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OPTION REPORTS

RIGHT TO CONDUCT BUSINESS

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

1. INTRODUCTION

The right to establish and/or conduct a business has surged in popularity after the collapse of communism. Over 60% of the constitutions in Eastern Europe stipulate such a right (the highest prevalence in any geographical region). We describe below the range of constitutional provisions on the right to establish and/or conduct a business.

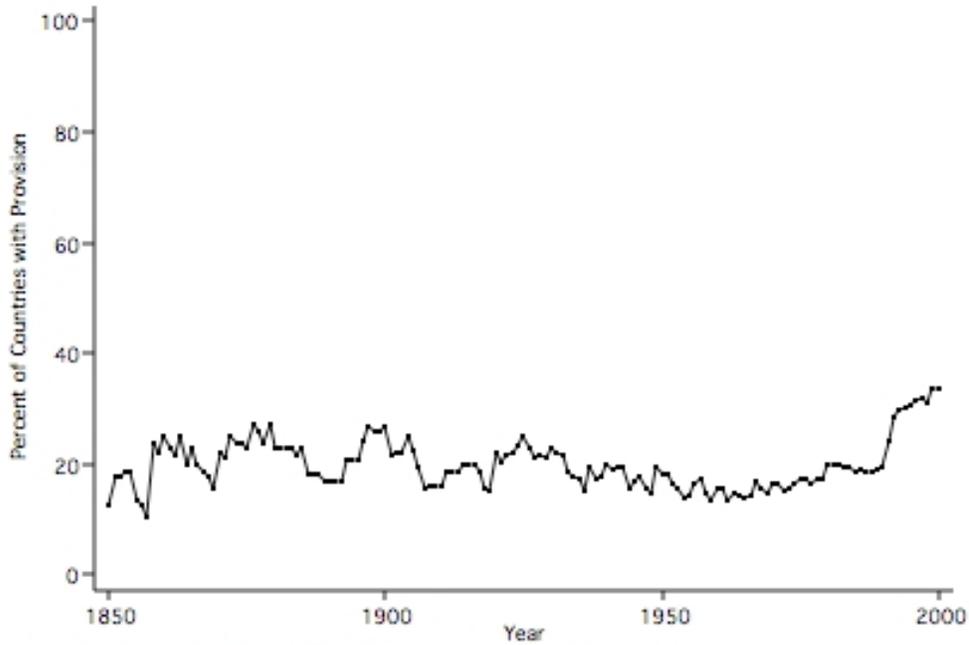
2. DATA SOURCE(S)

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

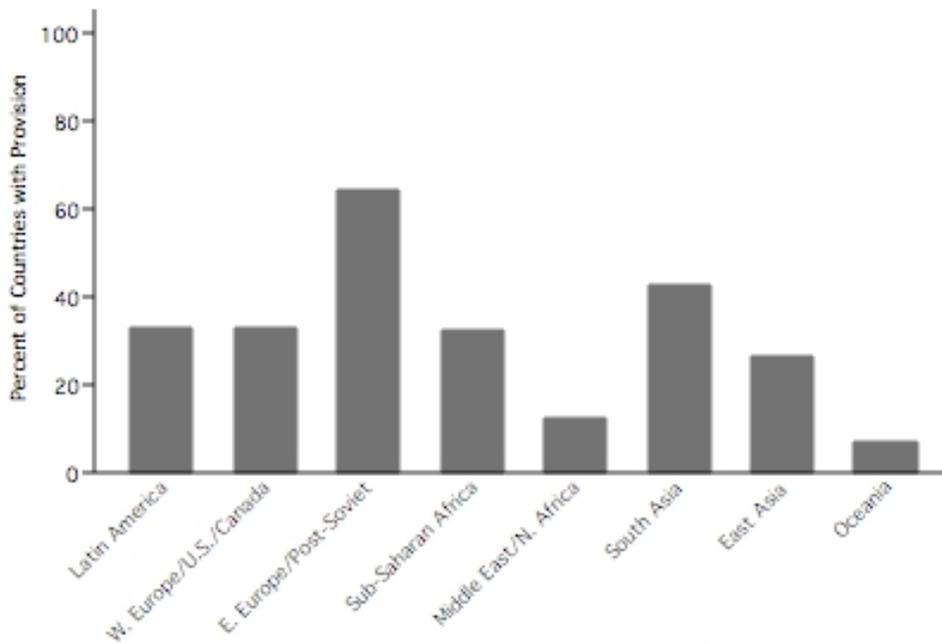
Overall, 28% of constitutions in the sample have provided for the right to establish and/or conduct a business. Figure 1 shows the percent of constitutions that stipulate the right to establish and/or conduct a business over time. It suggests that these constitutional provisions have been relatively uncommon, increasing in popularity after 1990. In 2000, almost 35% of constitutions in force provided for the right to establish and/or conduct business. As Figure 2 shows, the right is most common in Eastern Europe and South Asia, and least common in Oceania and the Middle East.

Figure 1. Percent of Constitutions That Provide for the Right to Establish and/or Conduct a Business by Year (N=550)



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

Figure 2. Percent of Constitutions That Provide for the Right to Establish and/or Conduct a Business in 2000 by Region (N=191)



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

4. NOTES ON ATYPICAL CASES

Some constitutions provide for “freedom of commerce and industry” (e.g. Ecuador 1946, Guatemala 1965, Honduras 1936, Mauritania 1991, and Nicaragua 1948). Such cases are not included in the statistics described above.

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. Right to conduct/establish business
2. Free enterprise

5.1. Right to conduct/establish business

The DRA encourages and protects the productive activities of artisans, their voluntary participation in production cooperatives for the purpose of further effective organization of production and the sale of their products. The state, in accordance with the law, guarantees the security of private investment in national economic development and encourages and supports the participation of national capitalists in the development in industry, transport services and agriculture. In the commerce sector, the state, with consideration of the national interests of all people of Afghanistan, encourages and guides the development of internal and external trade. For this purpose the state allows free retail and wholesale trading and will control the general level of prices. The state will assist institutions, commercial companies and national merchants in practicing foreign trade, will encourage increased production and improvement of the quality of exported goods and will protect them against monopolized imperialist competition.

- *Afghanistan 1980, Article 21*

All inhabitants of the Nation enjoy the following rights, in accordance with the laws that regulate their exercise, namely: of working in and practicing any lawful industry; of navigating and trading; of petitioning the authorities; of entering, remaining in, traveling through and leaving the Argentine territory; of publishing their ideas through the press without prior censorship; of using and disposing of their property; of

associating for useful purposes; of freely practicing their religion; of teaching and learning.

- *Argentina 1994, Article 14*

Every person possesses the following fundamental rights:

...

d) To work and to engage in commerce, industry, and any lawful profession, occupation or economic activity of one's choosing, under conditions which do not harm the collective welfare;

- *Bolivia 2002, Article 7.d*

The exercise of any work, trade, or profession shall be free, with observance of such conditions regarding capacity as the law may prescribe.

- *Brazil 1967, Article 150.23*

For all of Germany there exists a common denizenship with the effect that a member (subject, citizen) of each member of the Federation is to be treated in every other member of the Federation as a native and accordingly is entitled to permanent residence, pursuit of business, public offices, acquirement of land, obtaining of citizenship, and enjoyment of all other civil rights under the same conditions as a native, and is also to be treated like the latter in the matter of the, administration of justice and the protection of the law.

No German may be restricted in the enjoyment of this right by the authorities of his home or by the authorities of any other member of the Federation.

Those provisions which apply to the care of paupers and the admission into a local communal association are not affected by the principle enumerated in the first paragraph.

Likewise remain in force until further disposition the treaties which exist between the several members of the Federation concerning the taking over of persons who are to be banished or deported, the care of sick citizens, and the burial of deceased citizens.

As to the fulfillment of military duty in relation to the home state, the necessary regulations will be made by way of Imperial legislation.

Over against foreign countries all Germans uniformly have a claim to the protection of the Empire.

- *Germany 1871, Article 3*

Protection of certain rights regarding freedom of speech, etc.

...

(g) to practise any profession, or to carry on any occupation, trade or business.

- *India 2003, Article 19.1.g*

No person may be prevented from engaging in the profession, industrial or commercial pursuit, or occupation of his or her choice, so long as it is lawful. The exercise of this liberty may only be forbidden by a judicial determination when the rights of a third party are infringed or by a government resolution, issued in the manner provided by law, when the rights of society are undermined. No one may be deprived of the fruits of his or her labor except by judicial resolution.

- *Mexico 2003, Article 5*

All persons may devote themselves freely to the economic activity of their preference, with no further limitations than those provided in this Constitution and those that the laws establish, for reasons of human development, security, health, protection of the environment and others of social interest. The State will promote private initiative, guaranteeing the creation and just distribution of wealth, as well as the production of goods and services that satisfy the needs of the population, freedom of work, enterprise, commerce, industry, without prejudice to their faculty to dictate measures to plan, make efficient and regulate the economy and to promote the integral development of the country.

- *Venezuela 1999, Article 112*

5.2. Free enterprise

The right of every citizen to free enterprise is guaranteed within the limits provided by the law.

- *Cote d'Ivoire 2000, Article 16*

Private economic initiative is free.

It cannot be conducted in conflict with social utility or in a manner that could damage safety, liberty, and human dignity.

The law determines appropriate planning and controls so that public and private economic activity is given direction and coordinated to social objectives.

- *Italy 2003, Article 41*

1. Everyone has the right to freely use his or her abilities and property for entrepreneurial and other economic activity not prohibited by law.
2. Not allowed is any economic activity aimed at monopolization or unfair competition.

- *Russia 1993, Article 34*

Free enterprise within the framework of a market economy is recognized. The public authorities guarantee and protect its exercise and the defense of productivity in accordance with the exigencies of the general economy, and as the case may be, in keeping with planning.

- *Spain 1992, Article 38*

6. APPENDIX

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

[BUSINES]-Does the constitution provide for a right to conduct/establish a business?

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

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.