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## OPTION REPORTS

### DUTY TO OBEY THE CONSTITUTION

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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](http://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 which version was used for analysis. EXAMPLE: Brazil 2005 refers to the Brazilian Constitution of 1988, as amended through 2005.

## 1. INTRODUCTION

We describe below the extent to which a constitution imposes positive obligations upon public officials and private individuals to obey its provisions.

## 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

Just over half of all constitutions in the sample impose some duty to obey the constitution, either on public officials, private individuals, or both. The modal constitution, however, does not impose any duty to obey. Table 1 provides the percentages in each category.

**Table 1. Duty to Obey the Constitution (N=550)**

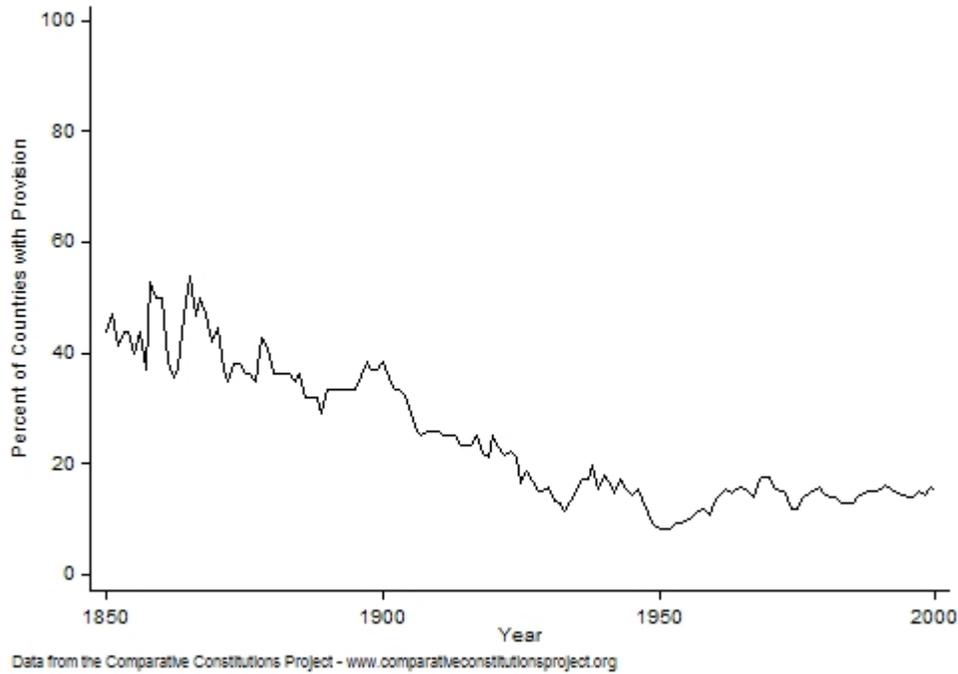
<b>Duty-Bound Actor</b>	<b>Number</b>	<b>Percentage</b>
Public Office Holders	84	15%
The People	113	21%
Both	102	19%
Neither	241	44%
Other	10	<1%

Note that the “neither” category should be interpreted as constitutional silence on the issue rather than as an explicit rejection of the duty for public officials or private individuals. The “other” category comprises 9 constitutions requiring loyalty to the state or obedience to the laws of the state, rather than the constitution itself. The 10<sup>th</sup> case, Germany 1871, requires the obedience on the part of the subsidiary units of the Federation to the constitution.

Figure 1 shows the percent of constitutions placing a duty to obey the constitution on public officials over time. There is a noticeable downward trend in the inclusion of this duty from the mid-19<sup>th</sup> century to approximately 1950. A slight positive trend marks the last half of the 20<sup>th</sup> century but even so, by 2000 the percentage of constitutions

containing a duty to obey provision remained below 20%. Even at its most common in the 1870s, this provision was included in just over half of the constitutions then in force.

**Figure 1. Percent of Constitutions Placing a Duty to Obey on Public Officials by Year (N=550)**



**Figure 2. Percent of Constitutions Placing a Duty to Obey on Public Officials in 2000 by Region (N=191)**

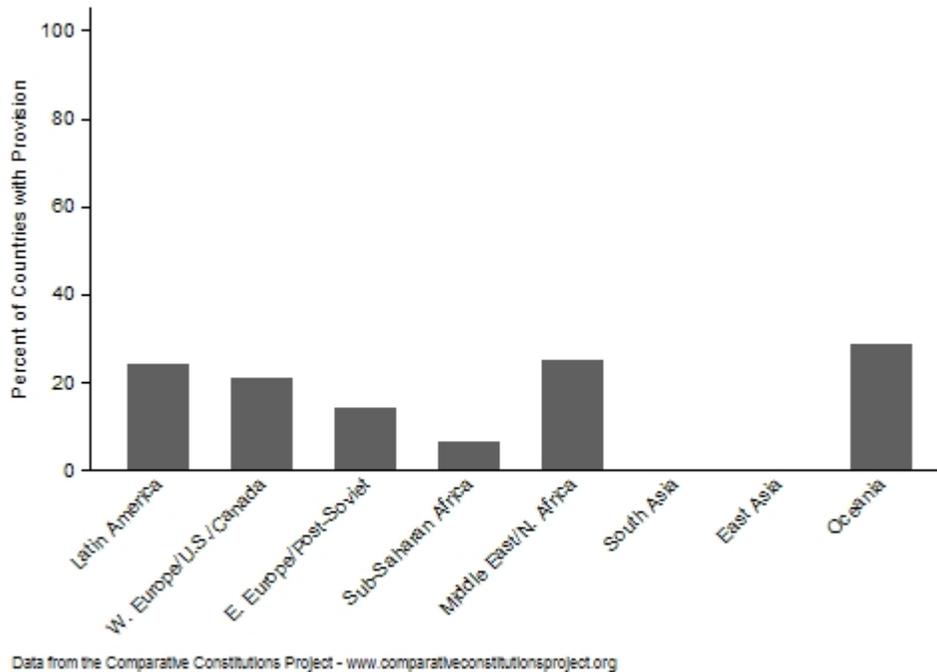
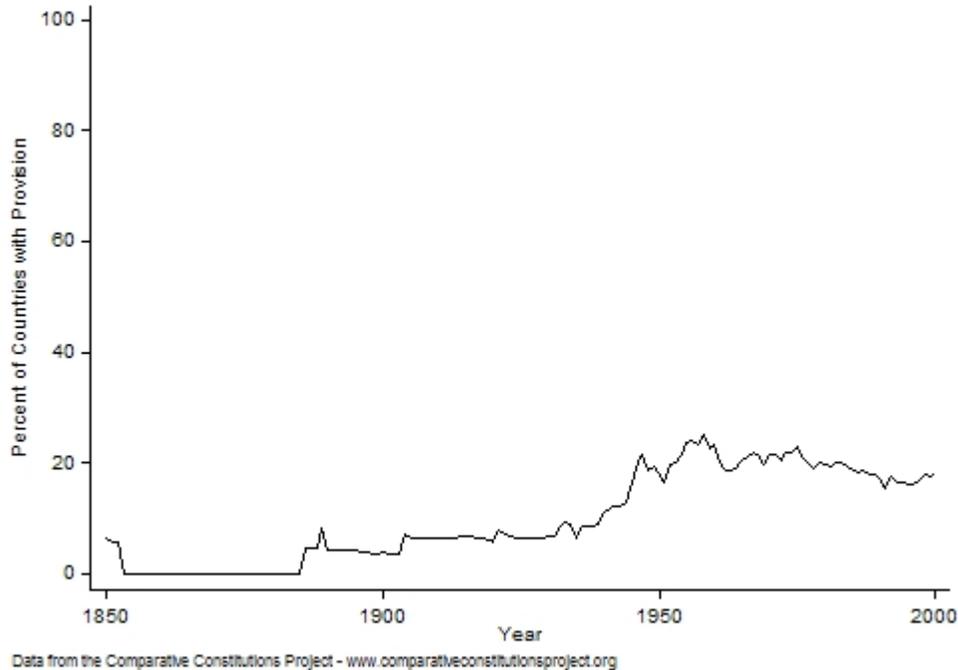


Figure 2 shows the regional distribution of the public official duty to obey provision as of the year 2000. As the figure reveals, the provision is most common in the Oceania and Middle East/North Africa regions. It is completely absent from South and East Asia.

**Figure 3. Percent of Constitutions Placing a Duty to Obey on the People by Year (N=550)**



In contrast to the time trend of the duty of public officials to obey the constitution shown in Figure 1, the time trend of a duty for the people to obey the constitution is one of modest, but unspectacular, growth throughout the 20<sup>th</sup> century as Figure 3 reveals. Taken together, Figures 1 and 3 show both a general leveling off of previous trends in the post-World War II period as well as rough convergence in the percentage of texts imposing a duty to obey on either public officials or the people by the year 2000.

**Figure 4. Percent of Constitutions Placing a Duty to Obey on the People in 2000 by Region (N=191)**

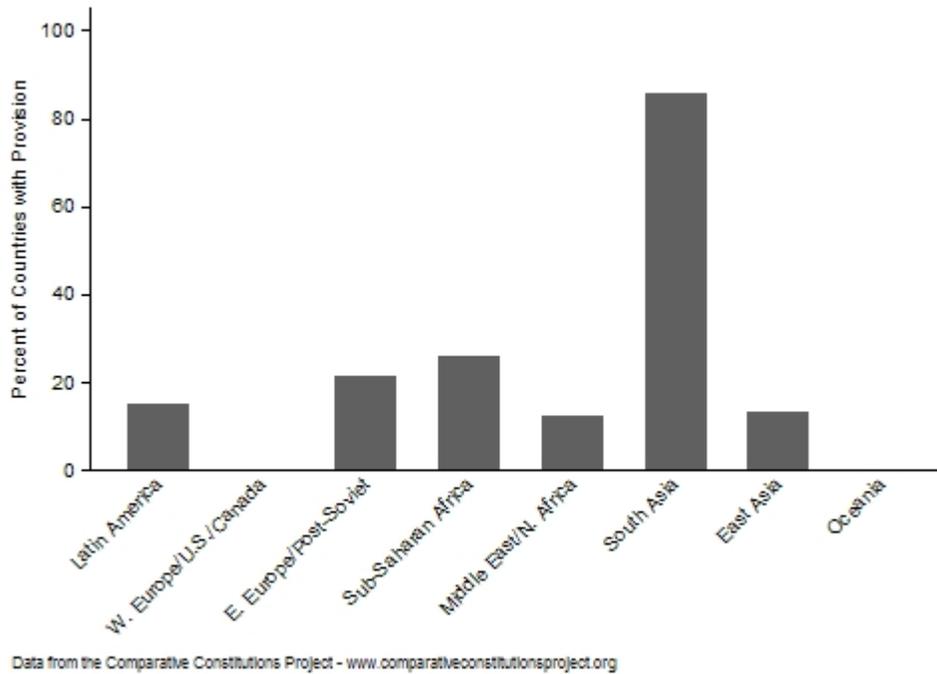


Figure 4 shows the regional distribution of the people's duty to obey provision as of the year 2000. As was the case with the duty of public officials to obey the constitution, this is a relatively uncommon provision with the very notable exception of the South Asia region. Also notable is the complete absence of this type of provision in the Oceania and Western Europe/US/Canada regions.

**Figure 5. Percent of Constitutions Not Placing a Duty to Obey on Either Public Officials or the People by Year (N=550)**

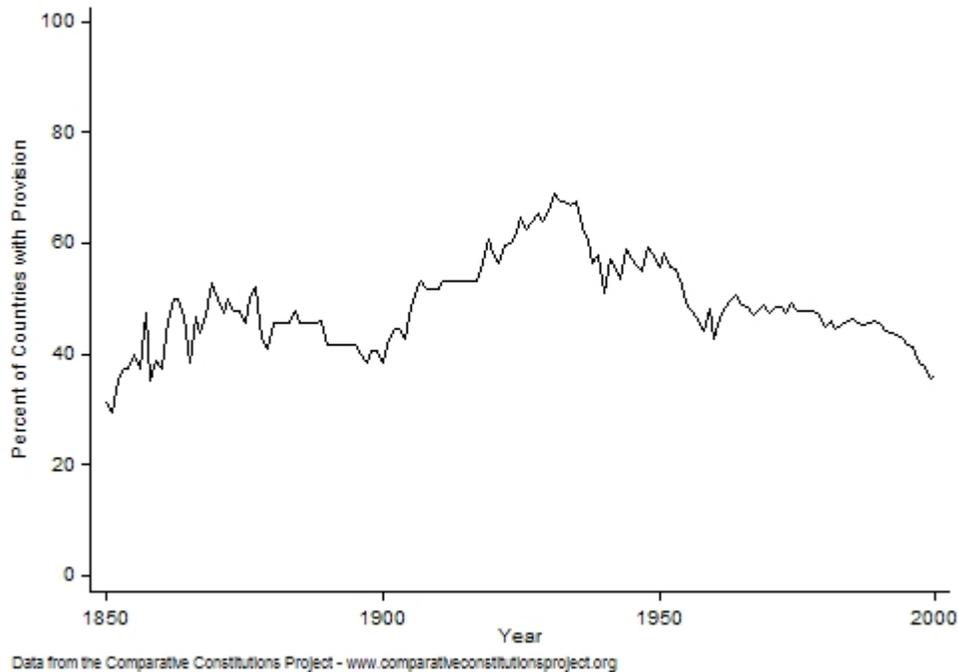


Figure 5, showing the percent of constitutions without a duty to obey provision over time, presents an additional perspective. Some form of a duty to obey the constitution provision has been present in roughly half of all constitutions since 1850. At times the frequency of constitutions without a duty provision spikes to over 60% or dips to below 40% but the general trend is quite consistent. This particular duty, while never being ubiquitous, has also never been particularly uncommon.

#### 4. NOTES ON ATYPICAL CASES

The duty to obey the constitution raises a number of interpretive issues. Constitutional provisions mandating oaths of office for public officials are considered in a separate report, and so are not considered here. Constitutional language requiring loyalty to the state or a duty to obey the law was treated as “other” for this analysis. References to a duty to obey the constitution on the part of either state organs as a whole or on the part of specific office holders such as presidents were considered to be duties on public office holders if there was no concurrent duty on the part of individuals. Approximately 5% of texts placed a duty to obey the constitution on all people or every citizen, and this was treated as a duty on the part of the people.

## 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. Public Office Holders
2. The People
3. Both

### 5.1. Public Office Holders

All organs of Government, persons and authorities exercising legislative, executive, administrative or judicial power shall be guided in the performance of their functions by the following Directive Principles of State Policy which provide the basic framework for the exercise of all powers of Government: ...

- *Ghana 1982. Article 1.1*

The Emperor or the regent as well as ministers of state, members of the Diet, judges, and other public officials have the obligation to respect and uphold this Constitution.

- *Japan 1946. Article 99*

This Constitution shall bind all executive, legislative and judicial organs of the State at all levels of Government and all the peoples of Malawi are entitled to the equal protection of this Constitution, and laws made under it.

- *Malawi 1999. Article 4*

The President—...must uphold, defend and respect the Constitution as the supreme law of the Republic;

- *South Africa 2003. Article 83.b*

### 5.2. The People

Observing the provisions of the Constitution, obeying the laws, adhering to public law and order are the duties of all people of Afghanistan.

- *Afghanistan 2004. Article 56.1*

Every person living in the national territory is held to respect the Constitution, the laws and the regulations of the Republic.

- *Cote d'Ivoire 2000. Article 23*

Loyalty to the State and obedience to the Constitution and to the law of the Maldives shall be the duty of every Maldivian citizen, irrespective of where he may be.

- *Maldives 1998. Article 29*

All citizens are held to honor Peru and to defend its national interests as well as to respect, implement, and defend the Constitution and the code of laws of the Nation.

- *Peru 2005. Article 38.*

It is the duty of every citizen of the Polish People's Republic to abide by the provisions of the Constitution and of the laws, to maintain socialist work discipline, to respect the rules of social intercourse and to discharge conscientiously their duties towards the State.

- *Poland 1952. Article 76*

Every person has the duty to comply with and to observe this Constitution, the laws and the other acts that the organs of the Public Power dictate in the exercise of their functions.

- *Venezuela 1999. Article 131*

### 5.3. Both

Article 5. No law or administrative or local rules and regulations shall contravene the constitution.

All state organs, the armed forces, all political parties and public organizations and all enterprises and undertakings must abide by the Constitution and the law. All acts in violation of the Constitution and the law must be investigated. No organization or individual may enjoy the privilege of being above the Constitution and the law.

Article 53. Citizens of the People's Republic of China must abide by the Constitution and the law, keep state secrets, protect public property and observe labor discipline and public order and respect social ethics.

- *China 2004. Articles 5 and 53*

Every Nigerian citizen, whether civilian or in the military, has the sacred duty to respect the Constitution and the legal order of the Republic under all circumstances.

- *Niger 1996. Article 29*

Organs of state power and local self-government, officials, citizens and their associations must comply with the laws and the Constitution of the Russian Federation.

- *Russia 1993. Article 15.2*

## 6. APPENDIX

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

[ABIDE] Does the constitution refer to a duty for holders of public office or the people to obey, or to abide by, the constitution?

1. Public Office Holders
2. The People
3. Both
4. Neither
96. other, please specify in the comments section
97. Unable to Determine

Instructions: Do not code public officials solely on the basis of an oath of office requirement. Provisions imposing a duty on citizens or all people should not be read to implicitly include public officials.

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](http://www.comparativeconstitutionsproject.org).