There are at least three questions that figure in determining the best position on the public funding of abortion. First, is it inappropriate for the state to actively support abortions, and not merely tolerate them, given a context of reasonable moral disagreement? Second, are there adequate reasons of justice that support subsidized abortions, assuming public funding would not be inappropriate? Third, should subsidies for abortion services only be drawn from pro-choice taxpayers' contributions, given some or other system of public funding is warranted?

21. Gutmann and Thompson, *Democracy and Disagreement*, p. 90.

22. <<http://www.checkoffcolorado.org/info.html>>

23. <<http://www.irs.gov/pub/irs-pdf/i1040.pdf>>

A

Sher's argument against public funding relies on a distinction between endorsement and toleration. Whereas toleration is acceptable, state endorsement is not desirable in a situation where citizens reasonably disagree about ethical matters. Sher's argument may gain credibility from an analogy with religious toleration. It is one thing to tolerate different religious practices, quite another for the state to proclaim the truth of a particular religion and support it with taxpayers' money. Subsidizing abortion would seem to amount to a similar adoption of a partisan ethical doctrine, especially given the close association of pro-life views and traditional religious convictions. Thus, although Jane may have ethical views favorable to abortion, it would be just as wrong of her to use her political office to divert public funds in support of her personal convictions as it would be for an evangelical president to divert public funds to his favorite religious group so that it may spread the Word of God.

The analogy is not compelling. There are two basic moral questions associated with the abortion controversy: is abortion ethical and should it be legal? Sher's point must be that public funding violates state neutrality on the first question, since the second question has to be answered one way or the other. But public funding of abortion has no more bearing on the ethical question than any other pro-choice position (including Sher's). In this it differs from the case of the evangelical president, whose policies only make sense given a commitment to the truth of his religion. No pro-choice advocate thinks that the state has any business dictating the ethics of abortion to women. Proponents of public funding of abortion argue that it is necessary to ensure women's effective ability to choose, whatever their ethical views happen to be. In turn, this ability to choose is a crucial determinant of the quality of women's lives. Public funding is not premised on any desire that women choose one way rather than another, nor on any belief that abortion should be no more ethically troubling for a woman than an appendectomy, but simply on the idea that an inability to control their reproductive destinies is not in women's interests.²⁴ There is therefore no reason to think

24. That this claim about women's ability to choose is compatible with neutrality about the ultimate rightness or wrongness of abortion can be illustrated by the claim of some pro-life proponents that women who have elective abortions are selfishly pursuing their

that public funding of abortion violates state neutrality on the ethical question of abortion; public funding and state neutrality, (f) and (n), are quite compatible.

B

Gutmann and Thompson claim that a failure to subsidize abortion violates the basic liberty of indigent women: “the refusal to fund abortions for poor women, when childbirth is funded, creates an almost irresistible pressure on indigent women to carry a child to term.”²⁵ This argument does not, however, adequately support public funding of abortions. One would not ordinarily think that it violates a person’s liberty to offer her an almost irresistible incentive to choose one of her two rightful options. If the state offered large tax incentives to encourage small families, it would not, presumably, be violating the rights of those who would otherwise prefer to procreate with abandon (although such a tax policy might conceivably be excluded on other grounds). Whether or not subsidizing only childbirth violates a woman’s rights depends on whether justice entitles her to subsidized abortions in the first place. And this is precisely the (reasonably controvertible) claim that is in question.²⁶

An entitlement to subsidized abortions is much more directly supported by straightforward egalitarian considerations than it is by considerations of liberty, where egalitarianism can be loosely understood in

own interests to the detriment of their maternal responsibilities. So it is quite possible to think that abortion is profoundly wrong and that the ability to have an abortion is in women’s interests. That said, there are also many pro-life proponents who think that the emotional and psychological harms of abortion outweigh the benefits, so my claim is not uncontroversial.

25. Gutmann and Thompson, *Democracy and Disagreement*, p. 88.

26. Alan Wertheimer notes the strangeness of Gutmann and Thompson’s argument here in his “Internal Disagreements,” in Macedo, *Deliberative Politics*, pp. 170–83, at p. 176. The latter are attempting to economize on deliberative disagreement, but the question of a right to subsidized abortion is obviously one about which sincere and reasonable people seeking mutually acceptable policies could disagree. As such, it is odd that Gutmann and Thompson seem to insist on it as a fixed point, when they are not so insistent on other points of deliberative contention. It could be that Gutmann and Thompson are simply noting that Sher’s rejection of such a right is a reasonably controvertible position itself. This could not support a rejection of Sher’s (h), however, since that proposal could still be the best compromise position, all things considered, even though it is not without controversy. Shifting to public funding would require additional arguments.

terms of John Rawls's difference principle, i.e., the claim that inequalities in social and economic primary goods are only just if they are to the advantage of the worst-off.²⁷ Egalitarian political parties must defend those policies that will, as a matter of fact, most improve the quality of life of the worst-off, and oppose those policies that will, as a matter of fact, aggravate it. Opposition to the public funding of abortion in the United States has had, on this measure, severe anti-egalitarian consequences.²⁸ The Hyde Amendment prohibits federal funding of abortion through Medicaid, except in cases of rape, incest, or a threat to the woman's life.²⁹ As of May 2005, only seventeen states provide Medicaid subsidies for abortions beyond the Hyde Amendment's restrictive limits, mostly under court order.³⁰ Accordingly, there are a number of difficulties that face Medicaid recipients who wish to abort a pregnancy. When public funding is unavailable, many women are simply unable to terminate unwanted pregnancies.³¹ Those who do pay for abortions are often

27. Rawls, p. 6.

28. I follow Sher and Gutmann and Thompson in focusing on the United States, although I do not think that the basic philosophical issues in question depend on the contingencies of the U.S. case. In particular, I assume that the egalitarian concerns I mention also arise in other societies. A complete argument for public funding of abortion services in any one society will need to balance the urgency of abortion services with the urgency of other medical services, as well as take into account the level of resources available for welfare provision in general. Naturally, not all societies will have the same priorities or the same capacities. Moreover, I do not assume that a failure to fund abortion services is particularly worse than other serious failures to protect the health and welfare of the worst-off. The ability to control one's reproductive destiny is an important element in human well-being, but I do not assume any distinctive right to subsidized abortion that marks it out as a special case, entirely unlike other aspects of healthcare. Egalitarian considerations defeasibly support publicly subsidized healthcare across the board.

29. The Hyde Amendment to the Social Security Act came into effect in August 1977. In 1981, the Reagan Administration excised the rape and incest provisions, although they were later restored by the Clinton Administration. In June 1980, the Supreme Court ruled in *Harris v. McRae* that the federal government is under no constitutional obligation to fund abortion services.

30. The Alan Guttmacher Institute, "State Funding of Abortion under Medicaid," *State Policies in Brief*, May 2005. The states are Hawaii, Maryland, New York, Washington (voluntarily), Alaska, Arizona, California, Connecticut, Illinois, Massachusetts, Minnesota, Montana, New Jersey, New Mexico, Oregon, Vermont, and West Virginia (under court order).

31. A 1999 study of North Carolina's intermittent provision of abortion funds found that when funds were unavailable 37 percent of women who would otherwise have obtained an abortion carried the pregnancy to term instead, as cited in Heather Boonstra and Adam Sonfield, "Rights Without Access: Revisiting Public Funding of Abortion for Poor Women," *The Guttmacher Report on Public Policy* 3 (2000): 8–11, p. 10.

only able to do so with significant difficulty and delay.³² These delays in turn increase the cost of abortion and can increase the medical risks and legal complications involved.³³ The lack of public funding does not affect only women on Medicaid. Private insurance coverage for abortion is low, with only 13 percent of abortions billed directly to private insurance providers.³⁴ The number of abortion facilities is declining steadily, further retarding the capabilities of women to control their reproductive destinies, especially those who experience considerable difficulty in traveling to metropolitan areas.³⁵

The desire to keep the U.S. government “out of the abortion business” has also had some detrimental consequences for U.S. international population assistance. The Mexico City gag rule prohibits U.S. assistance to foreign organizations that either provide abortion, provide information to pregnant women about legal abortion options, or advocate legalizing abortion in their countries.³⁶ In 1995, Congress cut funding for the U.S.

32. Boonstra and Sonfield cite a 1983 Alan Guttmacher Institute report which found that 60 percent of Medicaid recipients reported serious hardship in paying for abortion (including diverting money from rent, utilities and food, and even resorting to prostitution), compared with 27 percent of non-Medicaid women (ibid.). The same study notes that Medicaid-eligible women wait between two to three weeks longer than other women to have an abortion because of these difficulties in obtaining funds.

33. In 2001 the mean charge for an abortion at an abortion clinic was \$364 at 10 weeks, \$720 at 16 weeks, and \$1290 at 20 weeks; see Stanley Henshaw and Lawrence Finer, “The Accessibility of Abortion Services in the United State, 2001,” in *Perspectives on Sexual and Reproductive Health* 35 (2003): 16–24, p. 18.

34. Ibid., p. 20. Four states (Idaho, Kentucky, Montana, and North Dakota) place restrictions on private medical insurance coverage of abortion.

35. The number of abortion providers dropped 14 percent between 1992 and 1996, including a 23 percent drop in the number of public hospitals performing abortions; see Stanley Henshaw, “Abortion Incidence and Services in the United States, 1995–1996,” *Family Planning Perspectives* 30 (1998): 263–70, p. 268. There was an 11 percent drop in abortion providers between 1996 and 2000, and 34 percent of U.S. women live in those counties (87 percent of the total number of counties) with no abortion provider; see Lawrence Finer and Stanley Henshaw, “Abortion Incidence and Services in the United States in 2000,” *Perspectives on Sexual and Reproductive Health* 35 (2003): 6–15, p. 10. In 2001, 24 percent of women having abortions in non-hospital facilities traveled more than fifty miles to do so, a difficulty compounded by mandatory waiting periods and women’s own desire for confidential counseling; see Henshaw and Finer, p. 18.

36. Susan Cohen, “Global Gag Rule: Exporting Antiabortion Ideology at the Expense of American Values,” *The Guttmacher Report on Public Policy* 4 (2001): 1–3, p. 2. The name refers to the 1984 Mexico City conference where the Reagan Administration first announced the policy. It was rescinded by President Clinton on 22 January 1993 (the twentieth anniversary of *Roe*), but restored by President Bush exactly eight years later.

Agency for International Development's population assistance program from \$542 million to \$356 million, in part as an attempt to pressure the agency to accept the gag rule. It is estimated that restoring funding to 1995 levels would result in 4.3 million fewer unintended pregnancies, 2.2 million fewer abortions, 15,000 fewer deaths of women from pregnancy-related causes, and 92,000 fewer deaths of infants worldwide.³⁷ Although neither the gag rule nor the low funding of USAID are entailed by laws prohibiting federal funding of abortion, they are political bedfellows. Thus, President Bush has justified the re-imposition of the gag rule on the grounds that "taxpayer funds should not be used to pay for abortions or advocate or directly promote abortion."³⁸ Even if Gutmann and Thompson are wrong to think that Sher's Hyde-like (h) violates a basic liberty, it still trivializes the urgency of public funding to describe its absence as a merely utilitarian cost since this suggests that it is the sort of cost a society may choose to incur without injustice. As an egalitarian, Jane cannot accept that measures that significantly aggravate the quality of life of the worst-off are just. Hence, although Sher professes a willingness to supplement his compromise policy with additional welfare provisions, he has not provided any reason to think that the anti-egalitarian consequences of (h) can be easily avoided by any realistic alternative to (f). The state needs to be in the "abortion business" precisely because it needs to be in the business of aggressively improving the quality of life of the worst-off.

C

Public funding of abortion is warranted, at least defeasibly, by egalitarian concerns about the quality of life of the worst-off, and it is compatible

37. Susan Cohen, "Analysis Says Boost in Overseas Family Planning Aid Would Yield Improved Health, Fewer Abortions," *The Guttmacher Report on Public Policy* 3 (2000): 9–11, p. 9, citing an analysis conducted by researchers from the Alan Guttmacher Institute, the Futures Group International, Population Action International, and the Population Reference Bureau.

38. Cohen, "Global Gag Rule," p. 2. In July 2002, President Bush suspended the entire \$34 million U.S. contribution to the United Nations Population Fund (UNFPA) on the uncorroborated grounds that the UNFPA's program in China constituted a violation of the 1985 Kemp-Kasten amendment that prohibits support for any program of coercive abortion or involuntary sterilization; see Susan Cohen, "Bush Bars UNFPA Funding, Bucking Recommendations of its Own Investigators," *The Guttmacher Report on Public Policy* 5 (2002): 13.

with state neutrality on the ultimate ethics of abortion. The remaining question concerns whether public funding for abortion should be drawn only from the contributions of pro-choice supporters. Gutmann and Thompson reject the exemption for conscientious objectors in (o) because an unequal mandatory tax burden would be unfair to those who pay more. If justice requires that a society adopt a certain policy then the burden for implementing this policy falls on everyone. It does not fall only on those who believe the policy is a good one. One would need to discern a compelling reason for exempting people from this burden before one could maintain that only some of the population ought to shoulder it. Mere reasonable disagreement with the policy is not a good enough reason for exemption. For instance, the wealthy are, generally speaking, less inclined to support egalitarian measures than other people. Much of this dissent may be quite reasonable since egalitarianism is not self-evidently true. Nevertheless, it would be self-defeating for an egalitarian government to exempt them from their fair contributions.

Gutmann and Thompson note one possible basis for exemption: if a pro-life supporter's "fellow citizens truly acknowledge the moral seriousness of her views, they should find some way to reduce her complicity in acts she regards as murder."³⁹ They claim that although the argument for reducing complicity is powerful, it does not warrant an exemption. But the reason the argument does not warrant an exemption is because it is not cogent at all. Complicity in an activity is only really a moral problem if that activity really is unethical. Merely believing it to be immoral does not in itself ground a claim to special treatment.⁴⁰ Since

39. Gutmann and Thompson, *Democracy and Disagreement*, p. 89.

40. Gutmann and Thompson note that "although we permit conscientious refusal in military service, we do not extend the permission to taxes" (ibid.). My argument does not rule out conscientious objection to military service, and in fact helps make sense of the distinction between the cases of conscription and taxation. Conscientious objection can be justified by the actual injustice of the ends served by military conscription. For instance, the justification for refusing to serve in the apartheid-era South African Defence Force stemmed not from the fact that objectors reasonably believed that white male conscription perpetuated an unjust system, but from the fact that they were right to believe this. It is not the *presence* of conscience that is relevant here, but its *veracity*. In contrast, public funding for abortion services, by hypothesis, does not serve unjust ends. Moreover, in cases of justifiable military conscription, those objectors whose pacifist beliefs render them emotionally and psychologically incapable of using a weapon may be appropriately redirected to noncombat units even if this does not reduce their complicity in the overall war effort. In this case, moral beliefs are only of extrinsic relevance; many factors may

(n) requires state neutrality on the ethical question of abortion, however, the state cannot make the requisite assumption that abortion really is unethical. Jane could only regard pro-life complicity as the basis for a conscientious tax exemption if she had compelling reasons of correction to relinquish (n). In the absence of some such argument for the state to officially condemn abortion as unethical, there is no basis for Jane to regard pro-life complicity in supporting abortion as of any more concern than libertarian complicity in supporting public libraries.

Considerations of fairness also undermine (v), the policy that provides funding for abortion through voluntary donations. Although the extra amount paid by pro-choice supporters is given voluntarily, it is still unfair to expect any one group of people to shoulder the entire burden of a policy that is required for reasons of justice. A proponent of (v) could argue that pro-choice supporters should be willing to pay the price of their convictions. This is presumably true. But it has no bearing on whether other people who happen not to share those convictions should also contribute. What it is fair for a person to pay in taxation is not determined by what it would be appropriate for the person to be *willing* to pay, given their political convictions. At most, the argument implies that pro-choice supporters should make their contributions with a smile and that pro-life supporters may make theirs with a grumble.

Since (m), the policy in which pro-choice taxpayers direct a portion of their total mandatory tax burden to abortion services, does not involve any inequality in the total amount paid by pro-life and pro-choice supporters, it does not involve any substantive unfairness. However, (m) is inadequately supported. First, Gutmann and Thompson defend it as a fairer way to reduce pro-life complicity in abortion than (o), the exemption for pro-life conscientious objectors. But I have argued that there is no need to reduce pro-life complicity unless state neutrality on the ethical question of abortion is rescinded. Second, (m) does not, in any case, reduce pro-life complicity; it simply makes this complicity indirect. If funds from pro-choice tax returns are used to fund abortion,

incapacitate soldiers, and not every conscript with sincere moral objections to war is incapable of serving in combat. There is no parallel with taxation, because nobody is psychologically or emotionally incapable of paying tax (nor, for that matter, is any pharmacist incapable of providing women with "morning-after" contraception). I develop this position on the relative insignificance of conscience in a work-in-progress paper.

instead of what they would otherwise fund, then pro-life tax returns must make up the shortfall. This means that pro-life supporters would effectively be subsidizing pro-choice supporters so that the latter can subsidize abortion. As such, (m) is, in essence, a somewhat convoluted yet entirely cosmetic modification of the original public funding policy (f). It therefore cannot be the basis of a reasonable moral compromise on public funding between pro-life and pro-choice protagonists.⁴¹

IV. COMPROMISE ON ABORTION

Reasons of egalitarian justice support some form of public funding of abortion, and reasons of fairness support placing the burden of this policy on pro-choice and pro-life proponents equally. Considerations of state neutrality and moral complicity do not undermine this position. However, if a strong enough case for some form of principled compromise on abortion can be developed, Jane may have independent reasons to modify (f) that override these considerations of justice and fairness. Alternatively, Jane may have good principled reason to accept a moral compromise on some other component of (A), if public funding is seen as non-negotiable. At least four arguments for some sort of principled compromise on abortion can be distinguished, namely, arguments from complexity, respect, accommodation, and reciprocity.

A

I assumed above that Jane is correct to endorse (A). This may be a permissible assumption for the purposes of making an independent philosophical point about reasons for moral compromise, but it is not an assumption that Jane herself can be certain of in the day-to-day deliberations of her political life. It would be dogmatic of Jane not to recognize the reasonableness of opposing views. Since Jane cannot insist on the correctness of her own view, she “might rightly compromise because of the moral complexity” of the controversy.⁴² Principled compromise

41. The Presidential Campaign Fund check-off box is itself not without controversy. Opponents of public funding of political campaigns quite correctly reject the idea that (m)-type devices constitute voluntary donations from a subset of taxpayers.

42. Dobel, p. 86.

may be the best way to acknowledge our fallibility and the limitations of our ability to discern moral truth.

Moral complexity, however, constitutes no reason for moral compromise. A policy that splits the moral difference between two opposing yet reasonable viewpoints need be no more self-evident than the viewpoints themselves. If Jane cannot know that (A) really is, all things considered, the best policy on abortion, neither can proponents of principled compromise know that their favored compromise policy really is, all things considered, the best reaction to the abortion controversy. Fallibility is a shortcoming that affects all reasonably controvertible positions on abortion, whether uncompromised initial positions or moderated compromises. Proponents of a principled compromise on abortion require additional reasons why Jane, after acknowledging that she might be wrong about (A), ought to modify it for another policy that is just as uncertain and reasonably controvertible. A moral compromise involves some moral loss without any offsetting gain in epistemic reassurance.

The initial plausibility of the argument from complexity may stem from an ambiguity in the notion of insisting on a position. In the first sense, to insist on a position is to deny that there may be good first-order reasons for moral correction against it. In the second sense, to insist on a position is to refuse to compromise it, given that one has come to the defeasible conclusion that it is better than any other position. Insistence in the first, dogmatic sense is unreasonable in the context of reasonable deliberative disagreements. This does not mean, however, that it is unreasonable for Jane to be insistent in the second, intransigent sense. This crucial distinction is often ignored, so it is worth articulating in a different way. Each participant in public deliberation ought to appreciate the complexity and variety of considerations that are relevant to an issue such as abortion policy. Each participant ought to endeavor to bring these different considerations into reflective equilibrium so that the position she advances can justifiably be regarded as the best policy, all things considered. In the context of reasonable moral controversies, no person will be justified in adhering to her position without some measure of doubt, since her fellows may always raise relevant considerations—reasons of correction—that demonstrate that she has not, after all, attained true reflective equilibrium. But this doubt is normatively inert. Unless they actually do raise considerations that demonstrate this, she has no reason to think that she has not, in actual fact, formulated

the best policy. That a political agent must admit the possibility of being wrong does not give her a reason to modify her position unless that doubt is accompanied by independent reasons that show she actually is wrong.

Moreover, moral complexity does not generate a principled reason for moral compromise even in those cases where the agent is not at all sure that her position is the best one to hold, but where the exigencies of political life require her to adopt some or other position. However weakly the position is supported, if it is the position that is *best* supported by all the available first-order considerations, including considerations of the various risks involved, then the agent has no basis to assume that a compromise position is a safer bet. Naturally, there is an increased likelihood of being wrong in cases of greater uncertainty. But that is a shortcoming endemic to human fallibility for which principled compromise can be no remedy.

B

The second argument in favor of principled compromise on abortion supposes that giving one's reasonable opponents the respect they deserve requires a willingness to appreciate their point of view and adjust one's positions accordingly. A respect-based approach to grappling with the abortion controversy would move beyond disrespectful acrimony and hostile incivility towards a satisfactory moral compromise between pro-life and pro-choice positions. Thus, if Jane is to respect her political opponents, she should not insist that (A) become official policy without modification. A satisfactory compromise on abortion would allow all to feel that they have been given their due regard.

Following Stephen Darwall, we can distinguish between two senses in which a person can be respected.⁴³ The first sense, *recognition respect*, concerns the respect we ought to have for all human beings, and perhaps some other creatures, as beings with intrinsic moral status. To imprison a person without trial is to fail to respect her, since it is to fail to recognize that she is a creature who matters from the moral point of view. Yet this sort of respect has no bearing on principled compromise. To fail to respect a person in this sense is to treat her unjustly. If a public policy

43. Stephen Darwall, "Two Kinds of Respect," *Ethics* 88 (1977): 36–49, esp. pp. 38–39.

were to be unjust in this way, it would have to be corrected rather than compromised. For instance, one argument for state neutrality about conceptions of the good life supposes that a perfectionist state would fail to respect those who reasonably reject the government's favored conception, even if they were left free to pursue their own values and commitments.⁴⁴ If this argument is cogent, then state neutrality will be superior, on its own merits, to the establishment of any one perfectionist doctrine. If perfectionism unjustly disrespects those who adhere to dissident conceptions of the good, it must be discarded and not simply compromised.

The second sense, *appraisal respect*, is more discerning. To respect a person in this sense is to have a positive attitude towards her above and beyond mere respect for her as a person. This sort of respect is more fragile than the first. One can lose respect for a person, or lose it in one regard, after finding out more about her ulterior motives in performing a good deed, her despicable beliefs about racial superiority, or her all-round bad character. This is the sense in play when it is argued that the value of respect generates principled reasons for moral compromise. Thus, Gutmann and Thompson write that mutual respect "requires a favorable attitude toward, and constructive engagement with, the persons with whom one disagrees [and] consists in an excellence of character that permits a democracy to flourish in the face of fundamental moral disagreement."⁴⁵ Having a positive appreciation for the reasonableness of one's political opponents may not mean that the content of one's own positions should be corrected, but it could mean that one should be willing to forge a moral compromise with them. Whereas recognition respect for individuals affects what the content of our political positions should be in the first place, appraisal respect for the reasonableness of our political opponents could affect how we hold to these positions in democratic decision-making procedures.

It is certainly true that no side of the abortion controversy enjoys a monopoly on moral respectability. Jane ought to respect the moral sensitivity and profound moral conviction of those with whom she disagrees about (A). Until such time as she is presented with good reasons for

44. Larmore, chap. 3.

45. Gutmann and Thompson, *Democracy and Disagreement*, p. 79. Gutmann and Thompson refer to Darwall's concept of appraisal respect in a note to the quoted text.

moral correction to revise (A) on its own merits, Jane ought to regard these people (with all due respect) as in error but not at fault. It is one thing to say that Jane ought to respect those with opposing yet reasonable views about abortion, however, and quite another to say that on that basis she ought to compromise with them. There is a lacuna in the argument here. It can often be unpleasant to disagree with those whom one esteems and respects, and having a positive regard for others can often incline one towards agreeing with them. Yet these psychological tendencies are just facts about people, and provide no normative reason for moral compromise. There is no reason to think that Jane's intransigent opposition to compromise on (A) must represent a failure to respect her opponents or any desire for the state to officially denigrate pro-life citizens.

One argument designed to bridge the gap between respect and compromise claims that it is insufficient to simply respect those with whom one disagrees. In addition, one needs to make this respect manifest. Respect, like justice, must be seen to be had. One expresses respect for others by being willing to find mutually acceptable compromises with them. A willingness to meet one's reasonable opponents halfway, or thereabouts, sends a message that would otherwise be lost. But there are many ways to express respect without resorting to compromise. Jane can take the arguments of her pro-life opponents seriously and take time to respond to them appropriately. She can stick to criticisms of their arguments and eschew insulting *ad hominem* attacks. She can even form working relationships and alliances with regard to other matters. Yet none of this provides any principled reason for moral compromise. Jane's government can refrain from disrespecting pro-life citizens by not deriding or ridiculing their arguments in official state policy on abortion. Jane herself can express her respect for reasonable pro-life protagonists simply by being respectful towards them.

C

The third argument for principled compromise invokes the values of accommodation and inclusiveness. Since a democratic government should be representative of all citizens, and not simply its partisan supporters, Jane's party should accommodate pro-life citizens by including some of their views in a workable moral compromise on abortion. (A) is

an insufficiently inclusive state policy since it fails to accommodate pro-life views. The argument is correct insofar as equal participation in a democratic process is not sufficient for a thoroughly democratic public culture, even if the process is entirely legitimate; political legitimacy is not all of democracy. Something would seem to have gone wrong with a society's democratic culture, even if not its institutions, if a pro-life minority were to be treated dismissively as an evangelical nuisance, rather than fellow citizens with interests, perspectives, and ideals of their own.

Nevertheless, as with respect, the argument falls short of providing principled reasons for moral compromise. There are many ways to accommodate people in the development of public policy that fall between formal participation and full-blooded moral compromise. Efforts can be made to incorporate each party into policy deliberations and other political processes. Political parties can be open about how they caucus instead of secretly relegating all effective decision making to anonymous politburos. In addition, individuals can engage with each others' views, try to construct more persuasive arguments, and be willing to adapt their views when they are not, after all, supported by the best balance of reasons for correction. This sort of interaction demonstrates that it is possible for Jane to treat those with whom she disagrees as fellow citizens engaged in a common deliberative project without resorting to manufacturing compromises.

Moreover, it is no criterion of a democratic state policy that it be eclectically representative of the reasonable views of all of its citizens. Accommodation in the sense concerning the inclusion of citizens in democratic practices should not be confused with accommodation in the sense of compromise between their political positions.⁴⁶ If Jane's political party has been democratically elected on the basis of a manifesto that includes (A), it already has sufficient democratic mandate to implement (A) in its entirety. An official state policy is not more democratic because it emerges as a moral compromise between opposing parties if this also means that it diverges from the fair and just policy that a majority has voted for after public deliberations in which all parties were accommodated.

46. Wertheimer, p. 175.

D

My claim is that Jane's party should only compromise on (A) if there are pragmatic reasons to do so. Beyond such pragmatism, Jane has no principled reason to seek to economize on moral disagreement between her party and its pro-life opponents. As a consequence, we can expect there to be just as much controversy about abortion (or perhaps even more) after (A) is implemented as before. Gutmann and Thompson claim that their view "can deal with moral disagreement" better than this.⁴⁷ This assumes, however, that moral disagreement is a problem that must be dealt with in the first place, independently of the pragmatic difficulties it creates. Gutmann and Thompson defend this pivotal assumption by invoking the idea of reciprocity. Because terms of cooperation are binding on all, they should be acceptable to all. This means that citizens should practice a reciprocal give-and-take of reasons: "you make your claims on terms that I can accept in principle [and] I make my claims on terms you can accept in principle."⁴⁸ As such, if a position on abortion is not morally acceptable to all reasonable people motivated to find mutually acceptable terms of cooperation, the value of reciprocity provides a principled reason to seek out an alternative that is. Since (A) is not morally acceptable to pro-life proponents, Jane has a principled reason to seek a moral compromise, as long as any such compromise is morally acceptable to her. If there is no such mutually acceptable compromise, citizens should endeavor to find the best approximation. A principled reason for moral compromise could still be a good prima facie reason, even if it is not ultimately conclusive. Yet my conjecture is that there are no good principled reasons for moral compromise at all.

The key premise of this argument is that reciprocity requires mutual acceptability. I have argued that the values of respect and accommodation can be realized without any form of moral compromise between opposing reasonable viewpoints, so this premise must be supported by some other value. Gutmann and Thompson tend to equate mutual acceptability with fairness: their "deliberative perspective does not address people who reject the aim of finding fair terms for social cooperation; it cannot reach those who refuse to press their public claims

47. Gutmann and Thompson, *Democracy and Disagreement*, p. 54.

48. *Ibid.*, p. 55.

in terms accessible to their fellow citizens.”⁴⁹ The cooperative values of fairness and reciprocity are certainly closely connected. For instance, in Rawls’s justice as fairness, society is conceived of as a fair system of cooperation. This cooperative conception of society involves an idea of reciprocity or mutuality: “all who do their part as the recognized rules require are to benefit as specified by a public and agreed-upon standard.”⁵⁰ Rawls uses this notion of reciprocity to ground the egalitarian difference principle.⁵¹ The appropriate standard of mutual benefit is that which would be agreed to in an original position where parties are ignorant of their socioeconomic status and ethical beliefs, and motivated only by their holdings of primary goods.⁵² This account of fairness and reciprocity, however, has no bearing on the moral disagreement that divides pro-life and pro-choice supporters. Mutual *benefit*, according to the principles of justice agreed to in the original position, is quite different from mutual *acceptability*, according to the reasonable ethical doctrines that each person is assumed to have. (A) can be the best policy from the point of view of fairness and reciprocity precisely because it is implied by, or most in accord with, the principles of justice chosen in the original position (as seems plausible), even if this standard of justice proves morally unacceptable to some reasonable people (as seems the case).

In *Political Liberalism*, Rawls presents a somewhat different understanding of fairness and reciprocity, one which involves the idea of mutual acceptability in addition to the more familiar idea of mutual benefit. The “criterion of reciprocity” states that for terms of social cooperation to be fair, “citizens offering them must reasonably think that those citizens to whom such terms are offered might also reasonably accept them.”⁵³ Since any just democracy will be characterized by a reasonable pluralism of comprehensive moral doctrines, Rawls argues that principles of justice ought to be articulated and defended in terms of political values, because these are values that all reasonable people can

49. Ibid. See also pp. 52–53 and p. 73.

50. John Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass.: Harvard University Press, 2001), p. 6.

51. Ibid., p. 122ff.

52. Ibid., p. 14ff.

53. Rawls, *Political Liberalism*, p. xlv; see also pp. 49–50.

accept whatever their broader ethical convictions. Although there are reasons to doubt the wisdom of this broadened understanding of reciprocity (and the more general shift to political liberalism), Rawls's endorsement of mutual acceptability does not support the case for principled compromise on abortion. First, as I mentioned above, although political liberalism involves an intrinsic sensitivity to moral disagreement, it does not involve any principled reasons for moral compromise. Reasonable moral pluralism has significance for the first order of political theorizing, insofar as it generates reasons for moral correction against any theory of justice articulated in terms of comprehensive values. Revamping justice as fairness as a political conception does not involve any sort of compromise of a morally superior Kantian theory of justice, for either principled or pragmatic reasons. Political liberalism is supposed to be as good as it gets.

Second, (A) is quite compatible with political liberalism, and its attendant idea of public reason, because it does not involve any commitment to any comprehensive moral doctrine. The right protected in (r) and the equality promoted by (f) are both political values, while (n) requires state neutrality on the deeper question of the ultimate ethics of abortion. Similarly, the rejection of waiting periods in (w) and the assertion of judicial authority in (j) can be defended without any appeal to comprehensive moral doctrines.⁵⁴ On the political liberal view, (A) satisfies the criterion of reciprocity because it can be accepted by all reasonable people without requiring any alteration of their comprehensive moral doctrines. As such, even if reciprocity should be cashed out in terms of mutual acceptability in addition to mutual benefit, we have no reason to think that this grounds any principled reason to compromise an abortion policy such as (A).

54. Saying that (A) is compatible with political liberalism should not be read as any endorsement of political liberalism. Nothing in the way I have presented (A) or defended it from compromise should be read to suggest that it is in any way a good policy because of the existence of reasonable moral pluralism. In particular, the requirement of state neutrality in (n) can be defended without appeal to the fact of reasonable moral disagreement about the ethics of abortion. The state simply has no interest in making any judgment on this point, once the right to choose is enshrined. State advocacy of a particular position on the ethics of abortion may undermine the ability of women to exercise the right to choose autonomously.

V. PRINCIPLED COMPROMISE

Principled compromise on abortion is not supported by the fact that the abortion controversy is an instance of reasonable or deliberative moral disagreement. An egalitarian pro-choice politician can properly respect her pro-life opponents and accommodate them in democratic decision-making processes without seeking any form of moral compromise or accommodation of their convictions. In addition, the cooperative values of fairness and reciprocity do not obviously require that political positions be mutually acceptable to all reasonable people, at least in any way that raises difficulties for an egalitarian pro-choice position such as (A). I have not defended the substantive content of (A), except to note that egalitarian considerations provide defeasible reasons of justice for the public funding of abortion. Naturally, many arguments can be developed both for and against the provisions of (A). Although I assume that something like (A) would emerge undefeated from this first-order contestation of arguments, my only concern in this article is to support the claim that there are no principled reasons to compromise the policy that does appear best on its own merits, whatever that might be.

In one respect, the abortion controversy seems a good candidate for moral compromise because compelling moral arguments can be constructed on both sides. In another respect, however, it is a poor candidate for moral compromise because the most crucial point of contention is a discrete question: either a woman has the right to abort a pregnancy in her first trimester simply because she does not wish to carry it to term, or she does not. This question of right must be decided one way or another; there is no *via media* here. However, my arguments against the view that we have principled reasons to compromise on abortion are not premised on this difficulty. The four arguments from complexity, respect, accommodation, and reciprocity do not support principled compromise on any question. The criticism of these arguments in Section IV does not rest on any point specific to the abortion controversy. If the moral complexity of the abortion controversy does not give rise to a principled reason for compromise, then it is quite likely that the complexity of other moral controversies does not either. Similarly, if it is possible to respect and accommodate pro-life advocates properly without resorting to moral compromise, it is unclear why these values would have a different

significance in other questions. Last, if a political position, such as (A), really is the fairest way to distribute benefits and burdens then it is not at all obvious why the same values of fairness and reciprocity should imply that it ought to be moderated, even if only minimally, in a moral compromise between opposing camps. Presumably, other arguments in support of principled compromise can be developed. But in their absence, the simple fact that compromise involves some moral loss, however small, stands as an undefeated reason against those moral compromises that are not pragmatically necessary.

To focus on principled rather than pragmatic reasons for compromise, I have assumed throughout that Jane's party enjoys a majority in the legislature. But Jane is a fiction. In this article, I have used abortion policy in the United States as an example. At present, political power in the United States is exercised by individuals who are deeply antithetical to a woman's right to choose, who promote a backlash against the gains made in women's equality in preceding decades, who are hostile to the notion that justice requires assistance to the worst-off, and who are, generally speaking, in no mood for compromise. It would be far better if they thought they had some principled reason to accept a moral compromise on abortion that preserved *Roe*, even if it also preserved the Hyde Amendment or waiting periods. This gives progressives in the here-and-now of the real world some reason to keep talking about mutual respect, moral accommodation, and principled compromise, even if no such reason arises for imaginary pro-choice egalitarian politicians who enjoy fairy-tale electoral landslides. Nevertheless, the existence of a pragmatic reason to speak well of principled compromise does not imply the existence of any principled reason for moral compromise itself. Talk of principled compromise may be good agitprop, but it would be somewhat ironic if the best argument for principled compromise did not recognize any principled moral constraint against dissemblance. If (A) really is the position on abortion best supported by philosophical arguments, then there are good moral reasons to correct any public policy that contradicts it. These are not arguments that can be expected to convince every reasonable person. But supporting (A) is about as far as philosophical considerations go. The rest is politics.