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Does The Popular Vote Destroy Civil Rights?

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In her paper “Putting Civil Rights to a Popular Vote” (*American Journal of Political Science* 41:245–69), Barbara S. Gamble addresses the central and classical issue of whether the majority tyrannizes the minority in a (direct) democracy. She tests the hypothesis that “. . . civil rights opponents who have access to the initiative process will use direct democracy to thwart civil rights” (246). On the basis of seventy-four civil rights initiatives in state and local ballots covering five issue areas (housing and public accommodation of racial minorities, school segregation, gay rights, English language laws, and AIDS policies) between 1959 and 1993, she comes to a firm conclusion: “. . . the answer is quite clear . . . anti-civil rights initiatives have an extraordinary record of success: voters have approved over three-quarters of these. . . . This pattern holds across all three decades and across all but one of the issue areas . . .” (261).

We challenge this central conclusion. While Gamble may be right for the period and issues investigated by her for the United States, we find the opposite result for Switzerland where three-quarters of the referenda held worldwide were undertaken (see Butler and Ranney (1994) for an analysis of Swiss democratic institutions, see e.g., Linder 1994; Steiner 1974). In this comment, we do not question her methodological approach. We show that considering the same type of civil rights issues put to the vote at the Swiss federal level as well as the cantonal and city level (for the case of Zurich), direct democracy *protects* civil rights. Moreover, we identify conditions under which minority interests have a particularly high probability of success. These may partly explain the striking difference between Gamble’s results and ours.

1. CIVIL RIGHTS ISSUES IN SWITZERLAND

Before proceeding to the empirical evidence, we need to determine what civil rights are. We adopt the following definition: “In the Universal Declaration of Human Rights, and in the Covenant on Economic, Social and Cultural

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Rights deriving from it, rights to food, housing, education, health care, and other forms of social welfare are recognized as claims on one's own society, and as obligations on the political authorities of that society" (Henkin 1990, 45; more extensively 44–48). At the federal level, over the period 1970 to 1996, we accordingly identified twenty popular referenda relating to civil rights issues. If the title of the initiative, amendment, or law was inconclusive, we consulted the official communication of the federal council in order to determine whether (and how) civil rights were touched on. Therefore, we claim to have a systematic and complete sample. Among them were several popular initiatives and constitutional amendments (requiring a popular referendum) such as restricting the number of foreign immigrants (in 1970, 1974, 1977, 1981, 1982, 1983, 1984, 1988, 1994, 1996); equal rights for men and women (1959, 1971, 1981); forbidding the activities of Freemasons, Jesuits, and the establishment of monasteries (1937, 1973); and making Romansch (a language spoken by not more than one percent of the Swiss) an official language (1938)¹. Following Gamble, we calculated the frequency of anti-minority outcomes, using three aggregate issue groups: policy towards foreigners, religious liberty, and miscellaneous. The results are exhibited in Table 1.

At the federal level, only 20 percent of the issues were decided by the Swiss electorate in a direction suppressing minority civil rights. This result clearly speaks against the proposition that the voters in a direct democracy tend to abolish civil rights. This is all the more important as in Switzerland the fundamental issues relating to civil rights are determined at the federal level. The lower levels of governments, the cantons, and communes have to conform to the respective constitutional provisions and laws.

Even if we look at the lower levels of government, anticivil rights results are not pervasive at all. The lower parts of Table 1 show the corresponding results for the canton and the city (commune) of Zurich. We proceeded the same way in choosing pertinent referenda as we did for the federal level. The referenda involved decisions mainly on public policy issues such as financial aid to drug addicts and mentally ill and expansion of public housing for lower income classes. At the cantonal level, none of the groups of issues turned out in favor of the minorities, and overall 62 percent were anti-minority. In contrast, none of the three issue groups at the city level was systematically decided against the minority's interests. The results at the cantonal level resemble Gamble's anticivil rights finding and warrant comment. It could be argued that they are indeed antiminority as they are directed against the interests of small groups of persons. On the other hand, some of

¹A complete list of all issues considered can be obtained from the authors.

**Table 1. Direct Democracy and Civil Rights
Switzerland, 1970–1996**

| Issue | Number | Anti-minority Result |
|--|-----------|----------------------|
| Federal Level | | |
| Policy toward foreigners | 12 | 3 (25%) |
| Religious liberty | 1 | 0 (0%) |
| Miscellaneous | 7 | 1 (14%) |
| Total | 20 | 4 (20%) |
| Cantonal Level (Canton of Zurich) | | |
| Public housing | 4 | 3 (75%) |
| Youth and foreigners' rights | 9 | 5 (55%) |
| Total | 13 | 8 (62%) |
| Local Level (City of Zurich) | | |
| Drug policy | 5 | 1 (20%) |
| Public housing | 12 | 4 (33%) |
| Youth and foreigners' rights | 14 | 2 (14%) |
| Total | 31 | 7 (23%) |
| All levels | 64 | 19 (30%) |

Sources: for the votes at the federal level data: Swiss Federal Record (Schweizerisches Bundesblatt), several volumes; for the votes at the city level: Official Record of the City of Zurich (Amtsblatt der Stadt Zürich), several volumes; for the votes at the cantonal level: Official Record of the Canton of Zurich (Amtsblatt des Kantons Zürich), several volumes; own calculations

the issues are clearly dominated by concerns other than those of the minority. In the case of public housing, for example, three initiatives undertaken in 1974, 1982, and 1993 involved a strong redistribution of cantonal funds from rural to urban areas. Accordingly, in all three cases, the initiatives enjoyed a 55 percent approval in urban areas, but 60 percent of the rural voters rejected them. While the subject area clearly touched on civil rights issues, the three votes focused on the distribution between urban and rural areas.

The antiminority shares for the federal, cantonal, and communal level sum up to 30 percent which can be compared to Gamble's figure of 78 percent. We thus reach a rather different result: in more than two thirds of the cases, the Swiss voters *supported* rather than suppressed minority rights.

Gamble contrasts the pass rate of 78 percent for restrictive civil rights issues to the 33 percent average for substitutive measures (248, 254). She concludes that antiminority measures enjoy a substantially higher probability of success than the average issue.

**Table 2. Types of Referenda and Effects on Civil Rights
Switzerland**

| Type of Referendum | Number | Effect on Civil Rights | Anti-Minority Result | Average Rejection Rate | Average Pass Rate |
|-----------------------------------|--------|------------------------|----------------------|------------------------|-------------------|
| Federal level (1866–1996) | | | | | |
| Initiative | 2 | supporting | 2 (100%) | 90% | 10% |
| | 11 | restricting | 0 (0%) | | |
| Constitutional Amendment | 11 | supporting | 3 (27%) | 50% | 50% |
| | 1 | restricting | 0 (0%) | | |
| Federal Laws | 2 | supporting | 0 (0%) | | 63% |
| City of Zurich (1970–1996) | | | | | |
| Initiative | 3 | supporting | 1 (33%) | | 33 % |
| Amendment | 28 | supporting | 5 (17%) | | 82 % |

Sources: Same as Table 1, own calculations

As shown in Table 2, we cannot replicate this finding in our data set. At the federal level eleven initiatives aimed at restricting minority rights. None of them was successful. Compared to the average pass rate (10 percent) of initiatives, we do not find evidence that Swiss voters are prepared to restrict minority rights. While civil rights opponents might be given more possibilities of attacking civil rights, their record of success is poor. Rather, the proponents seem to benefit from direct democratic instruments. Out of eleven constitutional amendments broadening civil rights (e.g., in 1983, an ease in naturalization requirement for foreigners), eight were approved in the popular vote. Given that only 50 percent of all amendments survive a referendum, there is no evidence of voters overly disapproving expansion of civil rights.

The result is confirmed looking at the city level. Again we compare the acceptance frequency of initiatives expanding civil rights to the corresponding average pass rate. Only 17 percent of all referenda aiming at expanding civil rights were rejected, with the “average” issue being rejected in 18 percent of all cases.

2. CONCLUDING REMARKS

In summarizing previous studies and ours, we conclude that there is *no inherent tendency* in popular votes to suppress civil rights. In the case of the US, Gamble’s results and Cronin’s (1989) are at odds (see also Frug 1980,

1987). For Switzerland, we find no evidence of voters overly disapproving civil rights issues. In the city of Zürich, popular votes decidedly helped to expand them. It is beyond the scope of this paper to resolve the difference found in the two datasets. However, two aspects should be mentioned.

2.1 Distributional Concerns

The seemingly high rejection rate at the cantonal level illustrates this aspect. The rejection of three public housing initiatives in urban areas for lower income classes can be explained by a distributional conflict between urban and rural communities. Rural voters were not interested in financing minorities in other jurisdictions without receiving any benefit for themselves. This leads us to a tentative conclusion: Minority issues fare well in popular votes if they focus on the anti or pro minority dimension. However, if an additional policy dimension is important (such as the distributive issues mentioned), it might hamper the voters's benevolent intentions towards minorities.

2.2 Federalist Structure in Combination with Direct Democracy

Direct democratic institutions at different levels of government (communal, cantonal, and federal) improve the possibility of success for minorities at referenda. Their issues can then be put on the agenda of the jurisdiction where distributional conflicts are lowest. In the case of Zurich, the striking difference in the number of issues and acceptance rates between the cantonal and city level supports this conclusion.

Overall, direct democracy performs in a different way than suggested by the simple logic that the majority will always exploit the minority and that their civil rights will be consistently eroded. Rather, future research needs to explore in greater detail the conditions under which civil rights and minorities can prevail in a democracy with popular votes.

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