Why Majority Rule Cannot Be Based only on Procedural Equality*

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Sadurski (2008) takes the value of political equality for granted and seeks to show how majority rule follows. He proceeds by first resolving two apparent puzzles—the insensitivity of majority rule to the intensity of preferences and the relationship between majority rule and unanimity requirements. He then shows how political equality is compatible with unequal outcomes, through a discussion and criticism of Dworkin’s (2000) dependent conception of democracy. Dworkin points out that equality of impact (personal voting power) is impossible if applied to citizens and their representatives, yet too modest if applied only to different citizens. On the other hand, he also rejects equality of influence, since while some sources of influence are illegitimate (e.g., wealth) others are part of a well-functioning democratic process (e.g., persuasion). Unable to find an independent specification of political equality, Dworkin endorses a dependent conception of democracy that focuses on substantively equal outcomes. Dworkin presumably finds this position attractive because it allows him to say that, when Supreme Court Justices strike down majoritarian legislation in the name of equality, their action is democratic rather than undemocratic (Dworkin 2000, 208–9).

Sadurski criticizes Dworkin for failing to maintain political equality as a distinct sphere of equality. Taken to its limit, it would seem that we could dispense with the rule of the people altogether, if a panel of benevolent

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experts were better able to achieve equality of outcomes. As he points out, one reason why we endorse political equality is that we disagree over what constitutes substantively equal outcomes (Sadurski 2008, 63; for more on this theme, see Christiano 2008, 78–100). The challenge is to find an appropriate understanding of equality that preserves the distinction between political equality and more general equality of outcomes, while distinguishing legitimate and illegitimate sources of influence. Sadurski argues that this can be done by appealing to equality of opportunity (for illuminating accounts of equality of opportunity, see Williams 1973 and Radcliffe 1997). When we call for genuine—as opposed to merely formal—equality of opportunity, we implicitly accept certain influences as legitimate and others as illegitimate. What is legitimate may be disputed but, for example, when we call for equality of educational opportunity, we may mean selection that accepts genetic factors (such as intelligence) as legitimate, while excluding other factors (such as parental wealth) as illegitimate. Genuine equality of political opportunity can therefore deliver what we want, for it can accept some sources of influence as legitimate, while excluding those factors that we do not think should influence politics. The relationship of equality of political opportunity to majority rule is only indirect, for equality of political opportunity applies to the deliberative stage, whereas equality at the voting stage is simply defined in terms of equal impact. Nonetheless, Sadurski argues, it is this equality that explains and affirms the need for equality at the earlier stage.

1. The Place of Majority Rule

As Sadurski observes, majority rule is almost universally accepted as an appropriate decision rule for certain matters. Of course, there may be disputes about which issues are appropriately settled in this way—the claim of the majority seems weaker when the issue is one that permits of technical expertise—or who the decision-making body should be to begin with, a question that Sadurski puts to one side (on this problem, see Goodin 2007). Nonetheless, once it has been decided who is to decide on a given matter, whether it be the citizenry at large via a popular referendum, their representatives within a legislative assembly or a panel of judges, it is generally accepted that the majority within that body should be decisive. Indeed, such is the apparent obviousness of majority rule that it has been an alleged necessity, scarcely even argued for. John Locke, for example, simply asserted that if the community are to be united into a single body, then they must, by the law of physics, move with the greater force (Locke 1980, para. 96; on this argument, see Risse 2004, 46–7, and Waldron 1999, 130–50). This argument is multiply flawed. First, it attempts to derive a normative justification from an empirical fact; secondly, it gets the physics wrong, since bodies do not move only in accordance with the
greatest force acting on them but in accordance with a vector sum of all forces; and, thirdly, there is no reason to assume that the “greater number” constitute a “greater force,” since the minority may actually have more intense preferences or better arguments on their side. While numerous arguments have been adduced in support of majority rule since Locke’s day, none seem compelling (for a sceptical survey, see Risse 2004). So prevalent is the acceptance of the legitimacy of majority rule that it seems scarcely worth philosophical justification, yet when we look for one it is hard to find rational support for our adherence to majoritarianism—and a number of those who have considered the matter have ended up rejecting the majority principle (Guinier 1994; Hyland 1995, 85–99; Jones 1983; Risse 2004).

This absence of foundational justification has done little to diminish the widespread faith in the legitimacy of majority rule. So firm is this belief that democracy has actually been defined in terms of majority rule (Carritt 1947, 150). The dogma of majority rule is not confined to democracies; even in oligarchic states, it is the majority of rulers that decide policy in areas of disagreement. It seems that democracy requires not only equality between those who rule, but broad inclusiveness in selecting who those who exercise rule are to be. These considerations will soon return us, however, to the vexing problem of constituting the demos, which I cannot pursue here. Like Sadurski, I will simply assume that this issue is settled and that those who make the decisions are broadly the same as those bound by them. I shall thereby be restricting my attention to democratic cases, insofar as democracy is understood in terms of the extent of the franchise. This establishes that the many, as opposed to the few, are to make political decisions, but it does not yet settle how they are to reach their decisions. My concern is with the place and justification of majority rule when it comes to democratic decision-making.

It has often been said that democracy is to be understood in terms of citizen sovereignty and political equality (Dahl 1956, 34ff.). Majority rule is justified derivatively, as a consequence of political equality. If all are to count equally, then more must count for more. As Dahl and Lindblom put it:

To say that the votes of the greater number should not prevail is to say that political equality is impossible, or that it is undesirable, or both […] unless government policy responds to the preferences of the greater number, the preferences of some individuals (the lesser number) must be weighted more heavily than the preferences of some other individuals (the greater number). (Dahl and Lindblom 1976, 44)

Thus, majority rule is justified as an egalitarian procedure (Christiano 1996, 55). This is broadly the line that Sadurski takes. He argues that majority rule is legitimate because it respects each person, and their preferences and judgements, equally. In making this argument, he rejects Dworkin’s
dependent conception of democracy on the grounds that it submerges political equality to the more general ideal of an egalitarian society. I agree with Sadurski that political equality is an independent value, “not parasitic upon a more encompassing ideal of equality in a society” (Sadurski 2008, 53), and that a loss of political equality cannot necessarily be compensated by an increase in some other equality, such as economic redistribution. Nonetheless, I think that he fails to justify majority rule as a requirement of equality.

2. Procedural Equality

Sadurski’s positive contribution is to argue that the widespread adoption of majority rule can be explained by the fact that it realizes equality of political opportunity. I will argue that procedural equality is not enough to justify majority rule, since procedural equality is too thin an ideal and can be satisfied in other ways. While procedural equality may figure as part of the justification of majority rule, any defence of majority rule that seeks to privilege it over these alternatives must therefore appeal to outcomes. As I shall show, this does not mean reducing democracy to whatever results in equal outcomes, merely assessing procedures by the outcomes that they are likely to produce. The distinction between simply procedural and outcome-oriented justifications is not, therefore, clear-cut. I begin by showing why equality of political opportunity does not necessarily require majority rule.

Equality of opportunity is a contested ideal. As Sadurski observes, there are some who are satisfied with merely formal equality of opportunity, e.g., the absence of legal impediments. Since this is compatible with the effective exclusion of certain groups from whatever good is in question, by means of ensuring that they cannot become qualified in the relevant way, it is plausible to suppose that genuine equality of opportunity requires something more. It is no good, for example, insisting that jobs go to the best qualified applicants if the education system is so inegalitarian that certain groups, such as women or the poor, stand no chance of becoming the best qualified (this example is inspired by Williams 1973, 244–5). Sadurski claims that genuine equality of opportunity requires us to discriminate between those factors that legitimately influence opportunities, e.g., natural talents, and those whose influence should be excluded, e.g., wealth. Certainly we often do accept certain sources of influence as legitimate, but this overlooks a simpler way of ensuring equality of opportunity, namely, a lottery that excludes consideration of all factors.

When we use a lottery to allocate a good between two claimants, then we give each an equal chance of receiving it regardless of their personal characteristics. Sometimes this will be appropriate because we do regard them as equally, or nearly equally, deserving (Broome 1984, 40–2, and
Sometimes it will be because the criteria of distribution are contested and we do not wish to judge either more deserving. In the case of distributing medical organs, for example, patients might be assessed according to the benefits that the organs could deliver, how badly they will fare without the needed organs, how urgent their need is, how long they have been waiting, how old they are, and so on. Since the relative weighting of these factors is disputed, it seems impossible in most cases to produce a publicly acceptable proof that one patient deserves the organ more than the other (unless, of course, one patient wins on all criteria, which is extremely unlikely). It is sometimes suggested that one attraction of a lottery is that it does not require us to “play god” or make judgements between lives. It is, of course, true that employing a lottery does commit us to a certain judgement—viz., that it is appropriate to give these two claimants equal chances (Broome 1984, 52)—but this judgement seems different from judging that one is more deserving than the other. In any case, this is not the place for a general account or justification of lotteries (for two such defences, see Saunders 2008b and Stone 2007). The point is that, in certain distributive contexts, the use and acceptance of lotteries is as widespread as majority rule is in group decision-making. No doubt this is because lotteries can also be connected, in some way, to the ideals of equal respect for all persons and equality of opportunity. This, however, raises a problem for Sadurski’s defence of majority rule.

If a lottery is one way of realizing equality of opportunity, then one way of resolving disputes between two competing groups is to toss a coin (Taurek 1977, 303). As David Estlund puts it, “while democratic procedures may indeed be fair, the epitome of fairness among people who have different preferences over two alternatives is to flip a coin” (Estlund 1997, 176; the following remarks draw on Estlund 2007, 65–84). It seems that anyone who wants to defend majority rule only on grounds of procedural fairness has no reason to prefer majority rule to tossing a coin. Tossing a coin obviously gives each group equal chances of satisfaction, thereby realizing the value of equal opportunity. Moreover, it might also be pointed out that it significantly reduces the costs of decision-making, settling disputes in a fair and impartial way without the need for lengthy debate.

It seems that there is no reason to prefer majority rule to coin tossing based simply in procedural fairness, or the value of treating everyone equally, for majority rule is no more fair—indeed, it may even be less fair to persistent minorities. If we reject coin tossing and prefer majority rule, then it seems that our reason to do so must be connected with outcomes. That is to say, while procedural fairness may be necessary to democracy, procedural fairness does not uniquely require majority rule. This should, on reflection, be obvious since May (1952) showed that voter equality (anonymity) is only one necessary condition for majority rule and not alone sufficient. Any preference for majority rule over other procedurally fair
methods, including tossing a coin, must be based on something other than procedural fairness.

I shall say more about how consideration of outcomes enters our deliberation in the next section, but first there is one objection that must be considered. It may be responded to my argument that democracy is a matter of rule by the people, not simply rule for the people, and therefore requires their efficacious input into decision-making. Tossing a coin may give all equal chances of getting their way, but it does not allow them any influence on decision-making. Democracy requires not only equal expectation of outcomes but the ability to influence those outcomes (Vernon 2001, 43). Everything here I accept. I do not claim that tossing a coin between two disputing groups would be democratic, for the very reason given, that it respects political equality but not citizen sovereignty. The fact that it is not democratic is, however, beside the point. The claim made was that majority rule could be justified simply in terms of procedural equality. Tossing a coin, however undemocratic, satisfies procedural equality, so this suffices to show that procedural equality is not sufficient to justify majority rule. It is not necessary to think that tossing a coin could ever be a legitimate decision-making procedure in order to show that the legitimacy of majority rule must appeal to something more than procedural fairness. It should, however, be noted that there may be cases where tossing a coin does seem perfectly legitimate. If, for example, we consider power to be a purely positional good, then it may be that I do not care whether I have any influence over a particular decision, but do care that no one else has more power than I do. In this case, tossing a coin denies everyone any influence, and therefore ensures equality. Where goods are merely positional, it is not objectionable to level down in the name of equality (Radcliffe 1997, 271–2).

In any case, the objection that tossing a coin is not responsive to individual preferences is not decisive, because we can find alternative procedures that are responsive, satisfy procedural fairness, and are not majority rule. A “random dictatorship” method is suggested by two of the texts that Sadurski draws heavily on (Ackerman 1980, 285–9; Jones 1983, 170–1). Suppose that, instead of simply counting up votes and declaring the majority the winner, we metaphorically put all of the votes into a hat and randomly select one, taking that as decisive. Such a procedure has been defended at length and given the name “lottery voting” by Akhil Amar (1984) and Saunders (2008a). This lottery voting also satisfies procedural fairness and, unlike the simple coin toss, is responsive to individual inputs—since the number of votes for a given option determine its chances of success, outcomes depend on people’s votes, rather than mere chance, as with the coin toss. I cannot, here, provide a full defence of lottery voting, but—whether or not it is an all-things-considered desirable procedure—it should be evident that it treats each vote equally. It is not
obvious why we should prefer majority rule to such a responsive lottery (Ackerman 1980, 288–9; Estlund 1997, 193)—certainly, our reason cannot simply be procedural fairness, for lottery voting is also procedurally fair. Thus, if we are to justify majority rule, in preference to lottery voting, then it seems that we must appeal to the likely outcomes of each procedure.

3. The Place of Outcomes in Evaluating Procedures

When lottery voting is introduced, it is easy to think of objections. Lottery voting in effect gives groups proportionate chances of satisfaction, rather than ensuring that the majority always win, which means that even a very small minority just might win. It may be objected that this is suboptimal, even in cases that are simply matters of preference (or, in Dworkin’s terminology, “choice-sensitive”). Why satisfy fewer people when we could achieve more satisfaction by satisfying the majority? Moreover, it is even more troubling when it comes to decisions that are not simply about preferences but involve values. We would not, for example, want to give the minority of a jury the chance of getting their way (Jones 1983, 176), since part of the reason for our faith in the majority principle is the belief that “more heads are better than one.” We trust that, on the whole, a proposal that has won the support of a broad section of the population at least has something to be said for it—while it may turn out to be an unwise decision, it is the prerogative of the people to make their own mistakes. On the other hand, we recognize that an inclusive franchise always involves a few whose votes—whether out of incompetence or maliciousness—may be cast near randomly or, worse, deliberately badly. While there may be disagreements about what justice and the common good require, most sensible people at least converge on a reasonable middle ground, but there are always a few extremists who will support policies generally regarded as wrong-headed. We may worry that lottery voting gives even these undesirable minorities a chance of victory, with potentially disastrous consequences. It is easy to find objections to lottery voting, but note that both of these objections appeal to likely bad consequences of the procedure. In effect, they concede that lottery voting may be procedurally fair, but object that this is not sufficient justification when it may lead to bad consequences.

One obvious way that we assess procedures is in terms of their likely consequences. When it comes, for example, to matters where we think that there is an independent right and wrong of the matter, like a jury trial, then how likely the procedure seems to identify these outcomes is generally more important than whether it is procedurally fair. Even when fairness is important, however, there may be different ways of resolving matters that are equally fair in the abstract, and we may appeal to outcomes to decide between them. Suppose, for example, that we have two units of good to distribute and two equally worthy claimants. In this circumstance, we
would often be inclined to give one unit of good to each claimant, regarding this as the fairest outcome. Note, however, that there are other ways in which we could treat both claimants fairly. We could, for example, toss a coin to decide who would get both units of good. This would necessarily result in inequality—one claimant would get two units and the other none—but it would treat each fairly insofar as each would have an equal chance to be the one that got both units of the good. It may be pointed out that there is no reason to employ this procedure when, despite its fairness, it will predictably lead to unequal outcomes. I would agree, but this does not mean that outcome considerations trump procedural fairness, only that we need to consider our procedures more carefully, in light of their likely consequences.

Tossing a coin and giving both units of good to whoever wins is procedurally fair, but it is only one way of being procedurally fair. There are other ways of being procedurally fair and we need to consider their likely outcomes in deciding between them. For example, instead of tossing one coin to allocate both units, we may toss a separate coin for each. This gives each claimant a 50% chance of getting each unit, but it means that they will not necessarily go to the same person. In fact, there would be a 50% chance of inequality (if the tosses are either heads and heads or tails and tails) but a 50% chance of an equal distribution (if the tosses are either heads and tails or tails and heads). This seems to make separate coin tosses preferable to tossing one coin for both units. It is still a fair procedure and it is likely to lead to better outcomes. We can do still better though. Instead of tossing a coin, we might employ a raffle, where each claimant’s name is placed in a hat. To allocate the first unit, we draw a name from the hat, giving each claimant a 50% chance once more. When it comes to the second unit, there is no reason to put the first name back in a hat, so we will necessarily draw the second claimant’s name, thereby ensuring an equal distribution. I am inclined to think that simply giving one unit to each without any form of lottery is legitimate only because it is, in effect, a degenerate form of such a procedure (I take such a thought to lie behind Goodwin 2005, 59–63). In any case, this is still a fair procedure and it ensures that we arrive at equal outcomes, which makes it the preferable fair procedure compared to those that, despite their abstract fairness, may result in inequality. We want our procedures to be fair, but we can still adjudicate between procedurally fair procedures with reference to the outcomes that they are likely to produce. Presumably this explains Dworkin’s remark that “on the dependent conception, controversial questions of substance may well reappear, in much the same form, as controversial questions about process” (2000, 189). We are not simply engaged in assessing outcomes, but are assessing procedures by their likely consequences.

This reasoning explains why we might prefer majority rule to lottery voting. If democracy is defined in terms of procedural equality then both
are democratic, but if it is true that majority rule is likely to lead to better outcomes then it is a preferable democratic procedure. This conforms with my understanding of Dworkin’s distinction between detached and dependent conceptions of democracy. Detached conceptions can be specified independently of outcomes, because they simply concern what it is for a procedure to be democratic—it is a matter of political equality (and citizen sovereignty). The dependent conception, however, is not simply definitional but a matter of evaluating potential democratic procedures. As Dworkin puts it, the dependent conception “supposes that the best form of democracy is whatever form is most likely to produce the substantive decisions and results that treat all members of the community with equal concern” (Dworkin 2000, 186, emphasis added; quoted Sadurski 2008, 52).

Thus, the detached conception states what it is for a procedure to be democratic, and rightly tells us that both majority rule and lottery voting are democratic, since both satisfy procedural equality. The role of the dependent conception is not to say that whatever leads to equal outcomes is democratic, since a dictator who treats his subjects with equal concern and respect is evidently undemocratic. Rather, the dependent conception’s role is to specify which of those procedures satisfying procedural equality we should accept as the best form of democracy, and this adjudicates between fair procedures by appeal to their likely consequences.

Whether the dependent conception gives us reason to prefer majority rule to lottery voting will be an empirical question. If lottery voting does lead to unjust outcomes, because it gives extremists a chance to impose their inegalitarian views, then it is unlikely to be the best form of democracy. On the other hand, majority rule seems to come apart from equal outcomes when a persistent minority repeatedly fail to get their way on any decisions (Christiano 2008, 288–99; Guinier 1994; Jones 1983, 173). In these cases, the dependent conception may actually prefer lottery voting—particularly if constrained by judicial review that guarantees equal basic rights—to majority rule. In either case, the defence of majority voting cannot be completed only by reference to procedural values. We can only choose between fair procedures by appeal to something else, such as their likely outcomes. Appeal to likely outcomes in this context, however, does not mean subordinating procedural values to equality of substantive outcomes, or eradicating the distinctive importance of political equality.
References


