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**How to accommodate  
*modus vivendi* within  
normative political theory**

In this paper my aim is to rethink the role that the notion of *modus vivendi* can play within a normative political theory inspired by Rawls' 'political liberalism'. For that purpose, in the first section I criticize an alternative concept of *modus vivendi* articulated within an influential 'minimalist' (if not downright political-realist) approach to liberalism, championed by John Gray, Bernard Williams, and others.<sup>1</sup> In spite of the diversity of nuances, philosophical agendas and theoretical propensities, these defenders of a "liberalism of fear" incur similar difficulties. Although motivated by skepticism about consent for "reasons of principle", nowhere to be found, advocates of political legitimacy via *modus vivendi* shy away from the extreme conclusion that stability trumps justice under all conditions. At some point in their construction, they re-introduce normative assumptions and values – usually in the guise of make-shift bottom-line limits to admissible patterns of stability – that lack all specific justification and contradict the pretended overcoming of the distinction of justice and prudence. *Modus-vivendi* liberalism thus is affected by internal inconsistency. Furthermore, *modus vivendi* theorists are keen on presenting their approach as more respectful of pluralism than consent-based, 'moralistic', normative liberalism. It is hard to see, however, in what sense their views of *modus vivendi* – premised on rationality as the sole factor of orientation – would be more pluralism-affirming than the *dual*

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<sup>1</sup> Representative of this trend are Williams 2005, Gray 2000, Geuss 2008. In certain respects I would include also Bellamy 2007. For illuminating reviews and critical commentaries, see Galston 2010, Scheuerman 2013, Floyd and Stears 2011.

normative core of political liberalism, premised on the irreducible distinction of the rational and the reasonable.

These two problematic features of *modus vivendi* liberalism should not be misconstrued. They speak against the ultimate coherence of making *modus vivendi* the one and only frame of reference for liberal political theory, not against the fruitfulness of the notion of *modus vivendi* as such. In the second section, I argue that *modus vivendi* retains its full fruitfulness if integrated within a *normative* political-liberal view of legitimacy, as the notion through which the oppression-free political coexistence of liberal and non-liberal constituencies, domestically and transnationally, is best understood. More specifically, I will discuss how my notion of *modus vivendi* differs from the standard conception of *modus vivendi* expounded in *Political Liberalism*.

## I. *MODUS VIVENDI* LIBERALISM: GRAY AND WILLIAMS

In a plurality of vocabularies Williams, Geuss, Gray and other authors have been advocating a ‘realist’ or, more precisely, a ‘minimalist’ version of a legitimate liberal political order. In the eloquent and concise version offered by Gray,

Liberalism has always had two faces. From one side, toleration is the pursuit of an ideal form of life. From the other, it is the search for terms of peace among different ways of life. In the former view, liberal institutions are seen as applications of universal principles. In the latter, they are means to peaceful coexistence. In the first, liberalism is a prescription for a universal regime. In the second, it is a project for coexistence that can be pursued in many regimes (Gray 2000, 2).

Normative philosophers – Locke, Rousseau, Kant, Rawls – in his opinion epitomize the first face, philosophers who embrace a more skeptical or realist view – Hobbes, Hume, Berlin – epitomize the second face.

In a Chapter of *Two Faces of Liberalism* entitled *Modus Vivendi*, Gray highlights two ‘philosophies’ that struggle for the soul of liberalism:

In one, toleration is justified as a means to truth. In this view, toleration is an instrument of rational consensus, and a diversity of ways of life is endured in the faith that it is destined to disappear. In the other, toleration is valued as a condition of peace, and divergent ways of living are welcomed as marks of

diversity in the good life. The first conception supports an ideal of ultimate convergence on values, the latter an ideal of *modus vivendi*. Liberalism's future lies in its turning its face away from the ideal of rational consensus and looking instead to *modus vivendi* (Gray 2000, 105).

The *modus vivendi* liberalism propounded by Gray reaches back to Hobbes. Freeing ourselves from the letter and the details of his argument, we must take inspiration from Hobbes and reformulate the gist of his teaching in pluralist terms:

The end of politics is not the mere absence of war, but a *modus vivendi* among goods and evils... Amended in this way, Hobbes's thought implies that the most important feature of any regime is not how it succeeds in promoting any particular value. It is how well it enables conflicts among values to be negotiated. The test of legitimacy for any regime is its success in mediating conflicts of values – including rival ideals of justice (Gray 2000, 133).

Gray's neo-Hobbesian rethinking of liberalism carries two methodological consequences. First, "the trundling distinction between *de facto* and *de jure* authority", the pivot on which any and every normative view hinges, is now called "less than helpful". Second, "the demarcation of reasons of principle from reasons of prudence" is declared untenable. According to Gray, it derives from the illusion that morality overrides all other considerations and that its demands are "normally self-evident to reasonable people" (Gray 2000, 133).

It would be tempting to reject these formulations, especially the one concerning toleration as helping us cope with diverse ways of life destined to eventually fade into an undivided rational consensus, as gross misunderstandings of political liberalism. Countless times Rawls underscored that nothing, not even public reason, can miraculously cause the burdens of judgment to vanish and that the zeal to bring into politics the entire truth as we see it is incompatible with democracy. But Gray does duly acknowledge that both his project and 'political liberalism' reject the perfectionist idea that the legitimacy of a regime rests on its responsiveness to some 'supreme virtue'. Whereas Rawls, however, stops halfway and still nurtures the illusory belief in an overlapping consensus on a political conception of justice, Gray suggests that also justice is not immune from the conflicts of values arising from societal pluralism. Furthermore, both he and political liberalism acknowledge that some

‘primary goods’ are indispensable preconditions for any worthwhile human life. Whereas Rawls, however, embraces the natural law optimistic view that “primary goods do not conflict with one another”, Gray’s neo-Hobbesian liberalism embeds the realistic view that these goods, including rights, do not form a “consistent, harmonious system” but are often at war with one another.

In spite of his acknowledging these points of convergence, Gray still misinterprets Rawls. Rawls’s “overlapping consensus” on a political conception of justice is meant as an ideal-theory end-state to be striven after or to be used a yardstick for assessing given polities, but by no means as an account of the *current predicament* of democratic societies. Such predicament is best described as a “constitutional consensus” (Rawls 2005, 164-168) on a number of rights and constitutional essentials but *not on their implications*. For example, citizens in all walks of life, including justices, agree on ‘equal protection of the laws’ or ‘free speech’, but may disagree on what this implies. Such disagreement obviously extends to the way the different primary goods ought to be balanced and if necessary prioritized.

In the next section, Gray highlights the points of divergence between his liberalism of *modus vivendi* and political liberalism. Rawls is attributed the intent “to formulate principles of justice which any reasonable person is bound to accept, or at any rate cannot reject, regardless of her conception of the good. The result is a liberal philosophy of right in which justice is meant to have priority over all other goods” (Gray 2000, 135). Again, this interpretation is inaccurate: as of 1980, the normative credentials of ‘justice as fairness’ do not rest for Rawls on its being “being true to an order antecedent to and given to us”, as Gray would have it, but simply on its being the political conception of justice “most reasonable for us”, given “its congruence with our deeper understanding of ourselves” (Rawls 1980, 519; 2005, 28).

In the constructive, positive part of Gray’s *modus vivendi* liberalism, difficulties are even more manifest and visible. His approach, based on the assumption that “all or nearly all ways of life have interests that make peaceful coexistence worth pursuing” (Gray 2000, 135), aims at judging “regimes in terms of their capacity to mediate compromises among rival views of the good” (Gray 2000, 135). This Hobbesian priority of peace over justice, fully embraced by Gray, leads to three counterintuitive consequences.

First, in the absence of any screening of the ‘ways of life’ or ‘conceptions of the good’ susceptible of being party to a *modus vivendi*, any context could be the setting of a *modus vivendi*. Even in Syria a *modus vivendi* could be achieved among the Assad regime, Isis and the Al-Qaeda-derived Al-Nusra and such *modus vivendi* would not basically differ from the one that regulates the coexistence of different conceptions of the good in France or UK. Of course it would be different – in the obvious sense that no two *modus vivendi* are identical – but not so different as to require that we come up with a different term. That is to me deeply questionable.

Second, the idea that all human groupings have an interest in peaceful coexistence is an empty claim that contributes little to explaining why human groupings that have wildly disproportionate stakes in the making, implementation and stability of a scheme for transnational governance (say, the US and the Republic of San Marino) should equally abide by its terms. In the end, the explanation of stability comes to rely on the classical political-realist notion of balance of power: only when two parties to an agreement have roughly equal power and stakes, the agreement has a chance for stability.

Third, his questioning the distinction of reasons of principle and of prudence leads Gray’s liberalism to rest on a dubious moral phenomenology. The sense of justice plays no role distinct from the rational pursuit of one’s advantage, as though no difference existed between the point of view of what is to my or our advantage and what is fair to all the parties concerned.

Were these not, in and of themselves, formidable difficulties, Gray’s project of a liberalism of *modus vivendi* is affected by an internal tension between on the one hand its underlying intent, and the means through which such intent is carried out on the other. *Modus vivendi* is the affirmation of the primacy of peace, of peaceful coexistence over all other political values: *primum vivere*. The ballast that puts *modus vivendi* at risk of sinking way to the bottom of philosophical worth is the suspicion that the priority of peace is a road leading to the acceptance of the most horrible forms on injustice, the suspicion that anything can be sacrificed for the sake of stability. Aware of this risk, Gray, hastens to add that “modus vivendi is far from the idea that anything goes... There are limits to modus vivendi” (Gray 2000, 20). These limits, as it somewhat surprisingly turns out, are set by ‘universal human values’. These putatively universal values, a few lines above denounced as incapable of generating a view of justice (Gray 2000,

19), nonetheless are now invoked in order to “set ethical limits on the pursuit of *modus vivendi*” (Gray 2000, 20).<sup>2</sup>

Furthermore, we accept the limit-setting cogency of these values not because it is prudent and expedient to do so, but because we recognize their intrinsic worth, their being ‘just’. Thus Gray’s ‘comprehensive’ *modus-vivendi liberalism*, in order to avoid turning into a caricature-like idea of ‘might makes right’ or ‘anything goes’, in the end comes back full circle to presupposing non-prudential, actually even ‘universally’ cogent, values that set limits on legitimate forms of *modus vivendi*. It also surreptitiously reinstates the distinction between prudential and principled motivations. The ‘universal values’ that mark the red line between an acceptable *modus vivendi* and an unacceptable one evidently cannot be endorsed for prudential reasons: so Gray needs *malgré lui* to presuppose that at least some normative contents are endorsed for reason of principle only, because they are just. *Modus vivendi*, the concept that should have emancipated us from the spell of universal normativity – to which Rawlsian liberalism falls prey hook, line and sinker – now appears to presuppose ‘universal values’. Was it worthwhile to run through the whole anti-normative argument, if this is Gray’s conclusion?

To sum up, Gray’s idea of *modus vivendi* as the one and only model for the liberal polity suffers from the same weakness than affects pacifism as a philosophical position on war. Pacifism only makes sense as a radical, intransigent outlook that rules out any exception, including self-defense. The moment pacifists allow for any exception – e.g., taking arms in self-defense – they turn into theorists of ‘just war’. Their position becomes indistinguishable from a very demanding and narrow theory of just war, which admits only ‘war in self defense’, but a theory of just war nonetheless.<sup>3</sup> A similar flaw affects the program of neo-Hobbesian liberalism. *Modus-vivendi liberalism* is consistent and coherent only as an extreme position, prepared to claim that any agreement whatsoever, capable

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<sup>2</sup> The vagueness of Gray’s formulation stands out in contrast with Margalit’s detailed analysis of the line dividing compromises and what he calls “rotten compromises” (Margalit 2010).

<sup>3</sup> For an expanded version of this argument, see Salvatore 2016, 65–68. See also Salvatore 2010.

of securing any peace, even a Hitlerian peace, is better than conflict. The moment one reintroduces principled, value-based, normative limits to the kind of admissible *modus vivendi* then, at that moment, one falls back into a kind of normative theory and a very poor one at that – ‘universal values’ are invoked coming from nowhere, that command allegiance based on no principle whatsoever. So pure *modus vivendi* approaches end up in inconsistency and in a questionable admixture of political-realist and normative elements.

Many of the criticisms leveled by Gray against normative liberalism also apply to Bernard Williams’ sophisticated political realism, articulated in his posthumous volume *In the Beginning Was the Deed* (2005). Ground-breaking is Williams’ suggestion that political realism need not eschew the (normative) question of what authority *deserves* to be considered legitimate. Differently than theorists who, in the footsteps of Weber and Schumpeter, have enervated the critical dimension of legitimacy by equating it with the mere fact of belief in legitimacy, Williams must be credited with challenging what he calls ‘moralism’ – the subordination of politics to a standard of legitimacy couched in moral principles or in a moral reading of the Constitution – by giving us a competing realist account of what can count as a *justified belief in the legitimacy of authority*.

Williams identifies the ‘first political question’, the foundational stone on which the edifice of political philosophy rests, along Hobbesian lines, “as the securing of order, protection, safety, trust, and the conditions of cooperation. It is ‘first’ because solving it is the condition of solving, indeed posing, any others” (Williams 2005, 3). While crude forms of realism in the past failed to adequately distinguish between legitimate authority and arbitrary power, Williams vindicates realism for the 21<sup>st</sup> century by building into it the normative assumption, rejected instead by Gray, that such distinction makes sense. Rejecting the ‘moralist’ move of harnessing legitimate authority to some kind of principle, Williams revives the traditional battle-cry of political realism: namely, the autonomy of politics. The ‘first question’ should be answered without reference to moral principles, but such answer is only the first step towards meeting the ‘basic legitimation demand’. It goes to Williams’ merit to have developed the political-realist stance up to the point of closest possible convergence with normativism compatible with still retaining the distinction: for a state to *meet the basic legitimation demand* (and thus for its authori-

ties to be *legitimate*) means to provide an ‘acceptable’ solution to the first political problem – as opposed to its providing a solution that is merely de facto accepted by the subjects of that state.<sup>4</sup> One is left wondering why this position should be considered a realist one.

The reason is the following. Although all forms of political authority must answer the ‘first question’ in order to be legitimate, not all need to meet the ‘basic legitimation demand’ *in the same way*. In some parts of the world, people may find it reasonable to place *additional* requisites on authority, over and beyond answering the first question: for example, that authority also meet certain liberal-democratic standards. This is the element of realism that survives in Williams. Nothing can be said for liberal-democracy, other than the fact that in some parts of the world – for the time being, one should add – liberal-democratic credentials are taken as requisites for the legitimacy of authorities.

Two consequences follow. First, both democratic and non-democratic forms of authority may be legitimate, as also Gray emphasizes. Second, those who once posed additional liberal-democratic constraints on authority (in the guise of a bill of rights, or the presumption that political justification must be *equally acceptable* to *everyone* subject to the authority being justified), in a changed historical constellation *may cease to pose them*. Now, if it is only with modernity that legitimate authority has to satisfy liberal standards, we have “no ground for saying that all non-liberal states in the past were illegitimate, and it would be a silly thing to say” (Williams 2005, 14). For a structure of authority to claim legitimacy within its own parameters means that “it makes sense to us as such a structure” (Williams 2005, 14), where ‘making sense’ means something more than just the factual operation of a certain

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<sup>4</sup> Another passage where Williams comes close to a normative account is the following: “The situation of one lot of people terrorizing another lot of people is not per se a political situation: it is, rather, the situation which the existence of the political is in the first place supposed to alleviate (replace). If the power of one lot of people over another is to represent a solution to the first political question, and not itself be part of the problem, *something* has to be said to explain (to the less empowered, to concerned bystanders, to children being educated in this structure, etc.) what the difference is between the solution and the problem, and that cannot simply be an account of successful domination. It has to be something in the mode of justifying explanation or legitimation: hence the Basic Legitimation Demand” (Williams 2005, 8).



power structure. To make sense is understood by Williams as a descriptive notion when applied to the understanding of a political situation other than our own, but as one that “becomes normative” when applied to our case, in that we then think that the structure of authority confronting us is one that “we should accept” (Williams 2005, 11). What does that ‘should’ mean from a political-realist point of view?

Criticizing those who, like Rawls and Dworkin, aspire to anchor such ‘ought’ in unsituated principles or in the moral significance of the Constitution, Williams advocates a Weberian ethics of responsibility and a rethinking of ‘the political’. Concerning societies other than our own, Williams claims that we can consider legitimate certain contemporary non-liberal States. The notion of legitimacy, in this case, is *normative* insofar as these non-liberal societies ‘co-exist’ and enter relations with ours and thus “cannot be separated from us by the relativism of distance” (Williams 2005, 14). “In the beginning was the deed” means that discussions about legitimate authority must proceed from realistic assumptions about the chances of these societies to achieve stability: in particular “If the current legitimation is fairly stable, the society will not anyway satisfy the other familiar conditions on revolt” (Williams 2005, 14).

Williams’ position incurs three difficulties. First, his adoption of a Hobbesian question as the fundamental one of political reflection cannot go unquestioned. Although trust and the conditions of cooperation are mentioned, a residue of the old-type realism survives in Hobbes’ “priority of stability over justice”. For a different view, let us recall Locke’s point that unjust political arrangements may result in a *worse* predicament than the lack of order and that therefore the test of political legitimacy needs to be more demanding than the mere ensuring of order and the protection of life. The purpose of the Lockean commonwealth is to *avoid oppression*, where oppression certainly includes the deprivation of life, but also includes being forced to live according to principles one cannot endorse. A just commonwealth is one in which rights are respected, authorities are subject to the law, and the principles of government are endorsed by the citizens: together these features define an alternative “first question of politics” premised on “the priority of justice over stability”, a priority that reaches all the way to authorizing rebellion against established authority. Williams’ selection of a Hobbesian version of the first political question, posited as self-evident, biases the basic legitimation demand in a minimalist direction: “Have you protected my

life? Have you ensured order?” are the benchmark questions for testing authority’s legitimacy. A Lockean version of the first political question would generate a different benchmark question, which does not reject but *expands* the Hobbesian one: “Have you safeguarded me from oppression?”. Williams’ selection of a Hobbesian ‘first question’ leads his realism to question-begging. His anti-normative argument depends on his having already presupposed a realist understanding of how the question of legitimate authority must be approached.

The second difficulty is that while Williams acknowledges that a number of competing assessments of the legitimacy of authority – some critical, others apologetic – will vie for public acceptance in the public forum, given the absence of a normative standpoint he appears unable to distinguish a structure of authority ‘making sense to us’, in the sense that we should accept it, and one merely prevailing on the ground. In spite of his claim that in our own society this ‘making sense’ of authority is normative, it remains totally unclear on what basis the factually prevailing assessment could ever be challenged.

The third difficulty concerns the polemical target. Williams’ picture of ‘political moralism’ is flawed. Like Gray, Williams downplays the significance of Rawls’s turn from the framework of *A Theory of Justice* to that of *Political Liberalism*, based on which it is inaccurate to sum up Rawls’s view of legitimacy as connected with a moral principle. The gist of *Political Liberalism* is precisely to harness the standard of legitimacy to a *political* conception of justice endorsed by citizens who embrace *diverse* moral comprehensive conceptions. Not incidentally, Rawls’s declared goal is to investigate the conditions that enable a *stable and just* society to last over time despite the broad reasonable disagreement among its citizens. This modified understanding of legitimacy is partially acknowledged by Williams in his review of *Political Liberalism*, which contains important insights, but overlooked in his Chapter *Realism and Moralism in Political Theory*. The Rawlsian principle of legitimacy – the most promising starting point for addressing the legitimacy of authority from a normative point of view – is simply ignored.<sup>5</sup>

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<sup>5</sup> In fact, the framework of *Political Liberalism* completes the autonomization of politics *beyond* the autonomization from morality and extending it to include the autonomization of politics from theory (Ferrara 2014, 27-30).

To sum up, while Williams' realist approach offers an inconclusive answer to the question when authority should be considered legitimate, nonetheless its invaluable merit is to point to three challenges that any normative account should address.

First, a normative liberal theory should account for why its view of legitimate authority could and should be convincing also for *non-liberal* publics present in complex societies.

Second, a normative theory should embed differentiated accounts for what the legitimacy of authority means for modern and non-modern structures of authority. Only on the basis of a dubious philosophy of history human populations could be imagined to have lived in the throes of arbitrary power for millennia before liberal constitutionalism arrived on the scene. From a synchronic perspective, a proper normative theory of legitimacy should also account for what *in our times* makes authority legitimate within a liberal-democratic polity and in other kinds of polities. Only on the basis of an ideological fundamentalization of liberalism, in fact, could the sectarian idea be conceived that only in the 85 democracies counted by Freedom House in 2016 is legitimate authority to be found, whereas the rest of the 193 states of the world are ruled by illegitimate structures of arbitrary local power.

Third, a normative liberal theory ought not to renounce articulating a sense of what is attractive in the liberal-democratic idea of legitimate authority, without at the same time denigrating the forms of political association embraced by those who hesitate to embrace liberalism. In so doing it should justify why we may legitimately want to consolidate and protect from deterioration right-respecting structures of authority that have come into being out of historical contingency.

## 2. MAKING (BETTER) SENSE OF *MODUS VIVENDI* FROM A NORMATIVE PERSPECTIVE

Underneath the inconclusive theory of *modus vivendi* put forward by the proponents of a neo-Hobbesian liberalism of fear – who posit value pluralism as the reason why we should convert from consensus models towards *modus vivendi* models of the political order, only to then reintroduce universal values in order to prevent *modus vivendi* from slipping into the proverbial cabinet of horrors – lies the inability to grasp the difference between two

kinds of normativity: a normativity of principles and one which for lack of a better term I call the exemplary normativity of the reasonable. Either disregarding, or paying lip service to, the major paradigm shift that separates *A Theory of Justice* from *Political Liberalism*,<sup>6</sup> the realist neo-Hobbesian proponents of *modus vivendi* fail to notice that the normative ground of justice as fairness as “the most reasonable doctrine for us” has shifted away from what they call “moralism” and brings together normativity and plurality in a groundbreaking way.

No transcendent, context-independent standard of justice is posited within political liberalism, but the cogency of what is reasonable – and especially of what is ‘most reasonable’, a one-place predicate – remains rooted in the situatedness of ‘us’, the political subject to whom political justification is owed. If we want to spell out what ‘most-reasonableness’ means, we find an intuition close to the one underlying *modus vivendi* – namely, most reasonable for us is the ‘political conception of justice’ which a) best comports with the concrete historical plurality of reasonable comprehensive conceptions found in our context and thus b) makes it optimally possible for everyone to abide by such normativity without betraying her own comprehensive intuitions. What makes a political conception of justice most reasonable is not responsiveness to something beyond us, but its superior ability – relative to its competitors – for allowing each of us to remain in alignment or in resonance with oneself while abiding by its intimations.

What a normative political philosopher does is not to posit transcendent standards, but to hermeneutically bridge a gap between seemingly divergent positions whose supporters are unaware of how much common ground they share. The philosopher’s task is to unravel that common ground, to show how broader than suspected it is and how it can support institutional implementation. In Rawls’s words, one of the four tasks of a normative political philosophy is

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<sup>6</sup> See fn 7 of Chapter 2 of *Political Liberalism*. Rawls corrects a passage of *A Theory of Justice* “where it is said that the theory of justice is a part of the theory of rational decision [...] This is simply incorrect. [...] This theory is itself part of a political conception of justice, one that tries to give an account of reasonable principles of justice. There is no thought of deriving those principles from the concept of rationality as the sole normative concept” (Rawls 2005, 53).

to focus on deeply disputed questions and to see whether, despite appearances, some underlying basis of philosophical and moral agreement can be uncovered, or differences can at least be narrowed so that social cooperation on a footing of mutual respect among citizens can still be maintained (Rawls 2007, 10).

This normative understanding of a ‘stable *and* just’ society that enables “social cooperation on a footing of mutual respect among citizens” to take place shares with the *modus vivendi* propounded by Gray and the realism advocated by Williams a total independence from context-transcendent values. Rawls does not have to inconsistently invoke unsituated standards from ‘out of the Cave’ when it comes to blocking locally degenerated patterns of coexistence, because these pacts are suboptimal – namely, *less than ‘most reasonable’* – in their forcing some of the parties to suffer misalignment relative to their own moral intuitions and comprehensive conceptions.<sup>7</sup> At the same time as it shares this feature of Gray’s and Williams’ *modus vivendi*, Rawls’s notion of a legitimate political union does not undermine the two distinctions – integral to all normative perspective – between arbitrary influence or power and legitimate authority, and between principled and prudential motivations.

My point, however, is not simply that the later Rawls’s view of a just and stable society of free and equal citizens endorsing a political conception of justice ‘most reasonable for them’ does a better, more coherent and consistent, job than Gray’s and Williams’ neo-Hobbesian views at capturing how a pluralistic arrangement is possible. That would just amount to a plain defense of Rawls. Much more needs to be done. My point is rather that Rawls’s view can be brought – if appropriately expanded – to respond to two challenges that these authors raise.

Williams and to some extent Gray as well raise two important critical points. First, can normative liberal theories account for how their views of legitimacy could possibly convince the non-liberal publics present in com-

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<sup>7</sup> The normativity of the ‘most reasonable’, differently than the normativity of the ‘most rational’, has a dimension of exemplarity connected with it and cannot be reduced to the dynamic of subsumptive determinant judgment, to use Kant’s terminology. It is bound up with the exemplarity-tracking capacity of reflective judgment. On this point, see Ferrara 2008, 72-79.

plex societies? Second, liberal theories should embed differentiated accounts of legitimacy for modern and non-modern, democratic and non-democratic structures of authority. Only on the basis of a dubious philosophy of history we could imagine that human populations have lived in the throes of arbitrary power for millennia before liberalism arrived on the scene. Normative theories that wish not to turn into liberal fundamentalism should then account for what makes authority normatively legitimate in non-liberal polities.

How can the partially reasonable, who endorse comprehensive conceptions not fully compatible with the burdens of judgment, be included in the circle of those to whom political justification makes sense? To address this challenge I have suggested to expand the framework of political liberalism at four specific junctures (Ferrara 2014). I will only discuss two amendments to the paradigm, more directly related to *modus vivendi*. *Pace* those who would opt for restricting the circle of the addressees of political justification to reasonable citizens only (Quong 2011, 5), thereby paving the way to ‘liberal oppression’, political liberalism has the resources for meeting the challenge of making the partially reasonable citizens fully reasonable. This result can be achieved by complementing the role of public reason with *conjectural arguments* (envisaged also by Rawls, but confined to a peripheral role) that engage citizens endorsing partially reasonable comprehensive conceptions and offer them (hopefully convincing) *internal reasons* for recognizing the burdens of judgment and for subscribing to the liberal constitutional essentials. This ‘conjectural turn’ within political liberalism would generate a sort of *reflexive pluralism*, in which citizens reasoning from different comprehensive conceptions would embrace pluralism for diverse reasons. A whole stream of Rawlsian literature has produced examples of this way of proceeding (Ferrara 2014, 81-86).

However, there is no guarantee that conjectural arguments, given their hermeneutic nature, will deliver the desired result. What then? What to do when not *all* the citizens endorse the constitutional essentials “in the light of principles and ideals acceptable to their common human reason” as required by the liberal principle of legitimacy (Rawls 2005, 137)? This is the juncture at which we can improve Rawls’s standard view of *modus vivendi* qua “social consensus founded on self- or group interests, or on the outcome of political bargaining”, a form of political union which is “only apparent, as its stability is contingent on circumstances remaining such as not to upset the fortunate convergence of interests” (Rawls 2005, 147) which set it in place.

The distinctive feature, and Achilles' heel, of *modus vivendi* is the exclusively prudential nature of the motivation of the parties. When the matrix of mutual advantage is upset by contingencies and one party's benefits in breaking out exceed the costs involved in the collapse of the agreement, motivation to abide by the terms of agreement fades away.

My argument is that in order to meet the challenge of including non-liberal citizens in the circle of political justification, political liberalism could be amended by questioning the assumption, hitherto accepted by all interpreters of Rawls, that the polity moves all of a piece, holistically, through the stages of political conflict, *modus vivendi*, constitutional consensus and finally overlapping consensus. There is no need to hypostatize a purely analytic distinction between two ways of partaking of a political agreement into two historically exclusive forms of political compact: one and the same political arrangement could be endorsed by *some* citizens on *principled* grounds and by *other* citizens on *prudential* grounds. Even a cursory look at *The Law of Peoples* shows that Rawls envisaged the possibility, in the case of 'the world' *qua* political entity, of a multivariate political entity based on a mix of principled and prudential, justice-oriented and balance oriented, considerations endorsed by different groups of actors. One larger component of 'the world' includes peoples that relate via principles of justice to one another in the context of a 'Society of Peoples', and then jointly relate to other types of peoples (peoples ruled through 'benevolent absolutism', 'burdened societies' and 'outlaw states') on a mix of considerations of justice and prudence.

Thus, even when hyperpluralism proves intractable both for public reason and for conjectural arguments, political liberalism, if renewed along the lines detailed in *The Democratic Horizon*, can still offer the remedy of a *multivariate polity*, where some of the citizens embrace *all* the constitutional essentials in the light of principles (as in the standard version), while other citizens or groups of citizens embrace *some* of the constitutional essentials in the light of principles and *other* constitutional essentials out of prudential reasons, and a third group of citizens embraces *all* of the constitutional essentials out of prudential reasons. The legitimation of authority could then follow a differentiated pattern, avoiding liberal oppression but still remaining true to the mandate of protecting *all* citizens not just from life-threatening violence, but more broadly from oppression as per the liberal principle of legitimacy.

The second critical point raised by *modus-vivendi* and realist liberals concerns legitimate but non-democratic authority. Are the citizens of the states

not counted among the 86 democracies credentialed by Freedom House in its 2016 report in the throes of arbitrary power? How to distinguish those who indeed are in such predicament and those who instead are ruled by *legitimate yet non-democratic* authorities? Can we draw that distinction without conflating legitimacy and belief in legitimacy?

We need to go back, once again, to Rawls's liberal principle of legitimacy – “our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason” (Rawls 2005, 137) – and rethink it as a *special principle* of legitimacy, applicable only to contemporary liberal societies. For all other societies, I suggest to amend it at three junctures. First, the central notion of a constitution can be understood as referring to the central institutional complex (Plato's and Aristotle's “*politeia*”) and its underlying principles, customary or codified.

Second, the requirement that ‘all’ citizens as ‘free and equal’ should be ‘reasonably expected’ to endorse the essentials of the *politeia* must be modified when considering non-liberal polities. The legitimacy of authority need not be an all-or-none concept, but may admit of degrees. Citizens of a non-democratic polity may accept various kinds of inequalities connected with religious faith, gender, race, ethnicity, sexual orientation out of reasons of principle rooted in their comprehensive conceptions. This predicament makes the authorities that operate within that constitution *non-democratic*, but not *illegitimate*. On what basis? On the basis of their exercising power in accordance with principles, embedded in the constitution, which reflect a more or less ‘non-egalitarian’ conception of justice ‘most reasonable’ not *for us*, but for all those included (as rulers or subjects) within the authority system. This view of legitimate non-democratic authority embeds a situated, non-perfectionist understanding of normativity: we liberal-democrats do not share the idea of justice, largely comprehensive and not political, that underlies their institutions but acknowledge, based on their accounts, that it is *pro tempore* the idea of justice ‘most reasonable *for them*’, not just ‘what they believe to be reasonable’, and that structures of authority responding to it are legitimate not just in a *de facto* sense.

We can freely voice our dissent, point to the discrepancy of such conceptions and the rights included in the Universal Declaration signed by many of these non-democratic polities, we can even use our political and economic leverage to create incentives for change, we can actively support the sectors of



their citizenry who advocate democracy, but we cannot regard their structure of authority as on a par with a band of usurpers exercising arbitrary power. This is how normative liberalism can meet the challenge of the liberalism of fear.

Third, the basis for endorsing the essentials of the country's constitution-as-politeia can be expanded from 'principled motivations alone' to a mix of principled and prudential motivations. This modification of Rawls's principle allows then for a range of *degrees of legitimacy* attributable to existent authority, without falling into the realist view (the view of justice reconstructed must still be 'most reasonable for them', not just believed to be reasonable) or into a liberal normativism that, as Gray and Williams correctly point out, amounts to a kind of liberal fundamentalism. The limit-case of constitutional essentials entirely endorsed by everyone solely on prudential grounds marks the extreme hypothetical case when authority borders on arbitrary power and is not fully legitimate.

### 3. CONCLUSION

To conclude, the challenge of distinguishing arbitrary power and legitimate *non-democratic* authority can be met by making the liberal principle of legitimacy *a special case*. *Non-democratic* political authority is legitimate when it operates in accordance with the principles that shape the polity's central institutions and derive from the conception of justice most reasonable for all the participants in the system of authority. *Alignment with such normative backdrop* distinguishes legitimate authority and arbitrary power in contexts historically or geopolitically other than our own. Political liberalism so revisited can effectively counterattack 'political realist' conceptions. By presupposing a Hobbesian priority of stability, *modus vivendi* and realist liberals foreground the alignment of the authorities' conduct with the moral views of the powerful, more influential or majority sectors of the population. Instead, political liberalism offers a notion of legitimacy premised on the alignment of authority's conduct with the views not just of the more powerful, influential or numerous sectors but of *each and every member of the society*. Not in tracking transcendent principles, but in providing a non-ethnocentric critical edge and in its *greater capacity for inclusion* resides the appeal exerted by liberal-democracy on so many of those who don't live under democratic authority.

Going back to *modus vivendi*, the conception presented in Section 2 has shown how, differently than in the standard Rawlsian view, this notion can

still play a relevant role within a normative political-liberal approach to legitimacy. Far from being relegated to a remnant of past stages of political integration, *modus vivendi* and the prudential dispositions sustaining it highlight a possible path to the political coexistence of liberal and non-liberal constituencies within a rule of law, domestic or transnational, free of oppression.

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