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Justifying Democracy and Its Authority

Abstract In this paper I will discuss a recent attempt of justifying democracy and its authority. It pertains to recently published papers by Niko Kolodny, which complement each other and taken together practically assume a form of a monograph (Kolodny 2014a, Kolodny 2014b). It could be said that Kolodny's approach is a non-standard one given that he avoids typical ways of justifying democracy. Namely, when a justification of democracy is concerned, Kolodny maintains that it is necessary to offer a kind of an independent justification. It is not so much that he insists that the usual approaches are wrong as much as that an independent justification is necessary in order to discern what it is that gives them their significance. Kolodny's independent justification of democracy is based on the idea of social equality. In this paper I will try to reconstruct and critically assess Kolodny's approach by paying special attention to the question of democratic authority.

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When justifying democracy it is necessary to adduce certain values such as freedom, equality, justice, dignity.¹ The basic idea is that democratic decision making is to a greater extent than other forms of decision making in accordance with these values. However, “in accordance with these values“ can have a twofold interpretation. First, it can be assumed that it concerns values which are independent of democratic decision making; democratic procedure is then justified to the degree to which its outcomes advance or at least do not conflict with these independent values. We then speak about instrumental justification of democracy because democratic procedures are justified to the extent to which they contribute to preservation or advancement of values that are independent of the procedure itself. Second, it can be assumed that certain values are integral to the very procedure of democratic decision making. In that sense, we say that procedures which guarantee free and equal access to the process of decision making are intrinsically fair. We then speak about intrinsic justification of democracy because democratic procedures themselves are justified on the basis of their intrinsic characteristics.

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Therefore, a theorist attempting to provide a normative justification of democracy encounters two dilemmas. The first dilemma concerns the most adequate way of justifying democracy. The second dilemma concerns the values that should be given precedence when justifying democracy. If the first dilemma is concerned, a justification of democracy can be either monistic or dualistic (Christiano 2004: 266). If we opt for one of the aforementioned types of justification, then our justification is monistic, which means that it is either purely instrumental or purely procedural. But a justification of democracy can also be dualistic, if we maintain that it is necessary for this task to take into account intrinsic fairness of procedures, but also some values which are independent of procedures. When the second dilemma is concerned, an approach can also be either monistic or pluralistic. Namely, an attempt to justify democracy can either be based on only one value (for example, equality or autonomy) or on an entire set of values, seen either independently or as a part of a democratic decision making procedure. Therefore, when justifying democracy we usually adopt either monistic or dualistic approach in terms of the type of justification and we usually adopt either monistic or pluralistic approach in terms of values.

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It is noteworthy that a justification of democracy must not necessarily imply a justification of its authority. The justification of political authority primarily refers to the question about the source of political obligation. An answer to this question can also be either monistic or dualistic. I think that an answer to the question about the source of democratic authority must necessarily be dualistic. Namely, both instrumental and purely procedural justifications of democratic authority encounter familiar problems. A purely instrumental justification faces the problem of indeterminacy. If outcomes of an undemocratic way of decision making largely contribute to preservation or advancement of independent values, then this way of decision making should be given precedence over democracy. Therefore, the very source of political obligation remains indeterminate. A purely procedural justification of democratic authority encounters the problem of indistinctiveness. Namely, no matter how unfair outcomes of a democratic decision making may be, citizens equally bear political obligations, given the intrinsic fairness of democratic procedures. It seems to me that dualism is necessary in order to address problems of indeterminacy and indistinctiveness. In brief, a solution for the problem of indeterminacy consists in adducing intrinsic fairness of procedures which distinguish democracy from other forms of political decision making. The solution for the problem of indistinctiveness consists in adducing an independent value that enables an independent assessment of outcomes of democratic decision making. If procedures are intrinsically fair and if their outcomes at least do not undermine independent values (such as freedom and equality), then we also have an adequate justification of democratic authority, which obviously has

to be dualistic. An interesting question which has not been sufficiently discussed is whether a justification of democratic authority should be monistic or pluralistic in terms of values. Without further reflection on this issue, I will assume that when justifying democratic authority, one can also adopt either monistic or pluralistic approach in terms of values.

In this paper I will discuss a recent attempt of justifying democracy and its authority. It pertains to recently published papers by Niko Kolodny, which complement each other and taken together practically assume a form of a monograph (Kolodny 2014a, Kolodny 2014b). It could be said that Kolodny's approach is non-standard given that he avoids typical monistic ways of justifying democracy, consequently not juxtaposing it to a dualistic alternative. Namely, when a justification of democracy is concerned, Kolodny maintains that it is necessary to offer a kind of an independent justification. It is not so much that he insists that the two usual monistic approaches are wrong as much as that an independent justification is necessary in order to discern what it is that gives them their significance. Kolodny's independent justification of democracy is based on the idea of social equality. Considering that it is based on only the value of equality, employing previously explained terminology one can say that it is monistic in terms of values. In the remainder of this paper, I will try to reconstruct and critically assess Kolodny's approach. I will begin with Kolodny's definition of a democratic decision making:

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What is it for a political decision to be “democratically” made? As a more or less stipulated starting point, I say that a political decision is democratically made when it is made by a process that gives everyone subject to it equal or both equal and positive, formal or both formal and informal opportunity for informed influence either over it or over decisions that delegate the making of it. (Kolodny 2014a: 197)

Obviously, the essential thing about democracy according to the definition is an equal opportunity for influence. However, as can be seen, this opportunity for influence can be only equal or both equal and positive and can be only formal or both formal and informal. If an only equal opportunity is concerned, then a democratic decision making also includes lottery which gives to everyone an equal, but not a positive opportunity for influence, because a decision of each individual participant does not necessarily have to be reflected in the outcome, as is the case with voting. In the case of voting, an opportunity for influence would be both equal and positive. To safeguard this, a formal equality regarding an opportunity for influence is necessary. It includes a universal voting right but also an assumption that each vote is weighted equally. The opportunity for influence is equal not only in formal but also in informal sense when resources necessary for an informed participation in a democratic process have been distributed on an egalitarian basis.

Kolodny thinks that there are the three questions to which a justification of democracy should provide a solution:

1. Institutions: Why should we want, or establish, or maintain democratic institutions? Why do we, in general, have reason to try, over the long run, to make political decisions democratically?
2. Authority: Why does the fact that a political decision was made democratically contribute, *pro tanto*, to my being morally required, as an official or a citizen of the relevant polity, to implement or comply with it?
3. Legitimacy: Why does the fact that a political decision was made democratically contribute, *pro tanto*, to its being permissible to implement it, even despite its treating me, as a citizen of the relevant polity, in distinctively “political” ways that, at least in other contexts, are objectionable, such as using force against me, threatening to use force against me, or coercing me? (Kolodny 2014a: 197)

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Now Kolodny suggests the following strategy of justification of democracy. Considering that democracy has been defined as an equal (or both equal and positive) opportunity for influence over decision making, the first step is to look for an independent justification of such a view of democracy. Once an independent justification for an equal opportunity for influence over decision making has been provided, on these foundations all three questions related to justification of democracy are to be resolved. In this paper I shall particularly focus on his solution to the question of Authority. However, before I proceed to discuss the first step of Kolodny’s strategy of a justification of democracy, another clarification regarding his approach is in order.

Namely, Kolodny distinguishes between interests in correspondence, interests in influence and substantive interests (Kolodny 2014a: 199). These are different kinds of interests which citizens have in connection with political decision making in a society. At first glance, considering that democracy has been defined only in terms of influence, adducing two other kinds of interests seems superfluous. However, it seems that Kolodny introduces these two additional kinds of interests in order to suggest that there are some difficulties in usual ways of justifying democracy. In a nutshell, interests in correspondence pertain to the fact that outcomes of political decision making are in accordance with our preferences and judgments. Interests in influence pertain to an opportunity for our preferences or judgments to positively influence the final decision. Substantive interests pertain to realization of some substantive values in outcomes of political decision making (for example, that decisions contribute to the achievement of freedom, welfare, justice etc).

What is the problem with interests in correspondence? Obviously, a democratic decision making is not necessary for interests in correspondence to be satisfied. A benevolent despot could bring a decision that would satisfy preferences of a large number of citizens even though they have not had the opportunity to express their preferences in a decision making process. For example, Mill maintained that the chance that a benevolent despot could know the preferences of citizens better than citizens themselves were very slim which is why democracy should be given precedence over other forms of political decision making (Mill 1861/1977: Chapter III). The question however is whether this is an argument in favor of interests in correspondence. The opportunity for people to express their preferences in a process of democratic decision making does not mean that these preferences would necessarily be reflected in an outcome of decision making. Therefore, Mill's argument should rather be understood as related to interests in influence.

Kolodny points to additional problems with interests in correspondence. Namely, a statistical sample could show which preferences and judgments a majority of citizens hold. If it is so, interests in correspondence could be satisfied if a decision is brought on the basis of consulting this statistic sample. However, such a decision would hardly be considered democratic (Kolodny 2014a: 207). What this argument suggests is that interests in influence are essential for a democratic decision making. Furthermore, an additional problem concerns what kind of preferences should be met. Do any preferences a person currently holds have to be taken into account or only informed preferences? This gives rise to a dilemma whether an inferior decision that takes into account preferences of each person as they are should be accepted or a superior decision that requires a person to revise her preferences in the light of information and reasons offered by other people (Kolodny 2014a: 207). In any case, it is not clear whether satisfying interests in correspondence requires that others adjust to a given person or that she revises her preferences in the light of a better argument.

What is the problem with substantive interests? Obviously, the idea of substantive interests suggests instrumental justification of democracy. An instrumental justification of democracy first presupposes that there are substantive interests which are independent of the process of political decision making. It subsequently argues that democracy, in general, is a more reliable way over the long run to protect and advance substantive interests than any other form of political decision making. Kolodny gives two arguments which show what the problem with substantive interests in political decision making is and consequently also with an instrumental justification of democracy. The first problem is that the fact that a democratic decision making, in general, leads to better outcomes regarding substantive interests does not provide a solution to the issue of Authority and Legitimacy in each individual application of a democratic procedure. In other words,

that democratic institutions are, in general, justified does not guarantee legitimacy and authority of democracy in each particular case. Kolodny terms this problem the Bridging Problem (Kolodny 2014a: 201). The second problem is that if it is some elite that would bring a decision that would satisfy substantive interests better than a democratic decision making, it still makes sense to raise a question why would anyone be excluded from a process of decision making. The decision making by an elite rejects what Kolodny terms the Equality Constraint in line with which “if a procedure gives anyone a say, it should give everyone an equal say” (Kolodny 2014a: 202). Since we cannot adduce substantive interests, it is necessary to look for some other foundation of the Equality Constraint. And it is only the interests in influence that remain at the disposal for this purpose.

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The previous reconstruction of Kolodny’s standpoint could be summed up in the following way. Democracy is largely defined as an equal opportunity for influence over political decision making. The justification of democracy includes two steps. The first step is to offer an independent justification for democracy, that is, to solve the issue what the foundation of an equal possibility for influence over decision making is. The second step is to answer the questions of Institutions, Authority and Legitimacy. In addition to interests in influence, Kolodny also introduces interests in correspondence and substantive interests, ascertaining that they are not adequate for a justification of democracy, which leaves us only with interests in influence. Considering that an instrumental justification of democracy which is based on substantive interests encounters two problems, the Bridging Problem and the impossibility of deriving the Equality Constraint, the question is raised whether these problems can be solved if interests in influence are taken into account. If it could be shown that there is an independent justification for an equal opportunity for influence over decision making, then this solution could lead to the second part of justification which pertains to Institutions, Authority and Legitimacy. Or at least this is what Kolodny assumes.

I have already suggested that the first step in Kolodny’s justification of democracy is based on the idea of social equality. The basic idea is first to show that social equality is the basis of an equal opportunity for influence over political decision making. Kolodny points out that examples of a slave or a servant manifestly illustrate social inequality. Our rejection of slavery suggests an attitude that permanent social relations should be based on social equality. It implies that social relations should be such that there is anyone else who would be above us but also that there is anyone else who would be below us. Or, as Kolodny puts it, social equality implies an idea about “a society in which none rules over any other” (Kolodny 2014a: 196). He claims that social inequality is actually based on three things: power, *de facto* authority and greater consideration (Kolodny 2014b: 295–296). Namely, if

some have greater power and others do not have any right to limit it or if some have a position of authority which others also do not have any right to limit or if some have greater consideration on the basis of some properties such as wealth or race, then we have an asymmetrical relation which is typical of social inequality. Social inequality can be reported in either a political or a non-political domain, for example at work or in the family.

Kolodny, however, maintains that the following characteristics of political decision making suggest that decision making in this domain should be in accordance with social equality: “that subjection to them is not voluntary, that they are treated as having final authority, and that they involve the use of force” (Kolodny 2014a: 226). In order to avoid asymmetry of power and authority in the political domain, it is necessary that regarding power and authority all citizens have an equal opportunity for influence. It is thus avoided that any person should have greater consideration when making a decision. Since democracy has been defined as an equal opportunity for influence over political decision making, it means that it is an important integral part of social equality. Or as Kolodny says “the thesis, then, is that it is a particularly important component of relations of social equality among individuals that they enjoy equal opportunity for influence over the political decisions to which they are subject” (Kolodny 2014b: 308). He interprets the phrase “a particularly important component” as implying that without an equal opportunity for influence over political decisions, full or ideal social equality is not possible, and that even when full social equality cannot be attained, an equal opportunity for influence brings us closer to this ideal (Kolodny 2014b: 308–309). This completes the first part of a justification of democracy, that is, an independent justification of democracy on the basis of social equality.

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However, the first objection to Kolodny’s justification of democracy can be made here. Namely, it is not entirely clear how one arrives from social equality to democracy. Let us call this the original bridging problem. I think that any justification of democracy either in terms of justice or equality has to show how the given conception of justice or equality establishes democracy (Christiano 2008). Therefore it is not a coincidence that usual devices for solving the original bridging problem include either actual or hypothetical consent. Or more recently public reason or some criterion of acceptability (Estlund 2008: Chapter III). The solution of the original bridging problem according to these conceptions leads to solving what Kolodny terms the Bridging Problem because it provides a foundation for a solution to the questions of Authority and Legitimacy. Since Kolodny does not show how to proceed from social equality to arrive to democracy, the original bridging problem remains unresolved. In that regard, his claim that social equality implies an equal opportunity for influence over political decision-making is not of great avail (Kolodny 2014a: 227). This claim

actually presupposes what has to be proved, namely that democracy is an important constitutive part of social equality.

Let us proceed to the second part of a justification of democracy which provides solution to the questions of Institutions, Authority and Legitimacy. In what follows, as I have already suggested, I will focus only on the question of Authority. This is how Kolodny thinks that previous discussion could help us answer the question of Authority:

If I were to disregard the democratic decision, then I would be depriving others of equal opportunity to influence this very decision. For influence over the decision, in the sense relevant in this context, is not simply influence over what gets engraved on tablets or printed in registers; it is influence over what is actually done. Insofar as relations of social equality are partly constituted by precisely that equal opportunity for influence, I would be, by depriving others of that equal influence, relating to them as a social superior, at least in that instance. If others have a claim on me to avoid relations of social superiority, then they have at least that claim on me to implement the democratic decision. (Kolodny 2014b: 315)

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As we can see, Kolodny maintains that the foundation of democracy on the idea of social equality can help us resolve the Bridging Problem (by assuming that the first step in justification established what Kolodny terms the Equality Constraint). Namely, according to this view, we have political obligations because disrespecting decisions of democratic decision making process would imply that we do not consider that every citizen has an equal opportunity for influence over political decision making, which means that we reject the idea of social equality. But since the idea of social equality is something we accept independently of democratic decision making, as well as that an equal opportunity for influence is an important constitutive part of social equality, we do have an obligation to comply with outcomes of democratic decision making. Therefore, democratic authority also has a foundation in social equality, and it requires that in each case of a democratic decision making we adhere by the given decision. Thereby the Bridging Problem is resolved, at least when the question of Authority is concerned.

It seems however that the second part of justification of democracy, at least when the question of Authority is concerned, also encounters certain problems. We have previously emphasized that Kolodny's justification of democracy is monistic in terms of values because it is based only on the value of social equality. We are now in the position to see that Kolodny's justification of democratic authority is also monistic in terms of values. However, this relying on monism in terms of values, that is, exclusive aducing of the value of equality creates certain problems similar to those with which pure proceduralism is faced when it comes to justifying democratic authority. Namely, according to this view, we have the obligation to

comply with decisions which ensue from democratic procedures because these very procedures are intrinsically fair. The problem for this view is that it is not clear whether there are any limits to authority of democracy. The problem of indistinctiveness here equally applies. It turns out that there is no difference regarding political obligations between decisions which are fair and those which are deeply unfair, which for example suspend some fundamental rights and freedoms. We have consequently argued that certain type of dualism which includes an intrinsic fairness of procedures but also independent values is necessary for a justification of democratic authority. Kolodny's justification of democratic authority also encounters the problem of indistinctiveness. Namely, decisions may be such that an equal opportunity for influence has been fully acknowledged and that decisions are nevertheless deeply unfair, for instance suspending some fundamental rights and freedoms. The requirement of social equality requires that such decisions be equally respected as other fair decisions. But then it cannot be seen what the limits of democratic authority are. It seems that what creates a problem is monism in terms of values when justifying authority of democracy. Therefore, analogous to rejection of monism in a justification of democratic authority, monism in terms of values when justifying authority of democracy should also be rejected.

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In this paper I have considered a significant recent attempt of justifying democracy and its authority. Namely, in his papers, Niko Kolodny has offered a justification of democracy and its authority which is based on social equality. The first step in that endeavor is to offer an independent justification of an equal opportunity for influence over political decision making on the basis of the idea of social equality. The second step implies that the Equality Constraint can help us provide a solution to the questions of Institutions, Authority and Legitimacy. The solution to these issues, according to Kolodny, enables us to solve what he terms the Bridging Problem, that is, suggests why using democratic procedures, which are in general justified, generates legitimacy and political obligations in particular cases. I have concluded that both steps of Kolodny's justification of democracy encounter serious problems. The first step in the justification encounters the problem which I have termed the original bridging problem. In short, Kolodny has not demonstrated how to arrive from social equality to democracy. The second step in the justification encounters the problem of indistinctiveness. In short, the fact that Kolodny's justification of democratic authority is monistic, that is, is based only on the value of social equality, raises the problem that some deeply unfair decisions which, for instance, suspend some fundamental rights and freedoms, equally generate political obligations. I have suggested that this problem can be avoided by providing a dualistic justification of democratic authority and by rejecting monism of values in this type of justification.

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Opravdanje demokratije i njenog autoriteta

Apstrakt

U ovom radu diskutovaćemo jedan skorašnji pokušaj opravdanja demokratije i njenog autoriteta. Reč je o nedavno objavljenim tekstovima Nika Kolodnjija (Niko Kolodny), koji se međusobno dopunjuju i uzeti zajedno skoro da imaju oblik monografije (Kolodny 2014a, Kolodny 2014b). Moglo bi se reći da je Kolodnjijev pristup nestandardan s obzirom da on izbegava tipične načine opravdanja demokratije. Naime, kada je reč o opravdanju demokratije, Kolodnji smatra da je potrebno ponuditi neku vrstu nezavisnog opravdanja u odnosu na uobičajene pristupe. Ne insistira se toliko da su dva uobičajena pristupa pogrešna, koliko da je potrebno nezavisno opravdanje kako bi se uvidelo ono što im uopšte daje bilo kakav značaj. Kolodnjijevo nezavisno opravdanje demokratije zasniva se na ideji o društvenoj jednakosti. U radu ćemo nastojati da rekonstruišemo i kritički procenimo Kolodnjijevo stanovište posvećujući posebnu pažnju pitanju autoriteta demokratije.

Ključne reči: demokratija, instrumentalno opravdanje, intrinzično opravdanje, jednaka mogućnost za uticaj, autoritet demokratije