

Anna Fruhstorfer (University of Potsdam) [fruhstorfer@uni-potsdam.de] and Olga Leshchenko (University of Konstanz). *The constitutionalization of minority rights: citizen participation, group autonomy, and power sharing*.

Abstract: Is a more in direct democracy better for the constitutionalization of minority rights or not? In particular, are some rights more likely to be included than others when the process is more participatory? Or do the groups that primarily participate in direct democratic instruments protect their privileged status? While public participation in constitution making has received considerable scholarly attention, we know little about the impact of direct democratic measures on the constitutional protection of individual rights of minorities. For quite some time, scholars argued that more direct participation will lead to better democratic outcomes, yet more recent research pointed to the implicit majoritarian aspect in this argument and to the inherent danger that majoritarian processes support the development of something approaching the tyranny of the many. No matter how well-intentioned direct democratic instruments in constitution making are, the various traps these processes can create, present a real danger that the new constitution will provide only for the majority, or even worse, discriminate against marginalized groups. Hence, we argue that public participation in constitution making influences the constitutionalization of minority rights, but that the effect varies by type of right: while more public participation in constitution-making processes would result in more constitutional protections for group autonomy, it would decrease power sharing provisions. Power sharing here entails that all groups or individuals have the possibility to participate in political decision making (for example political rights for indigenous groups), while group autonomy requires the possibilities for groups or individuals to decide their own affairs (for example right of self-determination). We assume that group autonomy rights are perceived as less threatening to majority interests than power sharing rights. Drawing on new and unique data, this article examines the inclusion of minority protections in constitutions worldwide from 1918 to 2020. We show that direct democratic measures indeed have a differential effect on the constitutionalization of minority rights, however we find that the effect has a different direction than expected. While public participation does not affect the probability for rights that guarantee power sharing provisions, the same measures have a negative effect on the probability for rights that protect group autonomy. This points to a complex interaction between the type of minority right, the expectation about its actual enforcement, and the importance of identity politics in direct democratic procedures. The article's findings have important implications for understanding the relationship between political representation and the protection of vulnerable groups.