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OPTION REPORTS

ELECTORAL OVERSIGHT

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

1. INTRODUCTION

The adjudication of electoral disputes has become an issue of critical concern in developing democracies. We describe below the range of institutional arrangements outlined in constitutions for electoral oversight.

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, 31% of constitutions have provided for a special body to oversee electoral process. 24% of constitutions provide for an electoral commission and 6% for electoral court. Finally, only four cases have both an election commission and court: Mexico's constitution of 1917 as amended through 2004, Nepal's constitution of 1990, the Philippines' constitution of 1986, and the Philippines' constitution of 1935 as amended through 1940.

Table 1. Electoral Oversight Bodies (N=550)

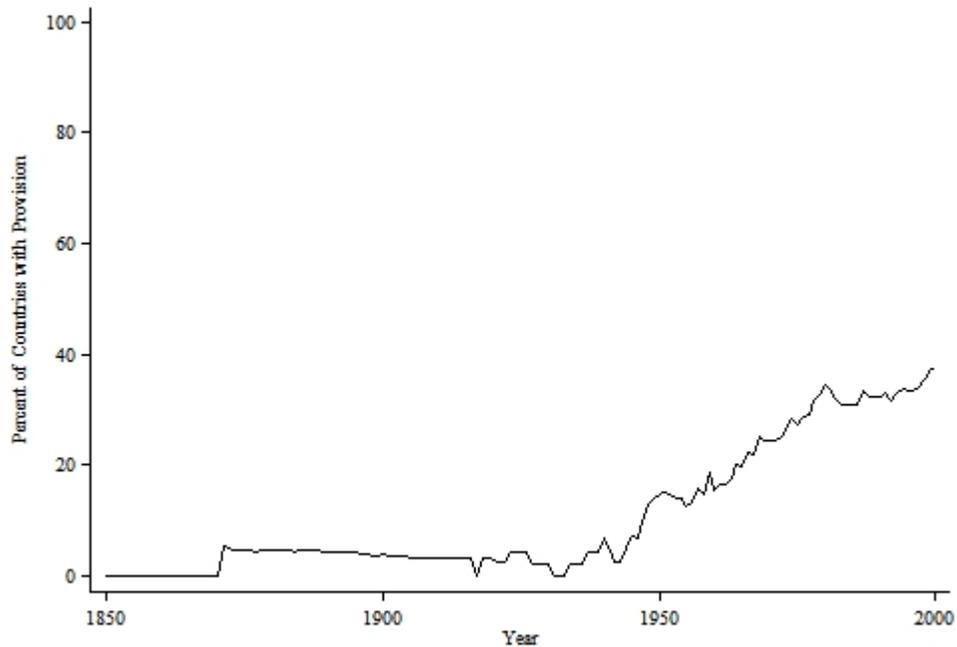
Body	Number	Percentage
Electoral Commission	136	25%
Electoral Court	35	6%
Constitutional Court	58	11%
Supreme Court	51	9%
Not Specified	280	50%

Table 1 shows the percent of constitutions that provide for an electoral oversight body. Categories are not mutually exclusive: in some cases, for example, both an electoral commission and a Constitutional or Supreme Court play a role in electoral oversight and dispute resolution. Such an arrangement usually reflects a two-level system of electoral oversight in which an electoral commission is granted with the power of organization of elections whereas a constitutional court reviews electoral disputes.

Figure 1 shows the percent of constitutions that provide for an election commission over time. As Figure 1 suggests, incorporation of an electoral commission into a constitution is a post-World War II phenomenon. The

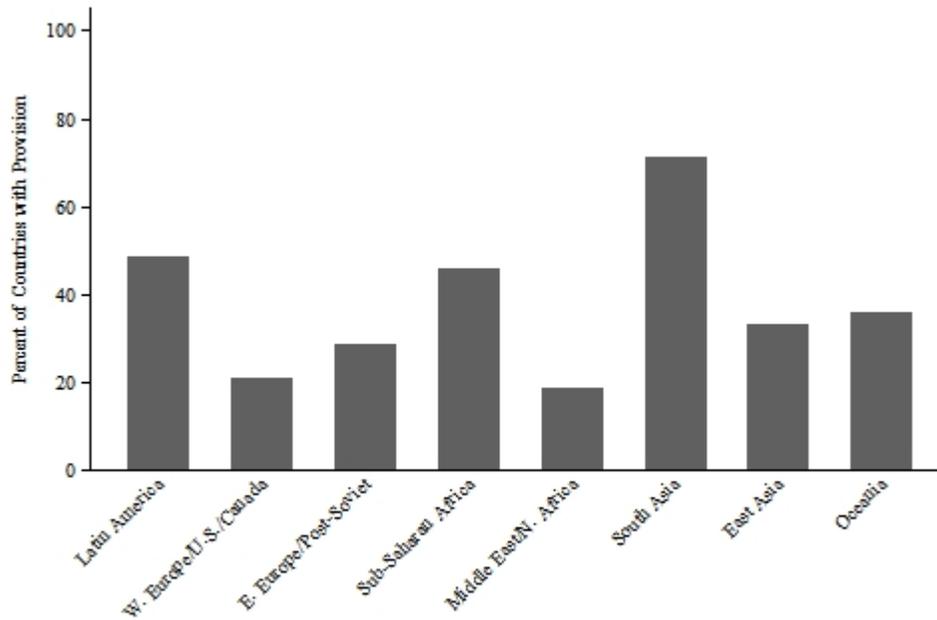
number of constitutions that provide for an electoral commission increased dramatically beginning in 1945. In 2000, almost 40% of constitutions in force provided for an electoral commission.

Figure 1. Percent of Constitutions with an Electoral Commission by Year (N=550)



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

Figure 2. Percent of Constitutions with an Electoral Commission in 2000 by Region (N=191)

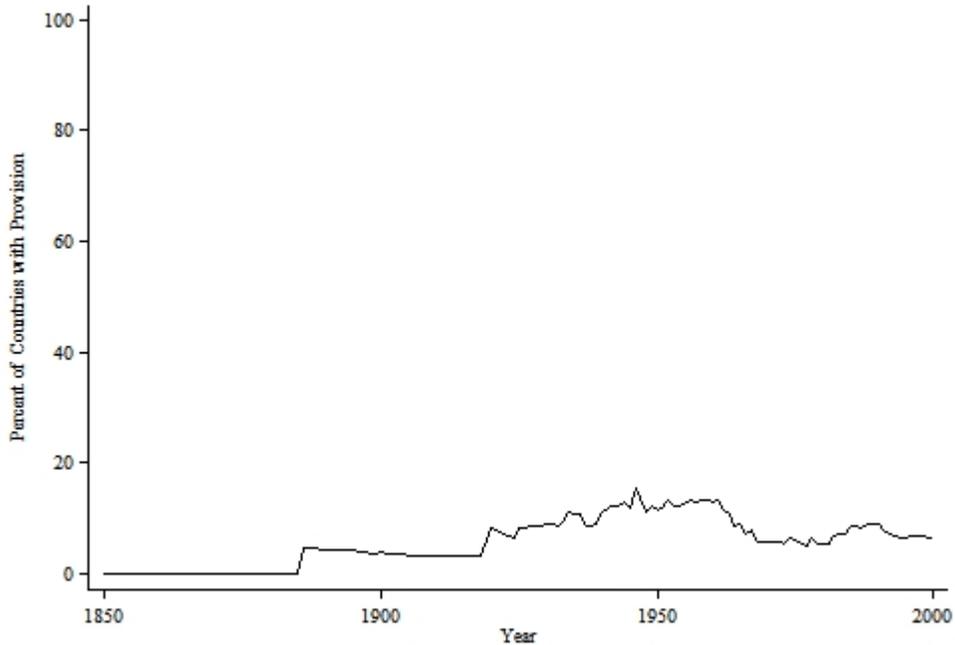


Data from the Comparative Constitutions Project - www.comparativeconstitutionsproject.org

Figure 2 shows the percent of constitutions that provide for an electoral commission across regions. The figure indicates that electoral commissions are most prevalent in South Asia, Latin America, and Sub-Saharan Africa. Electoral commissions are least likely in Western Europe and the Middle East.

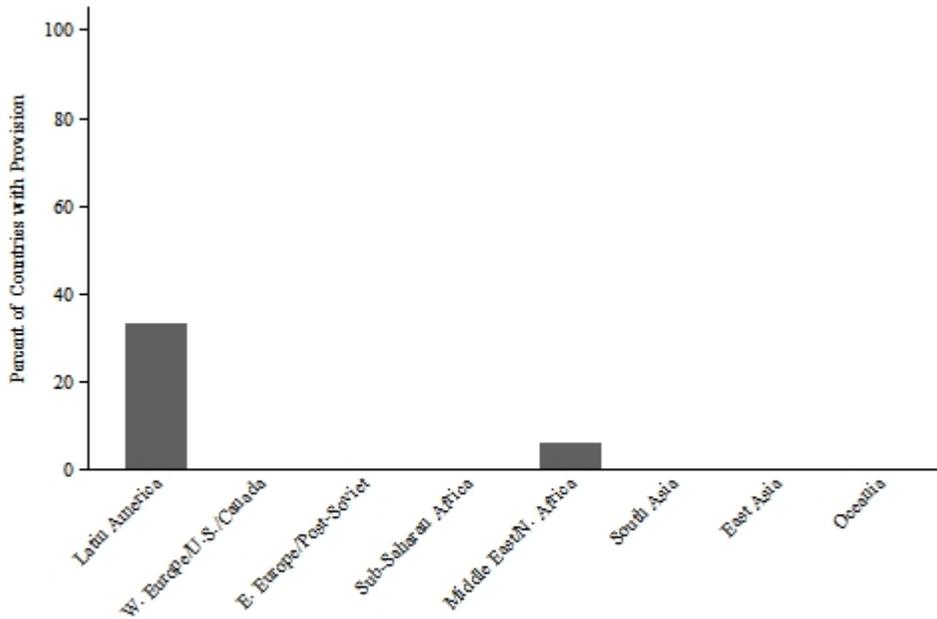
Figure 3 shows the percent of constitutions that provide for an electoral court over time. As the figure suggests, electoral courts are not as common as electoral commissions, and there has been no increase in the use of electoral courts, unlike electoral commissions. In fact, the figure suggests there has actually been a slight decrease in the number of electoral courts since World War II. As Figure 4 demonstrates, the vast majority of electoral courts appear in Latin America, but there are also a few in the Middle East. As of 2000, there were literally no electoral courts elsewhere in the world.

Figure 3. Percent of Constitutions with an Electoral Court by Year (N=550)



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

Figure 4. Percent of Constitutions with an Electoral Court in 2000 by Region (N=191)



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

4. NOTES ON ATYPICAL CASES

Many constitutions assign primary power to a constitutional court or supreme court to oversee elections. These provisions are reflected in another report of the Comparative Constitutions Project related to constitutional adjudication. Thus, the analysis here does not exhaust constitutional provisions on electoral oversight.

Some constitutions mention a single electoral commissioner or officers, rather than a multi-member electoral commission. Other constitutions refer to an electoral "board." These cases are considered as electoral commission for present purposes. An "electoral jury" is considered to be an electoral court.

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. Electoral Commission
2. Electoral Court
3. Both Electoral Commission and Electoral Court
4. Constitutional Court

5.1 Electoral Commission

The management, supervision and monitoring of the general election and the referendum shall be undertaken by an independent, neutral Supreme Commission. The number, eligibility, nomination and appointment of the members of the before mentioned Commission shall be defined by law. The jurisdiction and authority needed to guarantee the optimum execution of duties and functions of the same Commission shall be defined by law.

- *Yemen 2004, Article 157*

The elections for the post of president shall be held under the supervision of the Independent Commission supervising of the Elections. (9) This Commission shall be established to supervise all elections and referendums in the country, in accordance with the provisions of law.

- *Afghanistan 2004, Article 61*

The Supreme Commission for Human Rights and the Supreme Independent Commission for Elections and the Integrity Agency are considered independent associations subject to the supervision of the Council of Representatives. Their work is regulated by law.

- *Iraq 2005, Article 100*

For the purpose of election to both Houses of Majlis-e- Shoora (Parliament) Provincial Assemblies and for election of such other public offices as may be specified by law or until such law is made by the Majlis-e-Shoora (Parliament) by Order of the President, a permanent Election Commission shall be constituted in accordance with this Article.

- *Pakistan 2002, Article 218*

The elections for the post of president shall be held under the supervision of the Independent Commission supervising of the Elections. (9) This Commission shall be established to supervise all elections and referendums in the country, in accordance with the provisions of law.

- *Afghanistan 2004, Article 61*

There shall be an Electoral Commission consisting of a Chairman appointed by the President acting in his own deliberate judgment and not less than two nor more than four other members appointed by the President acting in accordance with the advice of the Prime Minister.

- *Fiji 1990, Article 51*

5.2 Electoral Court

The Superior Electoral Tribunal shall be composed of at least seven members, chosen:

I - through election, by secret ballot, with:

- a) three judges from among the Ministers of the Supreme Federal Tribunal;
- b) two judges from among the Ministers of the Superior Tribunal of Justice;

II - by appointment of the President of the Republic, two judges from six lawyers of notable legal knowledge and good moral character, indicated by the Supreme Federal Tribunal.

The Superior Electoral Tribunal shall elect its President and Vice-President from the Ministers of the Supreme Federal Tribunal, and an Electoral Inspector General from the Ministers of the Superior Tribunal of Justice.

- *Brazil 2005. Article 119*

There shall be a Supreme Electoral Tribunal which shall consist of five Magistrates, who shall last five years in their functions and who shall be elected by the Legislative Assembly. Three of them from each of the lists of three candidates (ternas) proposed by the three political parties or legal coalitions that obtained the greatest number of votes in the last presidential election. The two remaining Magistrates shall be elected with the favorable vote of at least two-thirds of the elected Deputies, from two lists of three candidates proposed by the Supreme Court of Justice, who must meet the requirements to be Judges of the Chambers of Second Instance and have no party affiliation.

- *El Salvador 2003. Article 208*

The Supreme Electoral Tribunal, with its seat in Quito, and jurisdiction throughout the national territory, is a juridical person of public law. It possesses administrative and economic autonomy for its organization and the achievement of its role of organizing, directing, overseeing and guaranteeing the electoral processes, and judging the accounts surrendered by political parties, movements, organizations and candidates on the amount, origin and use of the resources they employed in their electoral campaigns.

- *Ecuador 1998. Article 209*

5.3 Both Electoral Commission and Electoral Court

103. Election Commission

(1) There shall be an Election Commission of the Kingdom of Nepal consisting of a Chief Election Commissioner and such number of other Commissioners as may be required. If apart from the Chief Election Commissioner other Election Commissioners are appointed, the Chief Election Commissioner shall act as Chairman of the Election Commission.

106. Election Court

Petitions concerning elections shall be entertained by a court prescribed by law.

- *Nepal 1990, Article 103; 106*

6.11 The Senate and the House of Representatives shall have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen by

each House, three upon nomination of the party having the largest number of votes and three of the party having the second largest numbers of votes therein. The senior Justice in each Electoral Tribunal shall be its Chairman.

10. There shall be an independent Commission on Elections composed of a Chairman and two other Members to be appointed by the President with the consent of the Commission on Appointments, who shall hold office for a term of nine years and may not be reappointed. Of the Members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years. The Chairman and the other Members of the Commission on Elections may be removed from office only by impeachment in the manner provided in this Constitution.

- *Philippines 1935, Articles 6.11; 10*

41. The organization of federal elections is a state function carried out by an autonomous public organ known as the Federal Electoral Institute, which possesses juridical personality and its own assets (patrimonio), and which shall be created through the integration of the Legislative Power of the Union, the national political parties, and citizens, in accordance with the terms established by law. The principles of certainty, legality, independence, impartiality, and objectivity shall guide the exercise of this state function.

The Federal Electoral Institute shall be the authority on [electoral] matters, independent in its decision-making and functioning and professional in the performance of its duties; and shall include within its structure directive, executive, technical, and vigilance.

60. Decisions on the declaration of validity, granting of proof, and allocation of Deputies or Senators may be challenged before the regional courts of the Electoral Tribunal of the Judicial Power of the Federation under the terms specified by the law.

94. The exercise of the Judicial Power of the Federation is vested in a Supreme Court of Justice (Suprema Corte de Justicia), in an Electoral Tribunal (Tribunal Electoral), in Collegiate (Tribunales Colegiados) and Unitary Circuit Tribunals (Unitarios de Circuito), and in District Courts (Juzgados de Distrito).

- *Mexico 2004, Articles 41; 60; 94*

5.4 Constitutional Court

A Constitutional Council is established to watch over the respect for the Constitution. The Constitutional Council watches, among other matters,

over the regularity of referendum operations, the election of the President of the Republic and legislative elections. It announces the result of its operations.

- *Algeria 2002, Article 163*

The Constitutional Council exercises the powers [attributions] vested in it by virtue of the articles of the Constitution or the provisions of organic laws. It also provides rulings on the regularity of the election of the members of the Parliament and the operations of the referendum.

- *Morocco 1996, Article 81*

The people exercise their sovereignty by way of referendum and by their elected representatives. The conditions of recourse to the referendum and of designation of the representatives of the people are determined by this Constitution and by an organic law.

The Constitutional Council controls the regularity of the operations of the referendum and of the election of the representatives of the people. The organization and supervision of the referendum and of the elections is assured by an Independent Commission within the conditions provided by the law.

- *Cote d'Ivoire 2000, Article 32*

The Constitutional Council watches over the proper conduct of the election of the President of the Republic.

- *France 2005, Article 58*

6. APPENDIX

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

[OVERSGHT] Does the constitution provide for an electoral commission or electoral court to oversee the election process?

1. Electoral Commission
2. Electoral Court
3. Both
4. Neither
96. other, please specify in the comments section
97. Unable to Determine
98. Not Specified

Instructions: By electoral commission or court we mean a special body tasked only with elections oversight, not a Constitutional Court, Supreme Court or any other already established body that plays the same function.

If there is a mention of a single supervisor of elections of some kind, code as an Electoral Commission with a comment “one person”.

For additional documentation on the Comparative Constitutions Project, (including the full codebook, sampling criteria, 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.