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# Compromise, Negotiation, and Morality

*Carrie Menkel-Meadow*

**Avishai Margalit.** *On Compromise and Rotten Compromises.* Princeton, NJ: Princeton University Press, 2010. 221 pages. \$26.95 (hardcover), ISBN: 0691133174.

All government — indeed every human benefit and enjoyment, every virtue and every prudent act — is founded on compromise and barter.

—*Edmund Burke* (1775: 12)

## **Moral Philosophy, History, and Compromise in Negotiation**

Every once in a while an author publishes a book so important that it helps clarify fundamental concepts and thinking processes and illuminates the tragedies and hopes of the human condition. Avishai Margalit's new book *On Compromise and Rotten Compromises* is such a book. It not only has important implications for political and moral philosophers, historians, and political scientists, it is *must* reading for all theorists and practitioners of our art and science of negotiation.

In this book, Margalit provides negotiators with a clearer moral map on which to chart the importance and limits of the work we do when we negotiate for matters as important as peace and justice. Margalit rigorously explores the *ethics* (between those with “thick relations,” such as families, tribes, and friends) and the *morality* (between those with “thinner” relations — the rest of humanity) of negotiations in the context of “macro-negotiations,” which are those involving states and collectivities.

Margalit's key question is: when should a compromise be absolutely morally prohibited? Which compromises are truly “rotten compromises”?

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He sets the stage for exploring this question by distinguishing between categorically prohibited compromises, which he defines as those that help establish or support an “inhumane regime” (one of cruelty plus humiliation) and those that must be judged on a case-by-case or “retail” basis (pp. 1-2).<sup>1</sup> He hopes to provide a “wide berth” for compromises that can be tolerated under this judgmental regime because on balance, compromises are necessary for human action, and *a* peace, even if not a *just* peace, is more likely to be achieved by such nonrotten but still perhaps problematic compromises. Because compromise is thus necessary for peace and survival, argues Margalit, we need to negotiate and to barter, but we must know the moral limits of compromise as well.

As Margalit eloquently puts it, “We should, I believe, be judged by our compromises more than by our ideals and our norms. Ideals may tell us something important about what we would like to be. But compromises tell us who we are” (p. 5). This book raises some, but not all, of the questions raised in another rigorous study of compromise, J. Roland Pennock and John W. Chapman’s *Compromise in Ethics, Law and Politics* (1979). That book, although it predates most modern negotiation theory, is one that I have always considered required reading for any negotiation theorist.

Margalit focuses on compromises as both process (Should we talk to rotten regimes?) and outcomes (When should we actually conclude deals with rotten regimes or parties?). He clarifies, with precise definitions and evaluations, rotten versus not-so-rotten compromises and shady (suspicious motives), shoddy (exchange of phony goods), and shabby (exploitative) compromises (pp. 3-4). He marks the territory of competing rather than complementary conceptions of the tensions of peace and justice by suggesting this can be a zero-sum game. More peace, in some circumstances, means less justice, and sometimes too little justice means we should accept no peace.<sup>2</sup>

Margalit’s concepts, historical examples, stories, and analysis make starkly clear what a negotiator’s choices may be. He limits his discussion to what he calls “macromorality,” or the work of political or collective negotiations and agreements, distinguishing this from “micromorality,” or personal and individual compromises (p. 5), and offers some guideposts for considering when compromises have crossed his moral “point of no return” — when one should not make a rotten compromise “come what may” (p. 113).

But make no mistake about it: Margalit, in condemning a set of rotten compromises, joins a group of modern philosophers (e.g., Isaiah Berlin, Stuart Hampshire, Amartya Sen, Jurgen Habermas) who have argued that most philosophical treatments of the ideal, such as John Rawls’s *Theory of Justice* (1971), could prevent us from achieving the possible when it comes to creating a better world by negotiating good — if not great — outcomes. In a slightly different way, Margalit (1983, 1996) has joined recent attempts to explore how, when “the perfect should not be the enemy of the good,”

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we can make the good as good as it can be by making agreements that may not give everyone their most ideal outcomes (Elster 1995).

Margalit writes,

On the whole, political compromises are a good thing. Political compromises for the sake of peace are a very good thing. Shabby, shady and shoddy compromises are bad but not sufficiently bad to be always avoided at all costs, especially not when they are concluded for the sake of peace. Only rotten compromises are bad enough to be avoided at all costs. But then, rotten compromises are a mere tiny subset of the large set of possible political compromises (p. 16).

While many will focus on the key arguments of when we should *not* compromise, which I will explore more fully below, I want also to explore what Margalit has written about when compromise may be morally justified. As I have written before (Menkel-Meadow 2006a), *compromise* can have many meanings, philosophically, politically, and practically — some of which are at the core of what good negotiators seek, and others of which have led to devaluation of what negotiators do, by tarring negotiators as weak, unprincipled, and opportunistic.

In this essay, I will mostly praise this important, conceptually clarifying work and also explore its importance to our field of the theory and practice of negotiation. At the same time, I take some issue with some of the overly brittle categories that Margalit has created. While he clearly describes his own efforts as being limited to macro or political negotiations between nations, heads of state, or their modern equivalents (terror groups and their leaders, more “viral” and less sovereign negotiators), much of what he says here may be relevant at more micro levels, applying as well to more ordinary negotiations between people, organizations, or subnational or nonpolitical groups.

This book, like others addressing similar issues — such as Robert Mnookin’s *Bargaining with the Devil* (2010), which is reviewed elsewhere in this issue by Richard Shell (2010) — is written against the backdrop of specific historic negotiation dilemmas: Neville Chamberlain’s “deal” at Munich (see also Bottom 2010, elsewhere in this issue), the Yalta conference, and other significant World War II negotiations, recent negotiations with such terrorist organizations or rogue states as North Korea, Iran, and the Taliban, and, especially, in Margalit’s case, the on- and off-again peace negotiations involving Israel and Palestine. Margalit’s abstract negotiation dilemmas between “countries A, B, C, and D” or “Over-Dogs and Under-Dogs” (see pp. 81–88) are thinly disguised versions of possible and actual Middle East peace negotiation scenarios. The book’s most sustained treatment is of classic World War II negotiation dilemmas. Was it morally justified for the United States and Britain to align with Josef Stalin against Adolf

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Hitler (Gray 2010) when *both* regimes were rotten, cruel, and inhumane? But the Israeli–Palestinian shadow looms large behind the rigorous moral analytics of these essays.

For me, as for any negotiation theorist, an important question of historical necessity and contingency haunts this kind of analysis. What can we learn from the past? When do we learn *too much* from the past? To what extent are potentially *sui generis* important historical moments too singular to produce good prescriptions for either other macro or micro negotiations? Thus, Margalit’s important work should be considered not only for its philosophically interesting meditation on past events but also for what it might tell us about what we should or should not do in more ordinary or more presently complicated situations.

## Historical Contingency and Negotiation Theory

Perhaps, as the sociologists of science would tell us, all theory is marked by the historical periods and circumstances in which it is conceived. But the behavioral and social sciences are especially prone to theory development linked to concrete social, historical, and political circumstances. As I have argued before (Menkel-Meadow 2006b) and as William P. Bottom (2010) argues elsewhere in this issue, modern negotiation theory is a product of political and historical circumstances. Early game theory and distributive, scarce-resource, competitive negotiation theories were born of the necessity in World War II and the Cold War to anticipate and plan for antagonistic, essentially two-party, negotiations in both actual and imagined wars. Theories and derived strategies of defection, cooperation, communication, threats, bluffs, maximizing gain, and similar key ideas of negotiation were framed — as negotiation became a freestanding but multidisciplinary field — to anticipate “bad” motives or moves by others and to counter them to maximize “better” results for one’s own side (Raiffa 1982).

Hoping for a more peaceful world, the newer theories of negotiation that evolved in the 1970s and 1980s (e.g., Fisher and Ury 1981) introduced more collaborative models of integrative bargaining, joint gain, human problem solving, and coordinated multiparty negotiations, hoping for and anticipating that the Cold War would end and usher in a period of more cosmopolitan peacefulness and mutual cooperation in the political realm.

But even as the Berlin Wall fell and the Soviet Union disintegrated, our hopes for the efficacy of these new negotiation theories were often dashed against the realities of ongoing conflicts in such places as Kashmir, Israel–Palestine, Northern Ireland, and Korea (see Ignatieff 1993), where states continued their conventionally hostile modes of negotiation or worse, conflict and violence. (More successful attempts at innovative mediation in the 1970s included President Jimmy Carter’s Camp David one-text negotiations and Secretary of State Henry Kissinger’s shuttle diplomacy.) As third parties entered the fray of negotiations, negotiation theory also concerned

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itself increasingly with such multiparty negotiation dynamics as coalition formation, veto powers, holdouts, voting, decision rules, and the dynamics of international treaty negotiations.

Indeed, the recent philosophical return to “negative injustice” (Arjona et al. Forthcoming; see also Smith 1790/1976; Hampshire 2000; Sen 2009) from more “positive” or “ideal” and more abstract conceptions of justice or peace (e.g., Rawls 1971) reflects a new era of “historical realism” in philosophy, political theory, and, more concretely, negotiation theory, reflecting the complex and multilateral times in which we live. Although beyond the scope of this essay, a mapping of the development of negotiation ideas against crucial moments in modern political history might reveal just how contingent our negotiation theories are, based on what is actually happening in the world or what we would *like* to see happen in the world.

All of this is a long way of saying that Margalit’s important ideas about compromises and rotten compromises have been forged in the shadow of their — and his personal — political negotiation contexts, for example, during World War II and its aftermath and the current ongoing Israel–Palestine conflict. The question relevant to the evaluation of negotiation concepts is: how generalizable are Margalit’s philosophical judgments and analytics?

As I have long taught my negotiation students, “Munich” (the Munich Treaty of 1938) and “Chamberlain” (Neville Chamberlain, Great Britain’s prime minister at the time of the Munich Treaty) have loomed large as metonyms for the bad or weak compromise (“appeasement”) in any context. Consequently, they have been used to discourage many attempts to even talk to the other side.<sup>3</sup>

Margalit wisely deconstructs the infamous talks that led to the Munich agreement into two *separate* questions: first, should Chamberlain even have talked to the Nazis, and second, should he have agreed to the substantive agreement he did? In doing so, he underscores that it is important to learn what we can from past negotiations, but it is equally important to identify what makes particular negotiations historically contingent, specific, or special so that we may differentiate, if we need to, a Hitler from a Stalin, and the Palestine Liberation Organization from the Taliban. Philosophers may reexamine negotiation choices from a moral perspective — either from a what-was-known-then or even from a what-we-know-now perspective — but negotiation theorists and practitioners need to assess how analogous to current realities the historical examples actually are.

In his final chapter, Margalit attempts to apply his judgments about when it is immoral to compromise to the respective British negotiations with Nazi Germany (Munich) *before the war*, and British and American negotiations with the Soviet Union both *during the war* (forming an alliance), and near the *war’s end* (Yalta).

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Nevertheless, while the historical philosophical judgments are intrinsically interesting (if still debatable; see Gray 2010 and Proyect 2010), they may have more limited application to present negotiation problems. Similarly, with the specter of the Israel-Palestine negotiation looming in almost every example Margalit uses, one wonders how much negotiation theory really can be generated without reference to context. Is a uniform or unified theory of compromise and rotten compromises, as Margalit proposes, really possible?

If, using his criteria, we should never make an agreement that either establishes, agrees to, or supports an inhumane regime, how can we justify, excuse, or even understand the agreements that democracies such as the United States have made and continue to make with many arguably inhumane nation states? (Some contend that Margalit's own state of Israel is itself such an inhumane regime in how it treats Palestinians, even with Israel's claims of defense.<sup>4</sup>) Thus, in his view, "we" (Britain, the United States, and their Allies) should never have even talked to Hitler, once his genocidal aims were quite clear, but "we" could still morally talk to, and make concrete deals with, Stalin.<sup>5</sup>

What about North Korean dictator Kim Jong Il? Is Kim Jong Il more like a Stalin — head of a coercive regime, but with still possibly moral goals of a classless society and not a racial genocide? Or does the systematic starvation of one's own people, by both Kim Jong Il and China's Mao Tse Tung (p. 181), qualify such leaders as every bit as evil as Hitler? Does Margalit excuse or justify the Allied pact with Stalin — before Yalta — as being necessitated (chapter four and conclusion) by the need to defeat the more evil and dangerous of the two enemies, Hitler, thus demonstrating the historical and contextual contingency of his assessments of what constitutes a morally barred rotten compromise from a morally excused compromise? Was the Stalinist regime that much worse or different at Yalta than before?<sup>6</sup>

Thus, even if we might agree about what theoretically constitutes an "inhumane regime" with whom one should not negotiate, the actual answer to Margalit's question of when we should not compromise does seem to be the lawyer's and historian's answer and not the philosopher's: it depends! Although Margalit tries to make a razor-thin distinction between "political necessity" and "expediency" (pp. 101-102, 108), the case made for excusing our pre- and during-Yalta deals seems to rest more on expediency — and some would say, simple and more immoral self-interest (Proyect 2010) — than it does on a universal moral imperative.

Furthermore, extreme necessity, such as survival, might justify, for some, making deals or compromises with even the worst and most unjust of enemies. Is moral judgment a luxury of the "after-the-fact" analysts who have never felt forced to make a "deal with the devil" in order to even live to tell the tale (see Mnookin 2010)? Margalit does not fully explore this question, which leaves some of the moral limits or justification of negotiation unresolved by his framework.



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## Reframing Negotiation Concepts for Moral and Political Assessments

Margalit's examinations of historical examples of morally questionable compromises clarify some basic negotiation concepts, but I also think he significantly misinterprets some of them.

In chapter two, "Varieties of Compromise," Margalit describes a variety of negotiations to categorize them for evaluation. Like many with conventional conceptions of these important ideas, Margalit asserts that justice and peace are not complementary to each other but often in competition: "justice, which pierces the mountain, is manifested in *trial*" (p. 7) while "peace is only *caffeine*" (p. 9). He quotes the Talmudic phrase "When there is strict justice, there is no peace and when there is no peace, there is no strict justice" (p. 7). Crediting his mentor Isaiah Berlin with "rejoicing" in the clash of (some) values, Margalit, in my view, accepts too many brittle, oppositional conceptions of key negotiation values.

My own negotiation theories and behaviors can be reduced to one word: "and" rather than "but." Many of my colleagues and I look for the linkages and connections, believing in the possibility that even people of competing values can find some common ground and that peace and justice cannot only be reconciled but must exist together in some "compromised" form if we are to survive as a human race (Menkel-Meadow 2006c). Although arguing strongly that he is advocating "just *a* peace" and not necessarily "a *just* peace," Margalit still sees, in my view, too many dichotomous concepts, or as he puts it, "distinctions" in elucidating what justice and peace might consist of.

Margalit's framework will be familiar to many in the negotiation field: politics as either *economics*, with market values, where trades are possible, or politics as *religion*, with holy values where trades are not possible (pp. 24–38).<sup>7</sup> Others have suggested that there are at least three ways of characterizing negotiations — principled (objective, reason based), bargained for (trades), or passionate/affective. The third category includes negotiations involving religious principles, ethics, emotions, and what Margalit would call the "holy," but other negotiation scholars have also referred to it as the "sacred" or "value"-based negotiations (Elster 1995; Menkel-Meadow 2006c; Bazerman, Tenbrunsel, and Wade-Benzoni 2008).

But rather than relying on overly simplistic dichotomous categories, much modern negotiation theory suggests using all three kinds of discourse to integrate, or in some cases to avoid, more brittle or insoluble clashes of value differences.<sup>8</sup> Drawing on recent philosophical work on incommensurability — in which items may be both quantitatively and qualitatively impossible to compare or measure — Margalit emphasizes the impossibility of trading in such realms as values, as opposed to economic trades, which can always be reduced to monetary proxies for resource allocation trades.

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But in his otherwise eloquent discussion of this dichotomy using such religious and literary texts as the Talmud, the Qur'an, and Shakespeare's *The Merchant of Venice* (pp. 27–36) in order to demarcate the “taboo” rotten compromises, Margalit fails to note the ways in which such uncompromisable values have, in fact, often been negotiated or manipulated in order to permit agreements and other forms of trade. For example, charging interest on loans is prohibited in the Qur'an, but Islamic finance now permits more creative forms of installment rent-to-purchase transactions that allow commercial trades and religious values to coexist. Margalit also notes how payments from Germany to the state of Israel were “recharacterized” as compensation for lost and stolen property and labor, and not as reparations for murder.

Using other traditional concepts to challenge inappropriate negotiations, Margalit worries about coerced agreements or concessions that are not mutual (p. 20). This is a more promising avenue for assessing bad deals, and he offers negotiation theorists and practitioners some useful glosses on existing theory. In his brief review of game theory in chapter two, he distinguishes “sanguine” compromises from “anemic” ones and in so doing reiterates an important existing argument about negotiated compromises (Pennock and Chapman 1979; Menkel-Meadow 2006a). If a zone of possible agreement falls on any point between two preferences in a two-party negotiation, an agreement can be made on purely economic or efficiency grounds, what Margalit calls an “anemic” compromise. This solves the technical bargaining problem no matter who the two parties are. But a “sanguine” compromise is one that, in addition to solving the mathematical problem, also grants some recognition and legitimacy to both the nature of the claim and the humanity of one's negotiation counterpart (pp. 40–41). Thus, not-so-rotten compromises (and good negotiations) take account of the human value of the other party as a recognized partner.

Sacred values will always play a part in the macro-moral national and political negotiations that Margalit concerns himself with. A sanguine or good compromise recognizes that to live in peace with each other, we cannot always achieve our preferred outcome but may still achieve one we can live with — *if* we treat the other party as our human equal and they similarly treat us as fully human. Thus, concessions must be mutual but not necessarily symmetric in value (p. 20) and must acknowledge that to live together, we might meet, if not in the middle, then someplace other than where we first began. What makes some compromises rotten and morally unacceptable is that they treat those in the negotiation and those affected by the negotiation (e.g., the third-party victims of Soviet repatriation after Yalta) as less than fully human. It might then, in fact, be immoral *not* to negotiate in some cases or to fail to recognize the other.<sup>9</sup>

Margalit suggests a reframing, both of the *issues* to be negotiated and *who* is in the frame of the negotiation. When an “enemy” is seen instead as



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a “rival,” a “counterpart,” or a “partner” (Cohen 2003), the other in the negotiation is at least recognized as a human equal. Just recognizing the other as party to the negotiation is an important moral choice in negotiation (as in the disputed recognition of hijackers, kidnappers, terrorists, the Viet Cong, the Palestine Liberation Organization, the Taliban, etc.), but this important step adds moral force to otherwise soulless bargaining models of game theory.

Margalit also describes classical bargaining as a contest between a “feasible agreement and a point of conflict” (p. 45) or our best alternative to a negotiated agreement. But, he argues, in many real-world macro negotiations, the parties are more focused on their sacred aspirational goals. These convert to commitments or entitlements, and parties view the other’s aspirational goal as illusionary or illegitimate. Impasse — and sometimes war — follows.

Margalit also recognizes that not all compromise must involve meeting-in-the-middle, split-the-difference solutions. Good or sanguine compromises “redescribe” what is in dispute (the Sinai Peninsula represents security and sovereignty) and should not reflect raw power differences. Thus, concessions must be mutual, if not totally equal. Concessions must also not be impermissibly coerced. (Margalit thinly slices several categories of coerced concessions on p. 53.)

But Margalit does seem to see all negotiations (at least of the macro-moral, nation-state variety) as entailing concessions or the giving up of aspirations rather than focusing on the joint gains and expanded pies that might be realized with truly joint action. But that would take another book, not one limited by the conventional understanding that compromise means “giving up” something to the other side rather than seeing nation-state negotiations as “collaborations” (see below).

Margalit defines a sanguine compromise as “an agreement (or co-promise) that involves painful recognition of the other side, the giving up of dreams, making mutual concessions that express recognition of the other’s point of view and that is not based on coercion of one side by the other” (p. 54). This clearly stated definition sets the stage for Margalit’s examination of the acceptability of actual examples of compromise.

### **When Is a Compromise Rotten?**

Margalit would prefer to live in a peaceful world. Peace often requires agreements, treaties, and compromises. In this book, he asks how we can take what we know about past agreements to forge future ones. Using historical examples, vivid metaphors, and hypothetical “thought experiments,” Margalit compares such real-world historical situations as the U.S. Constitution’s Great Compromise on Slavery, World War II alliances, and such postwar treaties as Versailles and Yalta to imagined future outcomes of some contemporary disputes. From these comparisons he distills a lean

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definition of a rotten compromise. “A rotten compromise,” he writes, “is an agreement to establish or maintain a regime of cruelty and humiliation — in short an inhumane regime, unfit for humans. Regime has two meanings: one refers to government, the other to a regular pattern of behavior. . . . Not every compromise with a rotten regime is rotten” (p. 89).

Margalit declares the following as rotten: the Great Compromise of the U.S. Constitution on slavery because it agreed to sustain inhuman enslavement into the future, the Yalta agreement because it subjugated Eastern Europe to Soviet Russia, and any and all agreements with Hitler, who led a racist, genocidal regime. Other compromises can be objectionable without being rotten. These include trade agreements with North Korea, the World War II alliance with Stalinist Russia, and the “Blood for Trucks” deal with Adolf Eichmann (pp. 90, 131–132; see also Mnookin 2010) because they were “politically necessary.” Here, Margalit distinguishes necessity from simple expediency, which does not excuse a bad compromise.

While ultimately what a compromise’s rottenness is can depend on both *who* represents the regime and *what* the deal actually provides, Margalit finds many gradations of rottenness to be explored, distinguishing *active* from *passive* participation in negotiated compromises (e.g., the United States’ support of Great Britain in World War II, which he sees as more passive during the early years of the war and more active at Yalta).

He distinguishes the parties’ coercion of each other from third-party coercion. For example, would U.S. withdrawal of aid to Israel qualify as a coerced compromise if it forced Israel to give up territory and other claims to Palestine?

Margalit also worries a lot about the temporal effects of compromises: will the compromise last? And he distinguishes *irredentism*, the desire to reclaim lost territories, from *revanchism*, which adds an element of revenge to the effort to regain territory (p. 69), suggesting that a compromise might be measured by its longevity, as well as its legitimacy. Truce is not the same as stable peace. He contrasts the political compromises of various revolutionary parties as they either accommodated to existing power structures in the hopes of democratic legitimacy or determined to remain “pure” to further their aims (pp. 71–79). Thus, rotten compromises can be assessed both from teleological/consequentialist (goal oriented) and deontological grounds (duties and rights oriented), and we can theoretically tell the worse ones from the worst ones by comparing them according to general principles.

But can we? Put at its most vivid, a “fly in the ointment” — one rotten clause does not make the whole deal rotten — is different from a “cockroach in the soup” because one cockroach indeed ruins the whole bowl (p. 97). As the use of these vivid historical examples and metaphors makes clear, however, one person’s rotten soup is not another’s. I have eaten soups with bugs in them, and I have never faced starvation. I suspect that those

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who are actually starving would eat soups with all kinds of otherwise objectionable items. (Not to mention that one person's spice is another person's allergic death.) Thus, what a "rotten compromise" is will still largely depend on the contextual circumstances faced by the negotiator. I am wary of these attempts to generalize in advance, even as I am, like Margalit, willing to judge after the fact. (As the child of Holocaust refugees I have often wondered what I would have done to survive myself if I had been faced with their choices — whether facing concentration camps, trying to obtain scarce train or boat tickets, confronting limited immigration quotas, or facing other tragic choices.)

In his efforts to deal with such important questions, Margalit suggests that our lives cannot often be lived in conformity with rules laid down in advance. Even religions allow exceptions to their rules in conditions of necessity; for example, Jews and Muslims may eat pork if the other choice is starvation. And aberrant, unusual situations and events, such as the Holocaust or the September 11, 2001 terrorist attacks, should not determine our responses to more normal negotiations over security, territory, or economics. But he also fears that conflicts centered in the "holy" realms of identity and religion lead to civil wars that are more devastating than more conventional wars, with implications for the kinds of negotiations and compromises they might require. This is not only a philosopher's concern — in my view, it requires the historian as well as the social scientist to help us understand contextual differences as we craft general principles of negotiation.

In his concluding chapters, Margalit's condemnation of "rotten compromises" reduces to those that are sectarian, tribal, and racist.<sup>10</sup> Deals with Hitler were rotten because he sought to wipe out whole groups of humanity simply because of *who* they were. In Margalit's terms, however, deals with Stalin were not as rotten or "radically evil" because although he killed millions too, they were not what we in American constitutional law would call a "suspect" class (e.g., race) but many groups (e.g., prostitutes, political opponents, bourgeoisie, kulaks, priests) who interfered with his class-based telos. Like others (Gray 2010), I find this distinction of who is more evil ultimately unpersuasive. In Margalit's own terms of rotten compromises, Stalin, Hitler, and Kim Jong Il clearly were and are negotiators seeking passive or active recognition and support for their inhumane regimes.

Others might put the state of Israel and the United States, as well as Iran, Saudi Arabia, China — and any regime that subjugates women, children, minorities, or any specified group of people to cruel treatment or humiliation — in this category. But certainly many reasonable and moral leaders will still negotiate (and compromise) with those regimes and their representatives on such macro-moral issues as recognition, territory, economic trade, diplomatic and geopolitical strategies, as well as on micro-moral ones (cultural exchanges, education, individual contracts, etc.). So, we

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are left with this question: are there no generalizable principles for telling the difference between acceptable, if objectionable, compromises and rotten or morally prohibited compromises?<sup>11</sup>

## **The Moral Uses of Compromises: Lessons for Both Macro- and Micro-Level Negotiations**

Margalit's effort to elucidate categories of compromise in nation-state negotiations does not fully satisfy because of both the under- and overinclusiveness of his categories and because of the room left within his categories for interpretation and differential applications. Nonetheless, this important work makes significant contributions to our understanding of negotiation and compromise. Despite my critiques of the particular formulations and applications of Margalit's standards, this book offers important insights into the moral judgments we should make with respect to all negotiations and compromises. Furthermore, although Margalit shuns application to what he calls micromorality in the negotiations between individuals, I think much of what he says here may also be applied to our more ordinary and mundane individual negotiations.

I have taken from this book several ideas that I believe can be applied to our thinking on the opportunities and limits of compromise in negotiation. First, Margalit takes compromise seriously and does not universally condemn it as a process of weakness or lack of principle as others do (Fiss 1984; Luban 1995). Compromise and negotiation are necessary human processes — for survival, for peace, and for ordinary human interaction. To make promises and deals with others with whom we may not share world views and principles does not make us immoral, but human. To refuse to negotiate or compromise can reflect arrogance and a failure to take account of the other party, whose claim may be as legitimate as our own. To the extent that compromise or negotiation requires some amount of empathy toward even the most evil of other parties, it is itself a moral process.

Second, although the use of the word “compromise” suggests giving up something that is important, the compromise may have a moral justification beyond the deal itself. Compromise may be morally justified as part of the human survival process. Even Machiavelli (1998: 68–70) recognized the important need for leaders to compromise their own principles in order to lead and preside over diverse constituencies to achieve some larger purpose not only in wars against enemies, but in unifying city-states for commercial gain. Clearly, negotiations in the economics realm are significantly different than those involving sacred values, but many of us believe that the dynamics involved in each may help us understand the other.

The phrase “lowest common denominator” suggests reducing differences down to a “bottom line” rather than integrating them. Margalit can be criticized for buying into this more crabbed view of compromise and

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negotiation as a “giving up” rather than seeing the possibilities for all parties to make gains that may accrue to parties beyond the deal itself.

Modern negotiation theorists have argued that we need not compromise in every negotiation, a view that I believe should be rigorously examined by moral philosophers such as Margalit. By trading both complementary and conflicting items of our own and our counterparts’ valuation, we may get something better or bigger than the deal itself. Or, as others have argued, the compromise may *itself* provide a more precise justice when those on both sides have close to even claims (Coons 1979).<sup>12</sup>

Margalit explores some of this in his discussions of what potential enemies (underdogs and overdogs) might bargain for, but he fails to look at some of the more recent nation-state compromises that are potentially even more successful. Postwar attempts to regionalize and unify both commercial relations and human rights have created such entities as the European Union and the European Charter for Human Rights and its enforcing court in Strasbourg, and the Inter-American Court of Human Rights, through regional, if not international, negotiations. The resulting treaties have created texts; relationships, including informal networks (Slaughter 2004); and institutions (courts, banks) that coordinate actions and attempt to monitor both macro and micro negotiations on just the sort of issues that brought Europe into violent conflict in the past. Such processes can themselves be morally beneficial. This is true at both the macromoral (nation-state or regional, transnational or subnational political) level as well as at the micromoral (individual, organizational, domestic, or institutional) level.

Third, in this modern period of philosophical and international realism, Margalit, like other philosophers, asks us to focus on more realistic “second best” or at least nonidealized forms of human interaction. Like Hampshire, Sen, Habermas (1985), and others, Margalit wants us to make the world a better place by reducing conflict, inequality, injustice, and war by focusing on respect, decency, and recognition of our fellow human beings. Even if we might not totally agree on the content of the substantive good, say modern philosophers, perhaps we can at least develop some processes for deliberating and dealing with each other to prevent the horrors of war or the shame of humiliation and cruelty. Compromise and negotiation are processes of the “good,” if not the ideal “best.”

Fourth, in this way, the process of compromise and negotiation is also morally justified on its own terms when enemies are treated as legitimate negotiating partners — to negotiate is to grant some human dignity and respect to the other party. Negotiation and compromise as process therefore have moral valence, which thus generates controversy: should we recognize and legitimate such enemies as Hamas or the Taliban as legitimate negotiating partners? *Whom* we choose to negotiate with is itself a moral question, whether in an important nation-state negotiation or in everyday life.

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Fifth, Margalit's main enterprise in this book of separating the "rotten" compromises from the morally acceptable ones has significance beyond the realm of political necessity. If on the nation-state or political level a rotten compromise is one that "agrees to the establishment or support of an inhumane regime," how can we apply this analysis to more everyday negotiations? Throughout his book Margalit suggests criteria that should guide all who are concerned about negotiating *ethically* with colleagues, business associates, and friends, and *morally* with the rest of humanity (Menkel-Meadow and Wheeler 2004).

Here are some of his criteria applied to typical ordinary negotiation situations:

- Consider whether the other party is establishing or supporting an inhumane (or illegitimate) order. When should we not negotiate at all? With Hitler? Al-Qaeda? A fraudulent business? A nontrustworthy spouse? (see also Mnookin 2010; Shell 2010). Remember that for Margalit, not all compromises with rotten regimes are themselves rotten. Sometimes, because of necessity, we must negotiate with "rotten" parties. *How* we negotiate and *what* we negotiate with them are separate questions.
- What is the content of our agreement or compromise? Compromises or deals, even with nonrotten parties, can result in rotten outcomes, for example, agreements that knowingly subjugate others or agree to "unconscionable" terms.<sup>13</sup>
- Who is affected by the compromises or deals we make? Does a deal cause harm directly to the parties to the negotiation or indirectly to third parties who might be affected? Were the Allies justified in agreeing to Soviet domination of Eastern Europe? How are children affected by bad divorce settlements? Are future generations affected by environmental treaties?
- Is the agreement coerced and, if so, by whom? Margalit draws a distinction between parties coercing each other directly in negotiations from those in which third parties coerce compromises (e.g., those offering aid and security or threatening worse harms). If ordinary negotiations are justified by the concept of consent, how can we know if consent is real?
- What are the alternatives to the compromise or deal on offer? We may think a deal or compromise or negotiation looks bad ("shady," "shabby," or "shoddy" in Margalit's terms) but then again, other outcomes may be worse (war, death, serious economic loss, suffering). The moral assessment of compromise and negotiation is necessarily a comparative and not ideal metric. And it depends on factors outside of the negotiation itself.



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- What are the conditions under which we are negotiating? Is there a necessity to negotiate, or is it only expedient or efficient to negotiate? The concepts of necessity and coercion are very closely linked here and must be critically examined in assessing when we feel we have to negotiate or when we feel coerced and have literally no or little choice.
  - How stable is the compromise/agreement likely to be? The concepts of irredentism and revanchism can usefully be applied to all negotiated agreements. Will the parties comply with the terms of the agreement or seek to regain lost value, face, or territory? Will they want revenge and thus seek to overturn or undermine the deal? No negotiated agreement or compromise is secure if too much is given away or asked for — a stable negotiated agreement must approximate some form of rough or actual justice between the parties to be more than a simple truce.
  - What is the relationship of the intent or words of our agreement — what Margalit calls the expressive part of negotiation (p. 110)—to its actuality? Is it a rotten compromise to knowingly sign an agreement with words the parties know are unlikely to be fulfilled? (e.g., Stalin's promise of self-determination for postwar Central and Eastern Europe at Yalta).

In my view, Margalit has given us important criteria to apply to the moral assessments of virtually all of our negotiations, be they with political enemies, commercial partners, kin, or strangers. In that sense, compromise and negotiation require moral scrutiny and justifications, with relatively universal or general criteria. How we apply those criteria, however, may still ultimately be quite contextual whether looked at after the fact, by historians and moral philosophers, or before or during actual negotiations, by negotiation theorists and practitioners.

## NOTES

Thanks, as always, to Robert Meadow for insights, corrections, and moral negotiations of both macro and micro dimensions.

1. This is, of course, a totally separate question from what compromises or agreements might be unlawful, (not explored here by Margalit) because the international context remains somewhat “lawless” because of questions about the legal legitimacy of transnational agreements, especially those that are backed by threats of or actual force, despite much of the late twentieth-century jurisprudence of international law and United Nations practice.

2. For avid TV watchers reading this review, the final season of *24* (Keifer Sutherland, producer, 2010) concluded with the rejection of a peace agreement between the United States, Russia, and an Iran-like fictional country for reasons Margalit would likely applaud — it was a rotten compromise based on unjust, murderous, threatening, and inhumane treatment of, and cruelty to many, including regime leaders, as well as civilians, and governmental operatives (although not as genocidal or racist as other regimes that Margalit condemns).

3. Margalit movingly describes how the “trauma” of Munich affected a whole generation of philosophers and politicians, including his mentor, Isaiah Berlin (p. 10).

4. Margalit does not explicitly assess the morality of Israel's actions although he is an advocate of a two-state solution and has long been identified with the peace-seeking parties in

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Israel. Many of his abstract hypotheticals reveal what he does seem to think are some “rotten compromises” in the Israeli-Palestinian context (see, e.g., pp. 81–86). He does not, however, concretely or explicitly discuss what compromises or agreements might be rotten or not in a possible peace agreement in Israel–Palestine (see a short discussion of this on pp. 45–47).

5. Margalit distinguishes the Allies’ alliance with Stalinist Russia during the war, which he sees as morally justified, from the Yalta agreement, which was a “rotten compromise” because it acceded to the inhumane subjection of Eastern Europe to the post-war Soviet regime and permitted the “repatriation” of two million people to Soviet Russia, with sure death for many.

6. Other reviewers and historians are quite focused on this important distinction (see, e.g. Gray 2010).

7. And as a side note, I must criticize Margalit’s partial treatment of the market philosophy that Adam Smith espoused in *Wealth of Nations*. As the “negative politics” or “injustice” philosophers have recently argued, Smith was every bit as committed to the “holy,” emotional, altruistic, and empathic side of human needs and negotiations in his *Theory of Moral Sentiments*.

8. At least one branch of our more practical set of theories focuses precisely on structuring agreements even where there are vast value differences (see, e.g., Susskind and Field 1996).

9. This has important implications for the important question of when to acknowledge other “immoral” parties. Many governments, including the United States, claim they “never” negotiate with hostage takers or terrorists or other particular groups, but the historical truth is that they almost always do, even if they use private back channels or other devices for deniability (Dowell 2009). If some party has what they want (people or the ability to harm us or cause fear) they *will have to engage* in some way. Force is one way, negotiation in the shadow of war is another.

10. In my view the power of this book would have been greater without the freestanding final chapter, which undermines the power and persuasiveness of much of the analysis in preceding chapters. I agree with Margalit’s bottom-line conclusions in his final chapters, but I think he misapplies his own concepts, standards, and definitions.

11. Margalit provides a moral philosopher’s helpful distinction between “justified” bad deals (authorized by the circumstances, such as political necessity) and “excused” deals (forgiveness after the bad deed when consequences are made clearer) (p. 91), which does not completely track criminal law doctrine distinguishing these “defenses” to criminal acts.

12. Consider joint custody as a just compromise in which both parents have equal and just claims to raise their children. Although courts, juries, and much legal decision making cuts with a blunt knife of bipolar solutions, many legal and human claims are really not that clear (Menkel-Meadow 1984).

13. Thirty years ago the American Bar Association considered requiring that lawyers bear professional responsibility for ensuring that all negotiated agreements were not substantively unconscionable. The proposed Model Rule of Professional Conduct requiring both truth in negotiations and responsibility for negotiating substantively fair agreements was not ultimately approved (Menkel-Meadow (2002)).

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