
ROBERTA SALA

Università Vita-Salute san Raffaele
sala.roberta@univr.it

MAY JOINT COMMITMENT STABILIZE MODUS VIVENDI?

abstract

This contribution intends to extend my previous attempt to defend modus vivendi as an alternative way to include people who do not share the essentials of a liberal society. The idea was to respond to a claim to realism: besides loyal citizens, whose doctrines overlap on the basics of a fair society, there are people whose loyalty towards institutions is not be wholehearted – since they do not concur to their public justification – but who may endorse them in a stable way. I consider now a further way to deal with inclusion, compliance and stability: besides division on fundamental commitments and disagreement about values, peaceful coexistence may find strength in an alternative way to conceive the attitude of cooperation as rooted in a joint commitment. My argument will be presented as follows: a) I recall my conclusions about my idea of stable modus vivendi; b) I try and improve the wished outcome of stability in spite of partial political loyalty by reinforcing this with the argument of joint commitment; c) I draw some interlocutory conclusions.

keywords

unreasonableness, liberalism, Rawls, political obligation

The title of my contribution requires to be explained. I previously dealt with *modus vivendi* in the light of the Rawlsian political liberalism. My aim was to rehabilitate *modus vivendi* as an alternative way to include the so-called “unreasonable”. The idea was to respond to a claim to realism: besides loyal citizens, whose doctrines overlap or will overlap on the basics of a fair society, there are quasi-loyal citizens, those people whose loyalty towards institutions is not and will not be wholehearted but who may endorse them in a stable way. Their inclusion is grounded in a *stable* *modus vivendi*. The core question was to indicate reasons and motives backing their compliance and assuring stable cooperation. I consider now a further way to deal with inclusion: besides division on fundamental commitments and disagreement about values, peaceful coexistence may find strength in an alternative way to conceive the attitude of cooperation as rooted in a joint commitment. The bet is to defend a joint commitment as a sort of allegiance to one’s political community. My argument will be presented as follows: a) I recall my idea of *stable* *modus vivendi*; b) I try to improve the wished outcome of stability in spite of partial political loyalty by reinforcing this with the argument of joint commitment; c) I draw some interlocutory conclusions.

- I. *Modus vivendi* has generally been dealt with in regard to the idea of toleration in a plural society. In this perspective *modus vivendi* has been seen as the dark side of toleration as a moral notion roughly grounded in the respect for the others’ freedom and self-determination. When there is no room for toleration as a positive attitude of acceptance of persons who disagree with us against their ideas and beliefs, *modus vivendi* does its work to forbear those persons despite their unbearable beliefs with the only prudential aim to reach a balance or equilibrium among respective powers as long as possible. In this negative light *modus vivendi* has been rejected by John Rawls. According to Rawls, *modus vivendi* is a sort of political final disposition based on an unstable balance of political forces, rather than being grounded in a set of moral principles. For that, *modus vivendi* shows to be unfair: as Rawls puts it, *modus vivendi* is “political in the wrong way” (Rawls 2005, pp. 39-40). Thus, unfairness and instability are strictly connected: any *modus vivendi* is unstable since it is based on unfair reasons, i.e. mere convenience and fear. The only reason people agree to any *modus vivendi* is that it seems the best choice for them at an acceptable cost. Rawls contrasts this prudentially-motivated *modus vivendi* with the idea of an overlapping consensus, that is, an agreement based on a sort of moral (political) values. Only when this consensus obtains, stability may be assured for the “right” reasons.

Such an overlapping (moral) consensus among comprehensive doctrines may be achieved only among that class of comprehensive doctrines that are reasonable, meaning that reasonableness qualifies the group of comprehensive doctrines that can find common ground within a liberal-democratic regime (Sala 2013, p. 255). By contrast, those people who do not share this common terrain of values cannot reach any moral consensus. Their possible adherence to institutions may be attained only on the ground of a *modus vivendi*: i.e., it cannot be warranted at all. In face of them, Rawls trusts the benefits of living under liberal institutions will enable those people to come to support those same institutions, at first by a *modus vivendi*, then transforming it into an overlapping consensus (Rawls 2005, pp. 158-168). The Rawlsian thought about consensus is arguable, first of all because of the unrealistic dichotomy between moral consensus and *modus vivendi*. Rawls maintains that consensus is moral or it is not. I believe that, on the contrary, it is possible to imagine a consensus established on prudential reasons: the idea is that one may consent to a settlement for reasons placed in non-moral or prudential reasoning. Speaking so is coherent with the statement of value pluralism: moral reasons may appear non-moral when they are seen from another point of view. The idea is that, crudely put, we may admit further models of coexistence, although not all of them are “technically” forms of consensus. They may be accounted as *modus vivendi* in a specific sense (Sala 2013): it is not a mere *modus vivendi*, as Rawls depicts it. It is a special *modus vivendi* in so far as it is more stable than the ordinary one, as it is reached from different points of view or world visions that are not necessarily connected to mere balances of forces at risk of overturning.

The inclusion of people *via* this special *modus vivendi* is to be understood as based on a “partial” loyalty to society, as it is not referred to a full endorsement of its fundamentals. Nonetheless, they show to be ready to support liberal institutions although not for sharing the liberal values that are supposed to ground a fair society (equal respect for others, freedom of conscience, toleration, justice and so on). They may have other reasons relying on a view of the world in which people are not free and equal, but in which persons are viewed – for instance – as divided into saved or sinners, elect or damn. The way in which they see the others as fellows to be saved – although it does not appeal to an ideal of equal respect for persons – does not imply any direct infringement of the rights of others. They live peacefully with others in a collaborative way that takes the form of a special *modus vivendi*. It is special because it is not doomed to be precarious, or to be more precarious than possible morally grounded institutions. To conclude: we should admit that not all “regular” citizens abide by the “right terms” of cooperation, nor comply with liberal-democratic institutions by agreeing *with* them: sometimes their compliance corresponds to a mere agreement *to* them on the basis of their reasons, be they moral or prudential, or on the basis of mere motives, habits, traditions or mere (non reflected) adoption of a shared practice of cohabitation (Scheffler 1994).

The above reflection stems from a realist claim: besides loyal citizens, whose moral positions overlap and, in doing so, enable them to sustain a fair society, there *actually* are “partially-loyal” citizens, people whose loyalty towards institutions is not wholehearted – since they do not endorse them on the basis of liberal moral values – but who may adhere to them in a stable way. *Pace* Rawls, nothing wrong happens if liberal institutions find stable compliance of people who are divided at the level of their fundamental commitments.

My current aim is to explore further how fair society may be supported by people, whose adherence to liberal institutions contribute to their legitimation, hence the social stability, despite their disagreement on basic values of social coexistence (here legitimation is about what reasons there might be to justify the exercise of political power). Taking realism seriously, my intent is to probe possible legitimation through joint commitment, in the

II.

circumstances in which liberal institutions are not and will not be endorsed. Possibly institutional arrangements *prove* to be legitimate since they obtain compliance from citizens, independently of her specific reasons or motivations. Modus vivendi as I depicted it before, as a stable modus vivendi among people differently motivated to sustain liberal institutions, may be further defended as an alternative way to coexistence, according to a theory of joint commitment.

My attempt to go deeper into my idea of a stable modus vivendi consists of experimenting two ways: (1) first, approaching an alternative account of loyalty inspired by Margaret Gilbert's theory of joint commitment; (2) second, reaffirming modus vivendi as a reasonably stable pattern of peaceful coexistence among liberal citizens and not-liberal-nor-democratic people. (3) In conclusion, my will is to renovate my idea of modus vivendi as a moral engagement of liberal institutions towards those people, a way for their inclusion into citizenry in spite of their being unable to share liberal values.

Before entering the debate on joint commitment, I would like to stress the following point. I understand this "moral engagement" on the side of liberal institutions to include not-liberal-nor-democratic people as their overarching aim. The underlying belief is that as liberals we should care of the ones who disagree with us, whose ideals do no overlap with ours. I understand liberalism as committed to ensuring that the political order is to be justifiable or, at least, to appear legitimate in face of all people, be they liberal or not. To appear legitimate means to be accepted for whatever reason or motive or, even, for no reason at all and for motives only, but in a stable way (Rawls 2001, p. 33). A minimum acceptance of institutions may be attained even unwittingly, for example, as involuntary result of a joint commitment. This justificatory project of modus vivendi is morally based upon the reference to the moral status of all individuals as free and equal: the overall idea is that all individuals are entitled to the right not to be coerced unless they overtly menace liberal order and infringe others' rights. In maintaining this, I part company from the defenders of the internal conception of liberalism (Quong 2011). Their objection is a well-known one: the justificatory work of liberal theory – it is often emphasized – is not addressed to those people who do not take basic liberal values for granted. In the light of this objection the goal of political justification is not to solve the crucial question "why be liberal?", but more modestly, to understand what kinds of arguments citizens already committed to certain liberal values can legitimately offer one another. Those who do not share basic liberal values, and especially the moral claim that persons are free and equal, are not entitled to any justification. I reply to this objection by arguing that a moral consensus – specifically, an overlapping consensus on liberal moral values – is too abstract an ideal to be reached by all citizens in a plural society, inhabited not only by reasonable, but also by non-liberal-nor-democratic people. In the *real* circumstances in which a moral consensus is unattainable there is room for a modus vivendi to build on the two *facts* already mentioned above: a) that there are people within liberal-democratic societies whose lives are not inspired by liberal values; b) that these people may nonetheless sustain liberal-democratic institutions. That there are not-liberal-nor-democratic people within liberal society is a *fact* and it is probably a relevant one. Honestly I see that the matter is about the grounds of their inclusion: how may those people come not coercively to adhere to liberal institutions? What reasons may push them to support them, even in absence of a calculus of opportunities? My tentative answer takes the cue from two preliminary points: first, legitimation may occur in the absence of moral reasons; not moral causes or simple motives may act as factors of legitimation (Horton 2012). Second, legitimation may spring from relevant facts, that is, facts that turn out to be relevant to build up a theory of political legitimation. So conceived, legitimation is not a mere description of a matter of fact, something like a contingent acquirement as obtained by a specific group of individuals as

empirically identified. It finds a further ground on selected facts, the normativity of which is offered by joint commitment. I will hold that joint commitment is not to be claimed as a substitute for moral arguments or whatever further motives and motivations to defend social order as a legitimate and stable one. It is just an alternative argument to sustain the notion of legitimate social stability without appealing to external (mostly moral) sources of the mere circumstances of cohabitation. In this sense I will defend my idea of *modus vivendi* as corresponding to an enlarged *practice* of public exchange that is hospitable to various kinds of reasons and motives, which do not necessarily refer to liberalism as morals.

Before coming to discuss the theory of joint commitment, let me emphasize again the relevance of facts for political theory and legitimation (Horton 2010a, p. 435; Rossi 2010). To admit that a political theory should meet the criterion of the descriptive adequacy means to maintain that political theory should engage with the *phenomena* of politics as they are, as they happen, without indulging in idealizations (Scheffler 1994). There is no such thing as a clear-cut normative-descriptive distinction: desirable normative political theory has to be in dialogue with a phenomenological grounded understanding of a society's forms of legitimation (Rossi 2013). The underlying idea is that – besides theorizing – we have to acknowledge the world. We cannot but also accept that the world is only to a limited extent directly improvable in accordance with our ideals.

Having said that, the question now is to detect such *facts*: when may we say to be in front of people actually sustaining institutions? Where to turn the eyes to see people adhering to institutions? How could the mere fact of compliance play a normative role in defending the social order? The challenge here consists in interpreting joint commitment as a *fact* about people when they live within a community, willingly or not. Joint commitment seems to provide a case of a realistic approach of legitimation.

In the remainder of this part I will introduce the idea of joint commitment with regard to the kind of bonds it implies among people jointly committed. I will consider the theory of joint commitment political obligations defended by Margaret Gilbert and the alternative way to deal with it by John Horton. This comparison should lead to focus on joint commitment as a relevant fact for politics: this *fact* has to be paid a special scrutiny as it is supposed to act as a factual basis of social cooperation. The challenge consists in interpreting joint commitment as a sort of allegiance to the community: it is not to be conceived as a mere subjective feeling nor as voluntary or contractual relationship, but as an expression of membership. The task is to understand the debate on joint commitment as a contribution to draw a realistic approach of political theory.

I intend now to address the above challenge as follows: a) I will sketch out briefly Margaret Gilbert's account of joint commitment as referred to political obligation; then, I will depict the objections risen by John Horton, with specific regard to the normativity of joint commitment. b) I will do some tentative reflections about the relationship among stability, legitimation, and political compliance. In the end, *modus vivendi* will be back again as a name for a way to be involved (and not coerced) in a social enterprise, more or less willingly, generally aiming at a peaceful coexistence.

Let me start by recalling the general meaning of political obligation. To have a political obligation is to have among others a moral duty to obey the laws of one's country or state (Dagger & Lefkowitz 2014). Some questions arise immediately: why should one obey laws? Why should one be loyal to institutions? What about those people who live in a state, even born within its territory, but who live like aliens as they belong to, say, a cultural minority? How do they acquire – if they can – an obligation to comply with political institutions? A possible

III.

III.A Joint commitment and political obligation

answer may descend from Gilbert's theory of joint commitment political obligation. Gilbert focuses on how the sentence "I am a member of a political society" (that is a natural fact) can logically imply "I have obligation", that is a non-natural fact (Gilbert 2006, p. 9; Gilbert 2014). She refers to that sort of duties or grounds for obedience created by membership in a political society. The idea is that people in certain contexts have sufficient reasons to support and comply with certain political institutions. Political obligation is not to be referred to a voluntary or a contractual relationship. Instead, it springs from a joint commitment emerging out solely from an act or state of "wills". This concept of joint commitment stands outside a "singularist" conceptual scheme. To exemplify: walking together is a joint action that does not need any agreement. It is wrong to say that two friends walking together have agreed to walk together: to walk is what they are doing. The mutual expression of readiness to engage in a joint activity is to be understood as a *common knowledge* between the parties. Common knowledge is a *fact* out in the open between them. At the same time, what occurs at the collective level is enough to motivate the individuals who make up the collective. That is, our goal is sufficient to motivate each one of us. Further, the obligations of joint commitment are *not moral requirements*. They do not count as moral obligations. A joint commitment obliges by virtue of its structure, that is, by virtue of "jointness". The *fact* that one owes another person an action is not the same to say that she is morally obliged to perform this action. To discuss Gilbert's position I avail myself of Horton's critique to it, as unlike Gilbert he investigates the moral aspects of political obligation (Horton 2006, 2007). According to Horton a commitment to the institutions is not the same than a commitment to walk together. In Horton's associative account of political obligation the relevant idea is that there is some sort of moral relationship that holds by virtue of membership to a polity, the members of which mostly do not voluntarily choose to join. Even if we may agree with the idea that if one stops walking she is under the obligation to explain why she did so – Horton says – this obligation is very weak, and may rise a very weak right on the side of the partner. If political obligations are deprived of any moral dimension, the force of what makes them compelling remains obscure. Horton's account of political obligation, though sharing some aspects of Gilbert's one, like the emphasis on membership and association, tries to capture the normativity implied by being members of the same community. The focus is both on the idea that membership of association gives rise to obligations and on which kind of obligation one is dealing with. According to Horton, membership comes up as an important part of a *sort of phenomenology of our moral-political experience*: in some circumstances – especially those in which we feel shame or dishonour – we acknowledge our being a member of a polity and that being so has a moral meaning for us. The idea that we acquire memberships that we have not chosen is simply *the way things are*. Horton comments that this is a *fact* sufficient to support the claim that we can understand ourselves to be ethically bound to polity as non-voluntary group. He finds reasonable to think that we could have obligations to the polity because its distinctive element is the need for an effective coercive authority to provide order, security and some measure of social stability. A polity as a form of association holds as a generic value the good of order and security. This conclusion permits to avoid a reductionist account of political obligation as that depicted by Gilbert (political obligations as stemming from a not moral joint commitment) and to identify an independent source of normativity, since associative relationships intrinsically compel individuals to sustain (overtly or tacitly, wittingly or unconsciously) their own community. It is remarkable here to stress how that kind of associative obligation does exist independently of people's endorsement and how people are however requested to acknowledge it. Horton concludes by saying that political obligations are a concomitance of membership to a particular polity, a polity being a form of association that has as its generic value the good of order and security (Horton 2010b).

The exchange on political obligation between Gilbert and Horton as sketched above makes some suggestions about how to revise *modus vivendi* in order to strengthen its stability. My idea now is to develop a case for further stabilizing *modus vivendi*. This is only a tentative enterprise, and it is to be understood as more interpretative than explanatory. Consistently with this realist outlook an interpretative understanding of the *practice* of politics is favoured against any moral explication (Rossi & Sleat 2014; Newey 2010). It goes without saying that the descriptive element is not intended to substitute the normative one: notoriously, to be obliged by a commitment does not mean to be obligated to act consequently. But it also goes without saying that to be obligated by a norm does not imply to feel obliged to follow it as well. What I mean is that if the descriptive level and the normative level part company, we should admit that the normative level and the practicability of the norms do the same. Having said that, an interpretative understanding as the one being dealt with here is concerned with what sense can be made of the idea that people join a community, or they have some sort of relationship with it. The crucial point is about what kind of obligation the not-liberal-nor-democratic people may have in front of a fair society, in spite of their – so to speak – inability to share its constitutional essentials. In fact, if an associative account of political obligation may work to scrutinize how people feel their engagement possibly with their “native” community, the question is whether and how this account may possibly work.

With this question in mind, I find promising to my purpose of the stabilization of *modus vivendi* three elements of the above discussion between Gilbert and Horton: (a) the idea of a *common knowledge*, as claimed by Gilbert; (b) the idea of a *sense of identity*, as claimed by Horton; (c) the idea of a *shared practice*, as essentially claimed by both. Though their accounts of political obligation are distant, I see some common features that I would adopt and even adapt into my proposal. To sketch it out: the shared idea of non-voluntary or at least not-necessarily-voluntary commitment is especially attractive as it helps to figure the relationships among liberal institutions and not-liberal-nor-democratic people. After the reasons or motives they may have to comply with laws, the *practice* of cohabitation works undoubtedly to cement a peaceful community of citizens, be they committed for the “right reasons” or not. Non-liberal-nor-democratic citizens show themselves to be able to comply with liberal-democratic institutions not reluctantly, but as a kind of commitment to behaving politically together with their fellow citizens.

The point then is how to interpret the ideas of a common knowledge, of a sense of identity and of shared practices as further stabilizing *modus vivendi*. My perspective – but I may just announce it as the next step of this work – is that peace, the pursuit of peace and living in peace represent respectively the common knowledge, the sense of identity and the shared practice we are dealing with. Let us remind why people have always sought a *modus vivendi*: at least – this is the simplest answer – because they have always aimed at peace and, through peace, they have always aimed at safety. The special place of the goods of peace and safety does not mean that they are for everyone the supreme goods. That is, it is not necessary to conceive peace and safety as our final ends – or ideals – to feel committed to seeking them. People can, and sometimes will, have goals that they set above such goods. They will certainly have other aims as well as securing a stable and peaceful settlement. To speak so means to admit realistically that reasons for peace may include moral principles and general prudential considerations as well (Sleat 2011). It means also that though people (non-liberal-nor-democratic people specifically) join society to attain their purposes for their explicit or even implicit reasons, the outcome is still peace: and that is all we can be assured of in the real world (Horton & Windeknecht 2014). There may be a plurality of reasons why people value peaceful coexistence; some of these will be specific moral reasons internal to specific ways of life, others might be more instrumental. The idea is that

III.B Joint commitment and *modus vivendi*

modus vivendi is openly universalistic in accepting any reason to be sustained. As Sleat emphasizes,

if we were to pursue modus vivendi politics as a way of developing liberal realism, we would do well to disconnect it from any controversial justification that would only serve to replicate the disagreements about the normative foundations of politics that the realist challenge highlights. [...] What is potentially attractive about the politics of modus vivendi is that it allows us to overcome the realist challenge by finding common ground on minimal normative commitments, in particular peaceful coexistence (Sleat 2011, pp. 488-489).

Be peace and safety final ends or not, such goods have at least instrumental value to almost everyone, as they are an essential precondition for the achievement of almost any other good. If peace may be conceived as a realistic goal, we need now to understand in which sense it should be conceptualized as being possible without consensus on morality (Wendt 2013). This is not an easy task: the notion of peace as non-violent coexistence based on modus vivendi has been accused to be too weak to be an attractive ideal (Rawls 1993). In response to this objection, pursuing a demanding but realist conception of peace, we need a sort of consensus, but not a substantial moral consensus. A non-moral consensus may be conceived as a compromise that is an agreement reached by motivations, rather than reasons, understandable as a genuine willingness to abide. We can keep silent on the kind of reasons for accepting a compromise: I dare say that sometimes there are no reasons, that is, explicit or conscious reasons, at stake. We have no reasons to exclude other non-moral commitments, perhaps shaped by jointness, by the mere fact to join a society. What compromise entails is a long debate, but it exceeds the length of this brief contribution.

REFERENCES

- Dagger, R. & Lefkowitz, D. (2014), "Political obligation", *The Stanford Encyclopaedia of Philosophy* (Fall 2014 Edition), E. N. Zalta (ed.), <http://plato.stanford.edu/archives/fall2014/entries/political-obligation/>;
- Gilbert, M. (2006), *A Theory of Political Obligation*, Oxford, Oxford University Press;
- . (2013), *Joint Commitment*, Oxford, Oxford University Press;
- Horton, J. (2006), "In defence of associative political obligations. Part one", *Political Studies*, 54, pp. 427-443;
- . (2007), "In defence of associative political obligations. Part two", *Political Studies*, 55, pp. 1-19;
- . (2010), "Realism, liberal moralism and a political theory of modus vivendi", *European Journal of Political Theory*, 9, pp. 431-448;
- . (2010b), *Political Obligation*, New York, Palgrave MacMillan;
- . (2012), "Political legitimacy, justice and consent", *Critical Review of International Social and Political Philosophy*, 15, pp. 129-148;
- Horton, J. & Windeknecht, R. G. (2014), "Is there a distinctively associative account of political obligation?", *Political Studies*, doi: 10.1111/1467-9248.12129;
- Newey, G. (2010), "Two dogmas of liberalism", *European Journal of Political Theory*, 9(4), pp. 449-465;
- Quong, J. (2011), *Liberalism Without Perfection*, Oxford, Oxford University Press;
- Rawls, J. (2001), *Justice as Fairness: a Restatement*, Cambridge (MA), Harvard University Press;
- Rawls, J. (2005), *Political Liberalism*, New York, Columbia University Press;
- Rossi, E. (2010), "Modus vivendi, consensus and (realist) liberal legitimacy", *Public Reason*, 2(2), pp. 21-39;

- . (2013), "Consensus, compromise, justice and legitimacy", *Critical Review of International Social and Political Philosophy*, 16(4), pp. 557-572;
- Rossi, E. & Sleat, M. (2014), "Realism in normative political theory", *Philosophy Compass*, 9/10, pp. 689-701;
- Sala, R. (2013), "The place of unreasonable people beyond Rawls", *European Journal of Political Theory*, 12(3), pp. 253-270;
- Scheffler, S. (1994), "The appeal of political liberalism", *Ethics*, 105(1), pp. 4-22;
- Sleat, M. (2011), "Liberal realism. A liberal response to the realist critique", *Review of Politics*, 73(3), pp. 469-496;
- Wendt, F. (2013), "Peace beyond compromise", *Critical Review of International Social and Political Philosophy*, 16(4), pp. 573-593.