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## OPTION REPORTS

### PRESUMPTION OF INNOCENCE

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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 presumption of innocence is a legal right of the accused in criminal proceedings under which the burden of proof is on the prosecution. Unless the prosecution is able to establish guilt, the person should be considered not guilty of a crime. We describe below the range of constitutional provisions for the presumption of innocence.

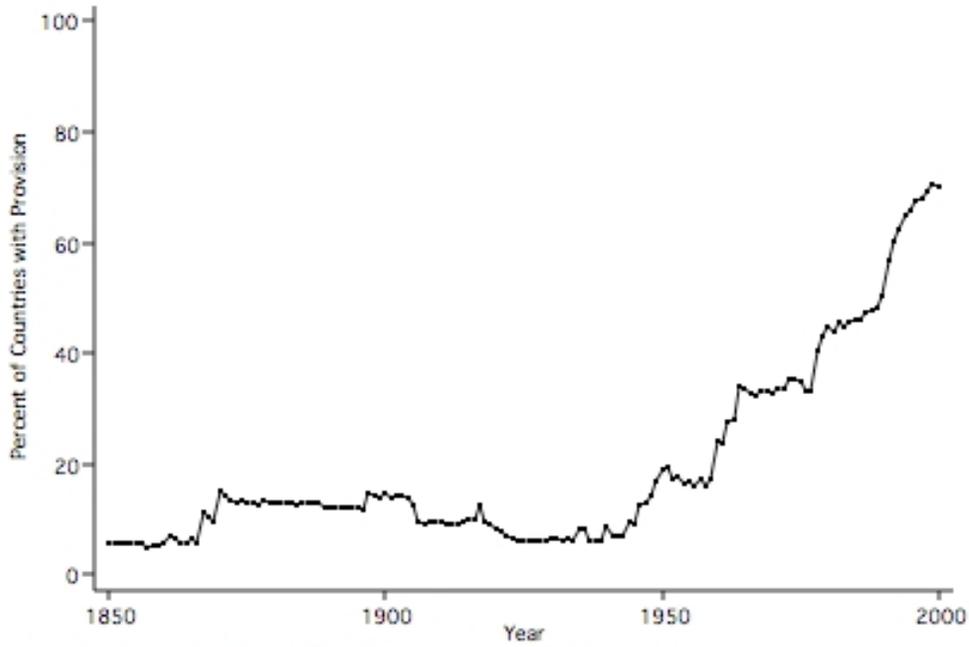
## **2. DATA SOURCE**

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**

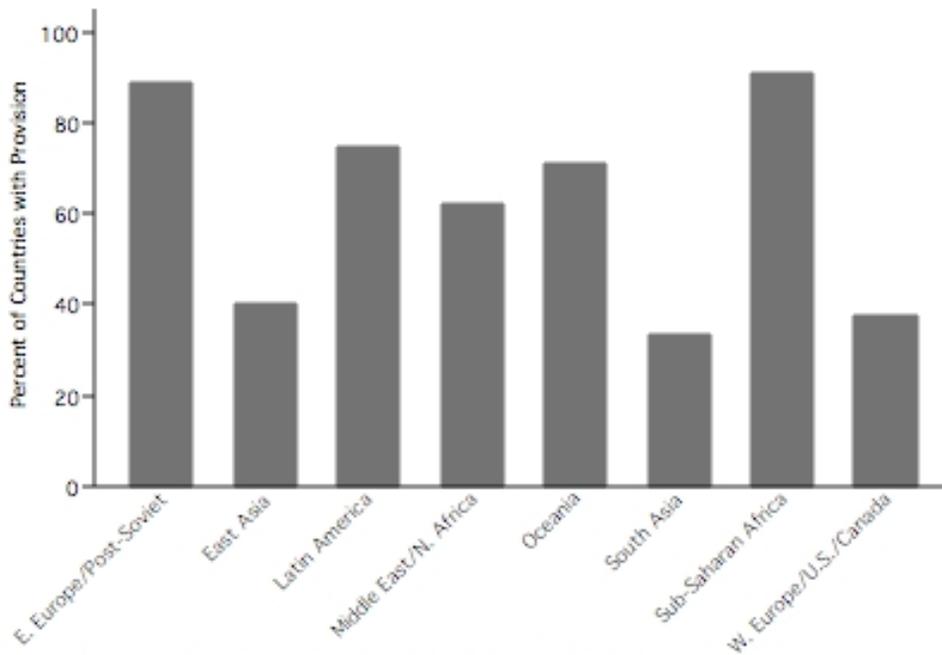
Overall, 41% of constitutions in the sample have provided for the presumption of innocence. As Figure 1 suggests, incorporation of this legal principle in constitutional texts has increased sharply after 1950. In 2000, 70% of constitutions in force incorporated the presumption of innocence. Figure 2 shows the regional variation among constitutions in 2000, showing that provisions regarding this legal principle are most common in Eastern Europe, Sub-Saharan Africa, and Latin America and least common South Asia, East Asia, and Western Europe.

**Figure 1. Percent of Constitutions That Provide for Presumption of Innocence by Year (N=550)**



Data from the Comparative Constitutions Project - [www.comparativeconstitutionsproject.org](http://www.comparativeconstitutionsproject.org)

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



Data from the Comparative Constitutions Project - [www.comparativeconstitutionsproject.org](http://www.comparativeconstitutionsproject.org)

#### 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.)*

(1) Innocence is the original state.

(2) An accused is considered innocent until convicted by a final decision of an authorized court.

- *Afghanistan 2004, Article 25.2*

Every person is presumed to be innocent until the establishment of culpability by a regular court and subject to all the guarantees required by the law.

- *Albania 1998, Article 30*

An accused person is innocent until proved guilty in a legal trial in which he is assured of the necessary guarantees to exercise the right of defence at all stages of the investigation and trial in accordance with the law.

- *Bahrain 2002, Article 20.c*

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:

57. no one shall be considered guilty until his criminal conviction has become final and non-appealable;

- *Brazil 2005, Article 5.57*

Any person accused of a violation of the law is presumed innocent until his/her guilt has been proven by a final judgment.

- *Democratic Republic of Congo 2005, Article 17*

No one can be arbitrarily detained.

Any accused is presumed innocent until his culpability has been established following a procedure offering to him the guaranties indispensable to his defense.

- *Cote d'Ivoire 2000, Article 22*

Every person who is charged with a criminal offence -

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

- *Fiji 1990, Article 11.2.a*

Every man being supposed innocent until he has been declared guilty, if it is judged indispensable to arrest him, all severity not necessary to secure his person ought to be strictly repressed by the law.

- *France 1793, Article 13*

Innocence is to be presumed, and no one is to be held guilty of a charge unless his or her guilt has been established by a competent court.

- *Iran 1989, Article 37*

The accused is not considered guilty before the definitive judgment is rendered.

- *Italy 2003, Article 27*

Every person who is charged with a criminal offence—

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

- *Kenya 1997, Article 77.2.a*

The law considers innocent those who have not been declared guilty or legally suspicious of being so by the act of a competent judge.

- *Paraguay 1940, Article 26*

In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the

attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

- *Philippines 1986, Article 3.14.2*

1. Everyone charged with a crime is presumed innocent until his or her guilt has been proven in conformity with the procedures specified by federal law and established by a sentence of a court of law.
2. The defendant is not obligated to prove his or her innocence.
3. The benefit of doubt shall be interpreted in favor of the defendant.

- *Russia 1993, Article 49*

Every accused person has a right to a fair trial, which includes the right—

...

(h) to be presumed innocent, to remain silent, and not to testify during the proceedings;

- *South Africa 2003, Article 35.3.h*

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*

An alleged offender or an accused in a criminal case shall be presumed innocent.

Before the passing of a final judgment convicting a person of having committed an offense, such person shall not be treated as a convict.

- *Thailand 1997, Article 33*

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

- *Venezuela 1999, Article 49.2*

## **6. APPENDIX**

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

[PRESINOC] – Is there a presumption of innocence in trials?

1. Yes
2. No
96. other, please specify in the comments section
97. Unable to Determine
98. 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).