

Moral Reasoning 74:  
The Theory and Practice  
of Republican Government

Lecture 24:  
The Procedural Republic –  
A Republican Critique

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Announcements

1. Extra Office Hours Today – 11:15AM to 1:45PM, K430
2. Regular Office Hours tomorrow, 3-5PM, K430
3. Fourth Paper due Monday, May 4<sup>th</sup>, 8PM [we'll get it back to you quick]
4. Final paper topics to be distributed no later than May 6 (2 weeks to write paper)

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Major Themes [today and Thursday]

- I. Republican Alternatives (and Supplements) to the Plebiscite [continuation of discussion]
- II. Individuation of Rights
- III. Perils of Republicanism – Exclusion and Coercion
- IV. Citizenship or Coercion? The Case of Mandatory Gun Ownership
- V. Globalization and Global Citizenship – Republican Critique
- VI. Federalism for “small-r” Republicans

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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.

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### 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?

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## 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)

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### 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]

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### Sandel on Civic Virtue

“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.”

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### 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?

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### 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?

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### 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."

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### 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."

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### Thorny Problem:

*Lochner* is One Thing, but What about Civil Rights?

What if the law in question is not limits on worker hours, but limits on minorities' voting rights?

Or...

- Laws against interracial, inter-ethnic, inter-religious marriage?
- Laws limiting the rights of minorities to hunt and fish, or own land (e.g., Reconstruction-era and Jim Crow laws aimed at African-Americans)?
- Laws privileging one religion over another?

Do we support national government intervention then? If so, what's difference between these cases and *Lochner*?

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## 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.

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## 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]

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### III. Problems of Exclusion and Coercion

- A. Exclusion: republican arguments have often been used to exclude people from the civic arena. Women, minorities, the poor and unpropertied.
- B. Coercion – my “community” can be your “nightmare.” Such worries often invoke “slippery slope.” Possible to strike balance? If so, at what level of government?

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### IV. Mandatory Gun Laws

Kennesaw, GA, statute of March 1982:

- Sec. 34-1 Heads of households to maintain firearms.
- (a) In order to provide for the emergency management of the City, and further in order to provide for and protect the safety, security and general welfare of the city and its inhabitants, every head of household residing in the City limits is required to maintain a firearm, together with ammunition therefore.
  - (b) Exempt from the effect of this section are those heads of households who suffer a physical or mental disability, which would prohibit them from using such a firearm. Further exempt from the effect of this section are those heads of households who are paupers or who conscientiously oppose maintaining firearms as a result of beliefs or religious doctrine, or persons convicted of a felony.

Source: <http://www.kennesaw.ga.us/CodeOfOrdinances.aspx>

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#### Town requires residents to get a gun Residents who do not comply will be fined \$10

GEUDA SPRINGS, Kansas (AP) -- This tiny south-central Kansas community has passed an ordinance requiring most households to have guns and ammunition.

Noncomplying residents would be fined \$10 under the ordinance, passed 3-2 earlier this month by City Council members who thought it would help protect the town of 210 people. Those who suffer from physical or mental disabilities, paupers and people who conscientiously oppose firearms would be exempt.

"This ordinance fulfills the duty to protect by allowing each individual householder to provide for his or her protection," said Councilman John Brewer.

"This is simply using the U.S. Constitution -- Second Amendment in particular -- to the city of Geuda Springs' advantage."

Geuda Springs has no local police force; the Sumner County Sheriff's department is responsible for policing the area. Sheriff Gerald Gilkey said the ordinance makes him concerned for the safety of his officers.

"This throws up red flags," he said.

...

Many Geuda Springs residents refused to talk about it, and others were tightlipped, saying outsiders should stay out of it.

"It's nobody's business but our own," said Phillip Russell, who owns a motorcycle shop in the town. "Everybody out of town is making this their business."

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## Qs for Discussion

- (1) Mandatory gun laws
- (2) Restrictive Zoning vis-à-vis Wal-Mart
- (3) School uniforms
- (4) LNG tankers – Fall River, or a state.

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