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OPTION REPORTS

CAPITAL PUNISHMENT

September 5, 2008

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

Capital punishment refers to the use of the death penalty as a criminal sanction. It has been the subject of an abolition movement for some time, and constitutions frequently prohibit it outright or limit its application to particular cases. We describe below the range of constitutional provisions for capital punishment.

2. DATA SOURCE(S)

The analysis reported below is based on data the Comparative Constitutions Project (please see the appendix for more information on this resource). As of this writing, the project sample includes 550 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

Overall, 21% of constitutions explicitly allow for capital punishment, while 16% of constitutions universally prohibit it. In 6% of the cases in our sample, the legislator allowed or prohibited the capital punishment for certain specified cases. These findings are summarized in Table 1.

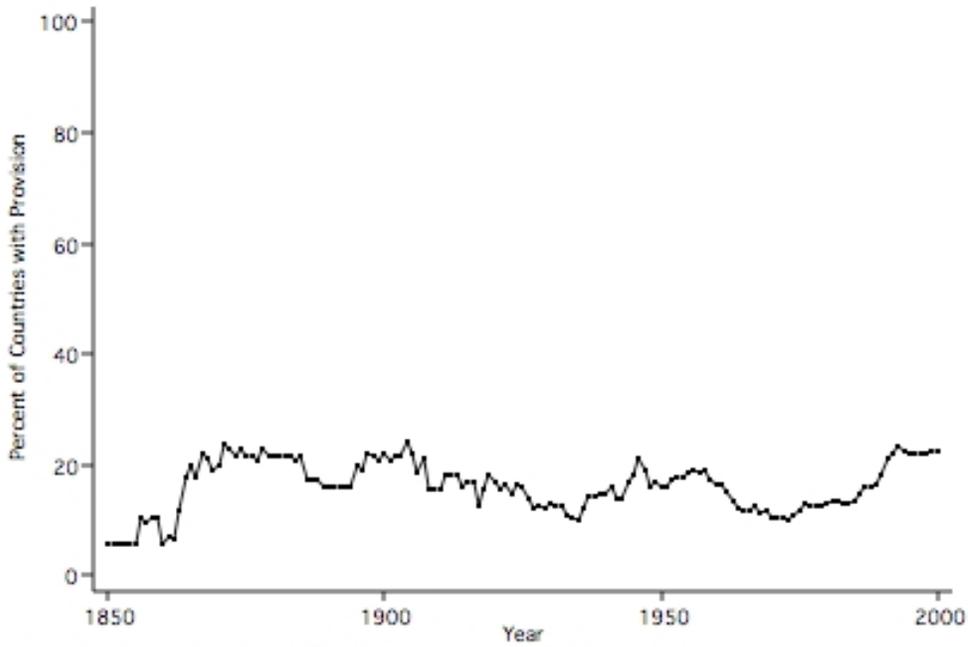
As Figure 1 suggests, incorporation of provisions prohibiting the capital punishment in constitutional texts has been relatively rare across time. In 2000, 22% of constitutions explicitly prohibited capital punishment. By comparison, Figure 2 shows that the incorporation of provisions allowing for the capital punishment in constitutional texts has increased in popularity after War World 2. In 2000, 28% of constitutions explicitly allowed for capital punishment. This is despite international pressure for abolition.

Figures 3 and 4 show the regional variation among constitutions in 2000. As Figures 3 and 4 suggest that provisions prohibiting capital punishment are most common in Western Europe, Latin America, and Eastern Europe, while East Asian and Middle Eastern constitutions tend to be silent on the issue altogether. South Asian, Latin American and Sub-Saharan African constitutions are more likely to explicitly allow capital punishment than to prohibit it.

Table 1. Distribution of Provisions Regarding Capital Punishment

Provision	Number of Cases	Percent of Cases
Universally Prohibited	94	16.7
Qualified: capital punishment allowed/prohibited only in certain specified cases	34	6.07
Explicitly Allowed	120	21.31

Figure 1. Percent of Constitutions That Explicitly Prohibit the Death Penalty by Year (N=550)



Data from the Comparative Constitutions Project - www.comparativeconstitutionsproject.org

Figure 2. Percent of Constitutions That Explicitly Allow the Death Penalty by Year (N=550)



Figure 3. Percent of Constitutions That Prohibit Capital Punishment in 2000 by Region (N=191)

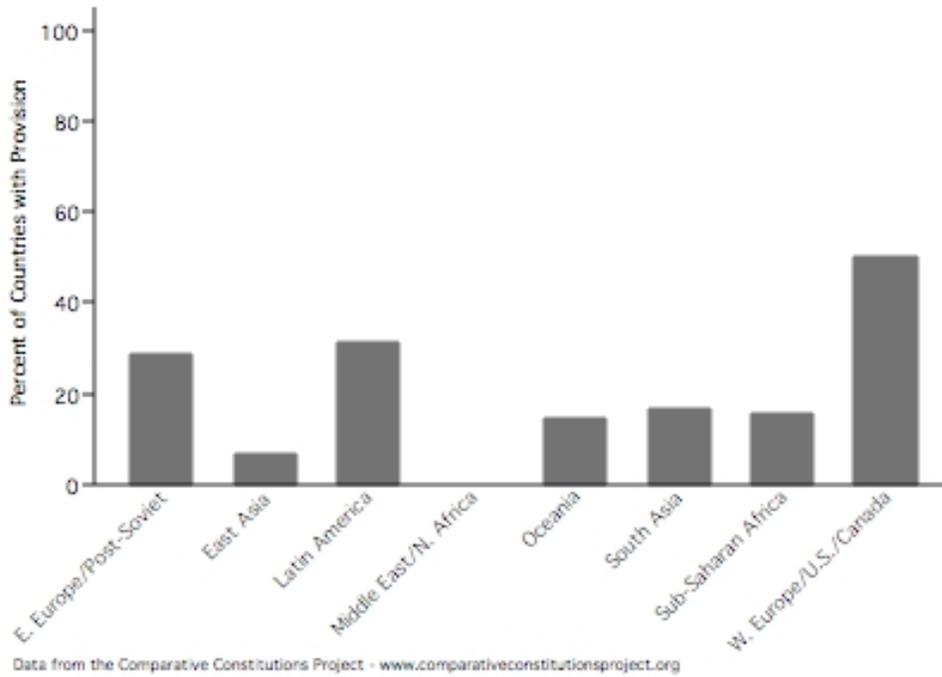
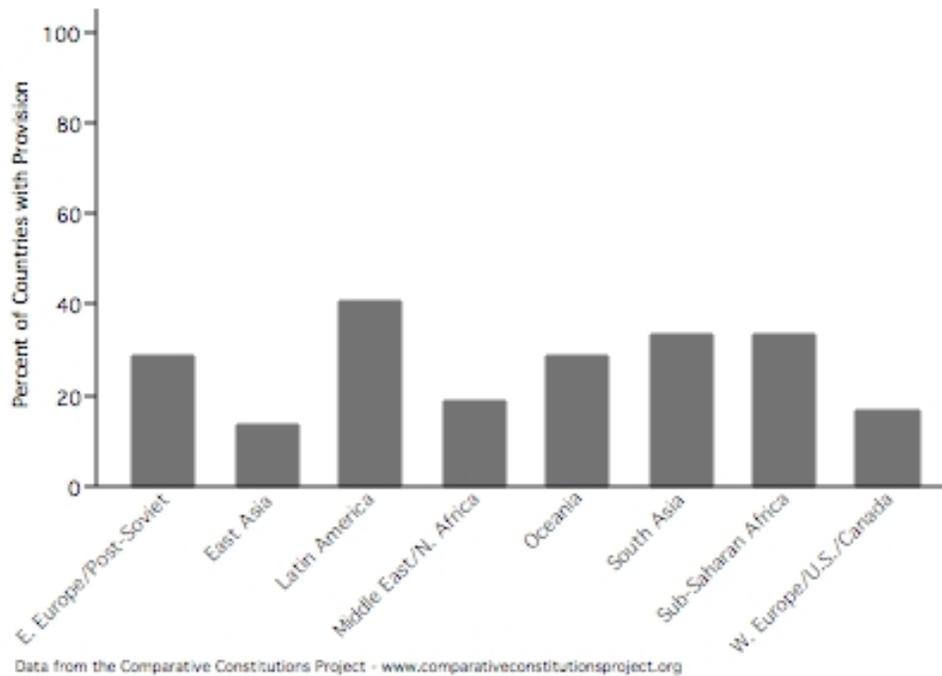


Figure 4. Percent of Constitutions That Allow for Capital Punishment in 2000 by Region (N=191)



4. NOTES ON ATYPICAL CASES

In the category of provisions explicitly allowing for capital punishment, we have included cases in which the constitution implies that the death penalty exists in another regulatory provision. For example, we include a provision specifying that those on death row are disqualified from running in elections (e.g. Antigua and Barbuda 1981 and Nigeria 1999), as well as those stating that a death sentence cannot be executed until the appropriate official has had the opportunity to grant a pardon (e.g. Indonesia 1950).

In many cases capital punishment is allowed or prohibited only in certain cases. The most common offenses for which capital punishment is allowed are military crimes, treason, and murder; capital punishment is sometimes prohibited for political crimes. In some cases (e.g. Georgia 2004 and Russia 1993), such provisions explicitly mention countries' intention to abolish capital punishment.

Finally, in some cases certain procedural requirements are imposed, such as signature of the president, jury trial, approval of the king. Such cases, if no further substantive restrictions are specified, were coded as "explicitly allowed" with a comment about the procedural restrictions.

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 sections on:

1. Capital Punishment is Universally Prohibited
2. Capital Punishment is Allowed Under Certain Circumstances
3. Capital Punishment is Explicitly Allowed

5.1. Capital Punishment is Universally Prohibited

The death penalty is abolished.

- *Austria 2004, Article 85*

There is no penalty of infamy or civil death. In case of assassination, parricide, or treason, the punishment of thirty years' imprisonment shall be applied, without the right of pardon. Treason is defined as complicity with the enemy during a foreign war.

- *Bolivia 1967, Article 17*

The human person is sacred.

All human beings are born free and equal before the law. They enjoy the inalienable rights which are the right to life, to liberty, to the full realization of their personality and to the respect of their dignity. The rights of the human person are inviolable. The public authorities have the obligation to assure the respect, the protection and the promotion of them. Any punishment leading to the deprivation of human life is forbidden.

- *Cote d'Ivoire 2000, Article 2*

Capital punishment is abolished.

- *German Federal Republic 2002, Article 102*

The death penalty is abolished in all cases.

- *Haiti 1987, Article 20*

The death penalty is abolished. No one may be sentenced to such punishment or executed other than for acts committed during the time of war or during an imminent threat of war and only in accordance with the law.

- *Moldova 2003, Article 24*

1. All citizens shall have the right to life. All shall have the right to physical integrity and may not be subjected to torture or to cruel or inhuman treatment.

2. In the Republic of Mozambique there shall be no death penalty.

- *Mozambique 1990, Article 70*

Capital punishment may not be imposed.

- *Netherlands 2002, Article 114*

The right to life is inviolable. No law can establish the death penalty, nor can any authority apply it. The State will protect the life of the persons who are deprived of their freedom, rendering the military or civil service, or submitted to its authority in any other form.

- *Venezuela 1999, Article 43*

5.2. Capital Punishment is Allowed Under Certain Circumstances

The penalty of death for political offenses, all kinds of torture and flogging are forever abolished. The prisons of the Nation shall be healthful and clean, for the custody and not for the punishment of prisoners confined therein; and any measure that under the pretext of precaution leads to mortifying them beyond what their custody demands, shall render liable the judge who authorizes it.

- *Argentina 1997, Article 18*

Everyone has the right to life.

Until such time as it is abolished, the death penalty may be prescribed by law for particular capital crimes, as an exceptional punishment.

- *Armenia 1995, Article 17*

The penalties of infamy and civil death do not exist. The penalty of death will be imposed only in cases of assassination, parricide, and treason to the country. Treason means complicity with the enemy in time of foreign war.

- *Bolivia 1945, Article 25*

The death penalty cannot be imposed. Exception is made as to members of the Armed Forces, for crimes of a military character, and as to persons guilty of treason, or of espionage in favor of the enemy at a time of war with a foreign nation.

- *Cuba 1940, Article 25*

The death sentence shall not be imposed, except for the cases provided by the law for felonies perpetrated in wartime and connected to the war.

- *Greece 2002, Article 7.3*

Capital punishment may not be imposed for any political matter, except treason.

- *Haiti 1983, Article 39*

Capital punishment (*pena de muerte*) for political crimes is likewise prohibited, and in regards to other crimes, it can only be imposed for high treason committed during a foreign war, parricide, murder that is treacherous, premeditated or committed for profit, arson, kidnapping, highway robbery, piracy, and serious crimes against the military order.

- *Mexico 2003, Article 22*

1. Everyone has the right to life.
2. Until its abolition, capital punishment may be established by federal law, as extraordinary punishment for especially grave crimes against life and with the right of the accused to have his case tried with the participation of a jury.

- *Russia 1993, Article 20.2*

All have the right to life and physical and moral integrity and in no case may they be subjected to torture or inhuman or degrading punishment or treatment. The death penalty is abolished except in those cases which may be established by military penal law in times of war.

- *Spain 1992, Article 15*

5.3. Capital Punishment is Explicitly Allowed

[Legal Reasoning, Capital Punishment] (1) The court is obliged to state the reasons for the decision it issues. (2) All specific decisions of the courts are enforceable, except for capital punishment, which is conditional upon approval of the President.

- *Afghanistan 2004, Article 129*

Everyone has the right to protection of life and the inviolability of his person. No one may be subjected to torture or to inhuman or degrading penalties or treatment. No one may be put to death except in the cases and manner prescribed by law.

- *Democratic Republic of Congo 1964, Article 16*

(1) No person shall be deprived of his life intentionally except in the execution of the sentence of a Court in respect of a criminal offence under the law of Ghana of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this article if he dies as the result of a lawful act of war, or if he dies as the result of the use of force to such an extent as is reasonably justifiable in the circumstances of the case, that is to say,

(a) for the defence of any person from violence or for the defence of property; or

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(c) for the purposes of suppressing a riot, insurrection or mutiny; or

(d) in order to prevent the commission by that person of a criminal offence.

- *Ghana 1979, Article 20*

No person shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty.

- *Nigeria 1960, Article 17.1*

A person shall enjoy the right and liberty in his or her life and person. A torture, brutal act, or punishment by a cruel or inhumane means shall not be permitted; provided, however, that punishment by death penalty as provided by law shall not be deemed punishment by a cruel or inhumane means under this paragraph.

- *Thailand 1997, Article 31*

6. APPENDIX

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

[CAPPUN] – How does the constitution treat the use of capital punishment?

1. Universally Prohibited
2. Qualified: capital punishment allowed/prohibited only in certain specified cases
3. Explicitly Allowed
90. left explicitly to non-constitutional law
96. other, please specify in the comments section

97. Unable to Determine

98. Not specified

Instructions: For qualified cases, please comment on details. If the restrictions are purely procedural, such as a requirement of court decision, jury trial etc. please answer explicitly allowed and describe procedural restrictions in comments. If capital punishment is to be allowed until abolition please code Qualified with a comment “until complete abolition”.

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.