

# CONSTITUTIONMAKING.ORG

## OPTION REPORTS

### RIGHT TO SILENCE

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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**

The right to silence or protection from self-incrimination is a legal protection given to people undergoing police interrogation or trial. We describe below the range of constitutional provisions for the right to silence or protection from self-incrimination.

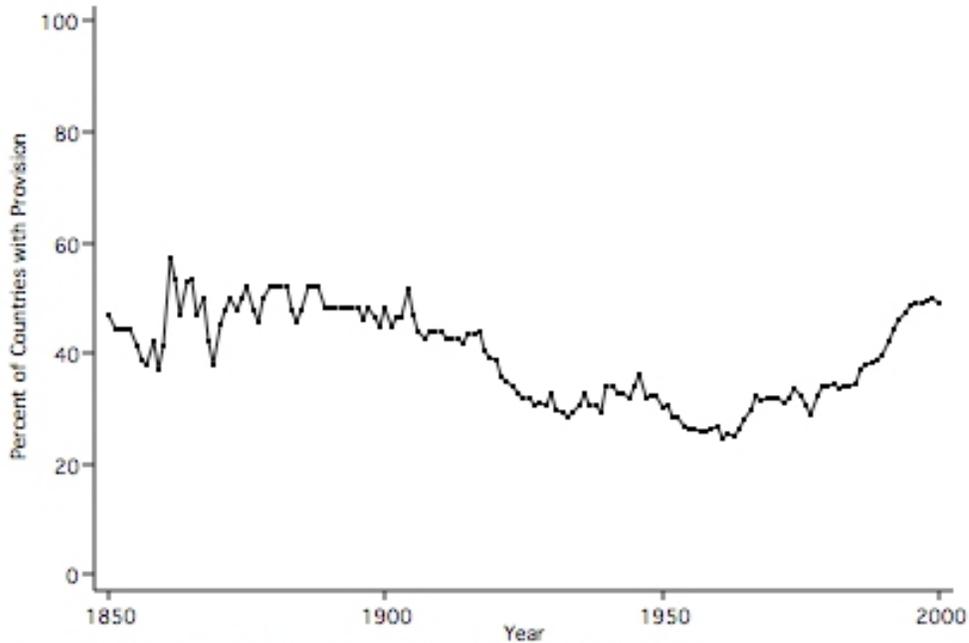
## **2. DATA SOURCE**

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.

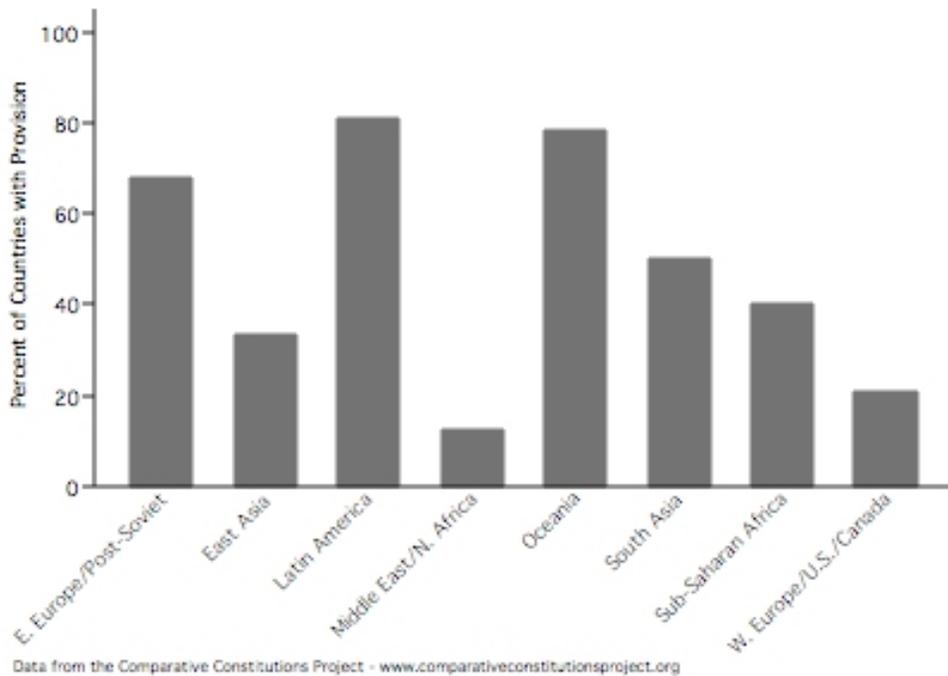
## **3. CLASSIFICATION AND HISTORICAL TRENDS**

Overall, 38% of constitutions in the sample have provided for the right to silence or protection from self-incrimination. As Figure 1 suggests, incorporation of this legal principle in constitutional texts decreased in popularity mid-20<sup>th</sup> century but has revived toward the end of the century. In 2000, 50% of constitutions in force incorporated the right to silence. As Figure 2 suggests, provisions regarding this legal principle are most common in Latin America, Oceania, and Eastern Europe, and least common in the Middle East, Western Europe, and East Asia.

**Figure 1. Percent of Constitutions That Provide for the Right to Silence by Year (N=550)**



**Figure 2. Percent of Constitutions That Provide for the Right to Silence in 2000 by Region (N=191)**



#### 4. NOTES ON ATYPICAL CASES

None.

#### 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.)*

...No one can be compelled to testify against himself, or be arrested except by virtue of a written order from a competent authority...

- *Argentina 1994, Article 18*

No person shall be compelled to be a witness against oneself, members of one's family or next of kin. Evidence obtained in violation of the law shall have no legal force.

- *Belarus 2004, Article 27*

Everyone is equal before the law, with no distinction whatsoever, guaranteeing to Brazilians and foreigners residing in the Country the inviolability of the rights to life, liberty, equality, security and property, on the following terms:

...

LXIII - one under arrest shall be informed of his rights, including the right to remain silent, and shall be assured assistance of his family and a lawyer;

- *Brazil 2004, Article 5.63*

In criminal cases the defendant (*imputado*) or accused may not be forced to testify under oath on his/her own actions; nor may his/her family, children, spouse and other persons which, depending on the cases and circumstances as determined by law, be forced to testify against him/her;

- *Chile 2005, Article 19.7.f*

...Neither shall anyone be compelled to testify against himself, nor against his spouse or relatives within the fourth degree of consanguinity or second degree of affinity...

- *Cuba 1962, Article 28*

No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

- *Fiji 1990, Article 11.7*

No one may be compelled in cases of crimes, minor offenses, or petty violations to bear witness against himself or his relatives up to the fourth degree of consanguinity or the second degree of affinity.

- *Haiti 1987, Article 46*

No person accused of any offence shall be compelled to be a witness against himself.

- *India 1995, Article 20.3*

No person shall be compelled to testify against himself. Confessions made under compulsion, torture, or threat, or after prolonged arrest or detention shall not be admitted in evidence. No person shall be convicted or punished in cases where the only proof against him is his own confession.

- *Japan 1946, Article 38*

Every person suspected or accused of committing a crime shall immediately upon arrest be informed in detail of the charges, of the right to remain silent and of the fact that any statement made could be used against him in a court of law. Such person shall be entitled to counsel at every stage of the investigation and shall have the right not to be interrogated except in the presence of counsel. Any admission or other statements made by the accused in the absence of such counsel shall be deemed inadmissible as evidence in a court of law.

- *Liberia 1986, Article 21.c*

The accused may not be forced to confess. Keeping the accused incommunicado or subjecting him or her to any intimidation or torture is prohibited and punishable under the criminal law. Confessions given to any authority other than the Public Ministry or a judge, without the presence of his or her defender, will lack all evidentiary force whatsoever;

- *Mexico 2003, Article 20.a.2*

1. No one is obligated to give evidence against himself or herself, for his or her spouse and close relatives, the range of which is established by federal law.

2. The federal law may specify other exemptions from the obligation to give evidence.

- *Russia 1993, Article 51*

(2) Every person arrested for the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person have the right

...

(c) not to be compelled to make a confession or admission which could be used in evidence against him or her;

...

(3) Every accused person shall have the right to a fair trial, which shall include the right

...

(d) to adduce and challenge evidence, and not to be a compellable witness against himself or herself;

- *South Africa 1993, Article 25.2.a; 25.3.d*

Likewise, all have the right to the ordinary judge predetermined by law, to defense and assistance of an attorney, to be informed of the accusation made against them, to a public trial without delays and with all the guarantees, to utilize the means of proof pertinent to their defense, to refrain from self-incrimination, to refrain from pleading guilty and to the presumption of innocence.

- *Spain 1992, Article 24.2*

A person has the right not to make a statement incriminating himself or herself which may result in criminal prosecution being taken against him or her.

Any statement of a person obtained from inducement, a promise, threat, deceit, torture, physical force, or any other unlawful act shall be inadmissible in evidence.

- *Thailand 1997, Article 243*

No person can be obligated to confess guilt or declare against himself, his spouse, consort [*concubino o concubina*], or relation within the fourth grade of consanguinity and second of affinity.

- *Venezuela 1999, Article 49.5*

## 6. APPENDIX

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

[MIRANDA] – Does the constitution give the accused a right to silence or protection from self-incrimination?

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](http://www.comparativeconstitutionsproject.org).