The ethics of compromise: third party, public health and environmental perspectives

Jonathan H Marks

My invitation to respond to Lepora and Goodin may be the result of my work on complicity—in particular, the participation of health professionals in torture and aggressive interrogation in the so-called 'war on terror'.[1 2] However, instead of responding to the précis, I intend to address the section of the authors' book dealing with compromise and to explore the implications of their approach for some pressing public health issues.[3 4]

In their chapter entitled 'Compromise as a Template', Lepora and Goodin contend that '[i]t is only when the intrapersonal conflict forces an agent to choose among items of principled concern … to her that a compromise is genuinely involved' (p. 19). The authors are right to emphasise the ethical significance of setting aside, forsaking or violating one's principles to reach an agreement. There may be serious implications for the integrity of an individual or an institution that makes such a compromise. But we should ensure that the intrapersonal focus does not lead to the neglect of other important ethical dimensions.

A compromise may be problematic because of its impact on others who are *affected by, but are not parties to*, the compromise. For example, it will be ethically problematic if my agreement with Bob adversely affects Charlie, and I have a legal or ethical obligation to protect Charlie. Compromises that adversely affect vulnerable or disempowered third parties or communities are also a source of serious concern.

Notably, one of the authors acknowledges the significance of these considerations in other work. Goodin has observed that 'when others besides the contending parties have an interest in the outcome, we naturally worry that the settlement may not necessarily take into account all their interests as well'.[5] He builds on the concerns of Owen Fiss who has argued that when parties settle 'society gets less than what appears, and for a price it does not know it is paying', and that '[p]arties might settle while leaving justice undone'.[6] Although there are many ways to illustrate these kinds of concerns, I will briefly describe two examples here.

In Pennsylvania, a couple (the Hallowiches) complained of adverse effects on their health and well-being—and that of their children—resulting from 'fracking' near their home. After commencing legal proceedings, they reached a settlement with several gas operators.[7] This attracted some media attention because, in exchange for a six-figure sum, the Hallowiches agreed they would not speak of their experiences. The press focused on one feature of the agreement: it also purported to 'gag' the couple's young children. But the case is remarkable for another reason too. The Hallowiches agreed not to disclose the results of their comprehensive medical examinations (unless required to do so by law or a court order). The inability of the family to share any of these results (should they subsequently wish to do so) might conceal important information from third parties including other potential litigants, as well as data that would be relevant to assessments of the public health and environmental impacts of fracking. This is not a unique case. Gas operators have been strategically and systematically settling cases to keep them out of the courts and to silence 'noisy' litigants.[8] It is understandable that the Hallowiches (and other families) would accede to these kinds of 'take it or leave it' settlements; there is undoubtedly an inequality of bargaining power. But the impact on third parties, public health and the environment of these settlements—whose terms are often sealed from public view by agreement of the parties—understandably fuels calls for legal reforms.[8]

Another example of an 'uneasy' set of compromises arises from government bodies (including public health agencies) at local, national and international levels 'partnering' with food and beverage industry actors (often soda companies) on public health interventions—including initiatives to address obesity and associated non-communicable diseases, the very problems to which those corporate actors are contributing.[9] Public officials tend to characterise these arrangements as a 'win-win-win'. But this Panglossian view downplays the potential harm to others who are not parties to the arrangement, as well as the impact on the integrity of the government body. When a public health agency participates in a partnership with a soda company, it may have the effect of burnishing the company's reputation, conferring a 'health halo' on its products, increasing brand loyalty and further promoting sales of leading brands that are exacerbating obesity and associated health problems. These types of arrangement also call for a refinement of the authors' claim that parties to a compromise acquire direct responsibility for what they undertake to perform together (committing responsibility) and for 'what they agree to omit doing as part of the compromise' (omitting responsibility) (p. 24). This framework captures explicit quid pro quo, but not more subtle reciprocities.

Sometimes one party to a compromise may fail to act because it is afraid of jeopardising its ongoing relationship with the other party (or other parties). When a public health agency refrains from taking steps that might promote its public health mission because they appear inimical to the commercial interests of industry partners, such as taxation or more stringent regulation, this is ethically problematic. It is still more problematic if those measures might protect vulnerable populations, such as children living in poverty, that the agency has an obligation to protect.

I wish to conclude with a word of commendation that is consistent with the theme of this response. The opening chapter contains a dialogue between the authors. This format allows for the expression of different perspectives by two authors with very different backgrounds and reflects a principled compromise from which important third parties (readers!) clearly benefit. I encourage other coauthors to do the same.

Competing interests None.

Provenance and peer review Commissioned; internally peer reviewed.

Correspondence to Professor Jonathan H Marks, Director, Bioethics Program, Penn State University, 232 Sparks Building, University Park, PA 16802, USA; jhm20@psu.edu

To cite Marks JH. *J Med Ethics* 2017;**43**:267–268.

Received 27 September 2016
Accepted 3 October 2016
Published Online First 11 November 2016

► http://dx.doi.org/10.1136/medethics-2015-103149

J Med Ethics 2017;**43**:267–268.
doi:10.1136/medethics-2015-103279

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