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OPTION REPORTS

PROHIBITION OF CENSORSHIP

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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

The prohibition of censorship is an essential guarantee for freedom of expression. We describe below the range of constitutional provisions regarding prohibition of censorship.

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, 27% of constitutions in the sample prohibit censorship unconditionally, and 10% of constitutions explicitly allow censorship under certain circumstances, such as war, state of emergency, or in the interest of public safety.

Table 1. Provisions Regarding Prohibition of Censorship

Provision	Number	Percentage
Absolute prohibition on censorship	147	27%
Qualified prohibition on censorship	57	10%
Censorship is not prohibited	341	62%
Other provisions	5	1%

Figure 1 shows the percent of constitutions that prohibit censorship unconditionally over time. As Figure 1 suggests, incorporation of an absolute prohibition of censorship into a constitution has declined in popularity after the late 1800s. We notice a resurgence of this constitutional provision in the 1990s. Figure 2 shows that qualified prohibitions emerged in the 1920s. In 2000, less than 40% of constitutions in force absolutely prohibited censorship, compared to almost 80% in 1850; approximately 10% of constitutions in force allow for censorship in certain circumstances.

Figure 1. Percent of Constitutions with Absolute Prohibition of Censorship by Year (N=550)

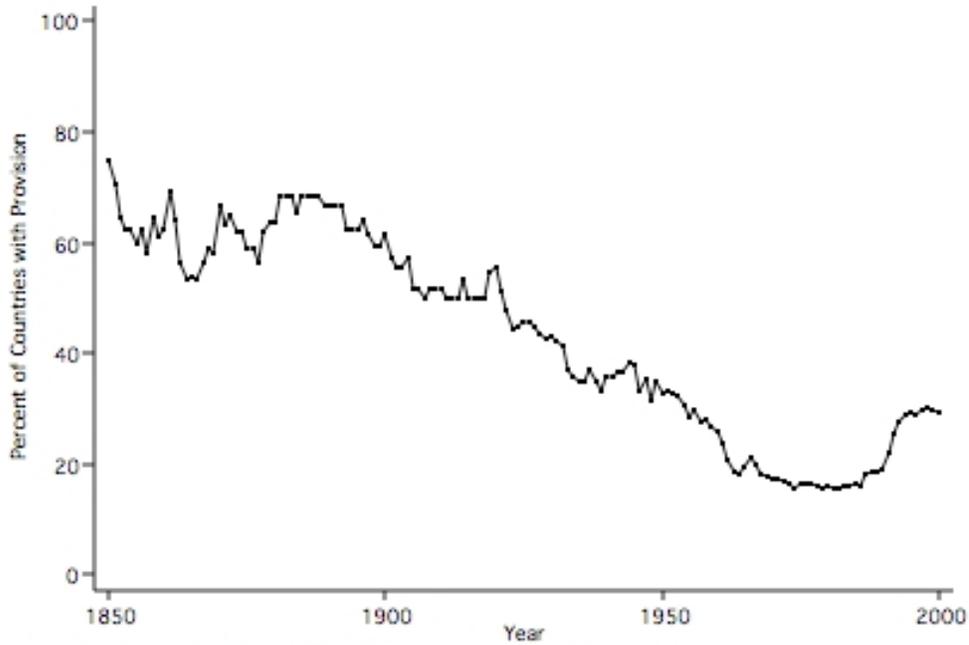
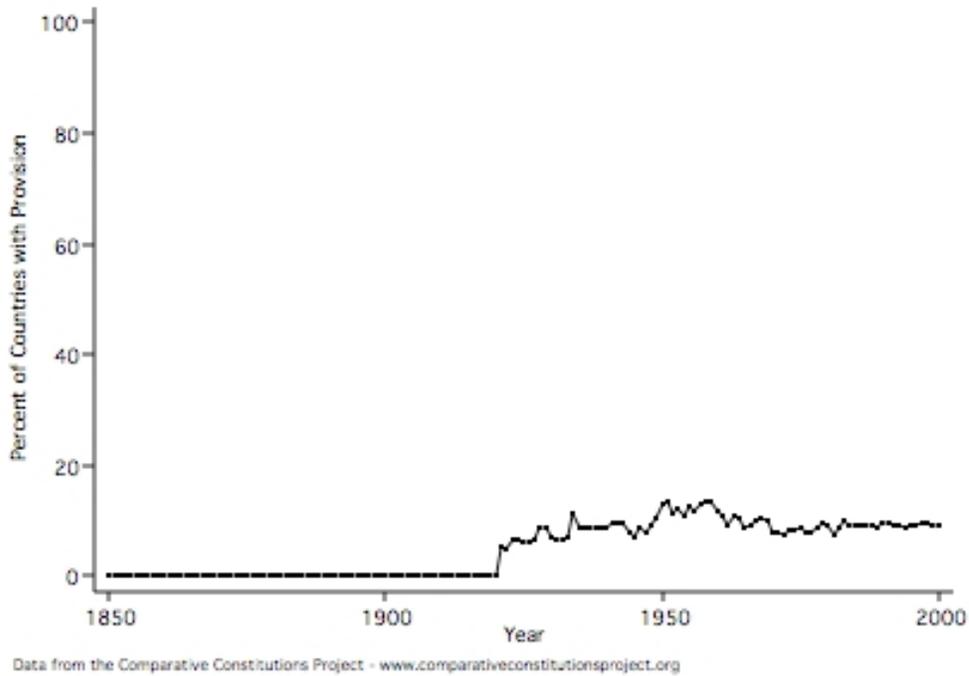


Figure 2. Percent of Constitutions with Qualified Prohibition of Censorship by Year (N=550)



Absolute prohibition of censorship is most prevalent in Eastern Europe, Western Europe, and Latin America. Constitutions in the Middle East, North Africa and South Asia have qualified provisions, if there is any mention of censorship at all. Any prohibition of censorship is rare in Sub-Saharan Africa and Oceania.

4. NOTES ON ATYPICAL CASES

Out of 204 constitutions that prohibit censorship 28% impose explicit circumstances under which censorship is allowed. Among the circumstances stipulated the most common are state of war or emergency, or in the interest of defense, public safety, order, morality, and health.

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 prohibition of censorship
2. Qualified prohibition of censorship

5.1. Absolute prohibition of censorship

Citizens of the Republic of Afghanistan enjoy the right of freedom of thought and expression. Citizens can exercise this right openly, in speech and in writing, in accordance with the provisions of the law. Pre-censorship of the press is not allowed.

- *Afghanistan 1990, Article 49*

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*

Art. 5. 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:...

IX - expression of intellectual, artistic, scientific, and communication activity is free, independent of any censorship or license;

Art. 220. 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...

2°. Any and all censorship of a political, ideological and artistic nature is forbidden.

- *Brazil 2005, Articles 5.IX and 220.2*

Freedom to express opinions and disseminate information, without prior censorship, in any form and by any means, without prejudice to the responsibility for crimes and abuses that are committed in the exercise of these freedoms, in conformity with the law which must be passed by a qualified quorum.

- *Chile 2005, Article 19.12*

Every citizen shall have the right to freely express and diffuse his opinion by speech, by writing and by image.

Freedom of the press and freedom of information shall be guaranteed.

Censure shall be prohibited.

Access to sources of information shall be free.

Every citizen shall have the right to information and communication.

Activities relative to these domains shall be exercised in total independence, in respect of the law.

- *Congo, DR 1992, Article 27*

Everyone shall have the right to publish his opinions through the press, but under responsibility for them before the courts. Censorship and other preventive measures shall never be re-established.

- *Denmark 1947, Article 86*

Everyone has the right to freely express and disseminate his opinions in speech, writing, and pictures and to inform himself without hindrance from generally accessible sources. The freedom of the press and the freedom of reporting by means of broadcasts and films are guaranteed. There shall be no censorship.

- *German Federal Republic 2002, Article 5.1*

Freedom of Expression. The expression of thought through any mass medium without censorship or prior restraint is free. This constitutional right cannot be restrained by law or any governmental provision. Whoever enjoying this freedom should fail to respect private lives or morals will be held responsible in accordance with the law. Whoever may feel

aggrieved has the right to publish his defense, clarifications, and rectifications.

- *Guatemala 1985, Article 35*

Every person may freely, and without previous censorship, express his opinions in words or by writing, by means of the press, or by any other method, without prejudice to the responsibility for the crimes and abuses committed in the exercise of this liberty in the manner and cases determined by law.

In no case may the printing office or its accessories be sequestered as instruments of crime.

- *Honduras 1936, Article 59*

All have the right to express freely their own thought by word, in writing and by all other means of communication.

The press cannot be subject to authorization of censorship.

Seizure is permitted only by a warrant from the judicial authority in the case of offences for which the law governing the press expressly authorizes, or in the case of violation of the provisions specified by law for the disclosure of the responsible parties.

In such cases, when there is absolute urgency and when the timely intervention of the judicial authority is not possible, periodical publications may be seized by officers of the judicial police, who must immediately, and never after more than twenty-four hours, make a report to the judicial authority. If the latter does not validate the act in the subsequent twenty-four hours, the seizure is considered to be withdrawn and without any effect.

The law may establish, by means of general provisions, that the financial sources of the periodical press be disclosed.

Printed publications, shows and other displays contrary to good morals are prohibited.

The law establishes appropriate means for preventing and suppressing all violations.

- *Italy 2003, Article 21*

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*

The freedom to write and publish writings on any subject is inviolable. No law or authority may establish prior censorship, require bonds from authors or printers, or restrict the freedom of printing, which shall be limited only by the respect due to private life, morals, and public peace.

Under no circumstances may a printing press be seized as the instrument of a crime.

The organic laws shall contain whatever provisions are necessary to prevent the imprisonment of vendors, “newsboys,” operators, and other employees of the establishment publishing the work denounced, under pretext of denunciation of offenses of the press, unless their guilt is previously established.

- *Mexico 2003, Article 7*

The freedom of mass information is guaranteed. Censorship is prohibited.

- *Russia 1993, Article 29.5*

1. The following rights are recognized and protected:

a) To express and disseminate thoughts freely through words, writing or any other means of reproduction.

b) Literary, artistic, scientific and technical production, and creation.

c) Academic freedom.

d) To communicate or receive freely truthful information through any means of dissemination. The law shall regulate the right to the protection of the clause on conscience and professional secrecy in the exercise of these freedoms.

2. The exercise of these rights cannot be restricted through any type of prior censorship.

3. The law shall regulate the organization and parliamentary control of the means of social communication owned by the State or any public entity and shall guarantee access to those means by significant social and political groups, respecting the pluralism of society and the various languages of Spain.

4. These liberties have their limits in the respect for the rights recognized in this Title, in the precepts of the laws which develop it and, especially, in the right to honor, privacy, personal identity and protection of youth and childhood.

5. The seizure of publications, recordings or other means of information may only be determined by a judicial resolution.

- *Spain 1992, Article 20*

Every person has the right to freely express his thoughts, his ideas or opinions in person [*de viva voz*], by writing or by any other form of expression, and to use for this purpose any means of communication and diffusion, over which censorship cannot be established.

The person who uses this right assumes full responsibility for everything that is expressed.

Anonymity, propaganda of war, discriminatory messages and those which promote religious intolerance are not permitted.

Censorship of the public functionaries for rendering account of the matters under their responsibilities is prohibited.

- *Venezuela 1999, Article 57*

5.2. Qualified prohibition of censorship

The freedom of postal, telegraphic, telephonic and electronic communication is safeguarded and its confidentiality is guaranteed. Communications shall not be censored or their confidentiality breached except in exigencies specified by law and in accordance with procedures and under guarantees prescribed by law.

- *Bahrain 2002, Article 26*

Paragraph 2. A state of siege authorizes the following coercive measures:

...

(e) Censure of correspondence, printing, telecommunications, and public amusements;

- *Brazil 1967, Article 152.2*

Everyone has the right to express his opinions on any matter and by any means within his power. The expression of thought, whatever form it takes, may not be submitted to any previous censorship, except in case of declared war.

Abuses of the right of expression are defined and repressed by law, without violation of freedom of expression.

- *Haiti 1946, Article 21*

Every person has the right to express freely his ideas and opinions, by word of mouth, or by any other method of publication, without prejudice to his responsibility, in the manner determined by law, for the abuses he commits, the editor or publisher being deemed to be coauthor in appropriate cases. There shall be no previous censorship, except in the interest of morality and good conduct or to prevent war propaganda or violent methods for the subversion of political or social order.

- *Nicaragua 1948, Article 97*

Art. 12. Postal, telegraphic and telephonic communications and other means of correspondence shall be inviolable and may not be delayed, censored or confiscated, except in such cases as are prescribed by law.

Art. 14. 1. Printing and the press shall be free within the limits of the law and their social duties.

2. Journals and papers shall not be suspended nor their licence be cancelled except in accordance with the provisions of the law.

3. The law may impose in matters connected with public safety and national defense only and in a state of emergency a limited censorship on newspapers, publications and books.

4. The procedure of control over the revenues of newspapers shall be regulated by law.

5. The state and concerned individuals shall have the right to ask for the publication of a denial or correction in accordance with provisions of the law.

- *Syria 1953, Articles 12 and 14*

Section 37. A person shall enjoy the liberty of communication by lawful means.

The censorship, withholding or disclosure of communication between persons including any other act disclosing a statement in the communication between persons shall not be made except by virtue of the provisions of law specifically enacted for security of the State or maintaining public order or good morals.

Section 39 ... 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.

- *Thailand 1997, Sections 37 and 39*

Censorship can be enforced only in time of war or mobilization and that for measures foreseen by law.

- *Yugoslavia 1921, Article 13*

6. APPENDIX

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

[CENSOR]-Does the constitution prohibit censorship?

1. Yes
2. Censorship allowed in exceptional cases (i.e. war, state of emergency, or in the interest of public safety, etc)
3. No
96. other, please specify in the comments section
97. Unable to Determine

Instructions: Prohibition of censorship must be explicitly stated, not just implied. If answering "Censorship allowed in exceptional cases" please note the conditions in 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.