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OPTION REPORTS

FREEDOM OF ASSOCIATION

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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

Freedom of association is an essential human right based on the premise that it is the right of citizens to freely choose their associates for whatever purpose they see fit. We describe below the range of constitutional provisions for freedom of association.

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, 78% of constitutions have provided for freedom of association.

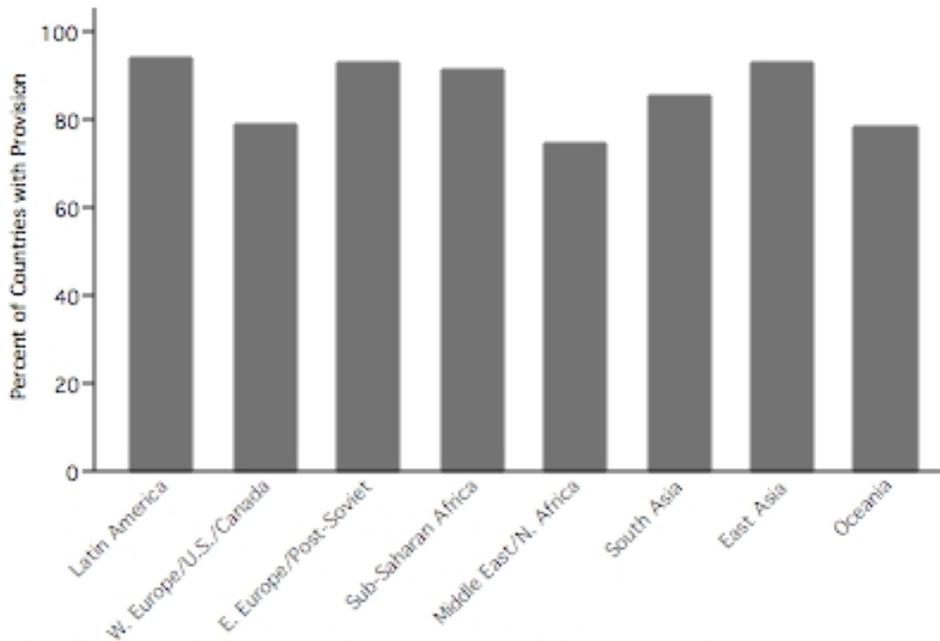
Figure 1. Percent of Constitutions that Provide for Freedom of Association by Year (N=550)



Figure 1 shows the percent of constitutions that stipulate freedom of association. As Figure 1 suggests, incorporation of freedom of association in constitutional texts has increased significantly in the

second half of the 19th century, and gradually throughout the 20th century. In 2000, 87% of constitutions in force provided for freedom of association.

Figure 2. Percent of Constitutions that Provide for Freedom of Association in 2000 by Region (N=191)



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

Figure 2 shows the percent of constitutions that provide for freedom of association across regions. The figure indicates that freedom of association is most common in Latin America, Eastern Europe, and East Asia, and least common in the Middle East, Oceania, and Western Europe.

4. NOTES ON ATYPICAL CASES

Some constitutions provide for freedom to form organizations or professional associations (e.g. Albania 1946 and Mali 1974). Other constitutions stipulate that freedom of association shall be provided by law (e.g. Indonesia 1945). Lastly, some constitutions specify that freedom of association can be restricted by law (e.g. Botswana 1997) or for the purpose of defense, public order, etc. (e.g. Fiji 1990 and Thailand 1997). All these cases have been characterized as providing for freedom of association in 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. Absolute freedom of association
2. Qualified freedom of association
3. Freedom of association shall be provided by law

5.1. Absolute freedom of association

Afghan citizens have the right to assemble unarmed, without prior permission of the state, for the achievement of legitimate and peaceful purposes, in accordance with the provisions of the law. Afghan citizens have the right to establish, in accordance with the provisions of the law, associations for the realization of material or spiritual purposes.

- *Afghanistan 1964, Article 32*

Freedom of speech, freedom of press, freedom of organization, freedom of assembly and of public demonstration, are guaranteed to all citizens.

- *Albania 1946, Article 18*

The Republic guarantees freedom of the press and of other means of information, freedom of association, freedom of speech and public intervention, and freedom of assembly.

- *Algeria 1963, Article 19*

All the citizens of the Republic of Azerbaijan have the right to unite freely in political parties and other public organizations to facilitate the determination of the policy of the Republic of Azerbaijan in democratic way.

- *Azerbaijan 1991, Article 27*

The constitution assures to Brazilians and to foreigners resident in the country the inviolability of the rights regarding liberty, personal security, and property, in the following terms:

SEC. 8. It is permitted to all to associate and assemble freely and without arms, the police not being permitted to intervene except to maintain public order.

- *Brazil 1891, Article 72.8*

Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.

- *China 2004, Article 35*

The Republic of Mali guarantees to its citizens, within the framework of the law: the right to work; equality in employment; the right to rest; the right to social assistance and to education; the freedom to form organizations of their choice for the defense of professional interests.

- *Mali 1974, Article 13*

The right to assemble or associate peacefully for any lawful purpose (objeto lícito) shall not be restricted; but only citizens of the Republic may do so to take part in the political affairs of the country. No armed deliberative meeting or gathering is authorized.

No assembly or meeting which has as its object the petitioning of any authority or the presentation of a protest against any act shall be deemed unlawful; nor may it be dissolved, unless insults are proffered against the authority or violence is resorted to, or threats are made to intimidate or compel such authority to render the desired decision.

- *Mexico 2003, Article 9*

In accordance with the goals of communist construction, citizens of the USSR have the right to unite in social organizations, which promote the development of political activity and initiative and the satisfaction of their diverse interests.

Social organizations are guaranteed the conditions for the successful fulfillment of their statutory functions.

- *Russia 1977, Article 51*

Freedom of association

Everyone has the right to freedom of association.

- *South Africa 2003, Article 18*

1. The right of association is recognized.
2. Associations which pursue purposes or use methods which are classified as crimes, are illegal.
3. Associations constituted under the provisions of this article must register for purposes of public information only.
4. Associations may only be dissolved or their activities suspended by virtue of a motivated judicial order.
5. Secret and paramilitary associations are prohibited.

- *Spain 1978, Article 22*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

- *United States of America 1791, Amendment 1*

Every person has the right to associate with lawful purposes, in conformity with the law.

The State will be obligated to facilitate the exercise of this right.

- *Venezuela 1999, Article 52*

5.2. Qualified freedom of association

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) in the interests of defence, public safety, public order, public morality or public health;

(b) for the purpose of protecting the rights or freedoms of other persons; or (c) for the imposition of restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

- *Fiji 1990, Article 14*

A person shall enjoy the liberty to unite and form an association, a union, league, cooperative, farmer group, private organization or any other group.

The restriction on such liberty under Paragraph One shall not be imposed except by virtue of the law specifically enacted for protecting the common interest of the public, maintaining public order or good morals or preventing economic monopoly.

- *Thailand 1997, Section 45*

5.3. Freedom of association shall be provided by law

The freedom of assembly and the right of association, freedom of speech and of the press and similar freedoms shall be provided by law.

- *Indonesia 1945, Article 28*

6. APPENDIX

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

[ASSOC]-Does the constitution provide for freedom of association?

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

Instructions: If the Constitution provides for freedom to form organizations (but not of political nature), code "Yes" with comment. If the freedom to form associations can be restricted for the purpose of defense, public order, etc., please code "Yes" with comment. If the freedom of association will be provided by law, please code "Yes" with 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.