Federico Zuolo

Is *modus vivendi* the best realistic alternative to public justification liberalism?

1. Introduction: *Modus vivendi* and public justification liberalism

The question within the title of this paper may sound strange. Why do I formulate the question in this way? Are *modus vivendi* (MV) approaches meant to replace public justification liberalism (PJL)? In a strict sense they are not, although MV approaches and PJL offer opposing approaches to the justification of a political order both in terms of their methodological assumptions (idealizing in the former, realism in the latter) and in terms of their normative content (more demanding in the former, more minimalistic in the latter). To better understand this opposition, we should clarify the two notions. In this paper, I will later define what I mean by MV. For now, however, let me clarify what I mean by PJL. In what follows I will include in PJL any kind of approach that is committed to both the foundation of a just liberal order and the liberal principle of legitimacy (Gaus 1996; Habermas 1990; Larmore 1990; Rawls 1993; Waldron 1987). In other words, PJL here includes all the theories that make the legitimacy of a just order dependent upon the acceptability of such an order to all those who are subject to it. Although there are various theories of public justification, for which a proper justification may demand specific kinds of reasons (public reasons, accessible reasons, shared reasons, and so on, depending on the author), they all share the idea that proper justification requires only certain kinds of reasons, namely good reasons on some moral or epistemic grounds. As we will see, this is one of the main differences between MV and PJL.

Many criticisms have been leveled against PJL. Let us focus here on two charges that typically come from the realist camp to which supporters of MV

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usually subscribe. The first is that PJL is too idealizing an approach. By reducing politics to public justification and by conceiving of political theory as applied ethics, it misrepresents political reality and human motivations. The second charge is that, notwithstanding PJL being committed to providing an answer to the problem of diversity and claiming to justify order to diverse perspectives, in fact, it ends up being non-inclusive of many positions. By establishing that only reasonable people or doctrines should be part of the justification enterprise or by excluding religious views, PJL, so the argument goes, fails by its own standard because it is not sufficiently inclusive of diversity.

In light of these considerations, the title of this paper asks whether an MV-based approach can supplement PJL by providing an account of how a legitimate political order can arise out of diversity without falling prey to the problems of PJL.[1] In a sense, both MV approaches and PJL start out from a similar concern: justifying the order against the background of deep disagreements. But they differ as to the kind of grounds they require at the basis of this order. PJL is demanding and establishes that only certain reasons can justify the order and only certain attitudes are appropriate responses to diversity, while an MV-based approach sets a lower bar regarding the reasons and forms of an order's legitimacy.

Returning to the question of the title, we must now better understand the other components of my starting point. In what follows I will ask what constitute the main features of MV-based approaches and how we should understand the realism criterion.

Famously, Rawls defined MV as an order stemming from an agreement that is reached thanks to the fortunate convergence of the interest of the parties (Rawls 1993, 146). In this sense, Rawls stresses the non-moral motivations of the parties, insofar as the parties are moved only by their self-interest. Here, MV is understood as a kind of social phenomenon, not as a theory. Hence, the question of the title of this paper should be rephrased as to whether the idea of MV as this kind of social phenomenon could be the basis of an entire political theory that recommends and uses MV as a solution to the most fundamental political problems.

In general, MV may be characterized as a kind of arrangement with the following main traits. First, an MV is a kind of social order that citizens

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[1] This point has been especially emphasized by McCabe 2010.

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accept for diverse (prudential) reasons. This means that for there to be a MV, there need not be only one kind of reasons in support of it; instead, all reasons, be they moral, prudential or otherwise, are admissible.[2] In this sense, second, an MV is a kind of order that may be reached through different micro and macro forms of negotiation, compromise and diverse types of agreements that need not be only principled in nature.[3] Moreover, people may implicitly accept the order or not reject it, even if they have not explicitly consented to it. Third, an MV is a settlement that may be historically reached in diverse ways. It can be a necessity in ending serious conflicts or wars. But unlike other ideas of order, MV may be the result of any kind of path. Unlike settlements that stem from significant ruptures – such as a constitutional crisis or change – MV can be both the result of an explicit agreement aiming at an MV and the unintended consequence of diverse agreements and changes of attitude at the micro-level.

In practice, MV may be reached through pragmatic compromises or negotiations. Unlike principled compromises, pragmatic compromises and negotiations are obtained for the sake of pursuing an advantage for the individual or the group at stake. Principled compromises, instead, are pursued for the sake of promoting or respecting a certain value (e.g. respecting the agency of other parties, tolerating other perspectives or respecting other epistemic capacities).[4] For this reason it is unlikely to be the case that an MV may be formed by principled compromises because the latter are quite demanding in terms of reasons

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[2] "A modus vivendi is a practical accommodation that can be built around any number of factors and be accepted for a variety of reasons by those who are parties to it. Those reasons often will include some measure of self-interest, but may also include more general prudential considerations and whatever moral principles and other values can be effectively mobilized in support of a particular political settlement. This is not, it should be emphasized, to reintroduce liberal principles or an assumed substantive moral consensus through the back door. Rather, it is only to recognize that typically people do in fact share some moral commitments or principles, along with other values, and that this overlap can be quite extensive, if often vague and indeterminate" (Horton 2010, 440).

[3] "A framework for the exercise of political power is grounded in a modus vivendi when its main features can be hypothetically presented as designed and adjusted over time through a virtually unrestricted bargaining process between the competing individuals and groups that make up the society" (Rossi 2010, 21).

[4] For further discussion about the difference between principled compromise and pragmatic compromise, see Bistagnino (2018), May (2005), and Weinstock (2013).

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for compromising. Although MV and pragmatic compromises are *de facto* often interwoven, insofar as MVs are likely to be formed by multiple pragmatic compromises by diverse parties, pragmatic compromises do not necessarily form or arise in an MV arrangement. Indeed, a compromise may arise in a situation characterized by the prevalence of a consensual form of agreement, namely a pragmatic agreement between a majority and a dissenting minority. For this reason, a non-realist perspective of politics may be open to pragmatic compromises, in lieu of a full consensus with certain parties, but remain reluctant to move towards MV as an overall and stable arrangement regarding the whole polity.

Now we may try to answer the question of what is meant by realism. This is not an otiose question because the term 'realism' is both a commonsensical notion and a concept that has been the subject of considerable debate in recent years. Even though it is a complex issue, it seems accurate to say that realism, in this context, entails the following requirements placed upon a theory. First, a realistic theory meets the principle of feasibility. Most realists, but probably not all (for an exception, see Rossi, mimeo), adhere to this connection between realism and feasibility. Certainly all realists are committed to upholding the idea that a political theory should have some significant practical import. This means that if it expresses a normative requirement and is not solely descriptive, a theory is realist if it is not utopian. This means not demanding the impossible and accepting the imperfections of this world as a structural feature of reality. Second, and related to this, both the assumptions and the content of a theory should be suitable to people as they are. This means, among other things, not assuming that people are fully rational or morally motivated, or that in a just state of affairs disorder and irrationality will be swept away. Moreover, it also entails that a theory should include and discuss really existing phenomena and agents (such as political parties, historical events, and so on), thus dropping non-existent elements that are present in idealistic theories (for instance, Rawlsian fictional entities such as Kazanistan, comprehensive reasonable doctrines, and so on). Third, a realist theory of politics rejects the standard idealist approaches according to which normative political theory can be thought of as a form of applied ethical theory. In this sense, politics is a specific domain of reality, which is not reducible to pure moral rules (Burelli 2016; Rossi 2010; Sleat forthcoming).

The connection between MV and realism needs a further clarification. Of course, as we have seen, MV is a kind of social order, while realism is a whole perspective on politics. Despite the obvious differences, I maintain that MV

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and realism are closely connected to the extent that MV is used as the cornerstone of a political theory, which, in this case, is necessarily realist in kind. Realism can dispense with MV, but MV as a basis of a political theory cannot but lead to some form of realism. The connection between MV and realism rests on MV's commitment to being descriptively adequate, and in particular more adequate than moralistic approaches, and in putting forward sober (and often minimalistic) normative requirements.

At this point, we can appreciate the realistic strengths of MV with respect to the alleged weaknesses of PJL. Supporters of an MV-based approach take MV to be more descriptively adequate and capable of practical guidance than PJL. Descriptive adequacy means a faithful representation of the world as it is, and in particular of how politics actually works. Building on descriptive adequacy, practical capacity means that a theoretical framework provides recommendations that are more fitting to real politics and people, thus avoiding the risk of normative irrelevance. This means not only taking into account real motivations of people, but also considering actual social settings as the result of historical processes. Hence, MV is thought to be capable of making sense of and including phenomena that PJL either neglects or normatively downgrades. This is particularly the case of unreasonable people. The relation between the reasonable and the unreasonable may be aptly accounted for in terms of MV (on this point, see Sala 2018).

Building on these preliminary considerations, which I take to be an uncontroversial reconstruction of the matter, I want to test whether MV-based approaches can meet their own standards, and in particular whether they are not open to the same critiques that MV approaches level against PJL. In particular, I will focus on MV as a foundational notion that aims to substitute consensus in PJL, so as to build an autonomous political theory at the center of which is MV (Horton 2010; McCabe 2010). In this sense, I will not question the very idea of MV, which may still be very important in a political theory that deals with diversity; rather, I will challenge the tenability of MV-based theories, namely those theories (most notably Horton's and McCabe's) in which MV is the cornerstone of an approach that should meet the realistic desiderata above.[5] I will argue that MV falls prey to a partial descriptive in-

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[5] Wendt (2018) has interestingly distinguished between three uses and understandings of MV in recent political thought. First, there is the negative account of MV where

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adequacy, which has some implications for its practical applicability, namely the incapacity to indicate how a certain MV arrangement can be improved. Although MV-based approaches are right to highlight some realistic concerns against PJL, similar worries may also be addressed to MV itself.

In what follows, I will use the treatment of animals as a test case to assess MV-based approaches with respect to the considerations outlined above. Although this case is rather specific, it is also a significant one because it points to new and possibly permanent challenges to order and legitimacy that do not involve the usual issues of ethnic and religious minorities.

2. A case in point: Disputes about the treatment of animals

In democratic and liberal countries, animals currently enjoy an unprecedented level of legal and social protection. Abuse of animals and their unjustified killing may be sanctioned. Moreover, the raising and treatment of animals on farms and in research laboratories are regulated by a number of rules regarding their welfare and appropriate use. Even the condition of pets in private houses is in many cases ruled by law. For these reasons we may safely surmise that it is likely that animals are better treated now than ever before. However, industrial farming and the massive consumption of animal products account for billions of animal deaths per year. Hence, despite the widespread and advanced concern for animal welfare, the current situation is denounced by animal rights activists as an unprecedented mass slaughter.

MV is defined as the negative pole that is opposed to the cherished kind of order (Rawls, Vallier). Second, there is the political theory of MV outlined by Gray (2000) and Horton (2010) whereby MV is a notion of social order that is compatible with realist methodological principles. Third, there is McCabe's (2010) *modus vivendi* liberalism, in which MV is made compatible with the liberal principle of justification. Fourth, Wendt (forthcoming) defends an idea of *modus vivendi* as a sui generis phenomenon that identifies institutions that secure peace and order. In this paper, I mainly refer to the second category (Gray's and Horton's political theory of *modus vivendi*), but the same considerations I will put forward are also applicable to McCabe's theory. Despite being liberal and committed to some principle of justification, thus differing from wholehearted realist accounts, McCabe's theory retains some realistic desiderata and MV plays a grounding role as in political theories of MV.

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This is a complex situation that may be analyzed from different perspectives and according to diverse criteria. But for our purposes we may only ask: Is there currently a form of social order regarding the treatment of animals? In some sense there is: we have many laws and the vast majority of people adhere to them. Many people also consider animals to be morally relevant from a moral point of view and show at least some concern for them, which may entail the safeguarding of their pets or the avoidance of some products (e.g. furs) or practices (hunting, corridas and the like). A relatively large minority (supporters of animal rights) considers the current situation unjust but may have reasons to appreciate a certain amount of progress in relation to the past (e.g. the obligation to stun animals before slaughtering them, bans on the use of primates in some countries, bans on animal testing for cosmetics, and so on). But a smaller minority within this minority (animal rights activists) challenges this order in a direct way.[6] They oppose current laws and actively challenge them in a range of ways, for instance, through protests, civil disobedience, acts of advocacy, attempts to convince other people to join the cause, acts of animal rescue, and on rare occasions through violent acts. These are vociferous and visible acts but their number compared to the vast majority of people who accept current practices is minimal. That there is broad acceptance can also be confirmed by the number of people who would prefer that animals not be used and/or eaten, but who nevertheless largely accept the situation because it is better than nothing.[7]

How should we describe this situation if we were to follow the categories of contemporary political theory?

Of course, this situation is characterized by a form of deep and seemingly irreconcilable pluralism, which goes beyond the standard Rawlsian characterization. Perhaps the best way to characterize it is by way of Alessandro Ferrara's notion of "hyperpluralism" (Ferrara 2014, 91). Hyperpluralism is

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[6] How many? We do not have the figures. Only some estimates of the numbers of vegetarians/vegans are available. In European countries, the number of vegetarians varies around 10%, and vegans are fewer. https://www.statista.com/topics/3345/meat-consumption-and-vegetarianism-in-europe/ However, the groups of vegetarian/vegan are not the same as the categories we are discussing, because not all vegetarians/vegans are supporters of animal rights in the sense used here. But these figures may at least offer us an approximate idea.

[7] Horton 2018.

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the idea that contemporary societies manifest multiple types of disagreement at different levels and are composed of both reasonable and non-reasonable parties. This means that there can be diverse types of agreement, negotiation or implicit assent by different groups of people. Some may share values on a consensual basis in a Rawlsian style, while others may accept the order out of strategic reasons, and others still may simply be unwilling to act upon their convictions and thereby merely acquiesce to the status quo. This is what Ferrara calls a "multivariate structure" (Ferrara 2014, 106).

One may object to this reconstruction by arguing that such notions have been outlined for the analysis of the whole structure of a polity, while here I am only considering the treatment of animals. Hence, these categories would not be applicable to our case. In response, it is true that the treatment of animals does not concern constitutional essentials and the institutional structure of the state. However, this is a justice-like situation: it affects every person although it does not regard persons; it pertains to an issue that cannot be solved merely through individuals' private spheres; it demands a public ruling, and it is marred with protests, challenges and disagreement. As such, the standard notions revolving around the justice and/or legitimacy of a social order may be applicable to our case because practices in respect of animals, and the disagreement thereof, are in need of justification.

Can we describe this whole situation as characterized by MV? It is likely that we can because the current situation is the result of years of negotiations and compromises. Furthermore, the current situation is somewhat accepted for different reasons (both principled and pragmatic). It probably cannot be vindicated as the best possible solution by most people.[8] Animal righters completely reject the situation on the basis of principle; supporters of animal welfare would probably strengthen the rules around animal welfare; speciesists are dissatisfied with the many hurdles that current rules pose to the treatment of animals, and so on. Perhaps only very moderate supporters of animal welfare – who think that animals are somewhat morally considerable but human interests always trump animal interests in the avoidance of suf-

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[8] It is an open question whether there is a (majority or minority) group that upholds this arrangement on a consensual basis as the best one. If it were sufficiently robust and widespread, then we would have a proper multivariate structure. However, it is difficult to assess this possible consensus because for many people animals are still not a matter of justice, even though many consider them to be morally relevant.

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fering – could consider it the best arrangement. Moreover, there is an MV at least between the majority of people who accept the use of animals (typically as a source of food and in scientific laboratories) and the minority of those who are vegetarian/vegan and who would prefer that there be no animal exploitation but somewhat accept the current situation as better than nothing.[9]

Finally, to check whether this is an MV, we can ask whether this situation is a peaceful and secure one. The answer is mostly positive. Only very few animal rights activists (in particular the Animal Liberation Front (ALF) and The Justice Department) have challenged some practices in a violent manner. Only some ALF activists think that there is a war and that they are prosecuting a just war in the defense of animals.[10] And most of the visible actions are acts of sabotage, animal 'rescue' or hardline campaign. But we can hardly say that, despite disagreements and some instances of violence, we are at war.[11] The security of people has been threatened only in a few hardline campaigns (for instance, the Stop Huntingdon Animal Cruelty movement in the UK). Even the most radical activists (e.g. ALF) seem to have not committed any physical injury to people – although we should recall that they have perpetrated some acts of psychological intimidation.

Is this a satisfying condition? A preliminary and rather standard Rawlsian consideration could be that an MV does not grant sufficient stability insofar as the parties do not agree for the right reasons, which in turn might be detrimental to their support of the arrangement. This concern for stability in part seems sensible to the extent that there is a growing number of vegetarians and advocates for animals. Moreover, dietary habits are changing quickly, while rules are slower to adapt to such change. However, this focus on stability misses some key points, because we should not suppose that further variation in social attitudes towards animals will inevitably result in increasing disorder or conflict. We should not take for granted that the evolution of the status quo is to be more favorable to animal righters. An MV can be an evolving

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[9] Francione (1996) has famously claimed that the animal rights movement has lost its commitment to liberation in favor of a convinced or acquiescent concern for animals in a condition of exploitation.

[10] This claim has sometimes been put forward by ALF activists. But it has also had a more academic formulation (e.g. Bernstein 2004, 101-103).

[11] I do not discuss here whether these cases are cases of terrorism. See Hadley (2009).

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and flexible order. And this speaks in MV's favor. Hence, the argument from stability does not represent a real challenge to the reconstruction thus far.

So what is the problem with this reconstruction based on the idea of MV? It seems that the categories employed so far provide a sufficiently faithful picture of reality. But I want to challenge this impression with two questions. First, is this a fully convincing picture of the current state of affairs? Second, should we be satisfied with the fact that there is an MV at the heart of the current disagreement regarding the treatment of animals? And should the parties be content with this? As the reader may recall, the first question reformulates the need for descriptive adequacy, while the second expresses the requirement of prescriptive capacity.

3. Is MV DESCRIPTIVELY ADEQUATE?

Let us focus on the issue of a framework's descriptive capacity. Realist approaches, including MV, claim that liberal moralism, as Horton calls it, which also includes PJL, fail to correctly represent reality because, among other things, in them there is "little real appreciation of how political processes and institutions work in practice" (Horton 2017, 490), there is a neglect of the power dimension of politics, and so on. In what follows I will argue that MV-based approaches also fall prey to a (partial) descriptive inadequacy and are not equipped to represent social reality in a satisfying manner.

To broach an answer to the question of descriptive adequacy, let me pose a straightforward question: Is an MV what people request and want? Since MV-based approaches seek to take people as they are and analyze real situations (not hypothetical ones), and actual social acceptance is what determines legitimacy, it is not out of place to ask such a question. On the one hand, we may doubt that an MV is what people want because most people would prefer an arrangement that is either more supportive of animals or less so. On the other hand, this is not a problem insofar as the specificity of MV approaches is to show the legitimacy of a situation that is structurally suboptimal or "second-best". People have reasons to accept it as a second-best because: (i) it might be an improvement with respect to other possible alternatives; (ii) people usually prefer order and peace to no order at all; or (iii) such a situation is the result of a compromise that at least realizes in part the preferred values and signals a middle ground between competing claims. This is probably the case in our situation.

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Before concluding that this reconstruction is descriptively satisfying, let us unravel what descriptive adequacy may mean in a more specific manner. An approach is descriptively adequate at the *macro*-level if it can account for the macro phenomena, for instance, social classes, parties, nations, and so on; or it is adequate at the *micro*-level if it can make sense of the functioning of the basic components of a state of affairs (individual behavior, family relations, and so on). An approach is descriptively adequate from a *behavioral* point of view if it can trace the outer functioning of the social elements at stake (for instance, if it can make sense of the observable behavior of the elements of an order without taking into account the grounds for that functioning). An approach is descriptively adequate from a *motivational* point of view, by contrast, if it can make sense of the internal grounds for the behavior of the elements of a state of affairs.

These distinctions are far from conclusive, and merely aim at outlining a more fine-grained, yet incomplete, characterization of what descriptive adequacy might mean. If they hold true, we may try to better understand in what sense an MV-based approach is more descriptively adequate than PJL. Theories based on MV take pride in MV's capacity to explain that a peaceful order has been reached, if at all, despite the fact that people may have diverse and conflicting reasons to accept the order. In this sense, an MV-based approach may be adequate from a macro and behavioral point of view. However, this does not necessarily grant that an MV approach is adequate from a micro and motivational point of view. This is so because an MV typically tracks the emergence of an order as a social phenomenon and is seldom interested in differentiating between different types of order. A supporter of MV may be suspicious of, if not baffled by, this claim: How can MV not be appropriate in this context if MV is precisely open to diverse motivations, types of relations and attitudes? Indeed, MV-based approaches do not restrict themselves to a specific source of acceptance so as to filter only good reasons and good types of attitudes that explain social order. In this sense, MV-based approaches are open to diverse motivational bases. But this openness and methodological richness seems, *de facto*, to be obscured by the recurrent insistence that what counts in the end is the dyad of peace and order. I am not claiming that in principle an MV-based theory should necessarily suffer from this problem, but as things are currently outlined, this seems to be the case.

To better illustrate my point, consider the following question. Would people think that the state of affairs regarding the treatment of animals is accept-

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able because it is a peaceful order? As anticipated, most people, if possible, would opt for a different order, be it more pro-animals or more pro-humans. In this sense, MV is admittedly trying to make sense of the goodness of a second-best order. And some people may recognize their motivations as second-best motivations to abide by this order. But making peace and order the master values reveals an assumed but non-justified normative preference for them. Such a preference may seem to be necessary to meet the requirements of descriptive adequacy, but this is so only to the extent that we privilege outer behavior and macro level explanation, thus overlooking the motivational and *micro*-levels of explanation.

Besides peace and order, at the *micro*-level people usually want that their goals to be more fully realized. Hence, when faced with disagreement, people engage in political activities, campaign or just discuss and argue with their friends and families in an attempt to convince them otherwise. What happens in these situations is an exchange of reasons, namely people want to be right and recognized to be so, rather than merely accommodate their conflicts. In other words, in many daily interactions, people do not seem to be engaged in finding an MV, for they seem rather engaged in an (often imperfect) kind of reason-giving that aims at finding the truth or convincing others at a substantive level. Then, it frequently happens that people become disillusioned about the real possibilities of convincing others or finding the truth, and as a consequence they may accept that an MV securing peace is all that can be secured. However, even if an MV arrangement is likely to be a frequent result, what comes before reaching it – people's continuous activities and debating for a better order – can hardly be accounted for in terms of MV. Overlooking all the other activities of reason-giving that aim to justify a point neglects an important part of reality.

Of course, MV theorists do not deny that an order is reached thanks to a variety of debates and negotiations. On the contrary, as noted, an MV may be the open result of 'unrestricted' forms of negotiation and other forms of agreements. But MV theorists, when making this point, do not make sense of it because they are just interested in the ultimate end of a secure and peaceful order. In other words, I am unconvinced that an MV-based approach as a theoretical perspective can make sense of the social phenomenon of requesting that something be justified appropriately, and that people or states provide (good) reasons for their actions. Public justification is usually taken to be a rather idealized setting, but it may have a surprisingly realist, descrip-

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tive counterpart in the fact that people frequently discuss matters to find an agreement and are sensitive to the kind of reasons that are provided. This does not mean, though, that PJL is in any case more descriptively appropriate than MV-based approaches. It simply means that descriptive adequacy may demand of MV-based approaches more fine-tuned categories and an attention to what comes before (and after) the achievement of an order.

More broadly, MV-based approaches tend to drive a wedge between moralistic approaches and realistic ones, the latter being very minimal (too minimal) in their normative requests as to the kind of agreement that the parties reach in an MV. But people are more often than not quite demanding and not necessarily lenient with respect to the kind of agreement they want to achieve. Indeed, to take just a few examples without being exhaustive, in real negotiations people put forward a number of normative demands. For instance, they want to be treated fairly in the process independently of whether they achieve the desired result;[12] they want to receive good reasons, and if this does not occur they tend to feel (rightly) disrespected; people may be worried about unequal relations of power at the beginning of and during a negotiation, as well as the procedures that crystallize symbolically such inequality, even though they know that the result is doomed. In sum, normative demands are likely to emerge in many real-life negotiations that end up in MV-like arrangements. These normative demands typically concern the type of arguments that the parties ought to exchange, namely those requested to be put forward and those expected to receive; and they concern the relational structure of negotiation, in that the parties are unwilling to take part in negotiations that too harshly express differences in power. In brief, the values of exchanging good reasons and of having a real or symbolic fairness in negotiations are values that people tend to cherish in real negotiations – even those that do not necessarily aim at a full consensus and are more likely to end up in an MV-like arrangement. How can MV-based approaches account for these normative demands?

My sense is that MV-based approaches are only seemingly rich in descriptive terms because of their exclusive focus on order and security as either mas-

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[12] On the axiological dimension of procedures to handle value conflicts, see Ceva (2016). She correctly emphasizes the moral nature of the procedures, whose value is to be judged intrinsically, namely independently of the kind of result to which they lead.

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ter values or interpretive lenses. Matt Sleat has put forward a similar point in more general and normative terms:

> Put differently, we need a justification of the liberal state that goes beyond justifying its capacity for physical coercion through the creation of order because the power that now stands in need of justification is more permeating, ubiquitous, and imaginably insidious, and does not necessarily have much if anything to do with the maintenance of peace and stability (though the state might claim that it does). My worry, therefore, is that modus vivendi is asking a possibly outdated question regarding the legitimacy of coercive power when the political reality, and in particular the nature of the power in need of justification, has changed considerably. (Sleat mimeo, 11).

I would add that the restriction on order and security is not only limited with respect to what we should protect from a state's invasiveness. It is also somewhat limited and misguided with respect to the kinds of claims that people put forward. Consider our case of disagreement about the treatment of animals. Peace and order is what we more or less have. But is this what people want? And should we not track this if we want to be descriptively adequate?

McCabe seems to be aware of this worry when he poses the question as to whether a theory based on MV fails to do what we want from a political theory – namely a rationally vindicated and fully justified solution to dissent.[13] His answer is that this worry is misplaced because in fact people do without fully harmonious solutions. People live well in second-best settlements and theoretical coherence is not an important task (McCabe 2010, 239-240). But this seemingly realist remark – calling for a retraction from a utopian society where disagreement is overcome – misrepresents the point. Consider,

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[13] "It must be acknowledged that the modus vivendi liberalism I have outlined is not entirely satisfying. In two main areas it seems especially inadequate. The first concerns the worry that MVL [Modus Vivendi Liberalism] fails to provide precisely what we want from a political theory – viz., a rationally vindicated solution to the problem of moral conflict that all parties within a political community would wholeheartedly accept. MVL does not resolve the moral dissensus that is the context for liberal theory through a more complete and reflective account, it might be said, but instead acquiesces to such conflict and shows us only how to manage it. In thus failing to articulate a rational harmony among the competing parties of liberal society, it fails to reconcile us to our social world in the manner of philosophical reflection at its best." (McCabe 2010, 237).

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for instance, the case of treatment of animals: those interested in change are mostly motivated by a sense of injustice; they are not necessarily moved by the search for an ideal harmonious state. Irrespective of this, it does not solve our problem either. Indeed, what those who are most unsatisfied with the status quo want is a proper vindication of the order or a change of the order.

Let me explain further my sense of dissatisfaction with the supposed descriptive adequacy of MV approaches. At their core is a half-descriptive/half-normative claim that the basic needs of individuals and society are peace and security. But perhaps this is not what people most ardently want. And this is not necessarily what they may demand of each other. In sum, MV approaches seem either to conflate what people need, what people want, and what people may demand of each other, or to prioritize the needs over the wishes and demands. Of course, in some cases the three may coincide. However, they have diverse normative features. What people need is an objective feature, which can be ascribed from a third-person perspective regardless of what people think. What people want is structurally subjective and depends upon people's desires, projects, and preferences. What people can demand of each other is an intersubjective domain that is reducible neither to the objective components of individuals and society, nor to its subjective features, for it rather depends upon the content of justice. Failing to distinguish these three elements may result in an impoverished account of social reality.[14]

The major ground for MV's descriptive approach is its refusal of PJL's idealization and acceptance of a realist methodology. However, MV's insistence on rejecting idealizing approaches is somewhat misleading. Idealization may be suitable or unsuitable for the purposes it is meant to serve (Valentini 2017). But then idealism is to be assessed with respect to its normative capacity, not its descriptive one. MV's supporters may reply in turn that idealism's lack in descriptive capacity is reflected in its false assumptions at the basis of normative theorizing. Hence, the descriptive dimension also affects the normative one. To be true, MV-based approaches may have a point in this regard. But what I want to emphasize is that their rejection of idealization cannot be the only answer to PJL's problems in descriptive adequacy, because

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[14] Horton (2018) recognizes that peace and security are not "super-goods" or what people necessarily want. That is fair enough. However, in practice the realist use of MV has always been quite insistent and *de facto* reliant on this assumption.

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idealization may be only one of the possible causes of the failure to meet the desideratum of descriptive adequacy. Another cause may be, as we have seen, the simplistic informational basis and the lack of nuanced categories that affect MV-based approaches.

In sum, I do not mean to say that MV approaches are descriptively wrong. Rather I claim that they provide only a partial descriptive account. But if so, one may rejoin that ultimately *any* approach is subject to this critique because it is realistically impossible to be descriptively complete. What counts, an MV supporter may claim, is that an approach is correct in describing the main features of a state of affairs and in assuming the realistically correct traits of the world. That is fair enough, but in what follows I contend that, from this descriptive partiality, a further flaw in MV's normative dimension follows.

4. WHAT KIND OF NORMATIVE GUIDANCE?

In light of the considerations above, we may ask: What might an MV-based approach recommend in a situation of deep disagreement, such as the one on the treatment of animals and many others?[15]

First, we may suppose that we should consider an MV as a satisfying arrangement. Insofar as a situation can be described as an MV-status quo, on the view of MV-based approaches it is legitimate and hence satisfying. Therefore, no further action should be taken because an MV-arrangement guarantees peace and security and may comply with other cherished criteria (minimal respect for human rights or genuine consent). This view seems coherent with a binary account of MV, according to which either we have an MV-like kind of order or we do not have such an order (either because there is no order at all or because such an order is consensual). That means setting a threshold above which all kinds of order are acceptable and below which all orders are unacceptable. However, the recommendation of being satisfied with an MV

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[15] Horton abandons the idea that political theory has a proper prescriptive role, and rather claims that the best one can do is to provide a satisfying interpretation of reality (Horton 2017, 497). So far I have quoted Horton many times in virtue of his being both an MV theorist and a realist. However, the practical guidance requirement is usually thought to be an important requirement, particularly if it is usually considered a weakness that MV theorists identify in other approaches. Hence, my question is pertinent.

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arrangement neglects the fact that many people may not be fully satisfied. But the supporters of MV could rejoin that the second-best is all what we can hope for. However, this pessimistic conclusion is not necessarily realistic. History is full of examples of certain arrangements that seemed "all things considered acceptable second-best",[16] but which were later challenged by some stubborn, unsatisfied group of persons who would eventually change the situation. It is true that the ideal is usually unattainable, but how close/far the status quo is posited with respect to the ideal may make a lot of difference. Merely saying that a certain order is acceptable because it is better than nothing and most people accept or do not want to change it amounts to relinquishing the normative role of a theory. We need a further criterion to establish whether or not the second-best solution is, all things considered, satisfying. But my contention is that MV cannot provide it. (See the next point).

Second, supporters of MV may acknowledge that there is a sort of imperfect MV insofar as there are grounds for dissatisfaction, and may encourage the parties to pursue a better MV. This is, unlike the previous account, a scalar understanding of MV, according to which we can measure the goodness of an order, and hence also of an MV along a certain continuum. This view is preferable to the binary understanding above. If we are faithful to the realistic spirit of MV-based approaches, this should be preferred because a binary account exists and is detectable to the extent that one can establish and find a threshold that defines what is MV and what is not. But setting this threshold is somewhat arbitrary and neglectful of the fact that in practice everything occurs in degrees. For instance, what truly counts as a peaceful order? Should there be no violence at all or only a minimal amount of it? And if so, how much? Answering these questions requires sensitivity to degrees and nuances that are at odds with a binary account of MV. But, then, if we opt for a scalar account of MV, we are open to ameliorations of MV because nothing would prevent us from being unsatisfied with some level of MV. In this case, what is meant by a 'better' MV? It may mean two things.

First, pursuing a better MV may mean seeking to implement an order that more fully embeds the reasons for which an MV is acceptable, namely order

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[16] This is admittedly a strange and seemingly contradictory notion. What I mean is that a state of affairs may seem the second-best and yet still be fully acceptable and probably satisfying in virtue of the impossibility of reaching the ideal or because of disagreement about the ideal.

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and peace. Can the pursuit of more order and peace be a convincing basis for disagreeing parties to find a better agreement? I doubt that it can. Consider our case of disagreement about the moral status of animals. Can we say to the disagreeing parties "look, we understand that this is not the ideal situation and that you might have grounds for dissatisfaction, but if you pursue further order and peace, in the end you will be happier"? I doubt it would be a convincing solution insofar as we are in a condition of almost complete order and security, and this answer proposes more status quo as a solution to those who criticize the status quo regarding animals.

The second way to interpret the idea of pursuing a better MV focuses on MV's being a second-best. Fabian Wendt (2016) has plausibly argued that MV arrangements may be assessed in terms of how close/far they are with respect to the ideal. Insofar as an MV arrangement is second-best, it is second-best with respect to an ideal (or more ideals, because people typically disagree about what constitutes the ideal). Notwithstanding the plausibility of this point, it is not a viable solution to our problem. To see this, consider the following. I take these three features to be necessary of an MV:

1) An MV arrangement is structurally second-best with respect to a more preferable arrangement or ideal;

2) Unlike PJL, an MV-based approach is very inclusive towards the types of reasons and motivations that people can have for accepting it;

3) An MV is normatively minimalist: it is sufficient that there is order and security plus another criterion – e.g. respect of a minimal set of rights (McCabe), or a lack of forceful imposition of the order (Horton) – for the order to be legitimate.

Taking these three conditions together, it is difficult to see how we can pursue a better MV from within an MV-based approach. As Wendt says, we can rank different MV-arrangements in terms of the extent to which they are distant from or close to the ideal. But ranking an MV in virtue of its being second-best can only be done in the light of the ideal of which an MV is the second-best. Hence, from within MV's perspective, which is characterized by conflicting values and possible ideals, we cannot know how to pursue the ideal and improve the second-best that is possibly far from ideal. Indeed, we would need to return to the idealizing approach that an MV-based approach seeks to replace. Alternatively, we may relax either the second or the

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third condition. That is to say, we may be less inclusive of the types of reasons and motivations that people may have to accept the MV. But if so, we would end up with a standard liberal public justification. As an alternative, we may make the third condition more demanding, but, in this case, we would lose the realistic and inclusive features of MV, thus getting closer to what Horton calls a 'moralistic liberalism'.

In sum, pursuing a better MV by seeking to approach the ideal can be done only at the cost of borrowing the normative criterion from other perspectives, thus including more robust and less minimal moral criteria, or by distinguishing between people's motivations, thus excluding some people. As second-best perspectives, MV-based approaches do not relinquish their normativity because they retain some claim to legitimize some social order. However, they lose either their action-guiding character or their theoretical autonomy because they need the help of other, more robust theories to establish what a better order would look like and what value should be further pursued.

There is a sort of short-circuit at play here. The realistic virtue of an MV-based approach is that of making a virtue of necessity, namely of arguing that second-best solutions are all that we can achieve because best solutions are unachievable or counterproductive in practice. But, where an MV already takes place, one cannot utilize MV to offer a better solution. MV can only offer an appropriate approach if the real problem is order and security. Otherwise, it can be the unintended result of parties fighting, negotiating, or campaigning for something else, namely for the realization of their favored goal, which cannot even be achieved. But from within a pure MV-based perspective, we do not have any guidance to improve an MV if MV is what we already have.

5. Conclusion

In conclusion, it is worth noting a further peculiarity of MV. If we interpret MV as any kind of order that is accepted by the parties for whatever reason and that is not imposed, we may say that nearly any kind of social arrangement could be characterized as a form of MV. With the exception of very rare cases of consensual just orders, on the one side, and orders achieved by force of despotic regimes, on the other, all more or less accepted social orders may

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be described as MV.[17] This very ecumenical interpretation is far too inclusive, and risks losing the peculiarity of MV with respect to other notions.

Now, we can finally try to answer the question from the outset: How do MV-based approaches fare with respect to the requirements of realism? An MV-based approach is probably more realistic than PJL. However, its narrow focus on order and security may be blind to further demands that require a more robust concern for normative reasons.

Supporters of MV have aptly challenged PJL for its lack of realism. But I doubt that MV can be an autonomous perspective, at least in its current form. To be an autonomous perspective in political theory, it would need to include, indeed, more details and a more fine-grained structure to meet the desideratum of descriptive adequacy and a clearer normative commitment to discharge its action-guiding function.

To conclude, my aim in this paper was to test MV-based approaches against their own standards. My critical remarks addressed MV as a pure alternative to PJL and as a foundational notion of a political theory that aims to be – as it were – 'freestanding'. I did not want to challenge the very idea that MV may appropriately describe certain states of affairs, or that it could appropriately legitimize them. In fact, MV can work both descriptively and normatively as a complementary perspective within PJL. Here I cannot discuss in any detail what this would mean. Suffice it to sketch a possible division of labor. To that end, MV could play the role of covering the faults of PJL by including those parties that are typically left out of public justification, whether they are unreasonable or just alien to the kind of agreement that PJL pursues. Who comprises these parties that are outside of public justification depends on the sort of PJL at stake. Hence, the kind of MV complementing PJL may vary accordingly. But it is a virtue of MV as a notion that it is sufficiently flexible to cover diverse possibilities in a functional division of labor.

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[17] Jones (2017, 454) is more skeptical of this and claims that in our societies in fact there may be more consensus, at least at the fundamental level of constitutional essentials, than supporters of MV may be willing to recognize. That is possible. However, as Jones aptly points out, even in quasi-consensual conditions, such accounts of MV as Horton's would consider as a MV even some quasi-consensual situations in virtue of the fact that such a condition has been reached through many fortuitous circumstances and contingencies that cannot be defended as optimal.

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