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OPTION REPORTS

FREEDOM OF MOVEMENT

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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 movement provides that a citizen of a state, in which that citizen is present, has the right to leave that state and, with proper documentation, return to that state at any time; and also to travel to, reside in, and/or work in, any part of the state the citizen wishes without interference from the government.

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, almost 70% of constitutions in the sample provide for freedom of movement. As Figure 1 suggests, incorporation of freedom of movement increased significantly after World War II. In 2000, over 80% of constitutions in force provided for freedom of movement.

Figure 2 shows the percent of constitutions that stipulate freedom of movement across regions. The figure indicates that the provision is most prevalent in Eastern Europe and the Post-Soviet states (with almost 100% of constitutions stipulating this freedom), Latin America, and Sub-Saharan Africa, and least common in Western Europe and the Middle East.

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

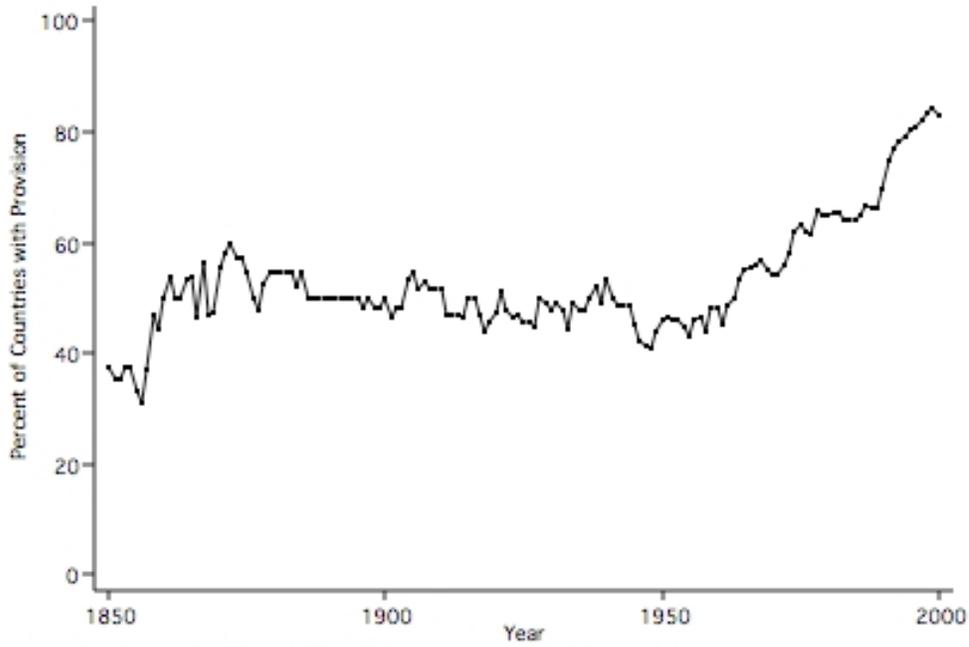
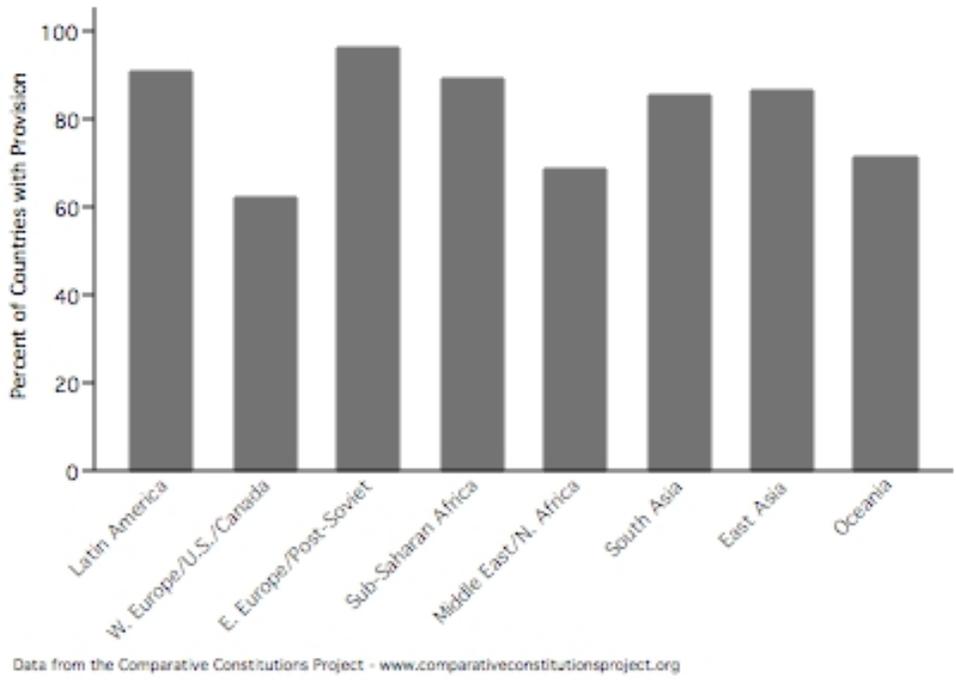


Figure 2. Percent of Constitutions that Provide for Freedom of Movement in 2000 by region (N=191)



4. NOTES ON ATYPICAL CASES

In some cases freedom of movement can be restricted for reasons of state security, public health, public safety, public order, or by law. A limited number of constitutions stipulate only the freedom to enter and leave the country. All these cases have been characterized as providing for freedom of association 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 movement
2. Qualified freedom of movement
3. Freedom to enter and leave the country only

5.1 Absolute freedom of movement

Every citizen enjoying all civil and political rights, has the right to choose freely the place of residence and to move about on the national territory. The right of entry and exit from the national territory is guaranteed.

- *Algeria 1996, Article 44*

Protection of certain rights regarding freedom of speech, etc.

(1) All citizens shall have the right—...

(d) to move freely throughout the territory of India;

- *India 1995, Article 19*

Everyone has the right to enter and leave the Republic, to travel through its territory and to change his residence without necessity of a letter of security, passport, safe-conduct, or any other similar requirement. ...

- *Mexico 1917, Article 11*

1. Anyone who is legally staying on the territory of the Russian Federation has the right to move freely and to choose the place to stay or reside.
2. Everyone is free to leave the Russian Federation. Citizens of the Russian Federation have the right to freely return to the Russian Federation.

- *Russia 1993, Article 27*

Freedom of movement and residence

(1) Everyone has the right to freedom of movement.

- *South Africa 2003, Article 21.2*

5.2 Qualified freedom of movement

...Every Afghan is entitled to travel within the territory of the state and settle anywhere except in areas prohibited by the law. Similarly, every Afghan has a right to travel outside of Afghanistan and return to Afghanistan according to the provisions of the law...

- *Afghanistan 1964, Article 26*

Protection of freedom of movement

(1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Botswana, the right to reside in any part of Botswana, the right to enter Botswana and immunity from expulsion from Botswana.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or public health or the imposition of restrictions on the acquisition or use by any person of land or other property in Botswana and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society;

(b) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Botswana;

(c) for the imposition of restrictions on the entry into or residence within defined areas of Botswana of persons who are not Bushmen to the extent that such restrictions are reasonably required for the protection or well-being of Bushmen;

(d) for the imposition of restrictions upon the movement or residence within Botswana of public officers; or

(e) for the removal of a person from Botswana to be tried outside Botswana for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law in force in Botswana of which he has been convicted.

- *Botswana 1997, Article 14*

Every citizen of the German Democratic Republic has the right to move freely within the state territory of the German Democratic Republic within the framework of the laws.

- *German Democratic Republic 1974, Article 32*

All citizens may travel or sojourn freely in any part of the national territory, except for general limitations which the law establishes for reasons of health and safety. No restrictions may be made for political reasons.

All citizens are free to leave and reenter the territory of the Republic, provided the legal obligations are met.

- *Italy 2003, Article 16*

The Constitution guarantees to all citizens:

Freedom of movement and settlement in any part of the Kingdom; ...

No restrictions shall be imposed on such freedom other than by law.

- *Morocco 1970, Article 9*

Spaniards have the right to freely select their residence and to travel in the national territory.

They also have the right to enter and leave Spain freely under the conditions established by law. That right cannot be restricted because of political or ideological motives.

- *Spain 1992, Article 19*

A person shall enjoy the liberty of traveling and the liberty of making the choice of his or her residence within the Kingdom.

The restriction on such liberties under Paragraph One shall not be imposed except by virtue of the law specifically enacted for maintaining the security of the State, public order, public welfare, town and country planning or welfare of the youth.

No person of Thai nationality shall be deported or prohibited from entering the Kingdom.

- *Thailand 1997, Article 36*

Every person can freely, and by any means, transit the national territory, change domicile and residence, leave the Republic and come back, move his goods and belongings into the country, bring his goods into the country or remove them, with no further limitations than those established by the law. In the case of concession of routes, the law will establish the cases in which the use of an alternative route must be guaranteed.

Venezuelans can enter the country without need of any authorization. No act of the Public Power can establish the punishment of banishment from the national territory against Venezuelans.

- *Venezuela 1999, Article 50*

5.3 Freedom to enter and leave the country only

The Constitution ensures to Brazilians and to foreigners residing in the country the inviolability of rights concerning life, liberty, security, and property, in the following terms;...

Paragraph 26. In time of peace any person may enter the national territory with his goods, remain there, or depart therefrom, so long as the provisions of law are respected.

- *Brazil 1967, Article 150.26*

Freedom of movement

(1) Every citizen has the right to enter and remain in the Fiji Islands.

- *Fiji 1998, Article 34.1*

6. APPENDIX

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

[FREEMOVE]-Does the constitution provide for freedom of movement?

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

Instructions: If the freedom can be restricted for reasons of public order, defense, health, etc., please code "Yes" and provide details in comments. If the constitution provides for freedom to choose their residence, please code "Other" and make comment. If the constitution provides for "freedom of travel" please code "Yes" (and code "Yes" in 549 too). If the constitution provides for the "right to leave the country" please code "Yes" and comment.

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.