

# CONSTITUTIONMAKING.ORG

## OPTION REPORTS

### GUARANTEE OF DUE PROCESS

August 7, 2008

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**

Due process (or due process of law) is the principle that the government must follow appropriate procedures when depriving a person of his/her liberty, life, or property. This report considers only explicit guarantees of due process, but many constitutions without such guarantees do provide for particular aspects that might be considered part of due process. We describe below the range of constitutional provisions for due process. For further information please see other reports such as those on Right to Counsel, Writ of Habeas Corpus, Right to Fair Trial, etc.

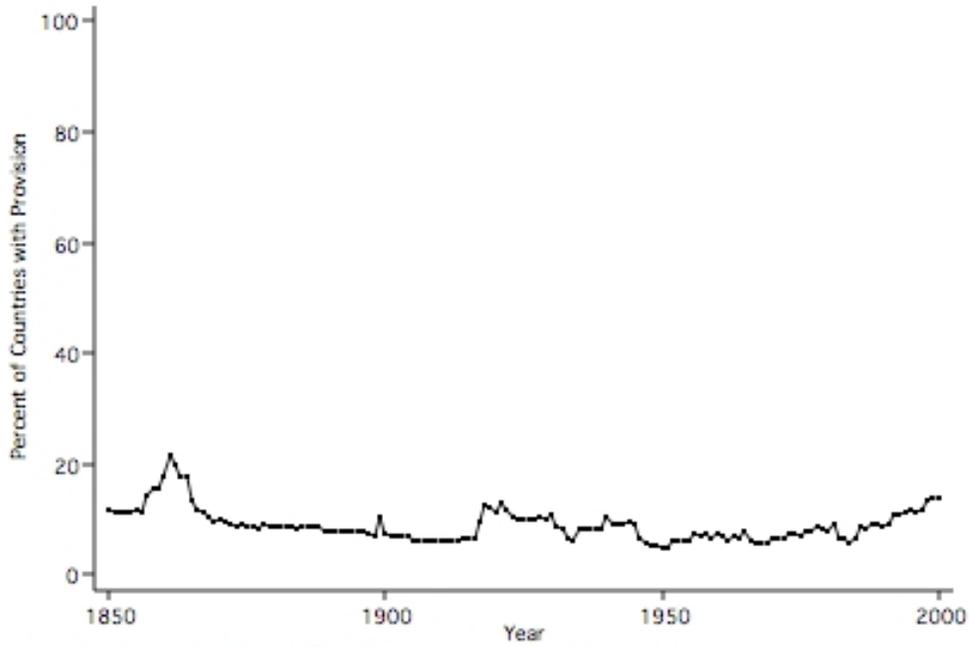
## **2. DATA SOURCE**

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.

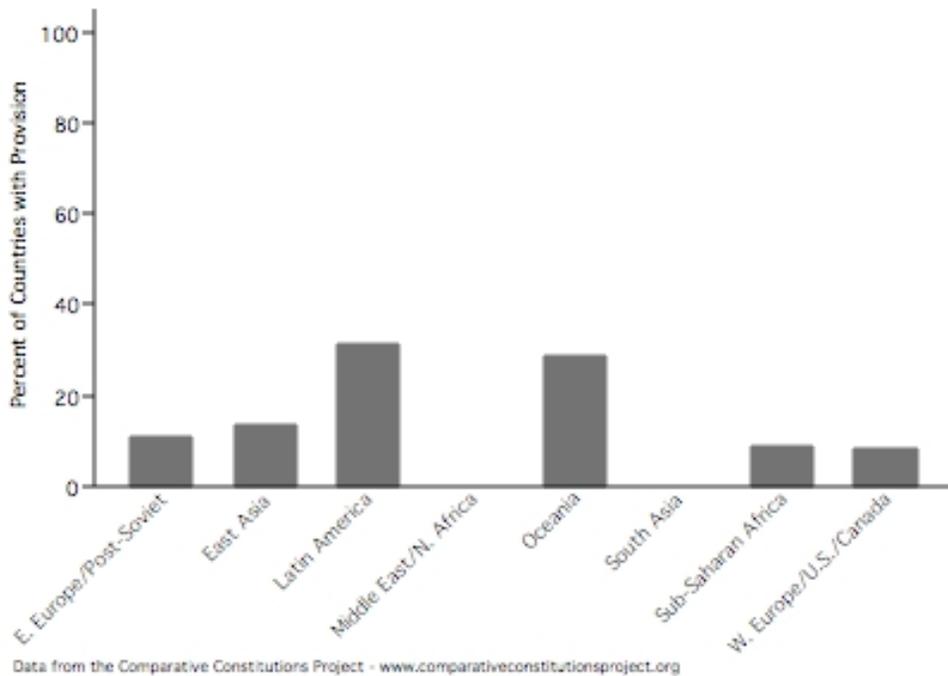
## **3. CLASSIFICATION AND HISTORICAL TRENDS**

Explicit guarantees of due process are relatively rare, found in only 7.7% of constitutions in the sample, and 14% of constitutions in force as of 2000. As Figure 2 suggests, provisions regarding this legal principle are most common in Latin America and Oceania, and absent in the Middle East and South Asia.

**Figure 1. Percent of Constitutions That Explicitly Mention Due Process by Year (N=550)**



**Figure 2. Percent of Constitutions That Explicitly Mention Due Process 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.)*

The right to due process in the defense of the person and of rights is inviolable.

- *Argentina 1994. Article 18*

Private property may be alienated for the needs of society and the state only under exceptional circumstances, with due process of law, and with prior equivalent compensation.

- *Armenia 1995. Article 28*

No one shall be deprived of liberty or property without due process of law;

- *Brazil 2005, Article 5.54*

Due process will be applied in all cases of legal and administrative measures.

...

Evidence obtained in violation of due process is null and void by right.

- *Colombia 2005, Article 29*

Without prejudice to other rights established in this Constitution and in international instruments in force, the State recognizes and guarantees the following to persons:

...

26. The right to due process and justice without delay.

- *Ecuador 1998, Article 23.26*

Right to Life and Liberty

1. No person shall be deprived of life without due process of law.

2. No person shall be deprived of liberty without due process of law.

- *Eritrea 1997, Article 15*

No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law. Justice shall be done without sale, denial or delay; and in all cases not arising in courts not of record, under courts-martial and upon impeachment, the parties shall have the right to trial by jury.

- *Liberia 1986, Article 20.a*

No person shall be deprived of life, liberty, property, possessions, or rights without due process of law instituted before a duly created court, in which the essential elements of procedure are observed, and in accordance with previously existing laws.

- *Mexico 1857, Article 14*

Every person shall be presumed innocent until proved guilty by a court by due process of law.

- *Mongolia 2001, Article 16.14*

No one shall be arrested, detained or punished otherwise than as prescribed under the law and in accordance with its provisions. The home shall be inviolable. There shall be no search or investigation without due process of the law.

- *Morocco 1970, Article 10*

No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

- *Philippines 1986, Article 3.1*

It is possible to annul, invalidate or change legal relations, regulated by legally enforceable decisions of state organs only in cases and after due process determined by law.

- *Slovenia 1991, Article 158*

Art. 5. 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.

Art. 14.1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- *United States 1992, Article 5; 14.1*

No one may be punished or imprisoned without due process of law and a legal sentence.

- *Uruguay 1966, Article 12*

Due process will be applied to all the judicial and administrative actions, and in consequence:

1. The defense and the juridical assistance are inviolable rights in all stages and levels of the investigation and of the procedure. Any person has the right to be notified of the charges on which he is being investigated, to have access to the evidence and to have the time and means adequate to exercise his defense. The evidence obtained by way of violation of due process, will be null. Any person declared guilty has the right to appeal the verdict, with the exceptions established in this Constitution and the law.

2. Any person is presumed innocent while it has not been proved otherwise.

3. Any person has the right to be heard in any type [clase] of procedure, with the due guarantees and within the time reasonably determined legally, by a competent, independent and impartial tribunal previously established. [The person] who cannot speak Castillian or cannot communicate in a verbal manner, has the right to an interpreter.

4. Any person has the right to be judged by his legitimate [naturales] judges in the ordinary, or special, jurisdictions with the guarantees established in this Constitution and the law. No person can be sentenced to judgment without cognizance of the identity of those who judge him, nor can [a person] be processed by tribunals of exception or by commissions created to this effect.

5. 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.

The confession will only be valid if it is made without coercion of any nature.

6. No person can be sanctioned for acts or omissions that were not specified as crimes, misdemeanors [faltas] or infractions in pre-existing laws.

7. No person can be submitted to judgment for the same acts in virtue of which he has been previously judged.

8. Any person can request of the State the reestablishment or reparation of the juridical situation damaged by judicial error, delay or unjustified omission. The rights of the individual to require the personal responsibility of the magistrate, judge and of the State, and to act [actuar] against these, is preserved.

- *Venezuela 1999, Article 49*

## 6. APPENDIX

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

[DUEPROC] – Does the constitution explicitly mention due process?

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

Instructions: Due process (or synonym) needs to be explicitly mentioned, not just implied. If the constitution specifies that “no one shall be tried except by competent authority and in conformity with legal proceedings” please code NOT SPECIFIED.

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).