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ABSTRACT

We extend Gamble (1997) and examine how minorities fare under direct democracy. We propose that the threat of majority tyrany is not simply a function of direct democracy, but of the scale over which democracy is practiced. Models used to predict direct legislation outcomes demonstrate that larger places are more likely to produce pro-gay policy outcomes. We dicuss the implications of this for crituques of direct democracy.

Direct Democracy and Minority Rights: An Extension

Gamble (1997:245) asks, "when citizens have the power to legislate issues directly, will the majority tyrannize the minority?" She notes Madison advocated a constitution that controlled for the "mischief of (majority) factions" and that his cure "was not direct legislation" (247). She claims further to have found "strong evidence that the majority has indeed used its direct legislative powers to deprive political minorities of their civil rights" (246). In conclusion, she echoes critics of direct democracy and claims that "direct legislation only weakens us" as a nation (262).

Theory

Publius' full treatment of the majority faction problem should be considered in evaluating these claims, since it offers insights into managing the threat of majorities in general, rather than just the particular threat of direct democracy. In *Federalist 9,* Hamilton argued that the tyrannical capacity of a majority would be constrained by the "enlargement of the orbit" (Hamilton (1788), 1961:73) of a political system over a greater territory, a warning

he addressed to Anti-federalist advocates of small, homogeneous republics (Storing 1981). In *Federalist 10*, Madison also urged the area of a democracy be extended and warned that in small jurisdictions, "more frequently will a majority be found of the same party" and, "more easily will they concert and execute their plans of oppression" (1961:83). In *Federalist 51*, he argues explicitly that minority rights are protected by extending the size of an area governed so that, "society itself will be broken into so many parts, interests and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority" (1961:324).

In other words, larger political units should offer the heterogeneity of interests that make it difficult for a cohesive majority to tyrannize a minority. [1] We suggest that Publius' theory indicates that direct democracy can be far more injurious to minorities when practiced in smaller communities than when used in larger places, since larger places (and states) are typically more socially diverse.

Evidence:

Gamble examines five areas where local and state ballot measures limited minority rights: AIDS testing, gay rights, language, school desegregation, and housing/public accommodations desegregation. The relatively high approval rates for referenda she identifies in these areas are compared to lower approval rates for all state ballot measures. This is used to conclude that direct democracy is likely to harm minorities, and that representative democracy protects minorities better than direct democracy.[2]

Gamble acknowledges (252) that her sample cannot contain all civil rights cases that have reached ballots and thus might be biased. Since there is no known population of measures on local ballots, drawing a random sample of observations for all these policy areas is not possible. This makes it impossible to judge how frequently local anti-minority

measures pass, how many local ballot measures pass overall, or how many policies abusive of minority rights were adopted via direct or representative democracy.

We can, however, evaluate Gamble's claim that anti-minority measures are approved by voters more frequently than other measures. Haider-Markel (1997) and (reference deleted) have identified state and local ballot measures appearing from 1972 to 1996 dealing with civil rights of gays and lesbians, including measures dealing with AIDS.[3] This provides data for a known set of anti-minority ballot measures dealing with these policies. Of the 11 state measures[4] identified, three passed (27%), but only two (18%) can be said to have produced decidedly anti-minority policy outcomes.[5] This compares to a 38% approval rate for all state initiatives from 1898-1992 (Magleby 1994:231). Although the number of cases is small, we can be sure that the selection of observations is unbiased. In this policy area, the electoral majority in states typically do not deprive this minority of civil rights, and are less likely to pass these policies than other initiatives.

Gamble's analysis also provides little prospect for pro-minority outcomes from direct democracy. In Table 1, we extend her analysis further by evaluating factors that might be associated with pro-minority outcomes. Using cases identified by Haider-Markel (1997) we estimate four models that predict when direct democracy outcomes are favorable to homosexuals.[6] Our dependent variable is coded 1 if voters in a jurisdiction approved a measure benefiting homosexuals (or rejected one hostile to gays), and coded 0 if otherwise.

Following Madison, we test how the size of a political jurisdiction affects the success or failure of direct legislation dealing with homosexuals. We include a measure of each jurisdiction's population (logged) to test if direct democracy produces better treatment of minorities in larger places. Race (percent white) is included as an additional indicator of community homogeneity. We also include as control variables median family income and

education (percent college graduates), as the latter has been shown to be a consistent predictor of tolerance of minorities (e.g. McCloskey and Brill 1983). Since percent white and population introduce problems of multi-colinearity[7], we also estimate models that exclude race.

Table 1: Estimates of Pro-Gay Direct Legislation Outcomes

	Model 1 (all places)	Model 2 (all places)	Model 3 (local)	Model 4 (local)
Variables:				
Log of Population	.623** (.167)	.531** (.141)	.297+ (.205)	.333* (.163)
Percent of Population White	1.49 (1.36)	----	-.454 (1.66)	----
Percent with College Education	.416* (.161)	.368* (.153)	.488** (.159)	.492** (.159)
Median Family Income	-.249 (.262)	-.176 (.247)	-.302 (.271)	-.312 (.269)
Constant	-9.97** (2.82)	-7.70** (1.86)	-4.58+ (3.52)	-5.36* (2.11)
Number of Cases	90	90	80	80
Model Chi-Square	31.8**	30.7**	18.8**	18.7**

Note: Logistic regression estimates. Standard errors in parentheses. Model chi-square is the improvement in -2LL between these full models and restricted (constant only) models.

Sources: Cases, Haider-Markel (1997); Demographic data, US Census, various years.

** = significant at p < .01 (two-tail)
* = significant at p < .05 (two-tail)
+ = significant at p < .10 (one-tail)

Results in Table 1 illustrate that pro-minority outcomes are significantly more likely in larger places, even when we control for the substantial effect of education. The effect of size is most pronounced when states [8] are included (Models 1 and 2), but is still significant when we compare large localities to smaller ones (Models 3 and 4). These data illustrate that direct democracy need not produce policies that are uniformly hostile to minorities. Indeed, well educated populations and large jurisdictions can lead to the adoption of direct legislation sympathetic to homosexuals.[9]

Implications:

We must exercise caution when applying logic and data to critique direct democracy. Publius predicted that minorities might find little protection from democracy *in any form* in small communities. Theory and evidence presented here, and studies of outcomes from local representative democracy (Wald, Button and Rienzo 1996) demonstrate that the size of a jurisdiction affects how minorities are treated. Any critical examination of how direct (*or representative*) democracy performs should take this into account.

Our analysis illustrates that minorities are less protected by direct democracy in smaller communities - places that we assume have a greater homogeneity of interests. But even this evidence should not be used to imply that direct democracy *per se* is abusive of minorities. Given Publius' theory, we could expect that the very same democratic process, indeed the very same initiative measure, could abuse a minority in a small community but not in a larger place. We suggest that either representative or direct democracy can operate to translate tolerance (or hostility) of minorities into policy. More data are needed to examine how and when *direct* democracy is abusive of minorities, and to examine how this compares to representative democracy.

References:

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Endnotes

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[1] Guided by an "urbanism/diversity theory" that is similar to our read of Publius, Wald, Button and Rienzo (1996) have established that population size is the single largest factor differentiating between communities that adopt gay rights protections (primarily via representative democracy) and those that do not. Smaller places are less likely to adopt policies protecting the rights of gays and lesbians.

[2] We address the first part of these claims. The second part is a potential logical fallacy. Finding appropriate data for evaluating that claim would involve finding data on the behavior of representative bodies. Gamble offers no such data.

[3] Gay rights and AIDS issues comprise 65% of cases in Gamble's sample.

[4] The state level is our only basis for analysis, since there is a known population here.

[5] Prop. 96 (AIDS testing) did not deal with rights of homosexuals, but applied to violent sex offenders.

[6] This produces 46 more gay rights/AIDS policy cases than Gamble identified. We include one additional case that Haider-Markel did not identify (Junction City, OR, 1994) and omit one (Prop. 96).

[7] The correlation between percent white and population is -.59 for all cases, and -.66 for local cases.

[8] States having initiatives include California (4), Colorado, Idaho, Maine, and Oregon (3). Population remains significant when California (the largest jurisdiction) is omitted.

[9] We acknowledge that our case are weighted equally here, and that some (a state level policy) could have much greater impact on minority rights than others (a local measure).