

I. INTRODUCTION

My aim in this paper is to begin thinking about political legitimacy in terms of a viable conception of *modus vivendi*.² The latter idea remains underdeveloped, both here and in political theory more generally, and, at least in my view, its potential for thinking about politics in a variety of theoretical contexts has been underestimated.³ This is no doubt partly explained by the fact that the initial impetus behind the renewed interest in the idea of *modus vivendi* in recent political theory derived primarily from the highly partisan and negative characterisation of it presented by John Rawls (Rawls 1993, 147-149). Here, I want

¹ This paper is an edited and lightly revised version of J. Horton, “*Modus vivendi* and political legitimacy”, in J. Horton, M. Westphal and U. Willems (eds), *The Political Theory of Modus vivendi*, Heidelberg, Springer, 2018, pp. 131-148. In addition to the acknowledgements there I am very grateful for their helpful and acute comments to the participants in the Workshop on ‘*Modus vivendi*’ at the Centro Einaudi, Turin in November 2017.

² I have addressed questions about political legitimacy and *modus vivendi* largely independently of one another in a number of earlier articles. See Horton (2005; 2006; 2010a; 2010b; 2012; 2018).

³ It should of course be acknowledged that there are a few theorists who have made serious attempts to develop a fuller account of *modus vivendi*, most importantly, perhaps, John Gray (2000) and David McCabe (2010). In a nutshell, I principally differ from both in not wanting to tie my account of *modus vivendi* to a theory of value-pluralism, and also from McCabe (and perhaps Gray) in not wanting to claim it to be necessarily liberal in any meaningful sense. I have however, learnt a good deal, although probably not enough, from them both. See also Horton *et al.* (2018).

to move beyond Rawls's view and try to take some no doubt faltering steps towards developing the idea of *modus vivendi* in a more positive way, through exploring its possible relationship to the notion of political legitimacy. In particular, I shall suggest that a suitable conception of *modus vivendi* can play an important role in at least one plausible interpretation of political legitimacy.⁴

It may be helpful to begin with a few brief preliminary remarks about where my discussion of *modus vivendi* should be located within the broader topography of contemporary political theory. First, I conceive of it as part of what has become known as the 'realist turn' in recent political theory (e.g. Rossi and Sleat 2014; Galston 2010; Geuss 2008; Williams 2005; Newey 2001). That is, it seeks to engage with a more quotidian and less idealised conception of politics than is typical of what is known as 'ideal theory'. So far, though, I think it would be widely agreed, even by sympathisers with a realist approach, that it has been more successful, or at least most commonly deployed, as a critique, rather than as offering a constructive alternative to the ideal theory it critiques. Developing the idea of *modus vivendi*, as I see it, is intended to offer one, but only one, possible way of taking forward the realist critique in a more creative direction. Secondly, my particular interest within the realist perspective is quite unusual in that it aspires to a style of political theory that is primarily directed towards *understanding* or *interpretation* rather than *prescribing*; political theory as more concerned with trying to make sense of fundamental political notions, rather than as a source of practical instruction or political guidance. In this regard my approach differs quite significantly from that of the many realists who want to harness their approach to the aim of providing practically useful political direction. Political theory in this more interpretative vein, by contrast, aims to be neither a form of *ersatz* political ideology nor a substitute for practical political thinking (Horton 2017; Freedman 2012). Thirdly, however, while being primarily interpretative in intent and seeking to avoid the overly moralistic bent of ideal theory, this approach remains to some extent unavoidably normative, if only weakly so. Thus, I fully accept that it is not possible to escape altogether some measure of normativity even in a style of political theory that aims to better reflect and be more sensitive to the complex and challenging 'realities' of political life. The very notion of political legitimacy is

⁴ To be clear, I conceive of *modus vivendi* and political legitimacy as separate and distinct ideas.

in some sense irreducibly normative and the conception of *modus vivendi*, as it is presented here, also contains within it some rather modest normative components. However, conceding that some measure of normativity is unavoidable does not mean that there is no significant difference between a political theory explicitly aiming at prescription or characterising an ideal political order, on the one hand, and one in which a modest measure of normativity is an ineliminable dimension and perhaps also a by-product of an essentially different kind of project, on the other.

One final preliminary point is that neither the conception of *modus vivendi* that I set out, nor the account of political legitimacy I endorse, are necessarily or specifically liberal.⁵ On the other hand, nor are they necessarily incompatible with liberal political regimes, and are not, therefore, inherently anti- or illiberal. Liberal regimes are certainly one possible form of a *modus vivendi* and one that might indeed be especially salient under some circumstances: liberalism in most of its forms has much to be said for it as a basis for a *modus vivendi*. Where there is a parting of the ways with most liberals, though, is in rejecting the claim that *only* a certain kind of philosophically endorsed liberal regime could be politically legitimate. It is one of my motivations to defend the idea, which is surely borne out by history however ‘radical’ some liberal theorists seem to find the very idea, that there can be a wide variety of legitimate political structures and regimes, including some, although most definitely not all, non-liberal ones.⁶

2. *MODUS VIVENDI*

The intuitive idea behind the concept of a *modus vivendi* is not hard to understand, even if working out a fully satisfactory account of it is considerably

⁵ Much though I admire his work, I fear that Gray (2000) is partly responsible for some confusion in this area. Although his book supposedly supports the claim that there are two faces of *liberalism*, one of which he believes defensible and the other not, he often writes as if he is criticising the claims of liberalism *tout court*, a problem which is further exacerbated by his vagueness about the specifically liberal credentials of the *modus vivendi* form that he defends.

⁶ Bernard Williams (2005) at least hints at the idea that *only* a liberal regime could be legitimate *under the conditions of modernity*. If that is indeed his view then I am deeply sceptical towards it (although much will depend upon exactly what is meant by conditions of modernity).

more difficult. The core idea is one of a set of arrangements that are, in some sense, accepted as basis for conducting affairs peaceably by those who are party to them; although they are not the arrangements that any of the parties would most prefer or believe to be 'right'. A *modus vivendi* is, then, from the point of view of its participants never better than second best, and often a lot worse than that. Establishing a *modus vivendi* involves trying to find a way of living together by reducing the potentially destructive effects to which serious disagreement and conflict would otherwise give rise.⁷ Each party gives up something that they would like but also gets something of what they want out of it, too. The value of a *modus vivendi* is that it offers a way for those who are party to it to coexist together, if not entirely amicably then at least for the most part peaceably, notwithstanding continuing significant and, absent the *modus vivendi*, potentially destructive conflict and disagreement between them. On the other hand, on matters about which we all agree a *modus vivendi* will not be needed.

It should be noted that *modus vivendi* arrangements are not, of course, limited to the sphere of politics. Anyone who has ever been a member of any even minimally complex group or involved in any personal relationships of more than the shortest duration will have at least a passing acquaintance with the idea, whether or not they use the term '*modus vivendi*' to describe it.⁸ However, my interest is in a political conception of *modus vivendi* and I therefore focus in what follows entirely on that. Furthermore, my interest is still more narrowly focused on the idea of *modus vivendi* as a way of characterising the conditions of workable basic or fundamental political institutions and practices, rather than with its role in helping to deal with particular polit-

⁷ *Modus vivendi* theorists, therefore, typically depart from agonistic theorists such as Chantal Mouffe (2005) in refusing to valorise political conflict. For *modus vivendi* theorists some measure of conflict is pretty much the order of the day in political life, but also always a potential source of threat to political order and security that therefore needs to be controlled rather than actively encouraged.

⁸ I use this Latin tag partly because it already has some currency in the literature, but also to avoid possible misunderstanding. I would be perfectly happy with the more mundane 'compromise', but for the fact that some political theorists have wanted to make a sharp distinction between a compromise and a bargain. However exactly that distinction is made, though, the conception of *modus vivendi* with which I am concerned incorporates both.

ical disputes within them. This kind of *modus vivendi* is probably best understood as an ongoing commitment that is concretely embodied in institutions, procedures and practices, rather than as a short-term or one-off settlement of a specific dispute or conflict.⁹ Constitutions, regimes, and basic political institutions and processes are typical subjects of a *modus vivendi* in this regard. If one is party to a *modus vivendi* about the broad set of institutions and practices that constitute a particular political regime then I claim that what this effectively means is that one is generally committed to accepting the outcome of those practices and processes as authoritative (where, of course, they have been properly enacted in accordance with the terms of *modus vivendi*), which is most importantly not the same as agreeing with them or believing them to be right. Although there is always the potential for it to be disrupted, undermined or challenged, the kind of political *modus vivendi* of concern here may be and often is long-standing and deeply embedded, while almost inevitably undergoing more or less substantial adjustments in response to changing circumstances.

I have elsewhere offered a fairly basic characterisation of how a *modus vivendi* is best understood in the following terms:

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 will often include a measure of self-interest, but may also include more general prudential considerations and whatever moral principles and other values can be effectively mobilised in support of a particular political settlement. This is not, it should be emphasised, to reintroduce liberal principles or an assumed moral consensus through the back door. Rather, it is only to recognise that typically people do share *some* moral commitments or principles, along with other values, and that this overlap can be quite extensive, if often vague and indeterminate. Also, even where people do not have the *same* reasons, they may have their own moral, or other, reasons for acting in ways conducive to a *modus vivendi* (Horton 2010, 440).

Although I largely stand by this brief sketch, at least in one respect it is insufficiently clear. Thus, although a wide variety of reasons can indeed properly ground support for a *modus vivendi*, it should be made clear that one

⁹The line between the two can be vague and imprecise. It is not always clear what will count as a basic institution or practice.

kind of reason in particular is excluded: serious direct threats. Such threats are characterised by being fundamentally coercive in intent; and this makes them the basis for tyranny or oppression, not a *modus vivendi*. There are inevitably considerable grey areas around what counts as coercive, and one of the tasks of a fuller account of *modus vivendi* is to try to be clearer on this matter, but the intuitive basis of the distinction at work here and the reason why it is needed are, I believe, clear enough.

A *modus vivendi* in this context is, then, essentially a way of living peaceably together, which is ideal for no one but is an arrangement that the parties to it are prepared to live with. Beyond securing some measure of peace and security,¹⁰ the core values that are integral to a *modus vivendi*, the substantive content of any actual *modus vivendi* (and usually there will be much more to it than just peace and security) is always specific to a particular arrangement: it is not something that can be determined through philosophical theorising or abstract reasoning. While the defining features of a *modus vivendi* can properly be specified in general terms, its content cannot, as any actual *modus vivendi* is a practical achievement and not a theoretical construct. Being party to a *modus vivendi*, accepting a set of institutions and practices as a viable *modus vivendi*, generally involves working within whatever are its parameters, even when the purpose of the activity is to effect changes to those very parameters. An effective *modus vivendi*, therefore, also sets limits to how changes in its terms should be pursued; in particular it represents an alternative to levels of ongoing violence and insecurity that seriously undermine one's ability to realise one's most important values or life projects. But it also by definition involves sacrifices of one sort or another; although some parties will likely have to give up more than others, as a *modus vivendi* neither implies nor requires there be an equality of sacrifice.

¹⁰The use of the terms 'peace and security' is, it should be mentioned, far from unproblematic. First, their meaning is not precise, and they can to some extent be differently interpreted. Secondly, in respect of their being scalar, they are always a matter of a degree, and there will be differences between people about how much is 'sufficient' for political purposes. Thirdly, the focus on these values can lead one to think that these are the only values that matter; they are not. But they do have a kind of *political* primacy in that some measure of them is the pre-condition for the realisation of other political values. It does not follow, though, that more peace and security is always preferable to the realisation of other values.

The extent to which a *modus vivendi* is actually realisable in any given situation is *always* and *unavoidably* an open question, and cannot therefore be arrived at through *a priori* reasoning. General theoretical reflection and empirical inquiry may help in understanding the conditions under which a *modus vivendi* is more or less likely to be achieved and whether some kinds of institutions tend to be more conducive to a *modus vivendi* than others. However, politics is quintessentially a realm of contingency and there is, in short, nothing in the fabric of the universe which ensures either that a *modus vivendi* will be achievable or that it will not. The idea of a *modus vivendi* is not, therefore, a panacea to all the problems and challenges of political life. Contrary to one common objection, it is simply a mistake to claim that *modus vivendi* theory assumes that peace and security are some kind of super-good. It does not claim that people must be committed to pursuing peace at any price. In the absence of a willingness to live with those of a different persuasion, or where the scope for compromise or bargaining is too limited, a *modus vivendi* may prove unattainable. At best, one can say that there are strong motivational reasons in most circumstances, especially when the costs of a failure are very high, for at least making a significant effort to find a workable *modus vivendi* and to sustaining and preserving it where one already exists. But it is always a practical project subject to the vicissitudes of fortune and much else.

This characterisation of the notion of a political *modus vivendi* is, I hope, for all its imprecision, at least an adequate basis for the subsequent discussion. That discussion touches on two of many issues that need to be addressed in developing further a political theory of *modus vivendi*, and which also bear closely on the issue of political legitimacy. The first of these concerns how we should deal with the fact that in reality it is impossible that any political regime will be universally accepted, even as a *modus vivendi*, by all those who are subject to it. Clearly, where such rejection is deep and widespread, there is no question of there being anything that can properly be regarded as a *modus vivendi*: it is a condition of an arrangement's being a *modus vivendi* that it is in some sense accepted as such by those who are subject to it. As noted earlier, there has to be a distinction between peace and security sustained by a *modus vivendi* and circumstances where such conditions are maintained solely by the use of violence or the threat of it on the part of those with much greater power. One might here adapt a remark of Bernard Williams in saying that a situation of one lot of people terrorising another lot of people is not

a *modus vivendi*, even if it does result in a kind of peace, but is rather the kind of situation to which a *modus vivendi* is supposed to offer an alternative (Williams 2005, 5). However, one question that then arises with regard to a *modus vivendi* around political fundamentals is whether a weaker condition such as ‘widespread acceptance’ might be sufficient. Could one yet be party to a *modus vivendi* that one does not accept? Or, do we nonetheless require something like acceptance from each and every party for there to be a genuine *modus vivendi*?¹¹

The question concerns what could be said to ‘dissenters’ from a *modus vivendi* – those who insist that they are not party to such an arrangement? It seems to me that there are two main lines of response that may have some initial plausibility. The first is simply to agree and grant that all those who are subject to an arrangement must explicitly accept it, if they are truly to be parties to the *modus vivendi*. If we do take this line, though, it would seem straightforwardly to follow that those who do not do so are not bound by it, or at least not bound by virtue of its being a *modus vivendi* to which they are party. On this view, those who reject a particular *modus vivendi* necessarily remain outside of it, and as such it has no valid claims on them. And, indeed, if they clearly and incontestably do reject it, then this would seem to be an unavoidable conclusion in the light of what a *modus vivendi* is. To be clear on this: I think that sometimes such an account will be an accurate description of the situation and it should be conceded that no *modus vivendi* exists with those who clearly refuse to be party to it. But is this all that can be said?

So, let me briefly mention the second approach to dealing with those who deny that they are party to a particular political *modus vivendi*. This response seeks to implicate within a *modus vivendi*, in suitably defined circumstances,

¹¹ Enzo Rossi (2010) has some interesting things to say about this, but he is specifically concerned with the relationship between *modus vivendi* and liberalism, and in particular the liberal principle of political justification, according to which the basic political structure should be reasonably acceptable (not accepted) to all those who are subject to it. As I am not concerned to relate *modus vivendi* with liberalism in this way, I need not be at all worried by his conclusion that ‘the idea of *modus vivendi* does not offer a viable internal corrective for consensus-based accounts of the foundations of liberalism’ (Rossi 2010, 22). However, while I can happily welcome the decoupling of *modus vivendi* from liberalism, and in this regard view Rossi as a perhaps inadvertent ally, this does not mean that some of the points he raises are not pertinent to the enquiry I am engaged in, and to which I cannot claim to have done full justice here.

at least some of those who may nonetheless *claim* not to be party to it. Initially, this may appear to be a most unpromising option, and perhaps contrary to the whole spirit of the idea of a *modus vivendi*. Surely, if some arrangement is to count as a genuine *modus vivendi* then the parties to it must clearly accept it as such to make it one? This is a powerful objection and, as I have already acknowledged, it can be a decisive one; but is it always and necessarily so? I return to this question shortly but first I want to introduce a different issue that a theory of *modus vivendi* also needs to address.

This issue, which is clearly related to the first, concerns what exactly it is for a *modus vivendi* to be ‘accepted’ if one is to be party to it. What does one need to do to be party to a *modus vivendi*; what does the ‘in some sense’ with which I have regularly qualified acceptance amount to? Again, I suggest, we do not want to be driven in the direction of something like either an actual or a hypothetical social contract. An actual contract is unrealistically demanding, while a hypothetical contract risks pushing us too far in the direction of ideal theory. Instead, my suggestion is that we have to think of a *modus vivendi* at the level of constitutional settlements or basic political institutions and procedures somewhat differently. In particular, we need to be less explicitly voluntarist in conceptualising the conditions of a *modus vivendi*.

My suggestion is that there are two relatively distinct perspectives on ‘acceptance’ in the context of a political regime. One is subjective and is broadly similar to the kind of thing I have been talking about so far. Do people see themselves, if only reluctantly, as party to the particular way of doing things politically that prevails in their political community? Do they understand themselves to be members of this particular polity? More specifically, do they acknowledge the right of basic political institutions to make authoritatively binding decisions? Whether they do so, though, is not exhausted by this subjective perspective, as it is not only a matter of what people *say* or *claim*, even if they are not being dishonest or deceitful. It is also about how they *act* or what they *do*. The second perspective, therefore, is more objective and behavioural. It asks: do they behave in ways from which it can be reasonably inferred, whatever they may say, that they do in fact subscribe the ongoing *modus vivendi*? Do they, that is, give every appearance of accepting the authority of the political institutions and practices through which the *modus vivendi* is given expression? Do they engage with normal political processes? Do they take advantage of the benefits available to those who are party to it? Do they make recourse to the judicial system? This may superficially

sound like an appeal to the familiar idea of tacit consent, but that would not be quite right. For one thing, these kinds of actions are to be taken not as *expressions* of consent, but as *evidence* of being party to the ongoing *modus vivendi*; of acceptance of the political authority of the prevailing institutions, practices and procedures through their behaviour. Also, as I shall argue in the next section on political legitimacy, consent theory typically gets things the wrong way round.

Finally, we can now return to the first issue, noting how this approach relieves *some* of the pressure created by the inevitable absence of universal acceptance. Once we understand how being a part of a *modus vivendi* is less demanding in what it requires by way of *explicit* acceptance than might initially be thought, it also becomes easier to see how a much wider range of people may properly be understood to be party to it. If the kinds of attitudes and forms of engagement with the political system that I am now suggesting may be sufficient evidence of ‘acceptance’, it seems plausible to think that only those who actually behave in ways that explicitly dissociate themselves from the established political order effectively exclude themselves from the ongoing *modus vivendi*; a mere mental reservation is not sufficient to establish that one is not party to a *modus vivendi*.

3. POLITICAL LEGITIMACY

Before seeking specifically to relate the foregoing conception of *modus vivendi* to the idea of political legitimacy it may be worth saying briefly what hangs on the latter notion and how I think we should understand it. Basically, a legitimate political regime is one that has claims on the allegiance of those who are subject to it. In particular, this has implications for the standing of law and fundamental political institutions and how changes to them should be sought and effected. Here, I broadly agree with Philip Pettit when he writes that if a regime is legitimate

attempts to change unjust laws should be restricted to measures that are consistent with the regime’s remaining in place. It requires you to acknowledge the state as the appropriate arbiter and decider of legal issues [...] Legitimacy imposes a *pro tanto* moral obligation, then, if you oppose certain laws or measures – and given different conceptions of justice, everyone will be disposed to challenge some – to oppose them in ways allowed by the system: to stop short of revolution or rebellion (Pettit 2012, 137).

This does not mean that illegal acts are always necessarily incompatible with acknowledging the legitimacy of a regime. Ordinary criminality and civil disobedience, to take two very different examples, do not typically involve a denial of the legitimacy of the political structure or of law in general. But, nor does it offer *carte blanche* for a regime to act however it wants; not just anything will be compatible with what makes a particular regime legitimate. Political legitimacy, therefore, involves the recognition of a regime's right to rule, its political authority, within the context of the criteria and beliefs that effectively ground the legitimacy of that regime's institutions, practices and procedures.

To elaborate in a little more detail.¹² First, I believe that there has to be some connection, at least in a rough and ready way, between political legitimacy and the actual (rather than hypothetical) beliefs and attitudes of those subject to it; a view that has largely fallen into disrepute among political philosophers, at least partly as a result of dissatisfaction with the Weberian explanation of what this amounts to. The principal objection to (the standard interpretation of) the Weberian view, which I also endorse, "is that it misrepresents the relationship between legitimacy and people's beliefs", for a state "is not legitimate because people believe in its legitimacy, but because it can be *justified in terms of their beliefs*" (Beetham 1991, 11). Thus, secondly, I suggest that a much more prominent role should be afforded to the social, cultural, conceptual and normative context, the broader belief system, within which a people frame their thinking about the legitimacy of their governmental institutions. This is undoubtedly a controversial claim. But, on the view I advance, while it is the allegiance of its members, their acknowledgement of it, broadly understood, that sustains the claim of a state (or any form of political community) to political legitimacy, this is not, though, merely a matter of asking people their opinion or the aggregating of such opinions to arrive at an overall assessment: it is not a matter of popularity or even of agreement about the merits of its basic political institutions or principles. Fundamentally, political legitimacy concerns the acknowledgement of the state as having political authority – recognizing the right of the state to exercise state power by making laws, pursuing policies and enforcing them on its

¹²This section is essentially a very slightly reformulated account of political legitimacy set out in Horton (2010).

citizens – in terms that have salience within the social and ideational context in which such authority is exercised and affirmed.¹³

While it may not be completely mistaken to say that something like consent plays *a* role, my argument is not a form of consent theory. This is because ‘consent’ is not the ground or justification of political legitimacy; legitimacy is not to be found in a voluntary act or decision, express or tacit, which supposedly creates it. Thus, while the acknowledgement of its authority by its citizens is a fundamental part of the story of what it means for basic political institutions or a governmental regime to be legitimate, it is not consent that *creates* its legitimacy. Simplifying greatly, according to classical consent theory, where it is given, our consent is the ground or reason that we have to acknowledge the authority of the state: I acknowledge its authority *because* I have of my own volition, either expressly or tacitly, granted it authority over me. And if I have not given my consent then the state does not have any justified claim to exercise authority over me. My contention, however, is that this misunderstands the role of consent: basically it gets things the wrong way around.

Thus, one consents to, or more accurately recognizes or acknowledges, the state as legitimate, because it meets the operative criteria of legitimacy. One does not acknowledge its legitimacy *because* one has consented to it. The acknowledgement of legitimacy matters, but that acknowledgement is grounded in something other than the act of acknowledgement itself. So, what then on this account explains my acknowledging political legitimacy? This can and does vary; and how it varies will depend in part upon the kinds of consideration that underpin the legitimacy of the basic institutions in the specific political community of which one is a member. Thus, in my own case, for instance, as a British citizen, it will be because, entirely mundanely, I recognize the political institutions and laws as having been properly constituted and enacted, and the current government as the properly elected government of Britain; and this is so notwithstanding my antipathy towards it in general and disapproval of much that it does in particular. However, in a culture and political structure within which, say, Islam is the dominant belief

¹³ While contestation about some of the criteria of legitimacy within a given political community is often ongoing, even such contestation takes place in a context of intelligible disputes about what is contested. That is, not just anything will count as a serious criterion for political legitimacy in any particular context.

system, for example, it will likely (and appropriately) play an important role in shaping the discourse of political legitimacy for that society. Islam will provide part of the context of beliefs in which claims about political authority are formulated, asserted and assessed. Although this does not of course mean that everyone in that society must be a Muslim, any more than everyone in a liberal society has to be a liberal, political legitimacy in such a society may be partly constituted through beliefs and discourses rooted in distinctively Islamic ways of thought. And the structure of political institutions can reasonably be expected in significant ways to reflect such differences of fundamental cultural and ideational differences.

In the course of his famous critique of social contract theories and reflecting on the relation of the people to their King in the England of his time, David Hume observed that: ‘they consent, because they apprehend him to be by birth their lawful sovereign’ (Hume 1987). Peter Winch’s comment on Hume’s remark captures very precisely the point that I want to make here:

Consent does indeed play a role in the relation between citizen and ruler in this case, but it is not the role described by social contract theorist. It is not the *source* of their sense of the ruler’s legitimacy; rather, their recognition of his legitimacy is expressed in the role played by the thought of his royal birth in the way they consent to his rule, and the importance they attach to this is of course rooted in the hereditary institutions which belong to their form of life (Winch 1991, 227).¹⁴

Contrary to the claims of some critics, this does not simply “dissolve legitimacy into belief and opinion”, and nor is it true that just because “a people holds a belief that existing institutions are ‘appropriate’ or ‘morally proper’, then these institutions are legitimate. That’s all there is to it” (Schaar 1969, 284). First, there is the possibility on this account that citizens can be mistaken, for example because they wrongly believe that their state meets the relevant criteria of legitimacy when in fact it does not. The key point here is that, on this view, people are making *judgements* about political legitimacy. They are deploying criteria and can offer reasons in making those judgements; not simply asserting that a state or ruler is legitimate merely because they say so. And to understand those judgements and how reasoning about political

¹⁴ I have discussed Winch’s views on political authority more fully in Horton (2005). My account is much indebted to his.

legitimacy functions, therefore, we have to situate such arguments within the specific context of the culture, political practices and intellectual and moral traditions that shape and give substance to them. Secondly, and equally importantly, however, people can also call into question those existing criteria, which are not immutable or unrevisable, and usually to some extent plural and open to varying interpretations. While the prevailing discourses of legitimacy will provide the starting point or initial context for such reflections it certainly need not be where those reflections end.

4. *MODUS VIVENDI* AND POLITICAL LEGITIMACY

Having thus far set out my favoured conception of *modus vivendi* and explained how I understand political legitimacy, the question that now presents itself is: how should the relationship between them be understood? Can the idea of a *modus vivendi* be of service in helping to formulate a viable account of political legitimacy? In brief, my suggestion is that the kind of account of political legitimacy offered here is not only broadly congruent with the understanding of a *modus vivendi* presented earlier, but that a discourse of political legitimacy grounded in an ongoing *modus vivendi* can help to explain the authority of its political institutions and practices, as well as supplying a normative context within which they can be intelligibly criticised, challenged and renegotiated. A *modus vivendi*, therefore, can help to explain how political legitimacy is possible in a way that does justice to what I believe are two important desiderata that such an account should meet: that is, first, it admits of the many and diverse forms that legitimate political regimes can take and, secondly, it responds to the idea that political legitimacy should somehow be rooted in the beliefs of those who are subject to it.

The central idea is that the web of operative beliefs about political legitimacy in any given society both supports and is sustained by a *modus vivendi* instantiated in its basic political institutions and practices. In this way such a *modus vivendi* to considerable extent (although not necessarily exclusively or completely) comprises recognising the salience of the criteria in terms of which members make sense of and assess the way they do things (politically) ‘around here’. That is, political legitimacy in the broadest terms is focused around such general considerations as our political community being a ‘constitutional democracy’, ‘a monarchy’, ‘an Islamic state’ and so on, and

the way that these terms of political association are interpreted and enacted through concrete political institutions and practices. The discourse in which these broad ideas are elaborated, which includes the possibility of their being challenged, is the substance and context of fundamental political debate and contestation. To be clear, this does *not* mean that one has to be, respectively, a constitutional democrat, a Muslim or a monarchist. That is one important reason why such a political settlement is a *modus vivendi* and not a consensus of values or even an overlapping consensus.

Political legitimacy, therefore, resides in the acknowledgement of the authority of the practices and institutions that are politically operative in terms that are ideationally salient. As explained earlier, this does not mean that these practices and institutions cannot change or that they cannot be challenged or contested: that would be absurd. If, however, one is serious about co-existing with others in a shared, and usually pre-existing, political association then one has to at least engage with the prevailing discourse of political legitimacy that confers authority on current institutions and practices. A *modus vivendi*, too, requires us to do something to address, rather than simply ride roughshod over, the fundamental concerns of those with whom one wants or needs to live peaceably together. We have to at least aspire to political inclusiveness if legitimacy is to be grounded in a *modus vivendi*.¹⁵

Legitimate political institutions and practices in even a moderately complex and diverse society, where that is political power is something other than the mere exercise of force and coercion, will at least to some extent almost inevitably be constituted through a *modus vivendi*. They will be the outcome of an historical and ongoing conglomeration of ‘settlements’ reflecting shifting and conflicting values and interests, as well as relative balances of power, which have coagulated into an acknowledged but not necessarily uncontested way of doing things politically. Their legitimacy, however, is expressed not solely in the bare fact that they are the basis of a *modus vivendi*, but through such arrangements coming to articulate ways of thinking about how they are

¹⁵ I think that this offers perhaps the best interpretation of Bernard Williams’ “basic legitimation demand” (Hall 2015). The Basic Legitimation Demand arises when “A coerces B and claims that B would be wrong to fight back: resents it, forbids it, rallies others to oppose it as wrong”, because in so doing, “A claims that his actions transcend the conditions of warfare, and this gives rise to a demand of justification of what A does” (Williams 2005, 6).

to be interpreted and assessed that also have an at least partly independent life. The marriage of *modus vivendi* and political legitimacy in this way, therefore, seeks to reflect both the contingent and ‘negotiated’, and always in a sense ‘provisional’, character of basic political institutions and practices, and an understanding of political legitimacy that sees it as mediated through an emergent discourse of argument and judgement associated with them. Political legitimacy will be standardly affirmed through the ongoing reengagement with a discourse about how politics should be conducted, notwithstanding serious and sharp disagreements about many important substantive issues, which is constitutive of a genuine *modus vivendi*. Correspondingly, where this does not obtain and fundamental conflict about the terms of political association persists to an extent that a significant number of citizens do not accept the authority of basic political institutions and practices, political legitimacy will at best be problematic; where such disagreement is deep and widespread it may simply be absent. However, this is not a weakness of the theory: any such theory if it is to reflect our experience also needs to explain how claims to political legitimacy can fail or even be indeterminate.

CONCLUSION

The aim of this paper has been no more (but also no less) than to sketch in a very general way an account of how a suitable conception of *modus vivendi*, broadly understood, can play an illuminating role in theorising political legitimacy in a manner that is both realistic and conceptually cogent. The core of that account has been to try to show how a *modus vivendi* constituted through the operative criteria or discourses can ground the terms in which the claims to legitimacy of a particular political regime are articulated, validated and contested. Such a *modus vivendi* is affirmed through an ongoing engagement with the basic institutions, practices and processes that constitute the fabric of a shared political life. In at least one sense this is an undeniably ambitious and highly controversial set of claims, and many political theorists will find the moral constraints on such an account of political legitimacy far too permissive and normatively undemanding. So, it may be worth emphasising one last time that on the account of a *modus vivendi* that I have presented, there has to be sufficient reason to motivate people to be party to a particular set of political arrangements. Furthermore, to reiterate the comments with which I began, it is

also quite modest in its claims in that what has been presented is intended as no more than a provisional and tentative sketch of how such an argument could be developed. My hope, therefore, is that this can be a contribution to, and certainly not the conclusion of, both a discussion about the meaning and possibilities of a political theory of *modus vivendi* in general, and what role it might have in articulating a viable conception of political legitimacy in particular.

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