Special Workshop 82

Democratic Authority

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Abstract

This special workshop examines the grounds of democratic authority and its limits. It is often said that democratic decisions have authority and therefore that those subject to them have an obligation to obey them. But why? Some refers to procedural values involved in a democratic decision-making procedure such as fairness, participation, and/or equal respect. Others point out substantive or epistemic values that embedded in democracy such as deliberation, suggested by deliberative democrats, and tracing truth, claimed by epistemic democrats. Our main task is to compare and examine the grounds of democratic authority.

To accomplish the task successfully, it would be useful to consider the limits of democratic authority. To whom does democracy have authority? How about experts who would have better knowledge than many laypeople? How about foreigners who have no suffrage in national and regional elections? How about minors who lacks the right to vote without being recognized as an "incumbent" member of democratic society? Democratic authority is usually supposed to cover all of them, but it is worth reconsidering whether it is and, if so, why.

Program

1. **Reunifying the Epistemological and Normative Foundations of Democratic Authority**
       Tatsuo Inoue (University of Tokyo)

2. **A Puzzle about Legal Systems and Democratic Theory**
       Barbara Baum Levenbook (North Carolina State University)

3. **Democratic Authority to Foreigners**
       Hirohide Takikawa (Rikkyo University)

4. **The Technocratic Interference in Democracy Authority**
       João Roberto Gorini Gamba (Universidade São Judas Tadeu Brazil)

       Coffee Break

5. **Legal Directives and Practical Reasons**
       Noam Gur (Queen Mary University of London)

6. **Volitional and Argumentative Authority in Democratic Legislation**
       Nils Brandenburg (University of Heidelberg)

7. **Hidden Competence: Democratic Authority and Political Ignorance**
       Paolo Bodini (University of Milan)

Abstracts

1. Reunifying the Epistemological and Normative Foundations of Democratic Authority

Tatsuo Inoue (University of Tokyo)

Why can democracy, or more precisely, a democratic decision-making system have authority over those who are relevantly defined as the demos or the citizens of the polity in question? There are two approaches to this problem: the epistemological and normative ones. Those who take the epistemological approach (referred to as epistemologists) attempt to show that there are some good epistemological reasons to believe that democratic decision procedures have better chances of producing the right or substantively tenable decisions than undemocratic ones. Those who take the normative approach (referred to as normativists) attempt to show that democratic decision procedures, unlike undemocratic ones, have a distinctive normative quality, such as respecting the equal political status of the citizens, which generate an independent normative reason for the citizens to accept the outcomes of the democratic procedures whether they are right or not.

The two approaches are independent but not necessarily inconsistent. In the fortunate situations where citizens can assume that their co-citizens whose political or moral views are different from theirs are as reasonable as, or not far more unreasonable than them, the epistemologist and normativist citizens can accommodate each other's' claim as a complementary reason for respecting democratic authority. In such situations, for example, the epistemologists may well believe that it will enhance the epistemic quality of democratic decisions to give equal voices to the different but equally reasonable views of the citizens while the normativists are very willing to urge that the occasional epistemic failure of democratic procedures is not only compatible with their normative acceptability but also with their overall epistemic probability of reaching the right decisions.

Politics, however, is not always so fortunate. The conflicts among people are often so deep and divisive that competing groups adamantly hold each other to be unreasonably wrong. In such situations, epistemologists may resort to such a manipulatively substantive redefinition of democracy that implies that only the political decisions they regard as right are authentically democratic ones, whereas normativists may claim that only the simple numerically majoritarian decision procedures are compatible with political equality of the citizens because their different views are

epistemologically indistinguishable in terms of their substantive merits. Both the polarized views will undermine democratic authority in the pluralistic political society where the disagreement among people is deep and fierce. The epistemologist polar brings about the strife of bigoted factions that disregard fair democratic decision procedure; the normativist polar, the tyranny of majority.

My aim is to present and defend a conception of democracy that can overcome the failure of the epistemologist-normativist polarization and re-establish democratic authority in the deeply divisive pluralistic society. I argue for the following claims:

(1)   Value relativism that claims to be an epistemological remedy for the epistemologist failure in deeply divisive society is both logically and practically self-defeating. Fallibilism, as it is developed in critical rationalism, is the most adequate epistemological basis for liberal democracy in the pluralistic society.

(2)   The concept of justice (the strong universalization demand as distinguished form the formal regularization demand) that constitutes the common constraint on the competing conceptions of justice offers an adequate normative basis for elucidating democratic authority in the sense of the legitimacy as distinguished from the rightness of democratic decisions.

(3)   Fallibilism and the concept of justice in the above sense are not only compatible but mutually supportive. They can be fruitfully combined to develop the conception of critical democracy that can promote the learning process of democratic decision-making system and enhance its legitimacy to a greater extent than its rival conception of democracy that I call reflectional democracy.

2. A Puzzle about Legal Systems and Democratic Theory
Barbara Baum Levenbook (North Carolina State University)

In this paper, I introduce a puzzle for democratic theory stemming from two aspects of a continuing legal system: diachronicity and systematicity. Statutes are understood, interpreted, and applied by officials as if their legal content is modified from the linguistic content by earlier statutes. This is the systematicity part of the equation.

Consider an elderly, modifying statute and a newer statute, and contrast their relationships with the current *polis*, or body of citizens in a democracy. Assume that democracy is a form of collective decision-making based on some form of political equality. If collective decision-making along democratic lines has been properly institutionalized through (among other things) the legislature, and the statutes were

produced in the way designated as proper, it is fairly straightforward that the collective – the one that exists now -- can be said to have made the decision in favor of the linguistic terms of the new statutory directive.   But it isn't straightforward – indeed, it is initially puzzling – how *this* collective, the people, can be said to have made the decision in favor of the restrictions, expansions or other modifications on legal content imposed by the elderly statute.

I call this as the *democratic problem of systematicity.*   This paper examines some leading solutions to it, including the idea that it is the newer legislature's intention to incorporate the modifications from the older statute, and Dworkin's idea of a cross-temporal political community producing diachronic law.   I argue that none of these solutions succeed, and propose a new solution: a statute democratically enacted is enriched in its legal content by an elderly statute through familiar norms of rationality for understanding and identifying human action.

3. Democratic Authority and Outsiders
Hirohide Takikawa (Rikkyo University)

Climate change calls for our actions to mitigate its expected effects and adapt to its inevitable outcomes. We must collectively decide to change many aspects of our life by improving energy efficiency, subsidizing renewable energy, regulating greenhouse gas emissions, introducing carbon taxes, and so on. An important moral question we must answer is whether our decisions have legitimate authority over those who have no right to vote, including foreigners and future generations.

When we decide politically important matters, the effects of those decisions impact outside the range of the demos. Can we claim legitimate authority over "outsiders"? If we can, why? This is called the boundary problem. Although the boundary problem is one of the most fundamental problems facing a theory of democratic authority, it is a question that is rarely raised by democratic theorists.

To discuss the boundary problem of democracy, I first examine the question of the philosophical justification of authority in general. Then, I apply the theoretical outcomes gleaned from this examination to the problem of political authority, especially democratic authority. I explore the main question of whether democracy can claim legitimate authority over outsiders, including foreigners and future generations. Finally, I draw several practical implications from this discussion.

4. The Technocratic Interference in Democracy Authority
João Roberto Gorini Gamba (Universidade São Judas Tadeu   Brazil)

This paper aims to understand the relation between technocracy and democracy, focusing on the possible ways in which the technique associated with power can interfere in democratic practices and in their respective foundations. In order to that, it understands the role of technology in the creation of the modern State, based on the Weberian reading of the expansion of rational action with respect to ends for the various fields of social life, including public administration, from which results the bureaucratic model characteristic of the modern State and which has had enormous historical importance in the application of democracy. It then verifies the rise of technocracy throughout the twentieth century and the complex issues that emerge from the technologies of the fourth industrial revolution. On the other hand, democratic authority, since the formation and consolidation of the modern State, is mainly based on the individual, seen as the formator of the social body from the idea of popular sovereignty. Therefore, the article verifies how technocracy diminishes and sometimes nullifies the role of the individual in the foundation of democratic authority, notably by leading to the depolarization of decisions, since the social relevance of the technique surpasses the importance of the individual and its decisions.

5. Legal Directives and Practical Reasons
Noam Gur (Queen Mary University of London)

Drawing on my recent book *Legal Directives and Practical Reasons* (OUP 2018), this presentation aims to offer a fresh perspective on the relationship between law and practical reasons. It critically engages with existing accounts and advocates an alternative understanding of law's interaction with practical reasons.

At the outset, two competing positions are juxtaposed: Joseph Raz's view that (legitimate) legal authorities have pre-emptive force, namely that they give reasons for action that *exclude* some other reasons; and an antithesis, according to which law-making institutions (even those that meet prerequisites of legitimacy) can at most provide us with reasons that *compete in weight* with opposing reasons for action. These two positions are examined from several perspectives, such as justified disobedience cases, law's conduct-guiding function in contexts of bounded rationality, and the

phenomenology associated with authority.

It is found that, although each of the above positions offers insight into the conundrum at hand, both suffer from significant flaws. These observations form the basis on which an alternative position ('the dispositional model') is put forward and defended. According to this position, the existence of a reasonably just and well-functioning legal system constitutes a reason that fits neither into a model of ordinary reasons for action nor into a pre-emptive paradigm—it constitutes a reason to adopt an (overridable) disposition that inclines its possessor towards compliance with the system's requirements. I will highlight the key distinguishing traits of the dispositional model as well as its key advantages over the rival positions. Finally, I will defend the dispositional against possible objections.

6. Volitional and Argumentative Authority in Democratic Legislation
Nils Brandenburg (University of Heidelberg)

Migration has increased significantly in many parts of the world in recent years. This has led to a growing number of refugees who are residents in, but not citizens of their host countries. Since they have no right to vote, they lack formal representation in the political system that will be governing their daily lives for the years to come. Thus, the question arises how the host countries can justify the authority that their legal systems claim over non-citizens.

There are at least two possible grounds of authority. The first ground is that the holder of the authority merely represents the will of the people subject to his or her commands. This is the conventional approach towards democratic authority. It may be called "volitional authority".

However, there is a different approach, which is widely accepted in other social contexts: Someone can claim authority owing to the quality of arguments he puts forward. For example, parents have authority over their child not because they simply represent the child with its immature will, but because they can come up with better arguments when it comes to certain complex decisions, such as the administration of property. The same is true for academics: Their statements are widely accepted not because they are called "professors", but because of the quality of their arguments. This kind of authority may be called "argumentative".

My initial assumption is that both concepts of authority play a role in democratic representation.

Imagine any parliament in the world passing the following bill: "If a person evades tax, he or she faces capital punishment, although this is not the will of the people." A bill like this would certainly lead to an outcry of indignation. The reason for this is that the bill repudiates the meaning of the act of voting. If a democratically legitimated parliament enacted laws just as it likes, there would be hardly any point in voting rather than being reigned by an autocrat.

Nonetheless, the following bill would lead to the same result: "If a person evades tax, he or she faces capital punishment, although there are no good reasons for this." If political decisions were not backed by any arguments, there would be no criteria for distinguishing the mere coincidence of legislative arbitrariness with the opinion of the majority of the people from a true representation of the people's will. Hence, by deciding in favour of representative democracy the framers of the constitution have already embraced both volitional and argumentative authority.

The presentation will deal with the tension between volitional and argumentative authority. It will also undertake to develop a solution for the problem of underrepresentation of refugees based on the concept of argumentative authority.

7. Hidden Competence: Democratic Authority and Political Ignorance
Paolo Bodini (University of Milan)

In contemporary democracies, voting plays a pivotal role in justifying the political authority of the government. Through the elections, people choose their rulers, determine the political agenda and select the politicians who makes the laws and enforce them. Government can rule people because it has been chosen by them.

This paper aims to analyse the strict connection between voting and democratic authority, focusing on the issue of political ignorance. The analysis considers three different forms of political ignorance and tries to answer the following question: is the political ignorance a problem in justifying democratic authority?

There are three main forms of political ignorance:
(i)   Individual political ignorance;
(ii)   Environmental political ignorance;
(iii)   Structural political ignorance.

The first form concerns citizens who decide not to be informed about politics, even if they have the means to do it. These electors may decide not to be informed

because they are disinterested, alienated or egoistic. Although their ignorance, these citizens vote – determining which government will rule.

The second form of ignorance is caused by the mediatic environment of contemporary democracy. Citizens affected by environmental ignorance try to acquire information about the political scenario, but they get misled by different mediatic phenomena, such as consumer sovereignty, echo chambers, fake news. They vote according to tendentious and biased convictions.

The last form of ignorance raises by the complexity of current politics. Contemporary governments deal with a wide range of issues and activities: from economics to foreign affairs, from environment to infrastructures, from instruction to defence. Running a country has never been so difficult and the role of experts has become increasingly decisive. This complexity challenges the electorate: less and less citizens have the means and the time to reach an informed point of view, albeit they bear the burden of choosing rulers.

These three forms of political ignorance involve, at different levels, democratic authority. In fact, why governments selected by disinformed and biased citizens should be obeyed? How can electors exercise their role in a democracy that asks for a professionalized competence? These questions involve both an instrumental theory of democracy and a procedural theory of democracy.

It will be argued that democracy can face ignorance only if the problem of the hidden political competence will be considered and taken on with normative policies.