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OPTION REPORTS

JURY AND LAY PARTICIPATION IN LEGAL DECISION-MAKING

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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

A jury is a body of ordinary citizens who are involved in legal decision-making in criminal, and more rarely in civil, cases. In the common law tradition, a grand jury is a body which decides whether there is enough evidence for a case to go trial. Once the case goes to trial it can be examined by a petit jury (or ordinary jury), which is a body of people convened to make an impartial decision and render a penalty. Today grand juries are very rarely found outside of the United States. We describe below constitutional provisions regarding ordinary juries and grand juries.

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

18% of constitutions in the sample require a jury or some other form of citizen participation in decision making in criminal trials. As Figure 1 suggests the trend in terms of such requirements has decreased over time. Although there seems to be a trend toward lay participation in some civil law jurisdictions such as Japan, South Korea and Russia, these institutions are not usually constitutionalized.

Figure 2 shows the percent of constitutions that require juries across regions. As Figure 2 suggests the jury requirement is most common in the constitutions of Western Europe. Almost 40% of constitutions in force in the region in 2000 required a jury. However, less than 10% of constitutions in Middle East and East Asia required citizen participation in decision making in criminal trials.

In our current dataset, only 8 constitutions reference citizen involvement in the indictment process, as in the grand jury process: Brazil 1963, Brazil 1824, Chile 1924, France 1791, Liberia 1986, Portugal 1921, Sierra Leone 1996, and United States of America 1789.

Figure 1. Percent of Constitutions that Require a Jury in Decision Making in Criminal Trials by Year (N=550)

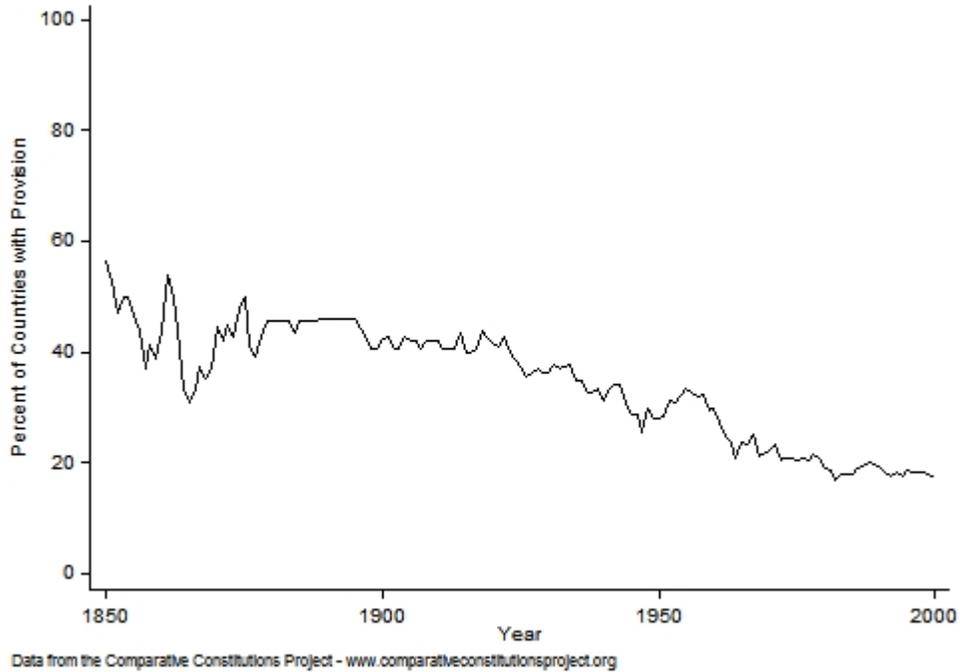
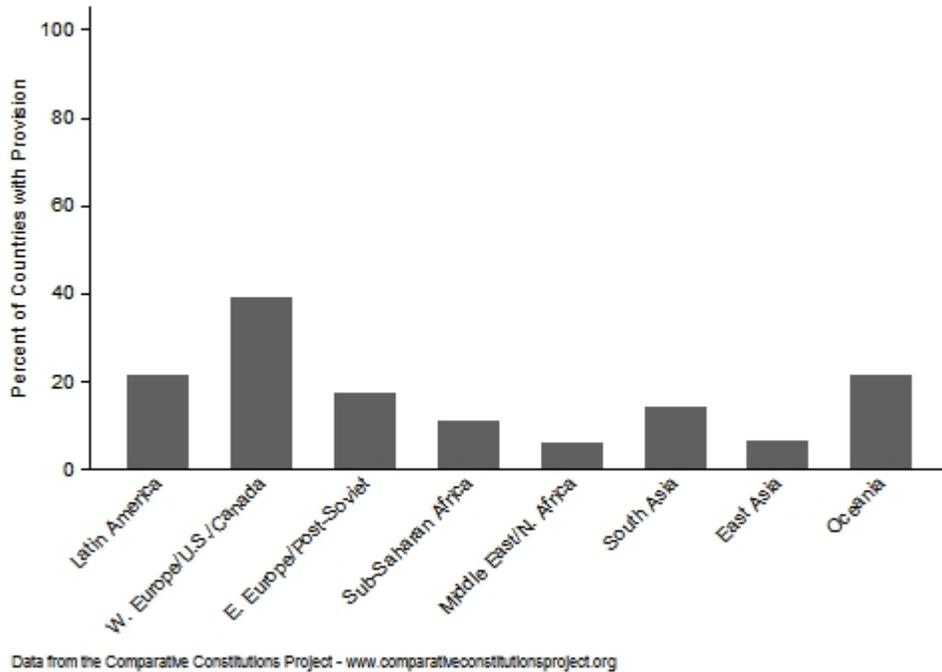


Figure 2. Percent of Constitutions that Require a Jury in Decision Making in Criminal Trials in 2000 by Region (N=191)



4. NOTES ON ATYPICAL CASES

Constitutions refer to jury in a number of different ways i.e. “people’s assessors”, “court assessors”, “elected assessors”, “jurymen”, “jurors” or “judges-jurors.” All of these terms were characterized as references to a jury for purposes of 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. General provisions on lay participation
2. Grand Jury

5.1. Criminal Jury

The people shall participate in the administration of justice.

- *Austria 2004. Article 91.1*

A jury shall be established for all criminal matters and for political offenses and those involving the press...

- *Belgium 2005. Article 150*

The accused shall be entitled to a public trial by a judge or a jury of citizens who know how to read and write and are also residents of the place and district where the crime was committed, provided that the penalty for such crime exceeds one year’s imprisonment. In all cases, crimes committed by means of the press against the public order or against the domestic or foreign security of the nation shall be subject to trial by jury;

- *Mexico 2003. Article 20.6*

In all criminal matters subject to the penalty of death or life imprisonment, in political matters and in misdemeanors involving the freedom of the press, a jury shall be provided.

- *Burundi 1962. Article 88*

The jury is established for the trial of the common crimes determined by the law

- *El Salvador 2003. Article 189*

A jury will deliberate privately over crimes and misdemeanors related to right of freedom of expression.

- *Guatemala 1993. Article 35*

The jury ... is summoned at the request of the prosecution or the defense...

- *Portugal 1992. Article 210.1*

The Federal Court shall pass judgment with the assistance of a jury in criminal cases concerning: high treason; violence against federal authority; crimes against law of the nations; political crimes; charges against officials appointed by a federal authority.

- *Switzerland 1991. Article 112*

There shall be a permanent jury, to assist in the judicial proceedings...

- *Tibet 1991. Article 64A*

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved and no fact tried by a jury shall be otherwise reexamined in any court of the United States...

- *United States 1789. Article 7*

It is the duty of the citizens to be jurors...

- *Nicaragua 2005. Article 51*

All courts ... will be made up of elected judges and people's assessors.

- *Russia 1992. Article 164*

5.2. Grand Jury

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be

deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

- *United State of America 1789, Amendment 5*

No person shall be held to answer for a capital or infamous crime except in cases of impeachment, cases arising in the Armed Forces and petty offenses, unless upon indictment by Grand Jury; and in all such cases, the accused shall have the right to a speedy, public and impartial trial by a jury of the vicinity, unless such person shall, with appropriate understanding, expressly waive the right to a jury trial.

- *Liberia 1986, Article 21.h*

6. APPENDIX

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

[JURY] Does the constitution require a jury or any form of citizen participation in decision making in criminal trials?

1. Yes

2. No

96. other, please specify in the comments section

97. Unable to Determine

Instructions: Forms of citizen participation include "people's assessors," "court assessors," "elected assessors," "jurymen," "jurors," "judges-jurors" and analogous terms. If the constitution mentions jury service without distinguishing between civil and criminal, code as yes with comment. If the constitution mentions that non-constitutional law will determine the cases that will be tried by jury, code as "yes" with the comment "left explicitly to non-constitutional law".

[GRJURY] Is there citizen involvement in the indicting process (such as a grand jury)?

1. Yes

2. No

96. other, please specify in the comments section

97. Unable to Determine

Instructions: The indicting process is the formal process for bringing charges against a suspect. If the text states that the issue will be determined by law, code as other with comment "left explicitly to non-constitutional law".

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.