**Instability and modus vivendi**

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**Abstract**

Political theories of modus vivendi start from an assumption of deep and permanent disagreement about conceptions of the good and conceptions of justice. In response to this disagreement, modus vivendi provides an account of legitimacy as a result of a minimally restricted bargaining process. This account of legitimacy faces three major criticisms. Firstly, that the political arrangement will be unstable, secondly that a modus vivendi will institutionalise injustice, and thirdly, that it will institutionalise the status quo. I concede the objection that a modus vivendi is unstable in order to address the more serious objections that it institutionalises injustice or the status quo. Through its acceptance of instability, modus vivendi theory is no more likely than liberal theory to institutionalise injustice. Far from the conservatism it is often associated with, modus vivendi permits radical political doctrines and radical political action in a way that is precluded by mainstream liberal theory.

**Introduction**

There is, it seems to us,

At best, only a limited value

In the knowledge derived from experience.

The knowledge imposes a pattern, and falsifies,

For the pattern is new in every moment

And every moment is a new and shocking

Valuation of all we have been. – T.S. Eliot, East Coker

Despite the efforts of public reason liberals, endemic pluralism about value continues to undermine the aspiration to establish liberalism as a doctrine that stands above the political fray.[1](https://www.tandfonline.com/doi/full/10.1080/13698230.2018.1525119) I do not intend to rehearse these arguments here as my aim is to defend a position that moves beyond liberal dismissals of modus vivendi. One approach that does recognise the depth and intractability of value disagreement is modus vivendi. A political theory of modus vivendi starts from an assumption of deep and permanent disagreement about both conceptions of the good and conceptions of justice. This disagreement, on most accounts of modus vivendi, is the result of moral pluralism (Gray 2000; McCabe 2010).[2](https://www.tandfonline.com/doi/full/10.1080/13698230.2018.1525119) Modus vivendi theory shares the core liberal belief that there can be no consensus on conceptions of the good life, but goes further by also dismissing the possibility that there could be a consensus on political principles. By accepting deep pluralism as an inevitable feature of modern societies, modus vivendi theory rejects Rawls’s idea of an overlapping consensus through which citizens with conflicting conceptions of the good can nevertheless reach agreement on liberal political principles (Horton, 2003). On this view, legitimacy emanates from those subject to power and not from the fulfilment of some external standard. In order to find a way of living together in peace political theorists must abandon the search for principles capable of producing a moral consensus. Instead, a political theory of modus vivendi advocates for a political arrangement, founded on compromise, that lays the foundations of peace from which other public and private goods can be built.

I make three main claims here. Firstly, I argue that a modus vivendi is, as its critics have claimed, unstable. Secondly, that this instability, far from being fatal to the project of modus vivendi, is in fact part of its appeal. Rather than confronting liberalism on its own terms, a theory of modus vivendi should distinguish itself through its willingness to accept instability as an inevitable feature of politics. When it is reinterpreted in this way, modus vivendi can offer at least some response to the criticism that it institutionalises injustice. Thirdly, I argue that a theory of modus vivendi is not a counsel of despair and that it permits deviations from the status quo in a way that liberal theory does not. I begin by sketching a conception of modus vivendi, before briefly outlining the three objections, and then addressing each objection in turn.

**A sketch of modus vivendi theory**

Before defending modus vivendi I should first briefly outline the conception of modus vivendi that I aim to defend. For my points to have a broader relevance to modus vivendi theory I do not develop a thick conception, as to do so would draw the focus away from the wider arguments I want to make. Although this is the conception of modus vivendi that I endorse, I think that the arguments made here apply to various (though perhaps not all) conceptions of modus vivendi. It suffices, then, to outline the key features of a modus vivendi.

Firstly, modus vivendi can be grounded in a theory of value pluralism, as John Gray and David McCabe choose to, but need not be grounded in this way. It can also be grounded in sociological pluralism as a contingent feature of modern societies, or in epistemic pluralism, a type of moral pluralism distinct from value pluralism that has recently been advocated by Robert Talisse and bears similarities to Rawls’s fact of reasonable pluralism (Talisse, 2012). Legitimacy, for modus vivendi theorists, can be achieved through a ‘virtually unrestricted bargaining process between the competing individuals and groups that make up the society’ (Rossi, 2010). Modus vivendi does not mean that ‘anything goes’ when trying to reach a political arrangement. In other words, it is not a *fully* unrestricted bargaining process, but the restrictions are minimal. The only limits on a modus vivendi are that it is:

(i) acceptable (broadly construed to include grudging acceptance) to those subject to it and ‘thus not a situation that is maintained *entirely* through coercion’ (*the acceptance condition)*

(ii) Capable of securing peace, understood as the relative absence of violence (*the peace condition*). (Horton, 2009).

Both of these conditions are problematic. Firstly, how do we define ‘acceptable’ in such a way that it is both philosophically coherent and practically useful, especially considering the depth of pluralism that modus vivendi intends to respond to? Secondly, how do we define peace and how do we define the ‘relative absence of violence’? Although I cannot fully defend these two conditions here, I need to say more so that the persuasiveness of my defence of modus vivendi can be assessed. Firstly, it is important to note that the two conditions rely on one another. The reason that enough people will find a political arrangement acceptable is that it secures a tolerable level of peace. This will depend on the circumstances of the modus vivendi, which is why I describe peace as ‘the relative absence of violence’. The degree of peace necessary to secure acceptance will always be relative to the absence of peace that the modus vivendi seeks to resolve. Without the possibility of a more ambitious moral consensus, peace offers a realisable and widely desired goal that might elicit acceptance. This relationship between the two conditions also works in the opposite direction. The reason that a modus vivendi arrangement will be capable of securing peace is that it is broadly acceptable to those subject to it. How these inter-dependent claims are met will depend on the political circumstances, and neither condition has priority as they can only be met in conjunction with one another. Secondly, both conditions are understood as minimum threshold conditions. Peace is not to be understood in terms of the binary of peace and war, but instead should be understood as the minimum degree of peace necessary to secure acceptance. Similarly, acceptance is not equivalent to unanimous consent, but is instead the necessary degree of acceptance to secure peace. There will be more or less peace and more or less acceptance depending on the political situation. The question is whether these two conditions can be satisfied to such an extent that politics can get up and running.

These conditions reflect the political realist distinction between politics and coercion. ‘The crux’, of Bernard Williams’s view according to Edward Hall, ‘is that political rule claims authority while brute force is mere coercion’ (Hall, 2015). Williams expresses this idea in the form of the ‘Basic Legitimation Demand’, which requires that the state gives an acceptable answer to the ‘first political question’ of ‘order, protection, safety, trust’ (Williams, 2005). According to Paul Sagar, the BLD ‘is what must exist if there is to be such a thing as politics: the requirement that something be said to those subject to organised violence. If nothing is said, we are in a situation of unmediated coercion, of warfare’. The two conditions try to establish that a modus vivendi is something other than ‘unmediated coercion’ and doing so is necessary ‘for there to be such a thing as politics at all’ (Sagar, 2014, p. 371). Simply put, a modus vivendi that lacks a sufficient degree of acceptance will either not be reached in the first place or will otherwise quickly disintegrate. A political arrangement that does not fulfil the acceptance condition will be recognisable because it will be clear that it has not fulfilled the peace condition. If, for example, half of the parties in a modus vivendi do not find the arrangement acceptable, the violence that characterises the absence of a modus vivendi will resurface and the modus vivendi will be untenable because it fails to meet the peace condition. The state may still have the capacity to successfully dominate those subject to its power, but such domination, as Williams emphasises, will not count as a political situation at all and there will be no modus vivendi to speak of (Williams, 2005). Nevertheless, I might grudgingly accept an authoritarian political arrangement which denies me the right to vote in order to end a civil war in which my life was at risk. I do not accept the arrangement because it is the one I would choose given a full range of options, but I accept it because it is the only offer on the table which might reduce the likelihood of my death. That is not to say, however, that I would *necessarily* accept any arrangement other than war. Because a modus vivendi depends on the first-person perspectives of parties in a modus vivendi, some of the relevant parties might, on balance, prefer continued civil war to acceptance of peaceful authoritarianism. If enough parties prefer war then the modus vivendi will not hold.

On this conception of a modus vivendi, there is no ‘moral minimum’ of the sort advocated by McCabe or Gray. Theories of modus vivendi that adopt a moral minimum try to blunt the criticism that a modus vivendi sanctions injustice by introducing an allegedly objective and minimal set of requirements that the agreement must meet in order to be deemed legitimate. Such palliative measures, however, stand in contradiction to the deep pluralism that motivates the turn to a theory of modus vivendi. A modus vivendi is not, however, purely about self or group interest. As Horton writes, ‘A modus vivendi emerges through the deployment of whatever moral, intellectual, cultural, rhetorical, emotional, motivational and other resources that the parties can mobilise in the political process.’ This includes ‘whatever moral values and ethical commitments the parties bring to a conflict that can be constructively utilised in the forging of a workable political settlement’ (Horton, 2009). This conception of a modus vivendi differs from Rawls’s more Hobbesian characterisation of a battle of interests, but is also closer to the reality of political conflict. Political disputes frequently invoke a wide array of justifications, spanning from ethical reasons and local political values to practical considerations and empirical assertions. Where a modus vivendi differs from political liberalism is that prudence and self-interest count as reasons for political settlement, but their inclusion is not to the exclusion of moral reasons. It does follow from this, however, that a modus vivendi is less purely moral than liberal theory requires. These two conditions are not exacting. Many, and perhaps most, of the states in the world currently meet these two conditions and are therefore legitimate by the standards of modus vivendi. This is to be anticipated because the willingness to reach any political arrangement rather than endure the absence of an arrangement is what gives a theory of modus vivendi its motivational force. People will find a suboptimal compromise arrangement acceptable in the interest of securing peace. A theory of modus vivendi describes both a way of thinking about political institutions and those institutions themselves. It supplies a justification of political authority and a way of thinking about how authority is created.

**Three objections to a modus vivendi**

Three major objections to modus vivendi theory are that it is unstable, that it institutionalises injustice, and that it institutionalises the *status quo* (Horton, 2007). The instability objection was most famously made by Rawls in *Political Liberalism*. Rawls claimed that a modus vivendi is unstable because it depends on a precarious balance of powers (Rawls,  1993). Changes to this balance will destabilise the arrangement and, as a result, destabilise the peace that the modus vivendi intends to achieve. On this account, modus vivendi fails on its own terms to secure its limited ambitions of acceptance and peace.

In supporting a barely restricted political bargaining process, a political theory of modus vivendi exposes itself to the criticism that it institutionalises injustice. On this view, modus vivendi is simply too normatively unattractive because its authorisation of power is also an authorisation of injustice. This objection can take two forms. Firstly, it might be claimed that a modus vivendi will allow the politically strong or the majority group to exploit and coerce the politically weak or minority group into an unjust agreement. Secondly, it might be argued that in a society where the political beliefs actually held by its citizens are unjust or illiberal, then an unjust and illiberal agreement will result. This might include, for example, a widespread rejection of free speech, a rejection of principles of non-discrimination, or support for the death penalty. This critique is also shared by some realist theorists, who are sympathetic to the pluralist grounding of modus vivendi, but ultimately reject it as an alternative to mainstream liberal thought. As Matt Sleat, one such realist critic, puts it, ‘Without any moral criteria for what counts as a legitimate form of political order, modus vivendi might legitimise profoundly unjust societies’ (Sleat, 2013). This second critique can be spelt out in two slightly different ways. The first is to suggest that in its pursuit of practical legitimacy modus vivendi forgets the normative character of political theory, leading it to normatively undesirable (or at least suboptimal) prescriptions. The second is to argue that modus vivendi theorists misunderstand the nature of political legitimacy by drawing too hard a line between legitimacy and justice. On this second expansion, critics suggest that the legitimacy of political institutions, expressed by the authority of the state, are in fact dependent on the capacity and willingness of the state to pursue and enforce a particular conception of justice.

To both versions of this critique, modus vivendi theorists will respond: normatively undesirable for whom and on whose conception of justice? This response emanates from the justification for a modus vivendi relying on some account of pluralism. The difficulty of answering those questions and, more ambitiously, of reaching a political consensus on a conception of justice means that no single conception of justice can achieve a sufficient degree of acceptability to achieve legitimacy. For modus vivendi theorists, the philosophical pursuit of such a conception is futile and the claimed consensus illusory. But this response is unlikely to persuade those who are not already sympathetic to modus vivendi theory. Even if we think that this objection misses the point of resorting to a modus vivendi in the first place, there is nevertheless a genuine worry that modus vivendi is simply too normatively unattractive to draw widespread support.

The third objection that I address is that a modus vivendi institutionalises the *status quo*. Gramsci claimed that the ‘challenge of modernity is to live without illusions, and without becoming disillusioned’ (Gramsci, 1994). Modus vivendi excels in casting off illusions, in particular the illusion of a consensus on value, but often fails to mitigate disillusionment. What this paper offers are some good reasons not to be disillusioned once our illusions of moral consensus have been shed. A political theory of modus vivendi is not a counsel of despair. The *status quo* objection speaks to the worry that theories such as modus vivendi, which form part of the political realist approach, also tend towards conservatism or pessimism or quietism. As Lorna Finlayson has noted, while realism is generally taken to be methodological position it is ‘striking that many commentators perceive a special tension or difficulty in being *both* “realistic” (or “relevant”) *and* politically radical, that is, strongly critical of the existing state of things’. More concisely, many theorists see an ‘affinity between “realism” and a kind of conservatism’ (Finlayson, 2015). Duncan Bell comments that ‘[r]ealism is often seen as a form of conservatism … [b]ut it does not follow that all realists are conservative’ (Bell, 2009). Janosch Prinz notes that Matt Sleat’s liberal realism could ‘be viewed as having a tendency to contribute to the affirmation of the status quo … because its foci on the ineradicability of political conflict and disagreement and order and stability could be read as constraints on the possibilities of political change’ (Prinz, 2015, p. 48) Alison McQueen makes the similar point that ‘their theoretical approach affirms the status quo in a way that … closes off the possibility of principled political reform’ (McQueen, 2016, p. 2). In responding to the *status quo* objection, I attempt to break the apparent affinity between realism and conservatism by revealing the distinctive appeal of modus vivendi theory.

I distinguish between the institutionalisation of justice objection and the *status quo* objection because the *status quo* is not inherently undesirable in the same way as injustice. Nevertheless, there is something troubling about a normative theory that seems to grant legitimacy to political arrangements simply because they already exist. This concern reflects the desire to reconcile two seemingly disparate ideas. Firstly, the idea that liberal theory is inadequate from the perspective of legitimacy once the depth of moral pluralism in modern societies is recognised. This is the common motivation behind modus vivendi theorising. The second idea, common in much liberal theory, but peripheral to modus vivendi theory, is that the world is in multifarious ways deeply unjust. My aim is to show that one can coherently hold both views and that modus vivendi can supply at least some resources for addressing persistent and widespread injustice. This is not, however, the more ambitious claim that modus vivendi is especially well equipped to prevent institutionalised injustice, but rather the more modest claim that it is not especially prone to institutionalising injustice. I now turn to the first of my main arguments: the claim that a modus vivendi is unstable.

**The instability objection**

Responding to Rawls’s characterisation of modus vivendi might seem to be a step in the wrong direction if the aim is to advance modus vivendi as a compelling alternative and to decouple the idea from its negative and critical connotations. There is, however, I think a good reason for returning to Rawls’s brief and rather uncharitable reading of modus vivendi beyond the fact that his account is the one that most theorists will be familiar with. The reason for this is that the problems with a modus vivendi as identified by Rawls can be turned on their head to show a positive side to modus vivendi theorising that increases its normative appeal. To understand why Rawls thinks that modus vivendi is unstable we first need to briefly look at the idea of stability in *Political Liberalism*.

What Rawls hopes to achieve in *Political Liberalism* is ‘stability for the right reasons’, which ultimately takes the form of his overlapping consensus, where each citizen takes ‘modules’ from their own comprehensive doctrine that lend support to the political conception (Rawls, 1993). This consensus on a liberal political conception will be stable for the ‘right reasons’ insofar as it is endorsed by reasonable citizens for moral reasons drawn from their own comprehensive doctrines. The wrong reasons, according to Rawls, would be in pursuit of a balance of power for reasons of self-interest or at least for non-moral reasons, for example, prudential reasons. Grudgingly accepting some political arrangement for non-moral reasons or for lack of a preferable alternative would not provide a sufficiently stable foundation for liberal political institutions, or so Rawls argues. An agreement like that, based on the balance of power, would amount to ‘stability for the wrong reasons’: the brush that Rawls tarnishes modus vivendi with. He also described modus vivendi as ‘political in the wrong way’ – so modus vivendi on Rawls’s view is doubly misguided – it is stable for the wrong reasons and it is political in the wrong way. Rather confusingly he also claims that modus vivendi would be unstable because it rests on a contingent balance of power that is liable to change. Changes to the political circumstances would ‘upset the fortunate convergence of interests’ (Rawls,  1993, p. 171). Stability, on this view, can only be secured by a moral agreement on principles, a claim that relies on a particular moral psychology of motivation and compliance that I will not discuss here. Rawls identifies two worries about a modus vivendi that seem to point in different directions. On his critique, a modus vivendi might be stable, but only through excessive coercion. More likely, however, a modus vivendi will be unstable because the agreement of citizens depends on their interests being maximised. If circumstances change and certain groups see the opportunity to gain from withdrawing their support, then the modus vivendi will collapse.

There are two sorts of claims here. The first is an empirical claim about the stability of a modus vivendi in contrast with the stability of his own political liberalism. This is a strange sort of comparison for a political theorist to make because so little support can be adduced either way. What evidence could be marshalled in favour or against the hypothetical success of two highly abstract theories? Were Rawls to point to history as his evidence then defenders of modus vivendi would quickly respond that some of the most enduring political institutions bear a greater resemblance to a modus vivendi than they do to the kind of moral constitutional consensus that he advocates. Historical interpretations of this sort are unlikely to illuminate the conceptual debate. The second sort of claim is normative. This is the idea that political institutions are only legitimate if citizens have a moral reason to accept the power that the state exercises over them. Both lead to the same conclusion: a modus vivendi will always be unstable when stability is understood to include principles as well as institutions.

It might be thought that modus vivendi could pursue a different kind of stability from the stability sought by Rawls’s political liberalism. For Rawls, stability means a set of institutions that exist for a significant period of time, supported by all reasonable people for moral reasons, and which support at least some set of principles.[3](https://www.tandfonline.com/doi/full/10.1080/13698230.2018.1525119) Stability for Rawls cannot merely be a set of stable procedures, but must also involve some stable principles too. A theory of modus vivendi need not necessarily endorse that conception of stability, however, and instead conceive of stability as the securing of peace for a significant period of time, but without the addition of any principles. On this conception, a state can maintain stability whilst also altering the principles that it supports. The British state has been stable, in the sense that it maintains peace (in the vaguest terms), for perhaps hundreds of years. Stability has been maintained despite tremendous changes to the state’s guiding principles. The dissolution of the Empire, extensions to suffrage, the development of the welfare state, to name only a few examples, all dramatically changed the nature, purpose, and scope of state power and the principles it supported. On this account of stability, principles need not be stable over time in order for the institutions themselves to be stable. This idea of stability through evolution reflects the idea inherent to certain versions of democratic theory that citizens are committed to the democratic institutions themselves rather than to the democratic outcomes. Although I think that this conception of stability has some appeal, it also stretches it beyond its breaking point. To return to the example, if we took a snapshot of the principles of the British state in 1790 and compared them to a snapshot of the principles of the same state in 1990 there would be little continuity beyond private property rights and some loosely related commitments to the rule of law and Parliament. To consider these two states as a stable entity would be misleading. This is not akin to the Ship of Theseus, but closer instead to borrowing a plank and a board here or there to construct a completely different ship. That a state has not endured civil war or social collapse does not mean that it is stable, as the evolutionary conception of stability would lead us to believe. Dramatic alterations to fundamental principles should also be counted as instances of instability. This then leads us back to the Rawlsian conception of stability of both institutions *and* principles over time.

John Horton has offered a brief response to the normative form of the stability objection. Horton argues that:

(i) There are no such moral reasons on which all citizens, or even a significant majority of citizens, could realistically be expected to endorse, in part because of Rawls’s ‘contentious conception’ of the reasonable

(ii) Rawls’s proposed solution to the problem of legitimacy does not resolve ‘how to deal with those who do not accept Rawls’s preferred principles’

(iii) The values that modus vivendi appeals to (i.e. peace and security) are more likely to attain consistent support (and thus stability) than Rawls’s own principles because these principles are ‘more minimal and less exclusive’. (Horton,  2007, pp. 50–51).

Although I am sympathetic to the first two responses, they do not address the criticism of modus vivendi directly. Pointing to the weaknesses of political liberalism is justified, but it is not sufficient to point to the failings of another theory if the aim is to justify one’s own theory. That political liberalism fails does not mean that modus vivendi succeeds. The third point addresses the objection directly but is, I think, unpersuasive for two reasons. The first is that, as Sleat has noted, peace and security can be trumped by other values from within certain belief systems. Those ways of life that ‘place high worth upon goods such as honour, glory, militaristic duty, or the salvation of the soul, may actually require conflict, and in some instances, war and violence’ (Sleat, 2013, p. 103). In addition, there are those ways of life that place ‘high value on peace yet which see conflict and violence with particular groups, such as “infidels”, the bourgeoisie, the oppressors, or a certain religious or ethnic minority, as positively encouraged’. These ways of life are frequently dismissed as irrelevant to liberal legitimacy by liberal theorists or otherwise ignored altogether, despite being far more widespread than most theorists are willing to recognise. Modus vivendi theorists may have a response to this, which is to admit that there will inevitably be groups of people who will not, under any circumstances, accept a modus vivendi, regardless of how favourable it is to them. The solution to the problem that these groups pose is not an attractive one, but it is a necessary one: they must be coerced in the name of peace. This solution, however, is also the one adopted by Rawls when he writes that that those doctrines that are ‘not only irrational but mad and aggressive’ must, ‘like war and disease’, be contained ‘so that they do not overturn political justice’ (Rawls, 1993, p. 64). If we substitute ‘the modus vivendi’ for ‘political justice’ we arrive at modus vivendi’s stance towards these intractable groups. In this sense, then, modus vivendi theory replicates one of the more troubling aspects of political liberalism.[4](https://www.tandfonline.com/doi/full/10.1080/13698230.2018.1525119) I should note that Horton’s argument does not suggest that a modus vivendi will *certainly* attain acceptance, only that it is *more likely to* given its minimal moral commitments. This claim then reverts back to the empirical claim about stability, for which evidence either way is scant. The third response begins to resemble the first two defences, in that it merely shows the weakness of political liberalism without demonstrating the superiority of modus vivendi with regard to stability.

This argument might appear to depend on the particular conception of modus vivendi that I outlined above. If we conceptualise a modus vivendi in a different way we might be able to sidestep the stability objection. Bernard Dauenhauer, amongst others, distinguishes between two different understandings of modus vivendi. Rawls, according to Dauenhauer, understands modus vivendi to be ‘a working arrangement between contending parties, *pending the settlement of matters in debate*’ (Dauenhauer, 2000, p. 219). On this conception, ‘those who accept such an arrangement would constantly be looking for a settlement on matters on *other* terms than those involved in the working agreement’. As a result, ‘their consent to the modus vivendi would be inherently unstable’. This conception of modus vivendi aligns closely with Hobbes’s view of a modus vivendi in which peace is secured only in a precarious and provisional way that must be constantly reaffirmed through state power. Dauenhauer contrasts this understanding with a second, less critical conception of modus vivendi as ‘an arrangement that effects a workable compromise on issues in dispute without permanently settling them’. On this definition, there is no suggestion that a modus vivendi is ‘only temporary, pending something permanent’. The second conception seems to suggest that modus vivendi can be just as stable as a conventional liberal theory. Dauenhauer supports this interpretation on the basis that the ‘presumption in favor of a constitution or any of its parts can never become so strong that it is beyond reasonable contestation’. Therefore citizens ‘who are free to challenge a constitution have reason to be loyal to a society that provides this freedom’, whereas citizens who ‘find themselves thwarted by political provisions that are treated as unchallengeable have significantly less reason to be loyal’. Whether this motivational claim is true in practice is up for debate, although it does at least seem plausible. On either of these two conceptions, however, a modus vivendi is nevertheless unstable.

The reason for its instability relates to the nature of a modus vivendi. A modus vivendi, on whatever conception, will draw upon a wide variety of relevant factors at any given time in order to reach an arrangement. That there is a significant enough majority of people who are willing to accept a modus vivendi on certain terms at point X, does not mean that there will be a significant enough majority of people who are willing to accept that same modus vivendi at point Y. Changing social circumstances will alter both the degree of support for the modus vivendi itself and the support for the content of the modus vivendi. Citizens will accept a modus vivendi that is ‘second-best’ in relation to their own preferred political arrangement, but the extent to which they are willing to compromise will depend on their material circumstances and the ordering and weighting of their values at that point. Changes to their material circumstances or changes to their values will diminish the degree to which they are willing to compromise, thereby destabilising the modus vivendi. For example, citizens in a state that has been torn apart by civil war would likely be willing to compromise a great deal on their ideal arrangement in order to restore peace. However, some years after that initial compromise the threat of civil war may have receded and their material circumstances improved. The original terms of the compromise would no longer be satisfactory and so the modus vivendi fails to meet the acceptance condition. Such examples need not be so dramatic. We could imagine that revelations of widespread and serious corruption amongst public officials, decisions to invade another state, or an economic crisis that exacerbated wealth inequalities could all prompt sudden withdrawals of acceptance from a significant proportion of the citizenry. This withdrawal could take many forms, such as a refusal to pay taxes, sustained and large-scale protest, and other forms of non-violent and violent disobedience. For a more concrete example, the uprisings of the Arab Spring offer a range of the ways in which the withdrawal of acceptance can be communicated politically, although the differences between the various uprisings also indicate how difficult it is to develop a comprehensive test for acceptability and its withdrawal. The possibility of instability in a modus vivendi marks it out as distinctive from liberal theories. If we grant Rawls his assumption that an overlapping consensus could be formed then that consensus would seem to have a durability that a modus vivendi lacks. On his account, changes to social circumstances would not affect the consensus because the consensus does not respond to circumstances, but draws its stability from its moral character. Once non-moral reasons are allowed to enter the justification for an arrangement the arrangement itself becomes subject to the instability of those changeable non-moral reasons. For the modus vivendi theorist no principles can be immune from the vagaries of history. If a theory is responsive to circumstances then it is, to a greater or lesser degree, unstable insofar as circumstances are themselves unstable. The price that modus vivendi pays for responsiveness is instability.

Conceding that a modus vivendi is unstable might seem to give too much ground to its critics. My argument, however, is that instability is inevitable once the depth of moral pluralism is recognised and that those theories that think themselves immune from instability are misguided. One only needs to look at the course of history in the last 50 years to see that such an ambition is insensitive to the churns and twists of social, cultural, economic, and political life. That does not dispel my central point, however, that a modus vivendi is also unstable. It is important that theorists of modus vivendi admit this. A theory of modus vivendi should not chase a liberal chimera. A moralised conception of stability is incompatible with political life as it exists under conditions of pluralism. Instead of confronting liberals on their own terms, a theory of modus vivendi should distinguish itself through a willingness to accept instability as an inevitable feature of politics. As soon as we let the messy force of politics into normative theorising the stability of an arrangement is threatened. That we ought to let the disorderly world of politics and its practices into normative theorising is a claim that requires justification. For my purposes here, however, I assume that all those who are broadly supportive of the aims of modus vivendi theory will not need convincing of the centrality of politics in all its dull detail to the study of political theory. Horton is right when he argues that there ‘can never be any guarantee; and it is right to suggest that there are always circumstances that can undermine a modus vivendi. To which the appropriate response is *c’est la vie*’ (Horton,  2007, p. 50). Politics is unstable, which means that a political theory that is political is also unstable. What I now argue is that this instability is not only inevitable, but also that instability can be a good thing. More specifically, a theory of modus vivendi that embraces instability as inevitable gives it the resources to combat the charges that a modus vivendi institutionalises injustice or the *status quo*.

**The institutionalisation of injustice objection**

To recall, what I take to be the most serious objection made against modus vivendi is that it institutionalises injustice. This objection can take two forms. On one account, the stronger groups, either in terms of sheer numbers or in terms of political power, can force an unfavourable arrangement onto the weaker groups. On the second account, the political beliefs held by the citizens of a state are unjust and illiberal, thereby engendering an unjust modus vivendi. Both routes lead to ‘a concern about the capacity of the politics of modus vivendi to allow, or even institutionalise, the oppression of the weak’ (Horton, 2007, p. 4). Here I take Horton to understand oppression as a particularly severe and targeted form of injustice, rather than as a separate phenomenon. This concern might be addressed, at least partially, by those accounts of modus vivendi that endorse a ‘moral minimum’ which protects certain essential rights. This is not, however, compatible with the conception of a modus vivendi that I outlined, for reasons that I cannot address in detail here.[5](https://www.tandfonline.com/doi/full/10.1080/13698230.2018.1525119) Even without turning to a moral minimum the problem of institutionalised injustice can be countered by the instability that I have argued is inherent to a modus vivendi. A modus vivendi must be able to secure enough peace to garner acceptance, but it will always be based on contingent factors which are liable to sudden change, meaning that legitimacy is always precious and precarious. Not only are the institutions prone to collapse, but the principles are similarly subject to dramatic change. The reasons that the state can give to me to agree to its principles might apply at one point in time but not another. Because modus vivendi arrangements are drawn from and reflect the balance of power in a society, shifts in that balance will destabilise the arrangement. *Contra* Rawls, I think that instability can in fact be drawn on to show how injustice in a modus vivendi can be responded to, and how its occurrence made less likely to begin with.

The two conditions of a modus vivendi that I outlined above, in conjunction with the instability that I have argued is inherent to a modus vivendi, suggest that an unjust modus vivendi will either be unsuccessful to begin with or will quickly collapse. The relevant condition here is the peace condition (‘a modus vivendi must be capable of securing peace’) here because peace can be undermined by a fairly small section of a population.[6](https://www.tandfonline.com/doi/full/10.1080/13698230.2018.1525119) A modus vivendi arrangement will be unable to withstand sustained civil disobedience or open violence from even a small minority of the population without violating the peace condition. In order to meet the peace condition, all parties have a good reason to reach an arrangement that is not highly unjust even towards a small minority, as that small minority has the capacity to undermine peace. The widely used slogan of protest movements ‘no justice, no peace’ brings this idea to the fore. A minority group may be willing to settle for what they perceive to be less than their conception of justice in the name of peace, but they will not be willing to agree to sustained injustice against them. The less stirring slogan of a modus vivendi is ‘some justice, some peace’. This is not to say that a modus vivendi will not in certain respects be unjust, as in some circumstances it clearly will be, but instead to suggest that a modus vivendi will be unlikely to be deeply unjust towards the weak. Judith Shklar defines a sense of injustice as ‘the special kind of anger we feel when we are denied promised benefits and when we do not get what we believe to be our due’ (Shklar, 1990, p. 102). The promise of a modus vivendi is acceptable peace and a ‘special kind of anger’ will be the result if that promise is not kept.

This argument depends on an acceptance of the instability of a modus vivendi. If we insist on Rawls’s consensual stability as a strong *desideratum* for a modus vivendi then the argument fails. The ability of groups to combat injustice is dependent on a modus vivendi being unstable, or at least susceptible to destabilisation. If, however, the options are either to accept instability, and in so doing, give modus vivendi the tools to counter the institutionalisation of injustice objection or to reject instability and deny modus vivendi the tools to resist the injustice objection, then the choice is clear: a modus vivendi must accept instability. Furthermore, if my argument about stability holds, then instability is an inevitable feature of political life, whatever theory one endorses, and to ignore it or to theorise it away would be wishful thinking of the sort that modus vivendi theory should abhor.

The best way to judge whether a political arrangement is acceptable to those subject to its power is to see how much dissenting behaviour it elicits. This claim reflects one important aspect of Jonathan Floyd’s approach of ‘normative behaviourism’, which argues that ‘just as we would consult the diners and not the chef in order to assess the quality of a meal, political philosophers should pay more attention to the behaviour of real citizens than to the reflections of other political philosophers when assessing the quality of different political systems’ (Floyd, 2017, p. 1). While this is the best approach it is nevertheless imperfect because of the capacity of the powerful to crush dissent or to use their power to discourage dissent in the first place. This problem is also reflected in Williams’s ‘Critical Theory Principle’, which states that ‘the acceptance of a justification does not count if the acceptance has been produced by the coercive power which is supposedly being justified’ (Williams, 2005), p. 6).[7](https://www.tandfonline.com/doi/full/10.1080/13698230.2018.1525119) When there is a stark difference in power between groups in a modus vivendi it is worth noting that political liberalism has the same problem with regards to the coercion (and oppression) of what it considers ‘unreasonable’ people. In this way, at least, a modus vivendi fares no worse than liberal theories, although it does not resolve this particular problem of dissent. The point here is that a modus vivendi, from the outset, makes severe injustice against the weak unlikely precisely because a modus vivendi is both unstable and committed to securing peace.

**The *status quo* objection**

I now turn to issue of whether a modus vivendi institutionalises the *status quo*. In Tom Stoppard’s play *Travesties* a fictionalised James Joyce argues with a fictionalised Tristan Tzara about the purpose of art and the role of the artist. Tzara, the progenitor of Dadaism, argues that art must be dynamic, destructive, and revolutionary, whereas Joyce sees art as primarily reflective and politically inefficacious. Their argument culminates with Joyce’s conclusion that art should ‘leave the world precisely as it finds it’ (Stoppard, 1975, p. 63). A theory of modus vivendi appears to suggest a similar attitude towards politics. Rather than reimagining political institutions or reforming principles of justice, a modus vivendi merely reflects the existing values and power relations of a *polis*. This critique is different from the previous critique that a modus vivendi institutionalises injustice because the *status quo* is not inherently undesirable in the same way as injustice. There may be many normatively desirable elements of the *status quo*. The worry here, however, is that modus vivendi is inert and incapable of imagining anything other than the way things already are. What I argue is that the opposite is true: a modus vivendi is more open to deviations from the *status quo* than the liberal theories it challenges.

The idea that modus vivendi theory is tied to conservatism is partly a result of the theorists who have advocated a modus vivendi. The Hobbesian tradition, of which modus vivendi is a part, is decidedly anti-radical, and modus vivendi’s best-known advocate, John Gray, is also associated with a form of pessimistic conservatism that rejects the utopian aspirations of much political philosophy. In addition to this intellectual lineage, a modus vivendi suffers from its commitment to real politics and real people. Because the ‘real world’ is more conservative than most political philosophy, it is assumed that a political arrangement drawn from the beliefs of real people will inevitably adopt the prejudices and unjustified traditions that they hold.[8](https://www.tandfonline.com/doi/full/10.1080/13698230.2018.1525119) I do not wish to define ‘conservatism’ in any precise way, as its content will depend on specific features and history that vary from society to society. For my purposes here, I use it only as a placeholder to convey a tendency towards the maintenance of the *status quo*. It is commonly assumed that theories of legitimacy will be less progressive or ambitious than theories of justice. This is because, as Shklar notes, ‘the very notion of political justice implies … an end beyond what is known to exist’ and that it ‘demands at least an ounce of utopianism even to consider justice’ (Shklar, 1957, p. 272). By contrast, theories of legitimacy, try to answer ‘the question of why we need politics in the first place’ (Rossi, 2012, p. 157).

Contrary to this perception, a modus vivendi expands the space for radical political action in a way precluded by liberal theories. Far from being conservative or unduly committed to the *status quo*, modus vivendi presents a vision of politics in which radical political action is made possible. To make that case we can contrast the instability of a modus vivendi with the *desideratum* of stability in Rawls’s political liberalism. John Gray has claimed that the ‘most basic assumption of Rawlsian liberalism, which is that the task of political philosophy is to specify once [and] for all a set of basic rights and liberties that are immune from the vagaries of political conflict’ is in violation of what he calls the ‘truth of modern pluralism’ (Gray, 1997, p. 54). This truth, which in his other work Gray makes clear is the truth of value pluralism, means that ‘we have no alternative to the pursuit of a Hobbesian modus vivendi’. Rawls’s desire to avoid this conclusion leads him to advance a theory, of which the ‘striking feature … is its utter political emptiness’. Rawls’s aim of securing stable institutions and principles is illusory because our ‘liberties cannot be fixed once and for all – least of all by the philosopher – precisely because the *political* task is to reach a practical agreement on them that is bound to shift with circumstances’.

What Gray points to here is the idea that fixed principles, of the sort that liberal theorists aspire to, strip political theory of its political content. A modus vivendi theory, however, is political through and through. The stability that Rawls seeks is not only chimerical, but also commits him to political institutions and principles that must become sclerotic. Stability, as imagined by Rawls, leaves us with political stagnation and stasis. The notion of ‘stasis’ is salient, because it suggests both equally matched opposing forces and, albeit less commonly, civil strife. This second connotation refers to the period of interminable feuding between ancient Greek aristocrats, as recounted in Thucydides’ *History of the Peloponnesian War*. Although I think that it is ill-advised to draw philosophical conclusions from etymology, the dual sense of ‘stasis’ illustrates the idea that stability can also be characteristic of a political malaise. On a modus vivendi account, Lenin’s question ‘what is to be done?’ has traction in a way that it cannot within a liberal framework. This is also what Glen Newey takes to be the ‘basic political question … What do we do?’ (Newey, 2016, p. 8). The focus of modus vivendi theory on political action and practice (as opposed to *a priori* theoretical coherence or normative attractiveness) means that Lenin’s question becomes the primary question that both theorists and political actors must address. In Rawls’s theory, there is only one answer: accept and advocate for political liberalism. Liberalism of this sort admits only one answer and only one course of action. In this sense, it is political liberalism and not modus vivendi that is conservative because it is both unadaptable and denies agency to political actors. Political liberalism makes political actors mere ‘janitors’, to purloin a term from Williams’s critique of utilitarianism, of its political conception (Williams & Smart, 1973, p. 118). Shifts in circumstances, in particular, shifts to the locus of political power, prompt no revisions to political liberalism, nor do its subjects ever gain the capacity to alter the terms of their obedience.

A theory of modus vivendi, however, admits a variety of answers and courses of action and can adapt to changing circumstances as they arise. New political coalitions, formed in response to economic and social change, can withdraw their support from the arrangement to pursue other terms. If, as we see currently in much of the Western world, wealth becomes concentrated in the hands of a small minority, those excluded from that wealth can attempt to destabilise whatever arrangement is in place in order to modify the terms of the political settlement. In addition to this, the range of political actions they can use to pursue their goals is far wider than in liberal theory. Violent disobedience against the state, revolutionary ferment, widespread industrial seizures, and even terrorism might all be possible means of political change under a theory of modus vivendi. I should make it clear that I am not here endorsing any of those methods, but rather using them to show that a theory of modus vivendi can be severed from its conservative connotations both in terms of the range of permissible political doctrines and in terms of the actions available to political actors to pursue those doctrines. The point is made more succinctly by the American union organiser Eugene Debs, who claimed that ‘[i]ntelligent discontent is the mainspring of civilization. Progress is born of agitation. It is agitation or stagnation’ (Debs, 1948, p. 304). Where liberal theory sides with stagnation, modus vivendi is able (although by no means certain) to embrace agitation, and with it, change. A modus vivendi is constantly being made, un-made, and re-made, and any *status quo* will be short-lived. Politics is in a constant state of flux and political actors should be able and willing to withdraw their acceptance when they no longer find the arrangement bearable. This is the nature of politics in a pluralistic world: there is no telos, there are no immortal political principles, but only those principles that serve and reflect the people who submit to political power at a certain point in time.

I want to make one brief remark about the nature of radicalism in a modus vivendi. ‘Radicalism’, as I have used it here, does not imply positive change. Radicalism can take various forms and many of them may be regressive. As Finlayson writes, ‘It would be a fallacy to draw a simple equation between the “radical” and the good, the “conservative” and the bad’ (Finlayson, 2016, p. 123). It does not follow, therefore, that change leads to a more just world. It is entirely conceivable that radical political causes contribute to the world becoming less just. This does not have any bearing on my argument here, however, as my aim in this section was to address the objection that a modus vivendi tends to institutionalise the *status quo* (although my previous argument indicates why I think that a modus vivendi is not especially susceptible to the institutionalisation of injustice objection). All I have attempted to show is that radicalism, of all stripes, is compatible with a political theory of modus vivendi. Whether that radicalism promotes justice or hinders justice will be decided by political actors through politics, and not by political theorists through theory. In this sense modus vivendi has a radical potential, but nothing more. A theory of modus vivendi which accepts instability is uniquely malleable with regard to its own principles and institutions, but it does not and cannot commit to principles in advance, and so the radical potential may well remain unrealised. This reflects the realist view that politics is ‘a domain that is partly rule-governed and partly open to innovation and change (and where the rules and procedures are themselves open to interpretation and challenge)’ (Philp, 2012, p. 643). Modus vivendi reflects its subject matter by incorporating the tension between a general adherence to rules and a sanguine acceptance of the likelihood that those rules will be broken.

The point I have tried to make here is that modus vivendi does not preclude change: it is not wedded to the *status quo*. Liberal theorists might respond that although modus vivendi does not preclude positive change, it is less likely to secure it than traditional liberal theories or political liberal theories. There are two responses to that claim. The first is to simply restate the central pillar of modus vivendi: given endemic pluralism about value in modern societies the only option available to us is modus vivendi; there can be no other. Although I think this is right, it will nevertheless be unpersuasive to those unsympathetic to modus vivendi in the first place. The second response, which I think is more promising on that front, is to suggest that modus vivendi is *just as likely* to secure normatively desirable political outcomes as Rawls’s political liberalism. As Rawls makes clear, ‘The problem of political liberalism is to work out a political conception of political justice for a (liberal) constitutional democratic regime’ (Rawls, 1993, p. xxxix). Rawls outlines a liberal political conception of justice for societies which are *already* liberal and democratic in character. As a result, political liberalism has very little to say to those about places which lack a history of democracy and liberalism. These self-confessed limits of political liberalism mean that it is broadly indistinguishable from modus vivendi in terms of the prospects of its outcomes. We would imagine that the citizens of a liberal and democratic society would, if forced to reach a modus vivendi, agree to broadly liberal and democratic principles. Similarly, those citizens of states which lack such a culture would likely reach an arrangement that was neither liberal nor, perhaps, democratic. In terms of political outcomes then, modus vivendi looks no more or less desirable than political liberalism from a liberal’s own view of justice.

**Conclusion**

The aim of this paper is to address three objections made against a political theory of modus vivendi and to recast political instability as a necessary and potentially desirable feature of modus vivendi thought. I have advanced a reformulation of modus vivendi that addresses its most troubling objection that it institutionalises injustice. To do so I have argued that instability is an inevitable feature of politics in pluralistic societies. In accepting this, 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. By embracing instability, a theory of modus vivendi can also counter a separate charge that it merely replicates the *status quo*. I argued this by contrasting modus vivendi with political liberalism, which institutionalises stasis at the cost of flexibility. Modus vivendi is, by its very design, not an endpoint but rather a means to further political disagreement. This does not entail that modus vivendi valorises disagreement, but rather that a modus vivendi is the necessary response to the inevitability and intractability of moral and political disagreement. To refer back to Eliot’s lines from the *Four Quartets* in the epigraph, because ‘the pattern is new in every moment’ modus vivendi encourages a ‘new and shocking/Valuation of all we have been’. New political moments require new valuations and a theory of modus vivendi enables those political valuations. By committing itself to the moralised conception of stability, liberal theory denies citizens the opportunity for such valuations and with it the chance for political change.

**Notes**

1. I do not intend to rehearse these arguments here as my aim is to defend a position that moves beyond liberal dismissals of modus vivendi.

2. Fabian Wendt has outlined four possible reasons for turning to modus vivendi and argued that modus vivendi is best understood as a phenomenon in politics that provides the institutional tools for peace (Wendt, ‘Why Theorize Modus Vivendi?’). This reading (and others too) is compatible with my view that modus vivendi arises in response to pluralism.

3. There is significant debate around the status and stability of Rawls’s principles in *Political Liberalism*. For my purposes it is enough to say that if Rawls does not see at least some of his principles as fixed, then political liberalism abandons any claim to be substantive and is merely a procedural ideal. I doubt that either Rawls or his followers would be willing accept this conclusion. See Jonathan Quong, *Liberalism Without Perfection* (New York: OUP, 2015), Chapter 7.

4. It is worth noting that Rawls believes that unreasonable people would be able to reach a modus vivendi, writing that ‘[u]nreasonable doctrines are a threat to democratic institutions, since it is impossible for them to abide by a constitutional regime except as a modus vivendi’ (Rawls, *Political Liberalism*, p. 489).

5. See Bacon for why Gray’s attempt to introduce a moral minimum fails: Michael Bacon, ‘Breaking Up is Hard to Do: John Gray’s Complicated Relationship with the Liberal Project’, *Social Theory and Practice*, Vol.36 (Bacon, M. (2010). Breaking up is hard to do: John Gray’s complicated relationship with the liberal project. *Social Theory and Practice*, 36(3), 365–384), pp. 365–384.

6. See Chenoweth and Stephan for an empirical analysis of the threshold for successful insurrections, which they put at 3.5% of the population: Erica Chenoweth and Maria J. Stephan, *Why Civil Resistance Works: The Strategic Logic of Nonviolent Conflict* (New York: Columbia University Press, Chenoweth, E., & Stephan, M. J. (2011). *Why civil resistance works: The strategic logic of nonviolent conflict*. New York, NY: Columbia University Press. ).

7. Knowing how to apply the critical theory principle is extremely difficult, as all problems of false-consciousness are for philosophers. I cannot delve into this matter here, but see Prinz and Rossi (2017) for an attempt to recast Williams’s principle as a form of ideology critique.

8. It is tempting to agree with Nabokov that ‘reality’ is ‘one of the few words which mean nothing without quotes’. The same applies to the term ‘the real world’. Vladimir Nabokov, ‘On a Book Entitled *Lolita*’ in *Lolita* (London: Weidenfeld and Nicholson, Nabokov, V. (1961). On a book entitled *Lolita*. In *Lolita* (pp. 301 307). London: Weidenfeld and Nicholson.), pp. 301–307.

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