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OPTION REPORTS

FREEDOM OF ASSEMBLY

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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. For example, Brazil 2005 refers to the Brazilian Constitution of 1988, as amended through 2005.

1. INTRODUCTION

Freedom of assembly is a key right in liberal democracies, allowing citizens to gather and express their views without government restriction. We describe below the freedom of assembly as outlined in constitutions.

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, 79% of constitutions in the sample have provided for freedom of assembly. Figure 1 shows the percent of constitutions that provide for freedom of assembly over time. As Figure 1 suggests, incorporation of freedom of assembly has increased gradually over time. In 2000, almost 90% of constitutions in force provided for freedom of assembly.

Figure 1. Percent of Constitutions that Provide for Freedom of Assembly by Year (N=550)



Figure 2. Percent of Constitutions that Provide for Freedom of Assembly in 2000 by Region (N=191)

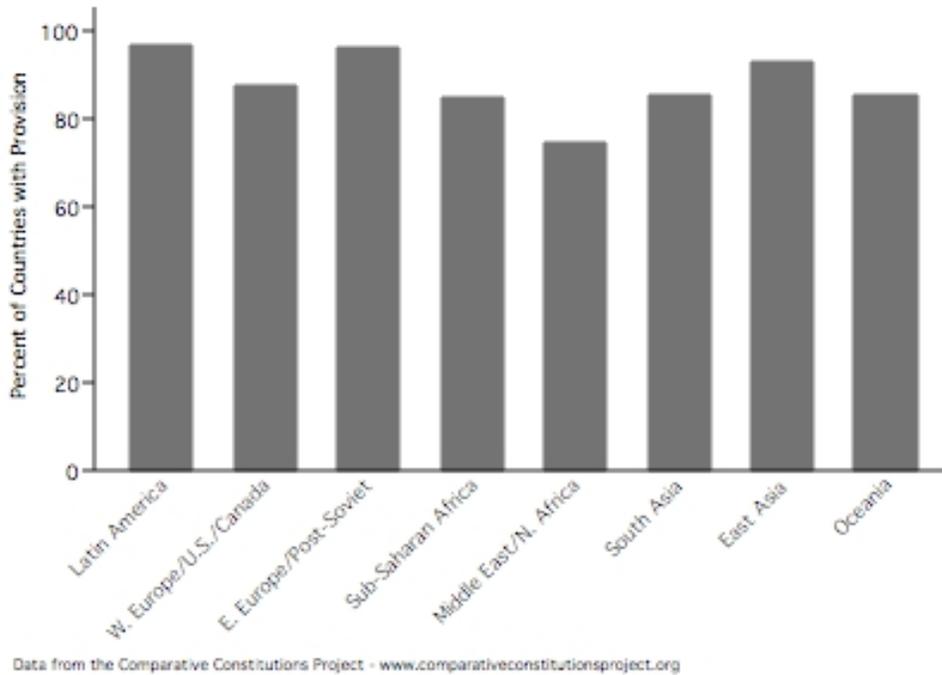


Figure 2 shows the percent of constitutions that provide for freedom of assembly across regions. The figure indicated that this provision is most common in Latin America, Eastern Europe, and East Asia, and least common in the Middle East and Sub-Saharan Africa.

4. NOTES ON ATYPICAL CASES

Many constitutions stipulate that citizens have the freedom of assembly peacefully or without arms. Other constitutional texts specify that freedom of assembly can be restricted to protect public order or public interest and the rights and freedoms of others. Lastly, in some cases, the constitution states that the law shall provide for freedom of assembly. All these cases have been characterized as providing for freedom of assembly in this report.

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. Absolute freedom of assembly
2. Right to assemble peacefully/without arms
3. Restricted/qualified freedom of assembly for public order, etc.
4. Freedom of assembly shall be provided by law

5.1 Absolute Freedom of assembly

The freedoms of expression, association and assembly are guaranteed to the citizen.

- *Algeria 2002, Article 41*

Citizens enjoy freedom of speech, correspondence, the press, assembly, association, procession, demonstration and the freedom to strike, and enjoy freedom to believe in religion and freedom not to believe in religion and to propagate atheism.

- *China 1975, Article 28*

The freedoms of assembly and demonstration are guaranteed by the law.

- *Cote d'Ivoire 2000, Article 11*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

- *United States of America 1791, Amendment 1*

5.2 Right to assemble peacefully/without arms

Afghan citizens have the right to assemble unarmed, without prior permission of the state, for the achievement of legitimate and peaceful purposes, in accordance with the provisions of the law. Afghan citizens have the right to establish, in accordance with the provisions of the law, associations for the realization of material or spiritual purposes.

- *Afghanistan 1964, Article 32*

Belgians have the right, without previous authorization, to assemble peaceably and without arms, conforming themselves to the laws which regulate the exercise of this right.

This provision does not apply to assemblies in the open air, which remain entirely under the police laws.

- *Belgium 1921, Article 19*

It is permitted to all to associate and assemble freely and without arms, the police not being permitted to intervene except to maintain public order.

- *Brazil 1891, Article 72.8*

Any group of individuals may gather and demonstrate publicly and peacefully. Only the law may specify those instances in which the exercise of this right may be limited.

- *Colombia 2005, Article 37*

All citizens have the right, within the limits of universally applicable laws, to express their opinion freely and publicly and to hold unarmed and peaceful assemblies for that purpose. This freedom shall not be restricted by any service or employment status, and no one may be discriminated against for exercising this right. There is no press censorship.

- *German Democratic Republic 1949, Article 9*

(1) All Germans shall have the right, without prior notification or permission, to assemble peacefully and unarmed.

(2) For open air meetings this right may be restricted by legislation or

on the basis of a law.

- *Federal Republic of Germany 1949, Article 8*

Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

- *Republic of South Africa 1997, Article 17*

A person enjoys full liberty to assemble peaceably and without arms. Such liberty may be restricted only by the provisions of special law governing public meetings for the purpose of preserving the public right of access to public places or maintaining public order during a time of war, state of war, state of emergency as declared by Royal Command or during the period when martial law is declared.

- *Thailand 1949. Section 37*

All individuals are entitled to congregate or march in demonstration without prior permission, in so long as they are unarmed and have no intent to assault.

This right can be restricted only by law for purposes of maintaining public order.

- *Turkey 1961. Article 28*

5.3 Restricted/qualified Freedom of assembly for public order, etc.

Whereas every person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest to each and all of the following, namely—

(a) life, liberty, security of the person and the protection of the law;
 (b) freedom of conscience, of expression and of assembly and association; and

(c) protection for the privacy of his home and other property and from deprivation of property without compensation,

The provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

- *Botswana 2002, Article 3*

All individuals are entitled to congregate or march in demonstration without prior permission, in so long as they are unarmed and have no intent to assault.

This right can be restricted only by law for purposes of maintaining public order.

- *Turkey 1961, Article 28*

5.4 Freedom of assembly shall be provided by law

The citizens of the People's Republic of the Congo enjoy liberties of expression, of the press, of association, of procession and of manifestations under the conditions determined by law.

- *Democratic Republic of Congo 1979, Article 16*

The citizens of the Popular Revolutionary Republic of Guinea enjoy freedom of speech, of the press, of assembly, of procession and of demonstration within the conditions prescribed by (the) Law.

- *Guinea 1982. Article 7*

The freedom of assembly and the right of association, freedom of speech and of the press and similar freedoms shall be provided by law.

- *Indonesia 1945. Article 28*

The federal citizens have, within the limits of the law, the right to assemble and to form associations.

- *Austria 1934, Article 24*

6. APPENDIX

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

[ASSEM]-Does the constitution provide for freedom of assembly?

1. Yes
2. No
96. other, please specify in the comments section
97. Unable to Determine

Instructions: Code "Yes" and include a comment if the right is to be provided for or regulated by the law; if the right is subject to some exceptional restrictions, such as reasons of public order; or if the right is generally restricted to peaceful or unarmed assembly.

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.