



How minorities fare under referendums: A cross-national study



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ABSTRACT

Referendums are often viewed as a threat to the rights of minorities. Empirical studies, so far, have tried to deal with the impact of referendums on minorities and civil rights at the subnational level by comparing either referendum or policy outcomes across subnational units. These units are, however, often constrained by the national level of government. Hence, to understand the full effect of referendums on minority policies, cross-national comparisons are required. Based on existing game-theoretical models, we argue that referendums and initiatives push policies towards the voters' preferences, either by protecting minority rights or reducing them. We test this proposition with national-level information on preferences and institutions as well as minority policies from countries spanning the whole globe.

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1. Introduction

How minorities fare with respect to their civil rights in representative democracies that allow for referendums on particular policies has occupied scholars and politicians for some considerable time. Researchers have attempted to address this issue both from a theoretical perspective and also in empirical research. Conclusive results, both at the theoretical and empirical levels, are, however, still elusive. Most empirical work focuses on the subnational level, mostly in the United States and Switzerland, or deals with a single country. Comparative work on this issue in a cross-country perspective is, however, largely absent.²

The present article takes advantage of the recent spread of direct democracy around the globe (see LeDuc,

2015). Drawing on the insights from positive theoretical work, we propose hypotheses that we test on the basis of data dealing with various minority-related policies, based on a worldwide comparison. We study a wide field of issues, in which policies imposed by the dominant political majority would suppress the rights of groups that are politically vulnerable, so that they might easily be hurt by a ruthless application of a majoritarian logic. While international law has focused on ethnic, religious, or linguistic groups as minorities, we include also other potential minorities, which risk the experience of collective discrimination through a majority (cf. Gamble, 1997, 252–3). We also look at the rights of political minorities to organise politically (freedom of assembly and association, freedom of speech), and at women's rights. Women are certainly no numeric minority, but politically they are the more vulnerable gender group in the investigated countries, so that their rights might be restricted, or protected – similar to other minorities – through affirmative action (Mayer Hacker, 1951). As theoretical models would suggest, we estimate the joint effect of direct democracy and voter preferences, and find that

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² See Blume et al. (2009) and Altman (2011) for some of the single exceptions. For case studies, see Marxer (2012).

referendums and initiatives move the results towards the preferences of the median voter. However, this result is not paramount; further research needs to address the question under what circumstances the expected effects appear, and when they fail to appear.

The article proceeds as follows. In the next section we discuss briefly the theoretical debate, both from a normative and positive viewpoint, concerning minorities under referendums. In [section three](#), we discuss the empirical problems related to the investigation of the effects of referendums on policy outcomes, and specifically on minority rights. In [section four](#), we present the empirical strategies that we deploy to assess the effect of referendums on minorities cross-nationally. [Section five](#), after introducing our data, presents our empirical results, while [section six](#) concludes by sketching out a research agenda.

2. Minorities and referendums in theory

Whether minorities might fare worse in representative democracies when referendums are possible has not only preoccupied empirically oriented researchers but also scholars working from a theoretical perspective.³ At least since [Barber \(1984\)](#) touted participatory democracy as a normative ideal⁴ interest in deliberative democracy related to referendums has increased (see for an overview [Chambers, 2003](#)). In several studies [Frey](#) with co-authors (e.g. [Frey and Kirchgässner, 1993](#); [Bohnet and Frey, 1994](#); [Frey, 1996](#)) argues that campaigns on referendums create conditions approaching those of a discursive ideal. [Baurmann and Kliemt \(1993\)](#) criticize specifically [Frey and Kirchgässner \(1993\)](#) by arguing that especially for [Habermas \(1992\)](#) real deliberation is probably only possible in parliaments with repeated interactions among the protagonists. Even more critical is [Chambers \(2001\)](#) who argues that deliberation, also in the realm of referendum campaigns, is undermined if at the end of the process a majority decision looms (see also [Sanders, 1997](#); [LeDuc, 2015](#)).

Based on these normative elements it appears difficult to assess how referendums might affect the position of minorities in societies. If the deliberative element really were strengthened in direct democratic decisions, then minorities should be better protected through direct democratic instruments than through the representative process. But given that already the premise of this claim is heavily disputed, normative political theory seems to be of little help for the question of how minorities in contexts with direct democratic instruments might be treated (see the extended discussion on this and related issues in [LeDuc, 2015](#)). Work in positive political theory (e.g., [Gerber, 1996](#); [Hug and Tsebelis, 2002](#)) indirectly relies on the problem of minority protection under direct democracy identified in the 'Federalist Papers' by [Hamilton et al. \(1787\)](#). They have argued that direct democratic decisions by majority rule might have a problematic effect on the rights of minorities,

resulting in a majority deciding in its own interest, which might include the violation of the rights of a minority. Given that the protection of civil rights and minority rights is an important element of any democratic state, they might be better protected by a system of checks and balances than through direct legislation by citizens.

3. Empirical problems of the study of direct democracy

The fears of such a *tyranny of a majority* have been reflected in a vast empirical literature dealing with the effect of direct democratic institutions on minority rights and civil rights.

The debate in the US has been fuelled by [Gamble's \(1997\)](#) study, which reported that ballot propositions (referendums and initiatives) that aim at strengthening the civil rights of minorities are most frequently rejected at the polls. The study investigated 74 cases of direct democratic votes on issues that are sensitive to different minority groups. More than three out of four cases had 'tyrannical outcomes', i.e. minority interests were defeated at the polls.

To analyse the consequences of direct democracy on minority rights, most comparative studies have investigated the outcomes of referendums in US states ([Gamble, 1997](#); [Donovan and Bowler, 1998](#); [Hajnal et al., 2002](#)). These studies have investigated a plethora of minority rights and issues, varying from same-sex couples, abortion rights, language laws, affirmative action for racial or ethnic minorities, death penalty, anti-discrimination laws for job discrimination, housing and accommodation, school desegregation policy, or AIDS policies.⁵ [Gamble \(1997\)](#), [Hajnal et al. \(2002\)](#) and [Frey and Goette \(1998\)](#) look at a broad set of minority-relevant referendums. But the conclusions of these studies are divided. [Donovan and Bowler's \(1998\)](#) study of the rights of same-sex couples show that a tyranny of the majority is most likely in small communities (but see [Haider-Markel and Lindaman, 2007](#)).

[Hajnal et al. \(2002\)](#) alter the notion of minority-relevant referendums. While in California, minorities indeed often belong to the losers in referendums, which directly target minority rights, the same minorities often belong to the winners of direct democracy in other issues, including issues that they consider as very important. The tyranny of the majority thus seems to be reduced only to a few questions when the minority–majority relations become directly an issue (see also [Moore and Ravishankar, 2012](#)). However, in a few cases, minority interests turn out to be on the winning side in direct democracy. Studies focusing on minority rights in referendums and initiatives in

³ This part draws on [Hug \(2009\)](#).

⁴ In this context authors often also refer approvingly to [Pateman's \(1970\)](#) work, without noting that this author has a very nuanced, at some instances critical, position regarding participatory democracy.

⁵ On same-sex couples: [Haider-Markel and Meier \(1996\)](#), [Donovan and Bowler \(1997, 1998\)](#), [Gamble \(1997\)](#), [Gerber and Hug \(2002\)](#), [Bowler et al. \(2006\)](#), [Nicholson-Crotty \(2006\)](#), [Haider-Markel and Lindaman \(2007\)](#), [Matsusaka \(2007, 2010\)](#), [Donovan et al. \(2008\)](#), [Lax and Phillips \(2009\)](#), [Lupia et al. \(2010\)](#), [Lewis \(2011\)](#). On abortion rights: [Bowler and Donovan \(2004\)](#), [Matsusaka \(2007, 2010\)](#). Parental notification requirements for teenage abortions: [Gerber \(1996, 1999\)](#), [Matsusaka \(2007, 2010\)](#). "English-only" laws for state action: [Gamble \(1997\)](#), [Gerber and Hug \(2002\)](#), [Matsusaka \(2007, 2010\)](#); or in schools: [Bowler et al. \(2006\)](#). Affirmative action: [Gerber and Hug \(2002\)](#), [Bowler et al. \(2006\)](#). Death penalty: [Gerber \(1999\)](#), [Hug \(2004\)](#). Anti-discrimination: [Matsusaka \(2007, 2010\)](#).

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