Saggi

Modus Vivendi Arrangements, Stability, and the All-Subjected Principle

Modus vivendi, stabilità e l'*all-subjected principle*

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Abstract. Despite the importance of the requirement that all parties subject to a modus vivendi accept it, the philosophical basis of the all-subjected principle has been largely neglected in the realist literature on modus vivendi arrangements as responses to disagreements on issues of common concern. In this article, I argue that the inclusion of all-subjected parties should be understood as instrumental to justifying the presupposition that enough parties will have the motivation to comply with an arrangement that they grudgingly accept as a modus vivendi. I also argue that without accepting the democratic commitments implicit in the acceptance of the standard reading of the all-subjected principle, realist modus vivendi theorists should demonstrate that all those parties who are subjected to a modus vivendi arrangement have the capacity to voice their objection and to be heard for such a claim.

Keywords: all-subjected principle, democracy, disagreement, modus vivendi, political realism, pluralism, stability.

Riassunto. Con la formula "all those subject to it accept it" la teoria realista del modus vivendi accenna spesso al *principle of all-subjectedness* senza approfondirne le implicazioni filosofiche. Questo principio, almeno nella sua lettura canonica, presuppone però tutta una serie di impegni normativi che i realisti normalmente rifiutano. Fare a meno della promessa democratica caratteristica del *principle of all-subjectedness*, come dimostro in questo saggio, e al contempo ribadire il motto "all those subject to it accept it" impone dei costi notevoli alla teoria: prima si deve

sostenere che tutti gli agenti potenzialmente sottoposti al modus vivendi si trovano nella posizione di dare voce alla loro relazione con l'eventuale intesa; poi si deve dire che tutti gli agenti potenzialmente sottoposti al modus vivendi si trovano nella posizione di essere ascoltati. Nelle società contemporanee, attraversate, come la dottrina realista ricorda a più riprese, da disaccordi asprissimi e asimmetrie di potere, le due affermazioni sono inverosimili.

1. Introduction

In recent years, political theorists have cast light on the merits of modus vivendi arrangements in contexts of deep moral and political disagreement.[1] One of the fundamental ideas is that in circumstances where social disorder is to be avoided, all sides can see a modus vivendi arrangement "as a rough and ready compromise, a trade-off of interests and opinions."[2] All subjected parties, in other words, will accept the arrangement as better than other options and have sufficient motivations to comply with its prescriptions.

Despite the importance of the requirement that all subject to a modus vivendi accept it, scholars have so far looked elsewhere. My intention here is to show that modus vivendi theorists should think of the scope of modus vivendi arrangements more carefully. On the one side, the idea that all subjected to a modus vivendi accept it is key to support the appealing claim that a modus vivendi arrangement will be stable enough to maintain a decent level of peace despite deep disagreement. On the other side, the realism of modus vivendi political theory recommends the avoidance of pre-political normative commitments, such as the whole set of democratic commitments implied by the standard democratic reading of the all-subjected principle. Against this backdrop, I claim, modus vivendi theorists could endorse the standard democratic reading of the principle of all-subjectedness, at a potential cost to the realism of the theory. They could also reject the standard reading

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[1] For the merits of modus vivendi, see De Vecchi and Sala, "Compliance with Iustice"; Gray, *Two Faces*; Horton, "Realism"; McCabe, *Modus Vivendi*; Rutherford, "Instability"; Sala, "Modus Vivendi"; and, Westphal, "Why Theorize." For the problems of modus vivendi, see Rawls, *Political Liberalism*. See also, Ferrara, "How to Accommodate"; Rossi, "Modus Vivendi"; and, Vallier, "On Distinguishing."
[2] Horton, "Rawls," 20.

of the principle of all-subjectedness, but this choice involves a potential cost to stability.

This article unfolds as follows. In the next section, I present a general definition of modus vivendi arrangements. I also argue that modus vivendi theorists advance a functionalist argument for inclusion. That is, the inclusion of all subjected parties in the process leading to the acceptance of a modus vivendi arrangement is functional to have sufficiently stable settlements. In Section 3, I introduce and unpack the all-subjected principle. Section 4 studies the scope of modus vivendi arrangements. Section 5 concludes the paper by thinking of possible ways to revise modus vivendi theory.

As a preliminary remark, David McCabe and Steven Wall, who are not realist authors, have also provided some arguments in favour of modus vivendi as a way to justify the authority of the State.[3] In this article, I zoom in on realist modus vivendi theory. In contemporary realism, we can also distinguish between two usages of modus vivendi: modus vivendi as a peculiar strategy for justification; and modus vivendi as a possible political response to disagreements on issues of common concern.[4] This article is on realist approaches to modus vivendi arrangements as responses to disagreements on issues of common concern.

2. Modus Vivendi Arrangements

In societies marked by the fact of pluralism, realist political theorists argue that principled agreements between parties in deep disagreement are either unfeasible or undesirable.[5] They therefore advocate a return to modus vivendi as a way to solve deep moral disagreements on divisive political issues.[6] Although disagreement and conflicts are constitutive of politics, modus vivendi arrangements can provide a shifting and fragile basis for avoiding instability. For John Horton, a modus vivendi avoids serious disruption and preserves a social order.[7] According to Nat Rutherford, a modus vivendi arrangement is an arrangement that from a first-personal perspective, it is more acceptable than available alternatives to contain violence.[8]

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[3] See McCabe, *Modus Vivendi*; Wall, "Political Morality."
[4] I borrow this distinction from Rossi, "Can Modus vivendi Save Liberalism." On modus vivendi as a justificatory strategy, see Gentile, "Modus Vivendi Liberalism," McCabe, *Modus Vivendi*; Sleat, *Liberal Realism*; and Zuolo, "Is Modus Vivendi the Best Realistic Alternative." On modus vivendi as a response to disagreement, see, among others, Horton, "John Gray"; Rutherford, "Instability;" and Westphal, "Institutions."
[5] Gray, *Two Faces*; Horton, "John Gray."
[6] Horton, "Rawls"; Rutherford, "Instability"; Westphal, "Why Theorize."
[7] Horton, "John Gray," 165.
[8] Rutherford, "Instability."

A modus vivendi arrangement is a second-best arrangement that reconciles diversity with the necessary condition for the pursuit of any worthwhile human existence. Such a necessary condition identifies with the galaxy of possible responses to what Bernard Williams called the first political question: that is, the demand for "order, protection, safety, trust, and the conditions of cooperation."[9] Modus vivendi arrangements are also revisable. Parties can amend and change them.[10] Yet, before concluding that the revised arrangement has been accepted as another modus vivendi arrangement, two conditions should be verified: first, enough parties prefer the revised settlement to continued disorder; second, enough parties prefer the revised settlement to the old modus vivendi for its capacity to contain the risk of escalating pressures to peace and order.

The literature also contains provisions as to how modus vivendi arrangements gain validity. Validity connects with the requirement that all those parties subject to a modus vivendi are also those who display values and beliefs, come to discover a harmony of interests in peace and order, and accept an arrangement as functional for the pursuit of their individual ends.[11] Here, one should not simply exchange liberal consent for modus vivendi acceptance. Even at its high level of abstraction, a modus vivendi does not hope to achieve unanimity or convergence. If the theory is to remain true to its realist spirit, modus vivendi, as Horton writes, should not require "that the exercise of political power must be justified to each and every individual over whom it is exercised."[12] A modus vivendi settlement can hold insofar as all those parties subject to it grudgingly accept it as a way to secure a decent degree of peace for enough members of society.[13] In other words, the scope of the arrangement should be as broad as possible, but, unlike overlapping consensus, reasons for accepting can be prudential.[14]

To sum up,

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[9] Williams, *In the Beginning*, 3.

[10] Horton, "Realism"; Rutherford, "Instability."

[11] Schweitzer, "Motives and Modus Vivendi."

[12] Horton, "Realism," 439.

[13] Horton, "Realism," 443. See also, Rutherford, "Instability," 8.

[14] Horton writes: "the point, as I understand it, is that for something to count as a political settlement, or in my terms 'a modus vivendi', it has to possess some quality of legitimacy for *those subject to it*. […] What is essential to a modus vivendi is that arrangements are broadly accepted by *those subjects to them*." Horton, "Realism," 439, emphasis mine. Horton also writes that modus vivendi "should at some point be the subject of actual processes of negotiation, compromise and bargaining among those who are parties to it, or at least of their representatives or spokespersons, rather than the construct of the political theorist." See Horton, "Toleration," 55.

a modus vivendi is an arrangement that is second best and open to revisions, which all relevant parties subjected to it prefer to a social occurrence (such as social disruption and violence) that they have a disposition to avoid.

So far, the literature on modus vivendi has focused on the justification and validity of modus vivendi arrangements.[15] Very little has been said about the parties who accept (and live under) a modus vivendi. Yet, it seems decisive to show that modus vivendi arrangements are not imposed on those parties who are subjected to their prescriptions. Some parties may perceive an instrument for peace and order as a foreign imposition, perhaps motivating alienation, and the resurfacing of violence.[16] Vis-à-vis the resurfacing of disorder, other parties may still retain the capacity to keep the arrangement in place, but this kind of forced domination, as Rutherford notes, will not count as a political situation at all and "there will be no modus vivendi to speak of."[17] It seems, therefore, that the discourse on the scope of modus vivendi is in fact intertwined with a more general argument for the stability of a settlement that subjected parties accept grudgingly as a modus vivendi. Such settlements should be stable enough not to fail the fundamental commitment to deliver peace and order relative to the ubiquitous violence that characterizes the absence of a modus vivendi.

The inclusion of all subjected parties should therefore be understood as instrumental to reach a sufficiently stable arrangement.[18] All subjected parties should be able to show that they grudgingly accept a settlement because knowledge of what people are thinking is functional to contain unexpected threats to peace and order. As Ulrich Willems and Manon Westphal have argued, a modus vivendi solution meets the acceptability requirement if it finds the actual acceptance of the involved parties in the reasons these parties actually have.[19] In this case, acceptable is actual acceptance because in a context of deep disagreement, it is reason-

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[15] On these issues, see Dauenhauer, "A Good Word"; Fossen, "Modus Vivendi"; "Hershowitz, "A Mere Modus Vivendi"; Horton, "Realism"; and Wendt, *Compromise*.

[16] Rutherford, "Instability," 4.

[17] *Ibid*.

[18] Literature on political settlements between powerful groups demonstrates that listening to all subjected parties can be essential to the stability of a settlement. For instance, Kelsall distinguishes between developmental, predatory and hybrid forms of settlements. Developmental settlements are inclusive and characterized by a high degree of coordination. Predatory settlements tend to be exclusive and elite-driven. In hybrid settlements, there is a significant degree of inclusion, but some elites are excluded and may be willing to use political violence. See, Kelsall, *Thinking and Working with Political Settlements*. See also, Rocha Menocal, *What is Political Voice*.

[19] Willems, "Normative Pluralität"; and Westphal, "Institutions."

able to assume that parties may be suspicious of one another; and, maintaining peace and order requires that parties know that other members of the society can support the arrangement. Therefore, the public display of subjectedness-related claims makes sure that all subjected members will see themselves represented in the specific sets of mechanisms that define a modus vivendi arrangement, have a motivation to grudgingly accept it, and, therefore, comply with its prescriptions.[20]

We have seen that modus vivendi arrangements must be recognizable comprehensive balances of claims and interests, where all subjected parties can recognize the balance as a good instrument for peace and order. If seen through these lenses, a commitment to the principle of all subjectedness entails that parties who are subject to a certain arrangement, and who hold different perspectives on an issue justifying the search for a modus vivendi, should be the same parties who count in legitimating the political arrangement. The commitment to the principle of all-subjectedness can therefore be reframed as follows:

> When all parties subjected to a modus vivendi arrangement show that they have reasons to prefer it to a social occurrence that they have a disposition to avoid, such an arrangement has more chances to function despite the persistence of deep disagreement.

This functionalist argument for inclusion requires a careful study of what a commitment to the principle of all-subjectedness entails (and does not entail) at the normative level. Such a conceptual work will help us to understand what we should (and should not) expect from the all-subjected principle, if used in the justification of a modus vivendi arrangement. To this I turn in the next section.

3. The All-Subjected Principle

In this section, I review contemporary disputes about the so-called boundary problem. Participants in this debate try to understand who should be included in the self-governing group of individuals that defines democracy in an increasingly globalized world.[21] Normative responses to the boundary problem accept an ideal of democracy as a form of self-

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[20] Rutherford, "Instability," 15. See also, Westphal, "Institutions."
[21] The debate on the boundary problem is huge. Key references are Arrhenius, "The Boundary Problem;" Erman, "The Boundary Problem"; Frazer, "Including the Unaffected"; Fung, "The Principle;" Näsström, "The Challenge."

rule.[22] Such an ideal recognizes the political agency of all members, and it prescribes that each member of the polity should act as a political equal.[23] Against this background, scholars have justified their constructions of the demos through the all-affected principle and the all-subjected principle.[24]

Proponents of the all-affected principle argue that the determination of our demoi should follow the interests affected by the outcomes of collectively binding decisions that take place in a democratic polity.[25] Many democratic theorists consider the all-affected principle too demanding, or leading to a politically unequal decision-making process, or translating global politics into a constellation of separate enclaves of different interests.[26] They have therefore defended different versions of the all-subjected principle. As Eva Erman puts it, this principle "states that all those who are subject to the laws … should have a say in their making."[27] For David Owen, the most appropriate conceptualization of the democratic demos should include any person subject to autonomy-violating power, whether coercive or not.[28] In considering the all-affected principle and the all-subjected principle, I want to set comparative analysis to one side. I shall therefore focus on the conceptual components of these principles, and especially on the conceptual components of the all-subjected principle, which, as we have seen in section 2, is at the basis of the functionalist argument for inclusion.

The all-subjected principle, I argue, has a fundamental three-element conceptual structure. These three elements are: a condition of exposure (subjectedness); what we may call the *democratic assumption*, which may take different forms, such as *democratic justification should ensure that person's will is engaged in determining the terms of subjection*, and *those whose actions are governed by democratic decisions should have a say in their making*; and the ability of subjected parties to demonstrate that a democratic decision affects them. Let me, therefore, clarify each of these elements.

Contributions to disputes about the boundary problem tend to conceive the subject as an entity exposed to the action of other entities, such as democratic institutions at the national or supranational level. Scholars disagree about the necessary degree of exposure and about what sufficient-

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[22] Näsström, "The Challenge."

[23] Biale, "A Fluid Demos," 102; Erman, "The Boundary Problem," 535-36; Goodin, "Enfranchising," 41; Näsström, "The Challenge," 116; Owen, "Constituting the Polity," 129.

[24] On the all-affected principle, see, for instance, Fung, "The Principle"; Goodin, "Enfrancising." On the all-subjtected principle, see, among others, Erman, "The Boundary Problem."

[25] Näsström, "The Challenge," 122.

[26] See Biale, "A Fluid Demos," 107; Erman, "The Boundary Problem," 537; and, Näsström, "The Challenge," 124.

[27] Erman, "The Boundary Problem," 538.

[28] Owen, "Constituting the Polity," 148.

ly exposed individuals are entitled to do, for how long, and in which ways. Yet, exposure (or exposure over time) justifies the entitlement to have a say as well as the right to require a justification from democratic institutions.[29] On such a view, it is important to demonstrate that one is subjected (could be subjected) to the exercise of a democratic authority over time, that one will be affected by the result of a collective decision-making process, and that one will continue being subjected to the democratic authority.

Therefore, subjectedness is causally and empirically prior to the exercise of political agency, but it is normatively relevant because of a commitment to the democratic ideal. As Näsström puts it, democracy means rule by the people, and it presumes a group of self-governing individuals (*democratic assumption*).[30] Therefore, a democratic polity that approximates the ideal should minimize the difference between individuals as rule-makers and individuals as rule-takers. It is not necessarily true that this requirement will be valid in other normative orders, but the normative pre-commitment to the democratic ideal supports the claim that sufficiently exposed individuals should be entitled to demand justification and to claim political rights. Autonomous individuals, as David Owen writes, are entitled to inclusion because inclusion renders the exercise of political power compatible with the promise of self-governance typical of a democratic polity.[31]

From a democratic point of view, given such a strong commitment to the ideal of citizens as rule-makers, it is not a necessary condition for subjected parties to demonstrate that they will be (have been) subjected to a collectively binding decision. In the definition of agency-ascribing mechanisms, justificatory burdens and political rights, the commitment to the ideal that all members should be self-governing makes democratic theorists act as if all members, irrespective of their degree of exposure, were subjected.[32]

The last point casts lights upon a too often neglected aspect of the all-subjected principle, especially if used without a pre-commitment to the democratic ideal. Other members of the demos should be ready to uptake communicative acts through which subjected parties make visible, consciously or unconsciously, with words or acts, the subjective consequences of collectively binding decisions. In other words, the all-subjected principle presupposes that subjected parties have the capacity to voice subject-

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[29] Erman, "The Boundary Problem," 538-39; Näsström, "The Challenge," 125; and, Owen, "Constituting the Polity," 131-32.

[30] Näsström, "The Challenge."

[31] Owen, "Constituting the Polity."

[32] Democrats can theorize as if all members, irrespective of their degree of exposure, were subjected. Yet, they may opt for more stringent requirements. For instance, Biale and Erman think that time matters. Owen argues that individuals should be truly subjected. See Biale, "A Fluid Demos"; Erman, "The Boundary Problem"; and, Owen, "Constituting the Polity."

edness-related claims and that they have the capacity to be heard for such claims. Against this backdrop, it is possible to compare two theses:

> Thesis 1: the democratic assumption makes exposure to collectively binding decisions normatively relevant, irrespective of the fact that subjectedness is communicated successfully.
> Thesis 2: if one does not commit oneself to the democratic assumption, for the all-subjected principle to be respected, individuals should have the capacity to voice subjectedness-related claims, and they should have the capacity to be heard for such claims.

Thesis 1 and thesis 2 cast new light upon the requirement that all subjected to a modus vivendi accept it. If a realist modus vivendi theorist advocates thesis 1, there is no need to show that all subjected parties can voice subjected-related claims and be heard for such claims. One may proceed as if all subjected parties had the capacity to voice and be heard for subjectedness-related claims. But thesis 1, as we have seen, is a way to express a pre-political democratic commitment. If a realist modus vivendi theorist advocates thesis 2, there is a simple, but important, question to be addressed. If one does not assume that all subjected parties have the capacity to voice subjectedness-related claims, and that subjected parties have the capacity to be heard for such claims, how can we know that a modus vivendi arrangement is consistent with the ideas that all subjected parties have the capacity to voice subjectedness-related claims, have the capacity to be heard for such claims, and, therefore, agree with the idea that parties have sufficient motivations to accept the arrangement? By shifting the perspective from modus vivendi as an arrangement to the process leading to an arrangement that parties accept as a modus vivendi, it is possible to address this question.

One word of caution: I am not claiming that the all-subjected principle is logically tied to democracy. In its standard democratic usage, though, the principle is a normative standard. That is probably the reason why democratic theorists use the all-subjected principle to compare the number of people who should have a say (had the principle been fully respected) with the number of people who have a say in our societies. Realist modus vivendi theorists do not use the all-subjected principle as a normative standard. The principle plays a descriptive function in the theory: that is, it describes the non-exclusionary character of modus vivendi arrangements. If compared to other arrangements, an arrangement accepted as a modus vivendi, as the argument goes, is the one that is acceptable to those subject to it. Such a descriptive function can be justified in many (nondemocratic) ways, but, in all such ways, it remains

important to demonstrate that parties subject to a modus vivendi accept it, and, therefore, that parties who accept a modus vivendi have demonstrated their subjectedness-related claims relative to the issue at hand.

4. The Scope of Modus Vivendi Arrangements

In the last section, I suggested that modus vivendi arrangements can be seen as the result of a process whose provisional result is the implementation of a settlement that avoids disorder. For a modus vivendi arrangement to provide parties with motivational incentives so that it can be stable enough to avoid regress in disorder and violence, the group voicing subjectedness-related claims should remain roughly the same in the cycle of input (transmission of subjectedness-related claims from outside to inside the procedure of decision-making) and output (the implementation of an arrangement that subjected parties have accepted as a means to the end of avoiding violence and social disorder). If a significant discrepancy arises, which is a relatively normal occurrence, the group of parties who once raised subjectedness-related claims, the group of parties who translated subjectedness-related claims into a modus vivendi arrangement, and the group of parties who are now subjected to such an arrangement are not necessarily one and the same, suggesting, therefore, that some subjectedness-related claims may remain unheard (or that some parties have not accepted the present arrangement as a modus vivendi).

As said before, realist modus vivendi theorists believe that the scope of their accounts corresponds with the total number of parties who would have a subjectedness-related claim about a modus vivendi arrangement concerning an issue of their concern.[33] We can explain this logic as follows: an object of public concern generates subjectedness-related claims; then, subjectedness-related claims motivate the interest in a modus vivendi arrangement; finally, the range of subjectedness-related claims defines

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[33] Horton, "John Gray," 164, 165; Horton, "Realism," 439; Horton, "Toleration," 59; Rutherford, "Instability," 3. Maybe realist modus vivendi theorists mean "being acceptable by as many subjected parties as possible." In a recent article, Horton has argued that his account of modus vivendi is compatible with as many ethical theories as possible, but this does not make it "compatible with every possible ethical theory." This limitation, though, refers to the meta-ethical foundation of the theory (moral skepticism, value subjectivism, value pluralism). On this issue, see Horton, "Toleration," 51. Moreover, other accounts explicitly states that one way to verify "whether a political arrangement is acceptable to those subject to its power is to see how much dissenting behavior it elicits." Rutherford, "Instability," 15. This confirms the idea that a modus vivendi arrangement should be acceptable to all those subject to it, and that dissenting behaviors demonstrate that there is an undesirable discrepancy between the scope the arrangement should have and the scope the arrangement has in practice.

the scope of the arrangement. This logic operates in a context where disagreement is deep, factually true and a distinctive feature of politics. According to realist modus vivendi theorists, such a deep disagreement requires a pragmatic approach that can mobilize all kinds of resources to obtain a workable and acceptable political settlement. Given the complexity of normative commitments in our societies, Horton writes, it is important that all parties subjected to a modus vivendi give something and receive something in the construction of it.[34] If all parties who voice subjectedness-related claims in input correspond with the parties who experience the benefits and burdens of modus vivendi arrangements in output (that is, *all parties who would have a subjectedness-related claim*), a modus vivendi arrangement satisfies the requisite that all parties subject to a modus vivendi accept it**.** Theorists, therefore, would have sufficient justification to presuppose that all parties subjected to a modus vivendi arrangement can accept it. They would have enough of a justification to make their claim that a modus vivendi arrangement can ensure stability and avoid disorder.

Yet, the presupposition that all parties subjected to a modus vivendi arrangement can accept it is not always justified in non-ideal scenarios. And the consequences for modus vivendi theory are nontrivial. Should obstacles arise, so that some subjectedness-related claims are not taken into account, collectively binding arrangements would not necessarily qualify as modus vivendi arrangements from the perspective of all parties subject to them. Taken together, input and output make easier the identification of three simple scenarios (optimal, standard, and problematic).

In the optimal scenario, all parties, who voice subjectedness-related claims (input), find and accept a solution, and live upon the outcome (output). In the realist literature on modus vivendi, such a perfect correspondence is almost unattainable. It can be attained only in small-scale and highly contextualized political disagreements, whose consequences affect a small community of individuals. In such small-scale fora, the political process can generate solutions that reflect the plurality of subjectedness-related claims on disputed issues.[35] In the standard scenario, parties who voice subjectedness-related claims are less than those who participate in the political disagreement (input). But they are the same number as those who live upon the outcome (output). A constitutional settlement can be a good example. In this case, representatives agree that "no one should be subject to cruel and unusual punishment," and, then, parties subjected

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[34] Horton, "Rawls," 20-21.
[35] Westphal, "Institutions," 263.

to it may appreciate the value of such settlement.[36] Political settlements resulting from inter-ethnic conflicts can be another good example. In this case, representatives of different groups find an arrangement that ensures a relatively stable peace and affects the entire population.

In the problematic scenario, parties who voice subjectedness-related claims and find a solution to the political disagreement (input) are less than the number of parties that is necessary to ground the presupposition that enough parties will grudgingly accept and live upon the outcome (output). In this case, modus vivendi arrangements fail to respect the requirement that all subjected parties to a modus vivendi accept it.

There are two versions of the problematic scenario. In the first version, subjected parties voice their subjectedness-related claims in output. For instance, protests by previously invisible groups may sometimes arise, or otherwise-functional customary rules may prove to be a source of interethnic conflicts across younger generations. According to proponents of modus vivendi, this is a normal occurrence.[37] Yet, for otherwise excluded parties to speak up in output, they should be given the opportunity to express their subjectedness-related claims in public, and to be heard for such claims. If some parties were unable to have an impact on the political disagreement in input, a proponent of modus vivendi should explain the new conditions that enable parties to voice their claims in output. In the second version, excluded parties are not in the position to voice subjectedness-related claims and to be heard for such claims. In this case, one seems ill-advised in presupposing that enough people, or, more charitably, enough people among those who can cause disorder and unrest, will grudgingly accept an arrangement as a modus vivendi. We have many examples of people who have fought and struggle for the recognition as relevant agents in their communities, people whose voices have been neglected by an ideological system that depicts some human beings as subhuman or disregards someone's specific identity. Individuals and groups have fought battles in order to be in the position to cause socially relevant political disagreements, that is, to voice their subjectedness-related claims and to be taken seriously, as a political problem or as positive contribution, by other members of the society. As Charles Mills has suggested, this lack of reception may be the result of epistemic deafness.[38] It may derive, as Candice Delmas puts it, from a background civility that makes society less likely to perceive voices that can disrupt the status quo.[39]

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[36] Wall, "Liberal Moralism," 64.
[37] Rutherford, "Instability," 14.
[38] Mills, *The Racial Contract*.
[39] Delmas, *A Duty to Resist*.

The two problematic scenarios confirm that the requirement that all subject to a modus vivendi accept it rests upon a presumption of capacity, the capacity to voice subjectedness-related claims and the capacity to be heard for such claims. This presumption may be true. This presumption may be false. In some real-word cases, we do not know. Yet, if my analysis in this section is sound, there are reasons for skepticism. Even if modus vivendi, with Horton's own words, contains "the idea that the resulting political accommodation or settlement is in some sense 'acceptable' to the parties to it,"[40] the potential neglect of subjectedness-related claims may impact the degree of cooperation that seems necessary to maintain the established political arrangement over time. It may also impact the plausibility of the basic claim that from all sides, a modus vivendi arrangement can be understood as an acceptable way to contain the proliferation of violence and social disorder.

5. *Stay With It, Stop Mentioning It,* **and** *Find a Balance*

One of the central claims of realist modus vivendi theorists is that all parties subject to a modus vivendi arrangement grudgingly accept it. In this paper, I have argued that

1. Realist advocates of modus vivendi arrangements argue that the inclusion of all subjectedness-related claims is instrumental to stability and order (the functionalist argument for inclusion).
2. Realist advocates of modus vivendi arrangements reject as "pre-political" a series of normative commitments that would justify the idea of operating as if all subjected individuals could voice their subjectedness-related claims.
3. Realist versions of the all-subjected principle as a necessary element in a functioning modus vivendi arrangement suppose that subjected partied give some voice to their subjection.
4. In contemporary democratic and non-democratic politics, it is very difficult to justify the presupposition that all those parties who are subjected to a modus vivendi arrangement have the capacity to voice their subjection and to be heard for such a claim.
5. Since some parties who are subjected to the arrangement may lack the capacity to voice subjectedness-related claims, and be heard for such claims, it is very difficult to presuppose that the requirement that all subject to a modus vivendi accept it will hold.
6. Modus vivendi arrangements may fail to satisfy a requisite of the functionalist argument for inclusion and may therefore not be stable enough, even under the minimal requirements of realist modus vivendi theory.

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[40] Horton, "John Gray," 164.

My argument, I think, may motivate a few readjustments of realist modus vivendi theory. To conclude, I identify three options: that is, *stay with it*, *stop mentioning it*, and *find a balance*.

Stay with it

Realists may decide to defend a universal entitlement to participate. In this way, they would shift from a functionalist argument for inclusion to a normatively grounded argument for inclusion. In reality, a defense of the universal entitlement to participate requires more than a few incremental steps. For instance, such an argument would require at least a minimal normative commitment in favor of respect for the capacity and agency of individuals that, like many other forms of normative theorizing, realist modus vivendi theorists tend to reject.[41]

Realists can also make their commitment to the democratic assumption of the all-subjected principle more explicit. In this way, they would reject thesis 2 and accept thesis 1. This is plausible. After all, there is no realist modus vivendi theorist who works outside the perimeter of a well-functioning democratic polity.[42] In this case, proponents of modus vivendi arrangements need a pre-political distinction between democratic and non-democratic modus vivendi arrangements. Pure domination, for instance, following Williams, would not count as a political situation.[43] Given their skepticism with respect to any pre-political normativism, there are reasons to believe that realists would consider such a democratic modus vivendi arrangement as just another kind of moralized settlement.

Moreover, and this seems particularly true at the high level of abstraction of modus vivendi realist theory, conceptualizing the democratic/non-democratic demarcation in normative terms may obfuscate the difference between modus vivendi arrangements and other forms of settlements that reflect the same fundamental commitment to the democratic assumption. Conceptual clarity is important to understand what (and why) modus vivendi arrangements can (or cannot) add to relatively stable liberal democratic societies like ours. In our societies, citizens disagree on many issues but may find the pursuit and maintenance of peace and order too exaggerated a reason to accept collectively binding decisions on everyday political problems, especially when the maintenance of peace and order may oper-

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[41] Jones, "The Political Theory."
[42] Horton, "Realism," 434; Westphal, "Institutions," 255.
[43] Rutherford, "Instability," 4.

ate as a toxic and silencing force. Otherwise, realist modus vivendi theorists may consider democracy as a good that is instrumental to stability in so far as democratic governance enables parties to find more stable modus vivendi arrangements. In this case, the ability to participate in democratic governance is a precondition that must be realized before anything like a modus vivendi arrangement can exist. Seen through these lenses, in already stable democratic societies, modus vivendi arrangements are all those second-best arrangements that ensure a stable peace and order. My worry is that this route says everything and nothing. On the one hand, several truly inclusive arrangements could be described as small contributions to the peace and order of stable democracies. On the other hand, very few arrangements could be described as significant contributions to the peace and order of stable democracies.

Stop mentioning it

Realist modus vivendi theory could do without the all-subjected principle. Earlier in this article, I have argued that realist advocates of modus vivendi advance a functionalist argument for inclusion. Vis-à-vis the fact of deep disagreement, the inclusion of all subjectedness-related claims connects with the search for settlements that enough parties can grudgingly accept as better options than social disorder. Against this background, a realist modus vivendi theorist may accept that no decision-making process can involve all the people it subjects, and, therefore, continue stressing the idea that instability is to be understood as an ingredient of politics in pluralistic democracies.[44]

Rutherford writes that in accepting instability as an inevitable feature of politics, a political theory of modus vivendi "distinguishes itself from liberal theory and provides the necessary materials to theorise a response to the possibility of an unjust modus vivendi."[45] Horton also says that instability is "at the heart of politics."[46] A defense of instability still requires realist modus vivendi theorists to admit that at least a minimal degree of ongoing stability is necessary for an arrangement to avoid violence and social disorder. Under this minimal reading, a modus vivendi is an arrangement that here-and-now, enough people perceive as a way to avoid violence and social disorder. Within this framework, a comparative merit of a modus vivendi arrangement would be the temporary and wide-

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[44] *Ibid.*, 19.
[45] Rutherford, "Instability," 19.
[46] Horton, "Realism," 440-41.

spread perception of stability it is able to guarantee in a context marked by pluralism and deep disagreement.

This adjustment is coherent with the internal logic of modus vivendi theory, but it raises some concerns about the relationship between modus vivendi arrangements and the fact of pluralism. In this way, realist modus vivendi theorists would assume that pluralism and disagreement will not be very deep on an important matter, such as the perception of the ongoing stability of a society. Yet, acknowledging, as proponents of modus vivendi do, the fact of deep disagreement implies that subjected members can disagree on all matters or at least on several important political issues, including the alleged instability of a democratic regime. Moreover, the perception of stability should be translated into indicators that can be evaluated and monitored. When defending modus vivendi arrangements through an independent standard, one should in fact consider that the perception of stability can inform a powerful rhetoric to dismiss proposals for amendments, that a shared interest in keeping a certain arrangement may create an inter-group identity among the most powerful ones, that the most powerful ones can make problems of instability seem hopeless and overwhelming.

Find a balance

I have argued that it is difficult to be truly realist in spirit and, at the same time, respect the all-subjected principle. It is difficult, but it is not impossible. Yet, there might be ways to adapt the principle to the realism of modus vivendi political theory.

By way of conclusion, let me point at one of those avenues. This research avenue draws upon the work of scholars with a realist sensitivity, such as Bernard Williams and Robert Jubb.[47] In debates about responsibility for state injustices, Jubb develops a conception of participation in collective action that can help to reconceptualize the all-subjected principle in a realist vein.[48] According to Jubb's account of participation, what matters is that an agent plays a role in the events that culminate in a collective action.[49] On such a view, participation in collective action does not require consenting or making a causal difference.[50] Suffice is to have a sense according to which the acts of the collective

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[47] Williams, "Consequentialism." See also, Jubb, "Participation."
[48] Jubb, "Participation," 68-71.
[49] *Ibid.*, 68-69.
[50] *Ibid.*, 69-71.

can be attributed to its members.[51] Therefore, having the intention to facilitate the goals of a collective and having the intention to observe the constraints set by the project leading to those goals can count as forms of participation in collective action.[52]

Some modus vivendi theorists have already explored forms of joint commitment and their consequences for unity of social collectives in disagreement.[53] They may apply the same logic to rethink their usage of the all-subjected principle. On such a view, what matters is not the presumption that a party can voice subjectedness-related claims. What matters is the idea that a party has both the intention to accommodate the project of finding a relatively stable settlement and the intention to continue living with some of the constraints set by this project. Therefore, a modus vivendi arrangement would be an arrangement that all those parties with both the intention to accommodate the project of finding a relatively stable settlement and the intention to continue living with some of the constraints set by this project grudgingly accept as better than social disorder and other ways to ensure peace here-and-now.

The assumption that most parties have such intentions does not require any pre-political commitment. Yet, in readjusting the theory in this way, realist modus vivendi theorists should keep in mind the fact that the implementation of an arrangement can be attributed to some agents does not entail that those same agents will comply with its prescriptions. Intersubjective attribution of joint involvement in collective projects may support the claim that other members of the collective have good grounds to develop a negative reactive attitude against defectors.[54] Therefore, even under this revised version, one can just hope that an inclusive modus vivendi will be stable enough. One can however presume that as long as they continue having the relevant intentions, parties will be motivated to comply with a modus vivendi arrangement or to revise it in a way that avoids regress to violence and social disorder.[55]

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[51] *Ibid.*, 69-71.

[52] *Ibid.*, 68-69.

[53] De Vecchi and Sala, "Compliance." See also, Sala, "Modus Vivendi."

[54] Jubb, "Participation," 71.

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