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## OPTION REPORTS

### RIGHT TO ASYLUM

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

## 1. INTRODUCTION

Right of asylum asserts that persons prosecuted for political opinions or religious beliefs in their own country can be protected by another country. Below we present the evolution of this right as a constitutional provision.

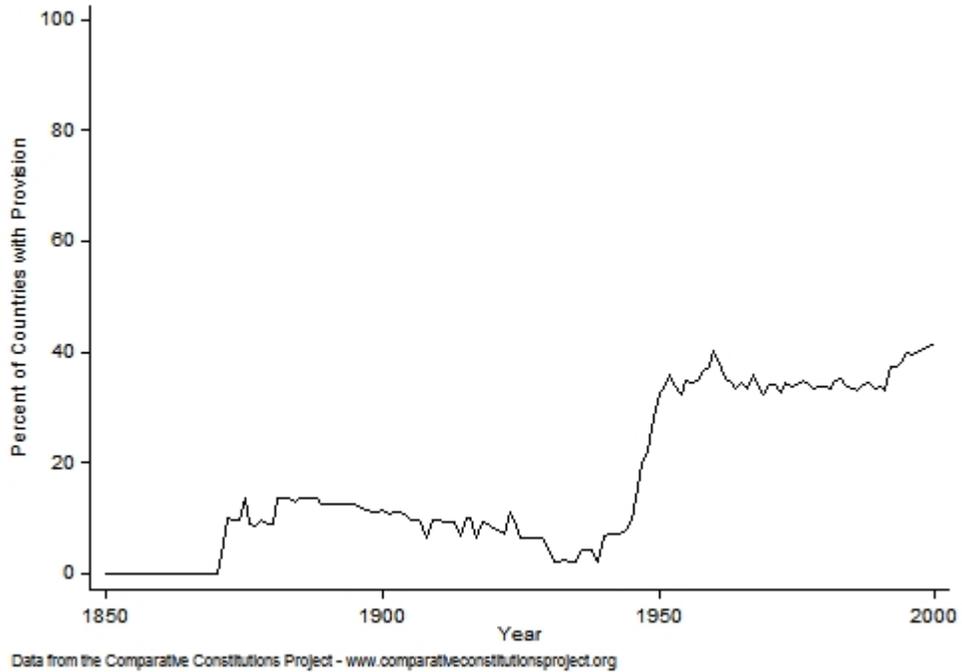
## 2. DATA SOURCE(S)

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.

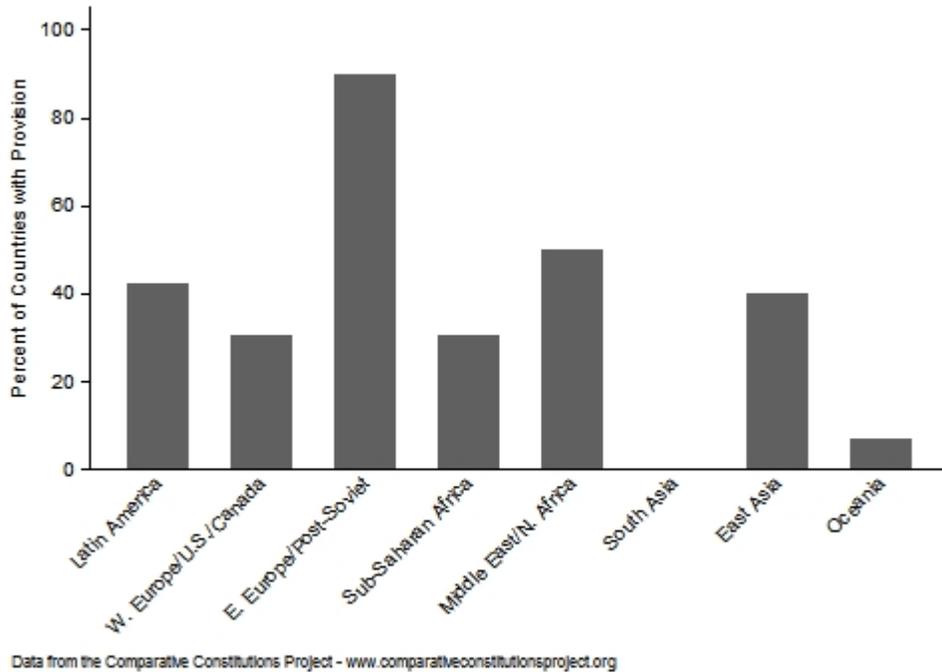
## 3. CLASSIFICATION AND HISTORICAL TRENDS

Overall, 32% of constitutions in the sample grant a right to asylum or contain provisions for the protection of stateless individuals. As Figure 1 suggests, the number of constitutions containing a right to asylum has increased dramatically after the end of the World War II. In 2000 about 40% of constitutions in force granted the right to asylum as opposed to almost none in 1940s. Figure 2 shows regional variations among constitutions in force in 2000. About 90% of the constitution in force in 2000 in Eastern Europe contained provisions for the protection of stateless individuals or granted the right to asylum. In contrast, only about half of constitutions in Middle East and 40% of constitutions in force in Latin America, Western Europe, and East Asia granted the right to asylum, and the provision is very unlikely to be found in constitutions of Oceania and South Asia.

**Figure 1. Percent of Constitutions that Grant the Right to Asylum by Year (n=550)**



**Figure 2. Percent of Constitutions that Grant the Right to Asylum in 2000 by Region (N=191)**



#### 4. NOTES ON ATYPICAL CASES

Constitutions vary in the way they incorporate the right to asylum. First, some frame the right in terms of the ability of the state to grant asylum. Others focus on the particular type of individual, for example by prohibiting extradition of “political refugees”. Some constitutions provide that the law will determine whether the right is provided for at all, while others say that the right exists and details will be provided by law.

#### 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 right of asylum is recognized within the limits provided by law.

- *Colombia 2005. Article 36*

The rights, liberties and duties of everyone and all persons, as listed in the Constitution, shall be equal for Estonian citizens as well as for citizens of foreign states and stateless persons who are sojourning in Estonia. The rights, liberties and duties listed in the Constitution shall extend to legal persons, to the extent that this is in accordance with the general aims of the legal persons, and with the nature of such rights, liberties and duties.

- *Estonia 1992. Article 9*

The law shall establish the terms under which citizens of other countries and stateless persons may enjoy the right of asylum in Spain.

- *Spain 1992. Article 13.4*

Political refugees cannot be extradited.

- *Tunisia 1993. Article 17*

In no case can a political refugee who is legally benefiting from the right of asylum be delivered or extradited.

- *Algeria 2002. Article 69*

The international relations of the Federative Republic of Brazil are governed by the following principles: X - concession of political asylum.

- *Brazil 2005. Article 4.10*

The People's Republic of China may grant asylum to foreigners who request it for political reasons.

- *China 2004. Article 32*

No Ivorian can be forced into exile. Any person persecuted for reason of his political, religious, [or] philosophical convictions, or of his ethnic identity can benefit from the right of asylum in the territory of the Republic of Cote d'Ivoire, under the condition of conforming to the laws of the Republic.

- *Cote d'Ivoire 2000. Article 14*

The Republic can conclude, with European States that are bound by commitments identical with its own in the matter of asylum and the protection of human rights and fundamental freedoms, agreements determining their respective jurisdiction in regard to the consideration of requests for asylum submitted to them.

However, even if the request does not fall within their jurisdiction under the terms of these agreements, the authorities of the Republic always have the right to grant asylum to any foreigner who is persecuted for his action in pursuit of freedom or who seeks the protection of France for some other reason.

- *France 2005. Article 53.1*

## 6. APPENDIX

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

[ASYLUM] Does the constitution contain provisions for the protection of stateless individuals, refugees from other states, or the right to asylum?

1. Yes

2. No

96. other, please specify in the comments section

97. Unable to Determine

Instructions: If the text prohibits the extradition of political refugees, please code "Yes" and make 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](http://www.comparativeconstitutionsproject.org).