

Moral Reasoning 74:
The Theory and Practice
of Republican Government

Lecture 23:
The Procedural Republic –
A Republican Critique

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Major Themes

- I. Republican Alternatives (and Supplements) to the Plebiscite [continuation of discussion]
- II. The Procedural Republic, and Sandel's Critique
 - A. Neutrality w/r/t virtue
 - B. Neutrality w/r/t economic life
 - C. Multiplication of rights
 - D. Individuation of liberty

Incremental Republican
Solutions to the Plebiscite

A. Supermajority requirements

Percentage of Voter-Approved Initiatives that would have passed a Supermajority Requirement				
		Supermajority Requirement		
		55%	60%	66.66%
California (n = 50)		68	40	8
Oregon (n = 41)		71	49	29
Colorado (n = 25)		56	40	20
Washington (n = 22)		77	45	32
Arizona (n = 21)		71	52	19
Average		69	45	20

Source: Ellis, *Democratic Delusions*, p. 51.

Incremental Republican Solutions to the Plebiscite

B. Embrace Mixed Regime

Who should be able to overturn referenda results?
Courts only?

Consider possibilities here: exec, leg, both chambers,
etc.

C. What would politics look like without any referenda at all? Better? Worse?

II. The Procedural Republic

A. Neutrality w/r/t virtue

B. Neutrality w/r/t economy

C. Multiplication of rights

D. Individuation of liberty (through rights)

A. Rights and the Common Good

“Instead of defining rights according to principles that re neutral among conceptions of the good, republican theory interprets rights in the light of a particular conception of the good society – the self-governing republic. In contrast to the liberal claim that the right is prior to the good, republicanism thus affirms a politics of the common good. But the common good it affirms does not correspond to the utilitarian notion of aggregating individual preferences.”

[25]

“Unlike utilitarianism, republican theory does not take people’s existing preferences, whatever they may be, and try to satisfy them. It instead seeks to cultivate in citizens the qualities of character necessary to the common good of self-government. Insofar as certain dispositions, attachments, and commitments are essential to the realization of self-government, republican politics regards moral character as a public, not merely private concern. In this sense, it attends to the identity, not just the interests, of its citizens.”

B. Economic neutrality

Antitrust: is it for welfare maximization, or to promote econ independence, small businesses?

Education: Is it for skills acquisition only, or for cultivating good citizenship, civic virtue, independence and capacity to engage in self-government?

C. Multiplication of rights

Right to health care

Right to abortion

Right to bear arms, any and all arms [bazooka, grenade launcher, firethrower?]

Right to engage in active defense (Florida).

Right to buy and sell drugs, without direct harm to those involved.

Republican response: does not this cheapen liberty?

D. Individuation of Liberty

1. Liberty w/o self-government.

Can I be free in a monarchy that leaves me alone?

Liberal “self” as “unencumbered,” bearer of rights, but without responsibilities to society.

“Postmodern” version of this: All obligations are to be “incentivized.”

2. Rights as against locality

Lochner v New York (1908). Invalidates law prohibiting employment of individuals for more than 60 hours per week in bread-baking enterprises.

Sandel, p. 42: “For the first time in American history, rights functioned as trumps. Liberty no longer depended on dispersed power alone, but found direct protection from the courts. Where fundamental rights were seen to be at stake, even the principles of federalism and state sovereignty no longer impeded judicial intervention. The *Lochner* Court thus offered the first sustained constitutional expression of the priority of the right over the good, at least in the sense that certain individual rights prevailed against legislative policies enacted in the name of the public good.”

2. Rights as against localities

“The procedural republic represents the triumph of a liberal public philosophy over a republican one, and accordingly reverses the terms of relation between liberty and self-government. In the early [American] republic, liberty was understood as a function of democratic institutions and dispersed power. The relation of the individual to the nation was not direct but was mediated by decentralized forms of political association and participation. The Bill of Rights did not apply to the states and was not understood to create individual immunities from all government action. Liberty was secured “largely through the preservation of boundaries between and among institutions.”

Republican fear: Liberalism promotes (eventually requires) promotion of national power as against state and local government.

3. Republican Response:

No liberty without self-government

Tocqueville, *Democracy in America*: "Town meetings are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how to use and how to enjoy it. A nation may establish a free government, but without municipal institutions it cannot have the spirit of liberty." [quoted in Sandel, 27]
