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OPTION REPORTS

DOUBLE JEOPARDY

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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

Double jeopardy is a procedural defense right that forbids that a defendant be tried and/or punished twice for the same crime on the same set of facts. It is designed to protect the defendant from the uncertainty associated with repeated prosecutions and to encourage the prosecution to gather all evidence in a timely manner. We describe below the range of constitutional provisions for the prohibition of double jeopardy.

2. DATA SOURCE

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, 28.6% of constitutions in the sample have provided for protection against double jeopardy. As Figure 1 suggests, incorporation of this legal principle in constitutional texts has increased sharply after 1950. In 2000, over 45% of constitutions in force incorporated the prohibition of double jeopardy. As Figure 2 suggests, provisions regarding this legal principle are most common in Oceania, Latin America, and South Asia, and absent in the Middle East.

Figure 1. Percent of Constitutions That Prohibit Double Jeopardy by Year (N=550)

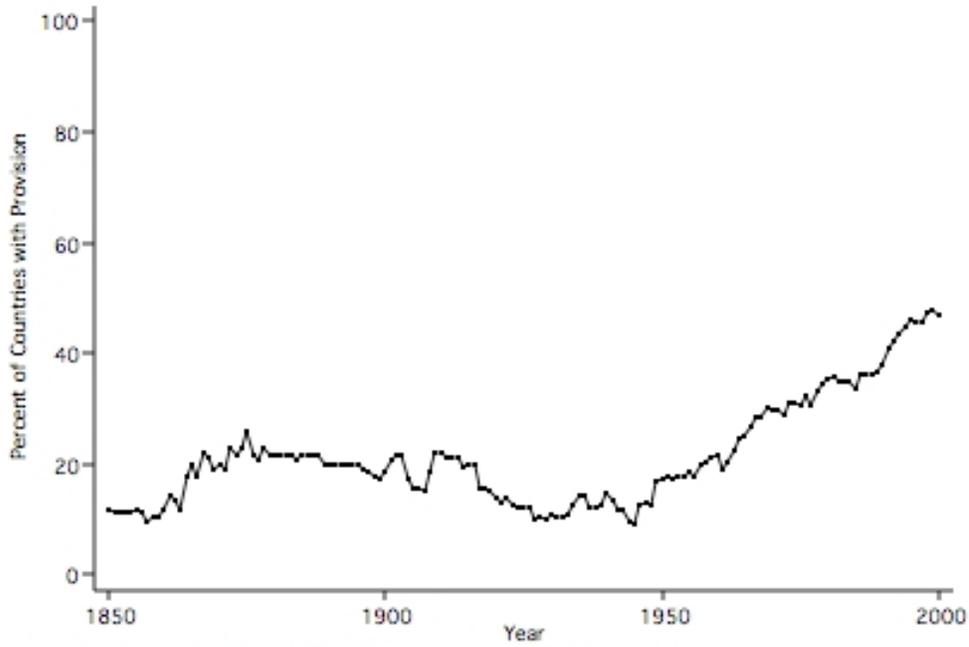
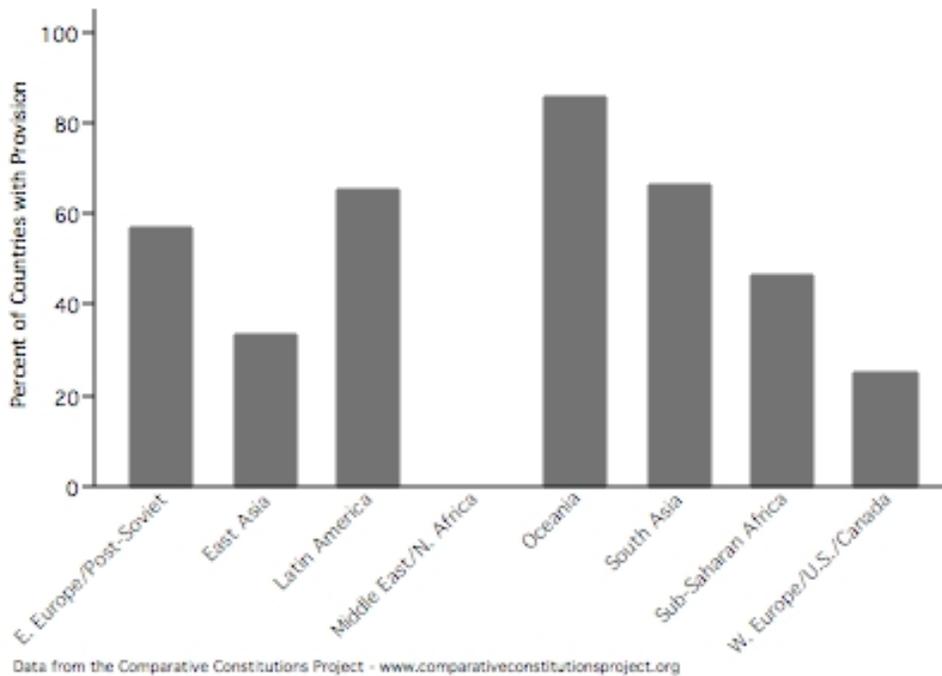


Figure 2. Percent of Constitutions That Prohibit Double Jeopardy in 2000 by Region (N= 191)



4. NOTES ON ATYPICAL CASES

None.

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.)

No one shall be convicted repeatedly for the same crime.

- *Azerbaijan 2002, Article 64*

No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

- *Botswana 2002, Article 10.5*

Every individual is presumed innocent until he/she is proved to be legally guilty. Whoever is accused is entitled to defense and the assistance of counsel picked by the accused or assigned automatically during the investigation and trial; to an appropriate public trial without unreasonable delay; to present evidence and to refute evidence alleged against the accused; to challenge the condemnatory sentence; and not to be placed in double jeopardy for the same act.

- *Colombia 2005, Article 29*

No one can be tried and convicted for the same criminal offense more than once.

- *East Timor 2002, Article 31.4*

Every person charged with an offence has the right:

...

(k) not to be tried again for an offence of which he or she has previously been convicted or acquitted;

- *Fiji 1998, Article 28.1.k*

No person may be punished for the same act more than once under the general criminal laws.

- *German Federal Republic 2002, Article 103.3*

No person shall be prosecuted and punished for the same offence more than once.

- *India 1995, Article 20.2*

No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial of that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

- *Kenya 1997, Article 77.5*

No criminal trial shall have more than three instances. No one, whether acquitted or convicted, can be tried twice for the same crime. The practice of absolving from the instance is prohibited.

- *Mexico 2003, Article 23*

No citizen shall be tried more than once for the same crime, nor shall a penalty be imposed that was not provided for, or is heavier than the one that was applicable, at the time when the criminal offence was committed.

- *Mozambique 2004, Article 59.3*

No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

- *Philippines 1986, Article 3.21*

No one can be twice convicted for the same offense.

- *Russia 1993, Article 50.1*

Every accused person has a right to a fair trial, which includes the right—

...

(m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;

- *South Africa 2003, Article 35.3.m*

Due process will be applied to all the judicial and administrative actions, and in consequence:

...

7. No person can be submitted to judgment for the same acts in virtue of which he has been previously judged.

- *Venezuela 1999, Article 49.7*

6. APPENDIX

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

[DOUBJEP] – Does the constitution provide for the prohibition of double jeopardy (i.e., being tried for the same crime twice)?

1. Yes
2. No
96. 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.