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OPTION REPORTS

PROTECTION OF JUDICIAL SALARIES

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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

Protection of judicial salaries from government intervention could be an important aspect of ensuring independence of the judicial branch from other branches of government. We describe below the range of constitutional provisions regarding the protection of judicial salaries.

2. DATA SOURCE(S)

The analysis reported below is based on data the Comparative Constitutions Project (please see the appendix to view the question text). As of this writing, the project's sample includes 640 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

Only around 17.5% of constitutions in the sample explicitly state that judicial salaries are protected from governmental intervention. As Figure 1 shows, these provisions appeared in written constitutions as early as the 1850s. The percent of constitutions protecting judicial salaries has remained constant at about 25% throughout 19th and 20th centuries.

Figure 1. Percent of Constitution that Explicitly Protect Judicial Salaries from Government Intervention by Year (N=640)

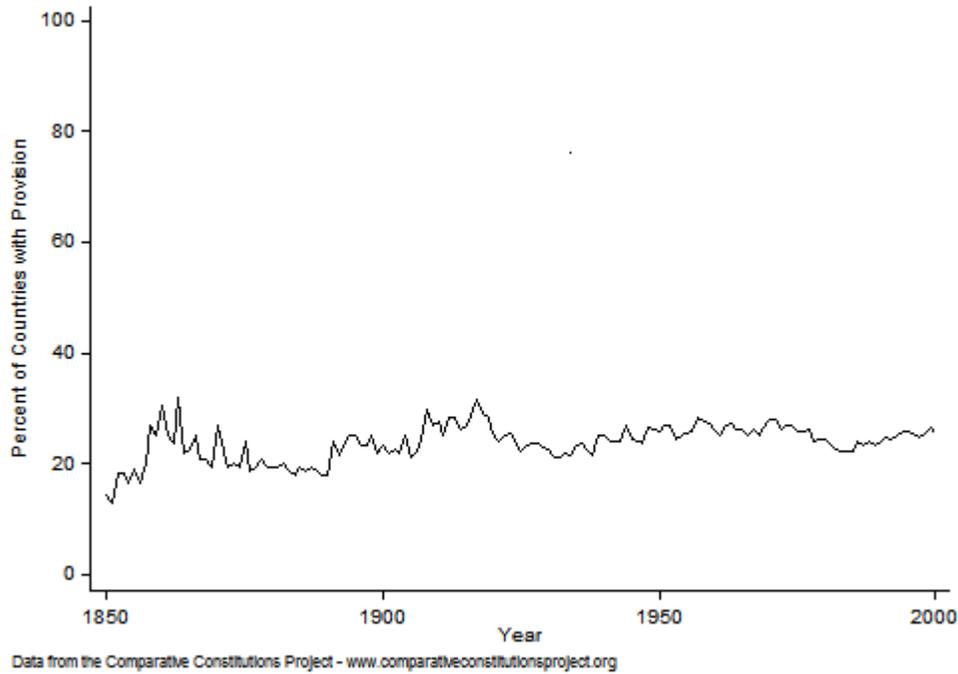
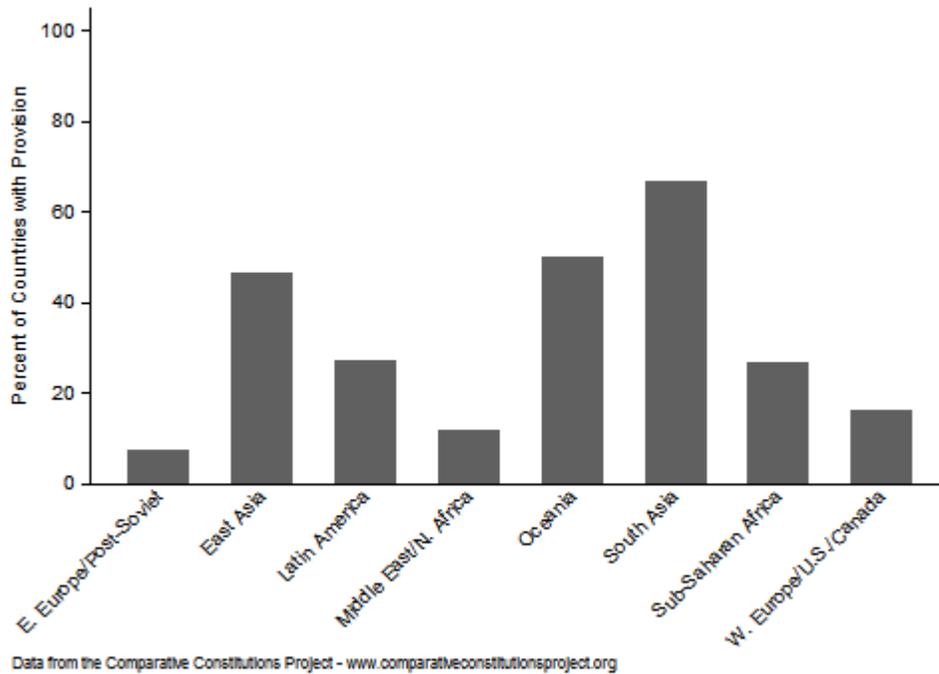


Figure 2. Percent of Constitution that Explicitly Protect Judicial Salaries from Government Intervention in 2000 by Region (N=192)



As Figure 2 shows the provisions are very common in South Asia, where around 70% of constitutions in force in 2000 explicitly protect judicial salaries. They are also common among the constitutions of Oceania and East Asia but are less likely to be found in Eastern Europe, the Middle East, Sub-Saharan Africa and Western Europe.

4. 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 judges, both of the Supreme Court and of the inferior courts of the Nation, shall hold their offices during their good behavior, and shall receive for their services a compensation that the law shall determine and that shall not be diminished in any way while they remain in office.

- *Argentina 1994, Article 110*

The salaries of the members of the judiciary are fixed by law.

- *Belgium 2005, Article 154*

The Judicial Power has economic and administrative autonomy. The General Budget of the Nation allots an annual portion, centralized in the Judicial Treasury, which is the responsibility of the Council of the Judicature. The Judicial Power is not authorized to create or establish judicial rates (*tasas*) or rights.

- *Bolivia 2002, Article 116.8*

(1) There shall be paid to the Judges of the Supreme Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule.... Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

- *India 2002, Article 125*

The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet.

All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

- *Japan 1946, Article 79*

The remuneration received for their services by the ministers of the Supreme Court, Circuit magistrates, District judges, and the members of the Council of the Federal Judicature as well as the Electoral magistrates may not be reduced during their term in office.

- *Mexico 2003, Article 94*

Judges and public prosecutors shall not be dismissed, or retired before the age prescribed by the Constitution; nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of a court or post.

Exceptions indicated in law relating to those convicted for an offense requiring dismissal from the profession, those who are definitely certified as unable to perform their duties on account of ill health, and those found unfit to remain in the profession, are reserved.

- *Turkey 1982, Article 139*

6. APPENDIX

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

[JUDSAL]: Does the constitution explicitly state that judicial salaries are protected from governmental intervention?

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.