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OPTION REPORTS

ACCESSION AND SECESSION OF TERRITORY

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The following report is one of a series produced by the Constitutional Design Group, a group of scholars dedicated to distributing data and analysis useful to those engaged in constitutional design. The primary intent of the reports is to provide current and historical information about design options in written constitutions as well as representative and illustrative text for important constitutional provisions. Most of the information in these reports comes from data from the Comparative Constitutions Project (CCP), a project sponsored by the National Science Foundation. Interested readers are encouraged to visit constitutionmaking.org for further resources for scholars and practitioners of constitutional design.

Note that the dates provided herein for constitutional texts reflect either the year of initial promulgation *or* of a subsequent amendment, depending on the version used for analysis. For example, Brazil 2005 refers to the Brazilian Constitution of 1988, as amended through 2005.

1. INTRODUCTION

The borders of the states change over time due to multiple reasons. A state territory can increase by accession of another territory outside of the country. The state territory can decrease by cession or secession of parts of its own territory. We draw a distinction between the two processes by which territory decreases. Secession is a bottom up process, a right granted to parts of the state to secede from the larger entity, whether a federation, confederation or even a unitary state. Cession, on the other hand, is an act by the state to give part of its territory away. In the present report we focus on secession and accession.

2. DATA SOURCE(S)

The analysis reported below is based on data the Comparative Constitutions Project (please see the appendix to view the question text). As of this writing, the project's sample includes 575 of the roughly 800 constitutions put in force since 1789, including more than 90% of constitutions written since World War II.

3. CLASSIFICATION AND HISTORICAL TRENDS

About 14% of constitutions provide for accession or adoption of territory outside of the country into the constitutional regime. As Figure 1 shows that is little variation over time. As of the 1850s, about 20% of constitutions provided for adoption of territory outside of the country. That number declined slightly in the end of the 19th century but came back to 20% in the early 1950s. In 2000 about 14% of constitutions in force provided for accession of territory outside the country. As Figure 2 suggests there is some variation across regions. In 2000 about one third of constitutions in South Asia and one fifth of constitution in E. Europe/Post-Soviet and Oceania contain the provision.

Figure 1. Percent of Constitutions That Provide for Accession or Adoption of Territory Outside of the Country into Constitution Regime by Year (N=575)

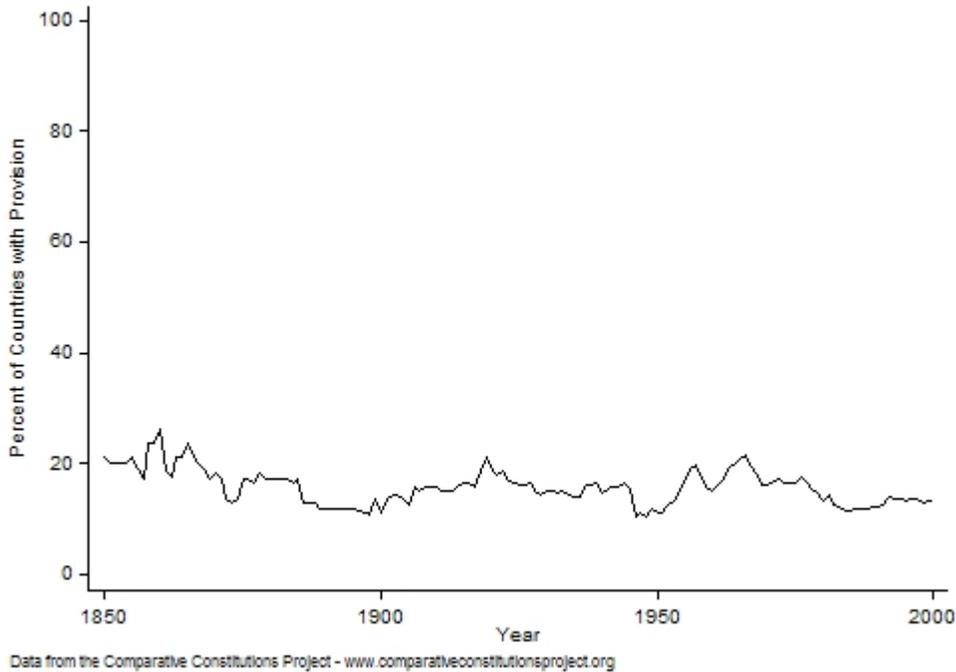
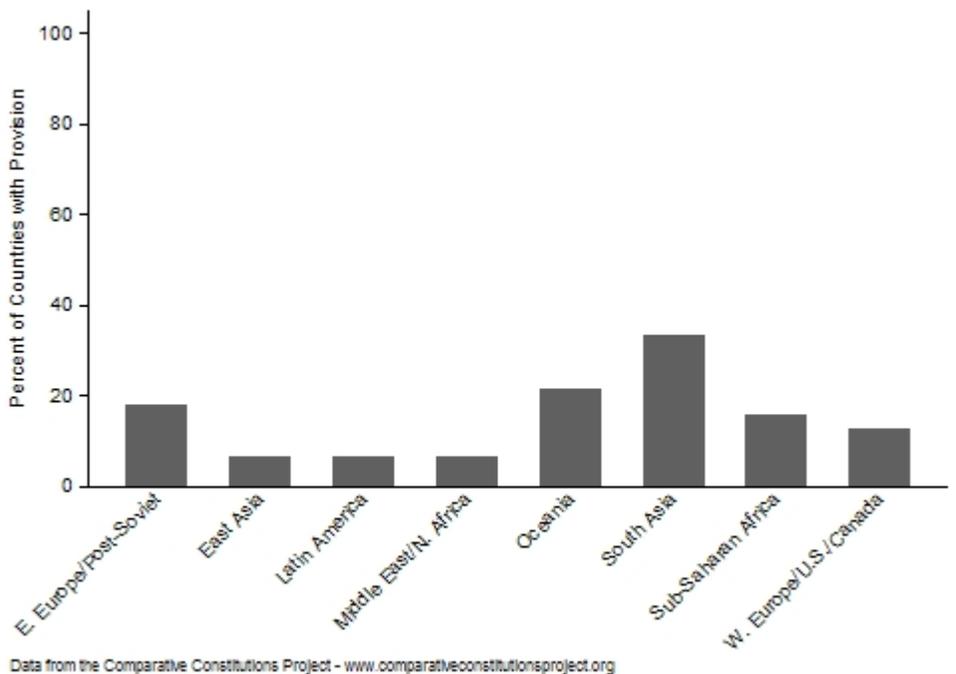


Figure 2. Percent of Constitutions That Provide for Accession or Adoption of Territory Outside of the Country into Constitution Regime in Force in 2000 by Region (N=181)



13% of constitutions contain provisions for the secession of parts of the state. About 84% of constitutions that contain provisions about secession prohibit it. As Figure 3 shows, very few constitutions prohibited secession of territory in 18th century. That percent had almost doubled in 2000. As Figure 4 shows that new constitutions written in Eastern Europe and Post-Soviet states are most responsible for the increase.

Figure 3. Percent of Constitutions That Prohibit Secession or Withdrawal of Part of the State by Year (N=575)

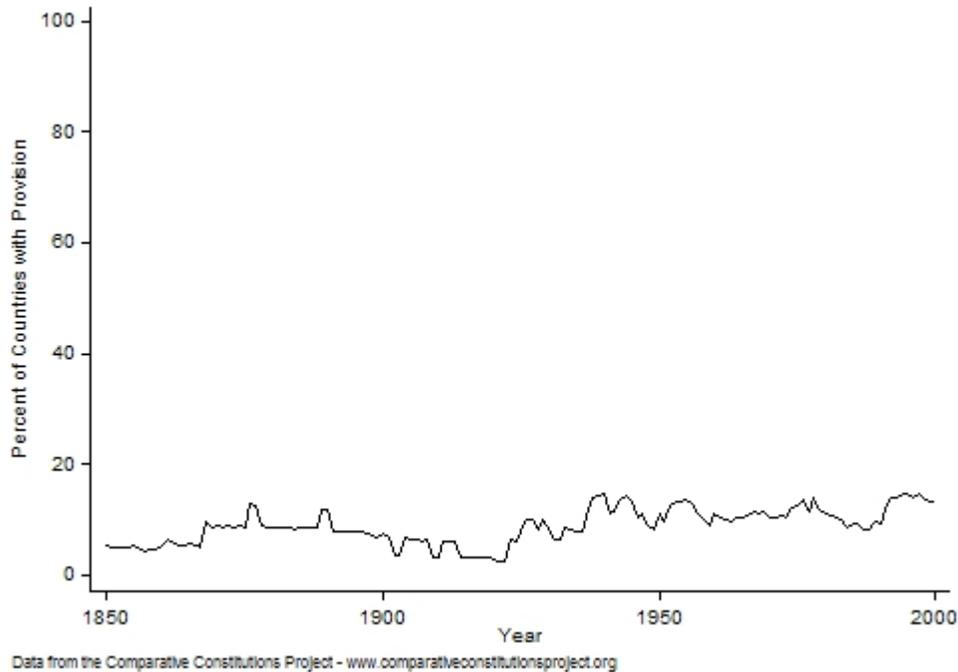
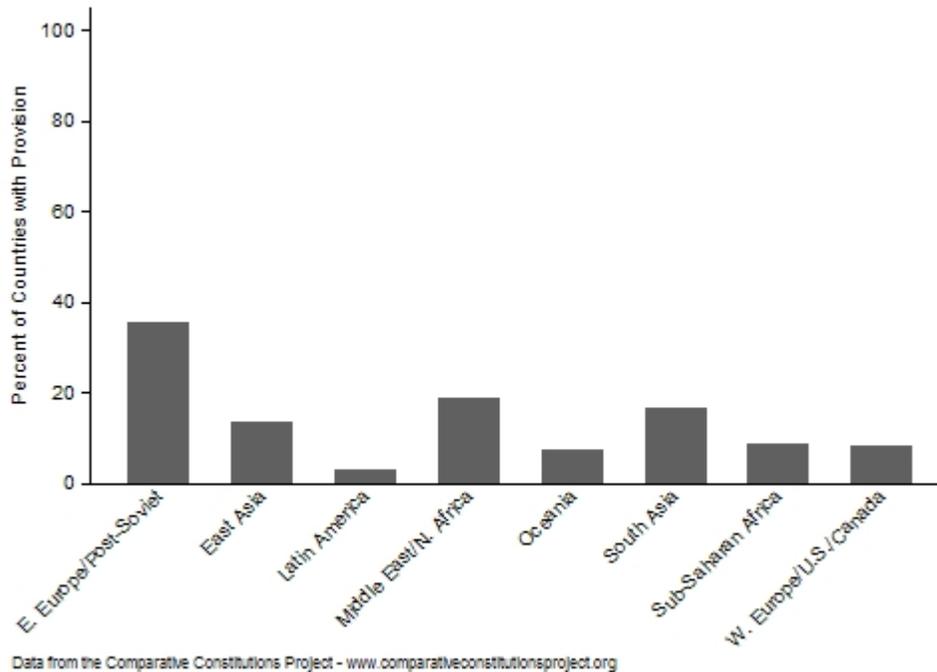


Figure 4. Percent of Constitutions That Prohibit Secession or Withdrawal of Part of the State in Force in 2000 by Region (N=181)



4. NOTES ON ATYPICAL CASES

A constitution that says the state is “indivisible” is considered to explicitly disallow secession. Examples include: Haiti 1805; Paraguay 1940; Thailand 1996; Niger 1899; Slovakia 2004; and the Czech Republic 2002. However, if the constitution contains only a general reference to territorial integrity, we consider the issue to be not specified in the constitution.

It is very interesting to note that the right to secession is the first sentence in the constitution of Yugoslavia 1974. Also, all Soviet Union constitutions grant the right of secession to the republics.

Most constitutions impose constraints on accession requiring consent of the population and expressed by means of a referendum.

5. SAMPLE CONSTITUTIONAL PROVISIONS

(Note: dates provided reflect the version of the constitution used to obtain sample provisions, and represent either initial year of promulgation or year through which subsequent amendments are included.)

The set of sample provisions is divided into the following sections:

1. Accession of Territory Outside the Country
2. Secession is allowed
3. Secession is Not Allowed

5.1. Accession of the Territory Outside the Country

No secession, no exchange, no territorial adjunction is valid without the consent of the people expressed by means of a referendum.

- *Chad 1996, Article 220*

The nation of Haiti shall not in any way make conquests outside the Island, limiting itself to conserving its territory.

- *Haiti 1807, Article 37*

No cession or exchange of territory shall be effected without a law.

- *Greece 1952, Article 33*

Treaties and international agreements which involve the cession, exchange or addition of territory may not be ratified or approved except by revision of Articles 1 (paragraph 1) and 4 of this Constitution and with the agreement of the populations concerned given by referendum.

- *Congo, Democratic Republic of 1964, Article 9*

The Congress has the power (facultad):

I. To admit new States into the Federal Union;

- *Mexico 2004, Article 73.I*

The Chambers authorize through laws the ratification of international treaties which are of a political nature, or which provide for arbitration or legal settlements, or which entail changes of the national territory or financial burdens or changes in the laws.

- *Italy 2003, Article 80*

Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

- *India 2002, Article 2*

Accession to the Russian Federation and formation of a new subject of the Russian Federation within it shall be carried out as provided for by the federal constitutional law.

- *Russia 1993, Article 65.2*

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

- *United States 1992, Article 4.3*

The law will establish a special juridical regime for those territories that by free determination of their inhabitants and with acceptance by the National Assembly become incorporated into that of the Republic.

- *Venezuela 1999, Article 14.*

No cession, no exchange, no addition of territory is valid without the consent of the Central African people called to pronounce by means of referendum.

- *Central African Republic 1994, Article 66*

5.2. Secession is Allowed

Individual communes have the right to secede from the State. A decision to initiate the secession procedure shall be taken by a majority of the citizens residing there who are entitled to vote. Secession shall be regulated by a law or, as the case may be, a treaty. In the latter event, a second ballot shall be held in the commune after the negotiations have been completed.

- *Liechtenstein 2003, Article 4.2*

The nations of Yugoslavia, proceeding from the right of every nation to self-determination, including the right to secession...

- *Yugoslavia 1974, Preamble*

Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.

- *Ethiopia 1994, Article 39.1*

Each Union Republic shall retain the right freely to secede from the USSR.

- *Russia (Soviet Union) 1977, Article 73*

The Republic of Karakalpakstan shall have the right to secede from the Republic of Uzbekistan on the basis of a nation-wide referendum held by the people of Karakalpakstan.

- *Uzbekistan 1992, Article 74*

Upon the expiry of a three-year period the member state has the right to initiate the procedure for a change of the state status, i.e. withdrawal from the State Union of Serbia and Montenegro. A decision to withdraw from the State Union of Serbia and Montenegro is made after a referendum has been held.

....The member state that exercises the right of withdrawal shall not inherit the right to international legal personality and all outstanding issues shall be regulated separately between the successor state and the state that has become independent.

If both member states declare in a referendum that they are in favor of changing the state status, i.e. in favor of independence, all outstanding issues shall be resolved in the succession procedure, as was the case with the former Socialist Federative Republic of Yugoslavia.

- *Yugoslavia 2003, Article 60*

(1) Six months before the end of the six year interim period, there shall be an internationally monitored referendum, for the people of Southern Sudan organized by Southern Sudan Referendum Commission in cooperation with the National Government and the Government of Southern Sudan[.]

(2) The people of Southern Sudan shall either:—

(a) confirm unity of the Sudan by voting to sustain the system of government established under the *Comprehensive Peace Agreement* and this Constitution, or

(b) vote for secession.

- *Sudan 2005, Article 222.2.b*

5.3. Secession is Not Allowed

No revision proceedings may be undertaken or pursued if they would impair the integrity of the archipelago.

- *Comoros 1985, Article 45*

The territory of the Dominican Republic is and shall be inalienable.

- *Dominican Republic 2001, Article 5*

The states shall reciprocally recognize one another's autonomy; they are declared to be equal as political entities; they shall retain fully the power in all matters not reserved by this Constitution to other powers, and they declare that their first duty is the conservation of the independence and the integrity of the Nation. Consequently, the states can never break the

national unity, nor can they ally themselves with foreign powers, nor can they solicit their protection, nor can they cede to them any portion of their territory, but they shall defend themselves and the Nation against any violence contrary to the national sovereignty.

- *Venezuela 1947, Article 120*

Art. 2. The State is one and indivisible.

Art. 3. The territory of the State is inalienable.

- *Peru 1940, Article 1 and 2*

The land, territorial waters and airspace of the Estonian state are an inseparable and indivisible whole.

- *Estonia 2005, Article 2*

No person shall, directly or indirectly, in or outside Sri Lanka, support, espouse, promote, finance, encourage or advocate the establishment of a separate State within the territory of Sri Lanka.

No political party or other association or organization shall have as one of its aims or objects the establishment of a separate State within the territory of Sri Lanka.

- *Sri Lanka 2001, Article 157A*

6. APPENDIX

This report is based on the following question(s) from the Comparative Constitution Project's "survey instrument":

[SECESS] Are there provisions for the secession or withdrawal of parts of the state?

1. Yes, subsidiary units only
2. Yes, but unspecified about who may do so
3. No, secession is not allowed
4. left explicitly to non constitutional law
90. other, please specify in the comments section
97. Unable to Determine
98. Not specified

[ACCESS] Does the Constitution provide for accession or adoption of territory outside of the country into the constitutional regime?

1. Yes
2. No
90. other, please specify in the comments section

97. Unable to Determine

For additional documentation on the Comparative Constitutions Project, (including the full codebook, the sample, the sources of constitutional texts and translation issues related to those texts, coding procedures, publicly available data, etc.) please visit the project website at www.comparativeconstitutionsproject.org.