

Equality and Legitimacy

Wojciech Sadurski

Oxford University Press, 2008

The aim of *Equality and Legitimacy* by Wojciech Sadurski is to ground the legitimacy of a government in the concept of equality. Sadurski attempts to establish this connection between legitimacy and equality by appealing to the legitimacy-conferring power of democratic procedures. The best motivation for preferring a democratic system to alternatives, according to Sadurski, is the fact that the former embodies egalitarian values. Sadurski relies on two claims about democracy. The first claim is that majority rule (a decision procedure where each individual gets one vote and the option which receives more than half the votes is selected) is an ‘irreducible core of democracy’. The second claim is that majority rule has ‘a legitimating element’. He thinks it is uncontroversial that particular decisions are legitimate simply because majority rule was the procedure that was used to arrive at those decisions. Then, in order to establish the connection between legitimacy and equality, Sadurski argues that majority rule cannot be made sense of without appealing to egalitarian values which explain the importance of political equality of citizens, namely majority rule where all citizens get one vote each. Since the very choice of a democratic system (with majority rule as a fundamental constituent of such a system) is motivated by egalitarian values (which makes the democratic system legitimacy conferring), laws created by democratic procedures can be legitimate even if the content of the laws are at odds with the value of equality. That is, political equality is sufficient for legitimacy.

One thing to note is that Sadurski does not feel the need to argue for the claim that majority rule confers legitimacy onto decisions made by applying the majority rule. The desire not to stray too far from what he takes to be folk consensus or ‘widespread convictions’ is a common theme that one finds throughout the book. While this is balanced by attention to vast literature on political and legal theory, the use of reflective equilibrium sometimes isn’t satisfactory. In particular, one could challenge the claim about the ability of majority rule to legitimate decisions made under it. We could imagine a democratic system which produces laws that violate basic human rights or, even worse, laws that thwart some citizens’ ability to appeal to the legal and/or political system. In these scenarios, it might not be ‘uncontroversial’ to claim that these laws are illegitimate despite them being produced by majority rule. It seems reasonable to point to legal and social inequalities embodied in the laws or promoted by them as reasons why the particular laws are illegitimate. We might learn, contrary to

Sadurski's conclusion, that although political equality might be necessary, it is not sufficient for legitimacy. It is true that Sadurski discusses objections to majority rule. However, his methodology favours the path of responding to the objections in a way that still leaves majority rule attractive rather than exploring the importance of (and perhaps the need for) legal and social equality in grounding legitimacy.

If political equality is not sufficient for legitimacy, then there must be other conditions that need to be met. Given the thorough and detailed treatment of how to best understand legal and social equality in the book, the reader is left wondering why political equality is privileged in relation to legitimacy. Sadurski seems right when he claims that the legitimacy of a democratic system is enhanced if it promotes the ideals of legal and social equality. However, it is unclear what the rationale is for excluding the standards of legal and social equality into our conception and justification of legitimacy. Indeed, one might argue that some basic standard of social equality has to be met for political equality to be meaningful so that it can give rise to legitimacy. This sort of connection between the different kinds of equality and their relationship to legitimacy might have been explored if Sadurski hadn't taken for granted the legitimating power of majority rule and thus, political equality.

The four chapters of the book seek to spell out the three different conceptions of equality which arise in different domains. This was one of the aims of the book (as Sadurski reminds us in his concluding chapter). The other main aim (the aim that Sadurski describes as more ambitious) is to show how legitimacy can be grounded by appealing to the three conceptions of equality. In order to achieve this aim, one needs to clarify the concept of legitimacy which Sadurski attempts to do in the first chapter. He claims that the concept of legitimacy is distinguishable from the moral justification (of a particular law) and the moral obligation (for a particular citizen to obey that law). On one plausible reading of Sadurski's discussion of these concepts, 'legitimacy' is ambiguous. One might take 'legitimacy' to mean justification – the interpretation that Sadurski prefers. This is where Sadurski employs the Razian account of legitimate authority to show how the concept of legitimacy can be aligned with justification. However, despite the compelling and, I think, accurate, exposition of Raz, one might challenge the claim that the Razian account of legitimacy amounts to justification. As Sadurski rightly points out, the Razian account of legitimacy does not come equipped with the conditions under which a particular law *should* be legitimate. It merely identifies features which are present when legitimacy is being recognised. Or in Sadurski's words: 'Raz's concept, in itself does not tell us anything about the proper moral attitude of citizens towards authority.' However, a very plausible understanding of *justification* of an authority would imply that citizens

should take serious the directives of the authority. This presents a dilemma: either (i) hold onto the claim that legitimacy of a law does not carry with it moral arguments in favour of that law and reject the claim that justification and legitimacy ‘rely on substantively the same arguments’; or (ii) require legitimacy to be grounded by substantial moral arguments so that both justification and legitimacy can be justified by the same arguments. It seems that Sadurski should prefer the first horn of the dilemma. If the concept of legitimacy is ‘thickened’ so that it can be aligned with justification, then arguably the more morally weighted arguments for the legitimacy of a particular law could be used to show that citizens ought to obey that law.

This book provides a very comprehensive overview of the relevant literature on the concept of equality, especially the concept of social equality. This alone makes the book worth reading for anyone who would delight in a survey of this field. Moreover, the conceptual issues raised by this exploration of the connection between equality and legitimacy (especially given the three different types of equality) and the argumentative steps that are taken to privilege political equality over the others provide fresh, important challenges in political and legal philosophy.

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**Symposium in Honour of Professor
Tom Campbell**