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OPTION REPORTS

FREEDOM OF THE PRESS

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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 the press is an essential guarantee in a democratic setting. We describe below the evolution of constitutional provisions regarding freedom of the press.

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, 51% of constitutions in the sample provide for freedom of the press. As Figure 1 suggests, the incorporation of this guarantee into a constitution peaked around 1900 and has become less widespread throughout the 20th century, increasing again in popularity in the early 1980s. In 2000, almost 60% of constitutions in force stipulated freedom of the press.

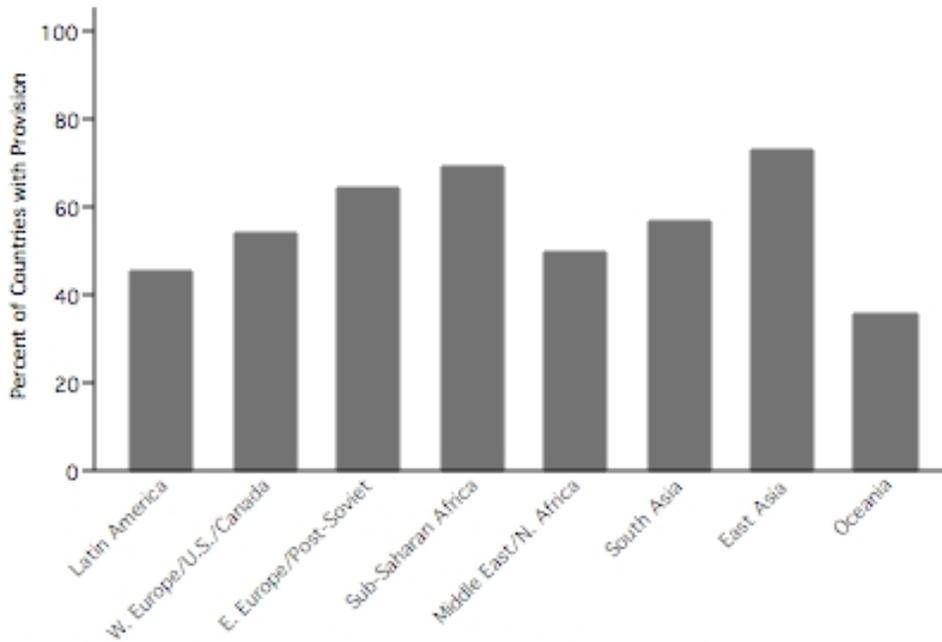
Figure 2 shows the percent of constitutions that guarantee freedom of press by region. The provision is most common in East Asia, Sub-Saharan Africa, and Eastern Europe, and least common in Oceania and Latin America.

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



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

Figure 2. Percent of Constitutions that Provide for Freedom of the Press by Region (N=191)



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

4. NOTES ON ATYPICAL CASES

Some constitutions provide for “freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons)” (e.g. Botswana 1997, Kenya 1997). Such cases account for 1% of the data. 1.5% of constitutional texts limit freedom of expression to writing, so that the “right to freedom of expression in writing is exercised in accordance to the law” (e.g. Afghanistan 1931 and 1987).

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.)

Freedom of thought and expression is inviolable. Every Afghan has the right to express his thoughts in speech, in writing, in pictures and by other means, in accordance with the provisions of the law. Every Afghan has the right to print and publish ideas in accordance with the provisions of the law, without submission in advance to the authorities of the state. The permission to establish and own public printing houses and to issue publications is granted only to the citizens and the state of Afghanistan, in accordance with the provisions of the law. The establishment and operation of public radio transmission and telecasting is the exclusive right of the state.

- *Afghanistan 1964. Article 31*

Protection of freedom of expression

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

- *Botswana 1997. Article 12.1*

The press is free; censorship may never be established and no security may be demanded from writers, publishers or printers. Where the author is known and resides in Belgium, the publisher, printer or distributor may not be prosecuted.

- *Belgium 2005. Article 25*

The expression of thoughts, creation, speech and information, through whatever form, process or vehicle, shall not be subject to any restrictions, observing the provisions of this Constitution.

§ 1. No law shall contain any provision that may constitute an impediment to full freedom of the press, in any medium of social communication, observing the provisions of art. 5, IV, V, X, XIII and XIV.

- *Brazil 2004. Article 220.1*

All persons shall have the liberty of speech and publication: such liberty shall not be denied or restricted except in accordance with law.

- *China 1931. Article 15*

Every person has the right to freedom of speech and expression, including:...(b) freedom of the press and other media.

- *Fiji 1998. Article 30.1.b*

The press shall be free, but the law may suppress abuses of this freedom. Nevertheless, bibles, catechisms, liturgical and prayer books shall not be printed without the previous consent of the bishop.

- *Italy 1848. Article 28*

Freedom of assembly and association as well as speech, press, and all other forms of expression are guaranteed. No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

- *Japan 1946. Article 21*

For the purpose of securing the freedom of expression to the toiling masses, the Russian Socialist Federated Soviet Republic abolishes all dependence of the press upon capital, and turns over to the working people and the poorest peasantry all technical and material means of publication of newspapers, pamphlets, books, etc., and guarantees their free circulation throughout the country.

- *Russia 1918. Article 14*

A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicize, and make expression by other means. The restriction on liberty under Paragraph One shall not be imposed except by virtue of the provisions of law specifically enacted for the purpose of maintaining the security of the State, safeguarding the rights, liberties, dignity, reputation, family or privacy rights of other persons,

maintaining public order or good morals or preventing the deterioration of the mind or health of the public.

The closure of a publishing house or a radio or television station in deprivation of the liberty under this Section shall not be made.

The censorship by a competent official of news or articles before their publication in a newspaper, printed matter or radio or television broadcasting shall not be made except during the time when the country is in a state of war or armed conflict; provided that it must be made by virtue of the law enacted under the provisions of Paragraph Two.

The owner of a newspaper or other mass media business shall be a Thai national as provided by law.

No grant of money or other properties shall be made by the State as subsidies to private newspapers or other mass media.

- *Thailand 1997. Section 39*

6. APPENDIX

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

[PRESS]-Does the constitutions provide for freedom of the press?

1. Yes
2. No
3. left explicitly to non-constitutional law
96. other, please specify in the comments section
97. Unable to Determine

Instructions: Freedom to communicate ideas and information without interference (whether to the public generally or to any person or class of persons) should be coded as "other" with comments.

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.