

Introduction:
Focus on *modus vivendi*
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This collection of essays emerges from a workshop on theories of *modus vivendi* held at the Centro di Ricerca e Documentazione Luigi Einaudi in Turin in November 2017. To introduce the topics, let me recall that *modus vivendi* is generally defined as a set of arrangements that are accepted as basis for conducting affairs by those who are party to them, although they are not the arrangements that any party would most prefer. Establishing a *modus vivendi* involves trying to reduce the potentially destructive effects that disagreement would otherwise produce. Recently *modus vivendi* has been defended also as a realist approach to politics against the so-called ideal or moralistic accounts of it. The claim is that political theories – specifically: the liberal accounts of politics – tell us little about how the real world works and even how it should work.

The targets of most critics are both Rawlsian political liberalism and its negative assessment of *modus vivendi*. In fact, Rawls sees *modus vivendi* as nothing but the Hobbesian contingent balance of powers: *modus vivendi* is understood as a precarious equilibrium that depends on “circumstances remaining such as not to upset the fortunate convergence of interests”.¹ This means that according to Rawls *modus vivendi* is not the best political arrangement in order to live and coexist peacefully with one’s own fellows.

To Rawls, *modus vivendi* may be only the way for the so-called unreasonable people to live within a liberal society since they do not share its moral fundamentals – such as tolerance and mutual respect. Although Rawls

¹ Rawls 2005, 147.

is critical of grounding society in a *modus vivendi*, he admits that a *modus vivendi* may develop over time into a moral overlapping consensus. Having experienced the goods of living according to those fundamentals, unreasonable people may turn to comply with liberal institutions convincingly. Rawls concludes this argument by saying that there is no guarantee for such an occurrence. Views that would suppress the basic rights and liberties of persons, the ones that tolerance and mutual respect are supposed to protect, may indeed survive in society. He thinks that in a sufficiently fair society such views would not be strong enough to undermine those fundamentals, but “that is the hope; there can be no guarantee”.²

As anticipated above, Rawls’s idea of *modus vivendi* has been widely criticized. In light of a more realistic approach to political theorizing, various authors offered more ‘optimistic’ accounts of *modus vivendi*. Indeed, although it is not the ideal pattern of political cohabitation grounded in shared moral values, *modus vivendi* seems to be the best alternative to a utopian consensus-based society. So, all of the criticism that have been levelled against *modus vivendi*, be it optimistic or not, started by outlining the standoffs of the Rawlsian theory of overlapping consensus. Some of them end by offering a fruitful view of *modus vivendi* as a legitimate settlement, albeit of a specific kind of legitimacy. The idea is that a society relying on *modus vivendi* may be still legitimate, whereas legitimacy is not dependent on a sharable moral content.

The papers of this collection follow this line of criticism. They all start by recalling the shortcomings of Rawlsian criticism against *modus vivendi*. They are also similarly committed to valuing *modus vivendi* as a way to contribute to social stability in a realistic political framework. They all address the question of the legitimacy of *modus vivendi*, hence the concern about the reasons people may have to adhere to a *modus vivendi* arrangement. These reasons are not necessarily moral reasons: indeed, *modus vivendi* is not something like a moral consensus. Many different reasons may move people to it.

At the same time, all authors agree on recognizing the ‘side-effect’ of admitting different reasons: *modus vivendi* is somehow less demanding than consensus but it also guarantees less stability. All authors wonder whether *modus vivendi* may be stable or not and conclude that *modus vivendi* may be reached at some cost in terms of instability. When people do not consent on a

² *Ibidem*, 172.

sort of common morality, what they may agree on is a contingent settlement obtained through negotiation and compromise.

Having recalled some general elements of all of the following contributions, I would like to spend now two words about each one. Alessandro Ferrara authored the one: “How to accommodate *modus vivendi* within a normative political theory”. He defends an idea of a ‘fruitful’ *modus vivendi* to be more pluralist than a moral consensus but still legitimate. To argue for that, Ferrara conceives of a “normativity of the reasonable” (p. 20): this means that any political justification should be addressed to “us”, not to an external third person who does not exist. Thus, a fair society should be justified to “us”, without making us betray our own comprehensive view while abiding by its injunctions. In order to include more people among “us”, Ferrara advocates a *modus vivendi* as a further way of political inclusion. The idea is that one and the same political arrangement could be endorsed by some citizens on *principled* grounds (that is, subscribing to the same moral values and reaching an overlapping consensus on them) and by other citizens on *prudential* grounds (that is, by entering a *modus vivendi*). Legitimacy is still preserved: authorities are legitimate still remaining true to their mandate of protecting all citizens, be they wholeheartedly compliant with them or only obedient to them for a number of different reasons, moral and non-moral.

In his paper “Political legitimacy and *modus vivendi*”, John Horton aims at understanding how *modus vivendi* can play a role in theorizing political legitimacy in a manner that is both cogent and realistic. That means that Horton is seeking to engage with a more ordinary conception of politics, directed towards ‘understanding and interpretation’ rather than prescribing any rule or moral principle. He recalls the definition of *modus vivendi* he put forth in an earlier paper that is still well-suited to account for it:³ *modus vivendi* is a practical accommodation that could be accepted for a variety of reasons by those who are parties to it, except for reasons of violence or fear. If violence and fear cannot be conceived of as plausible reasons to adhere to a *modus vivendi*, given that they cause dependence and subjection, *modus vivendi* cannot be interpreted as a consensual settlement. Horton claims that: “we need to be less explicitly voluntarist in conceptualizing the conditions of a *modus vivendi*” (p. 57). The idea is that there is a further perspective of acceptance

³ Horton 2010, 431-448.

of a political regime: not only a subjective one, as it is shown by what people say or claim; but, also an objective one, as it may be inferred from how people behave, from what they do in fact. Horton's concern is about actions as *evidence* of being party to an ongoing *modus vivendi*, that is, of acceptance of political authority through people's behaviour. Horton's alternative account of political legitimacy is grounded on an ongoing *modus vivendi*: political legitimacy resides in the acknowledgement of political institutions and practices, and these may change over time.

Political legitimacy is at the core of the paper by Valentina Gentile, "*Modus vivendi* liberalism, practice-dependence and political legitimacy". Her point is to analyse David McCabe's theory of liberal *modus vivendi*⁴ in comparison with Rawls's *Political Liberalism*. She is specifically interested in showing how both theories are similarly practice-dependent although from two different perspectives. In spite of McCabe's willing to close the loopholes of Rawlsian political liberalism through the adoption of a liberal *modus vivendi*, his proposal does not reach his goal. Gentile starts by elucidating the two accounts of practice-dependency. In Rawls's *Political Liberalism* practice-dependency entails a sort of common morality: "sharing a liberal institutional context shapes the framework of reasons for endorsing a conception of political authority that better represents certain moral premises concerning citizens understood as socially and politically equal" (p. 35). Differently, McCabe sees practice-dependency as "actual citizens' acceptance of the liberal terms which reflect society members' actual equality of status" (p. 35). According to McCabe, *modus vivendi* liberalism may be recast as a practice-dependent model of political legitimacy that can be realized when citizens' reasons converge in endorsing an institutional arrangement, not necessarily when these reasons are the object of a consensus. Convergence seems to better respond to actual pluralism according to McCabe. In spite of its expectation, *modus vivendi* liberalism does not work: Gentile charges McCabe of not clarifying why those who are not committed to liberalism should endorse liberal institutions. Indeed, he assumes a minimal universalism consisting in a shared presupposition that the interests of all persons matter equally. He trusts that this presupposition is universally accepted by any person, be she liberal or non-liberal. But this presupposition "seems to trump practice-de-

⁴ McCabe 2010.

pendency” (p. 38) and turns to be scarcely realistic. Conceived so, *modus vivendi* liberalism is at odds with its main goal to provide an anti-utopian defence of liberalism. Furthermore, any context-dependent (contingent) justification of a political order is weak as it disconnects the idea of legitimacy from a conception of liberal political morality.

The relationship between realism, public justification, and legitimacy is also the focus of Federico Zuolo’s paper “Is *modus vivendi* the best realist alternative to public justification liberalism?”. By public justification liberalism Zuolo means any approach committed both to the foundation of a just liberal order and to the liberal principle of legitimacy. In light of public justification liberalism, a just order is the one that is acceptable by those who are subject to it for a few shared moral reasons. The question now arises of what happens when people do not share those reasons. In fact, realistically some people do not consent on the same set of reasons: in light of their disagreement different reasons should be invoked to support just order. Zuolo wonders whether *modus vivendi* may be the solution: in fact, a *modus vivendi* may be reached through negotiation and compromise, not necessarily through a consensus on moral reasons. Unfortunately, *modus vivendi* does not work. Any account of it betrays both the expectations of realism: descriptive adequacy on the one hand, and the ambition of prescriptive capacity on the other hand. In order to illustrate his thesis, Zuolo refers to the ongoing dispute about the treatment of animals. This dispute sees animalists and anti-animalists engaging in a dramatic reasons-exchange and in mutual efforts of persuasion. If *modus vivendi* should be justified by a sense for peace and security, it is pretty clear that peace and security are not what people look for and demand of each other. Perhaps *modus vivendi* is – says Zuolo – “the unintended result of parties fighting, negotiating, campaigning for something else, namely for the realization of their favoured goal which, though, cannot be achieved” (p. 85). In a realistic perspective, then, *modus vivendi* is what people have, not what they prefer. Zuolo stresses the ambiguity of *modus vivendi*: on the one hand, *modus vivendi* is probably all that people may reach in a pluralistic society; any consensus-based arrangement is too idealistic. On the other hand, when hinged on order and security, *modus vivendi* is a too restrictive arrangement: there are many more demands and they all require a more robust concern for prescription. Zuolo concludes by admitting that *modus vivendi* is not an alternative to political justification liberalism. Nonetheless, it works as a complementary perspective within it, as it may describe certain states of affairs and legitimize them appropriately.

In sum, these contributions in this collection suggest several future directions for *modus vivendi* to be revised. They all emphasize some weakness of the traditional framework of liberal political legitimacy supposedly based on shared values. Their common target is Rawlsian political liberalism: they all criticize the idealistic presupposition of reasonable pluralism and the idea of a moral overlapping consensus. Similarly stimulated by the so-called realistic turn in political theory, all authors recognize the normative dimension of realism. Their lesson is an invitation to revise the notion of *modus vivendi* in line with the idea that it may represent the most promising way to live in a 'differently legitimate' society in spite of a truly deep disagreement.

REFERENCES

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