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OPTION REPORTS

RIGHT TO APPEAL

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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

The right to appeal judicial decisions is an important guarantee in judicial proceedings. We describe below the range of constitutional provisions for the right to appeal.

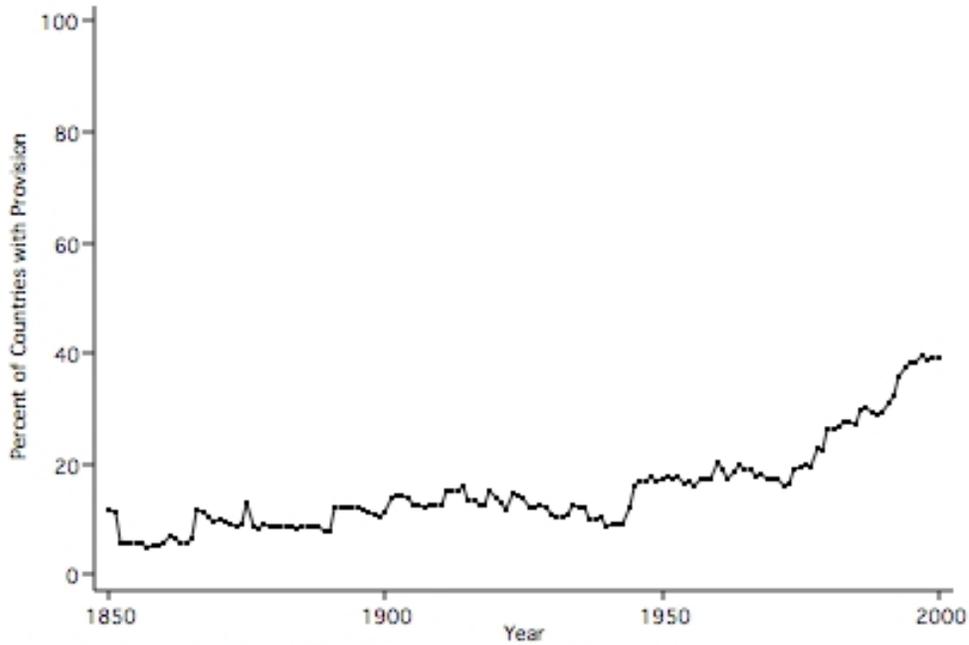
2. DATA SOURCE

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

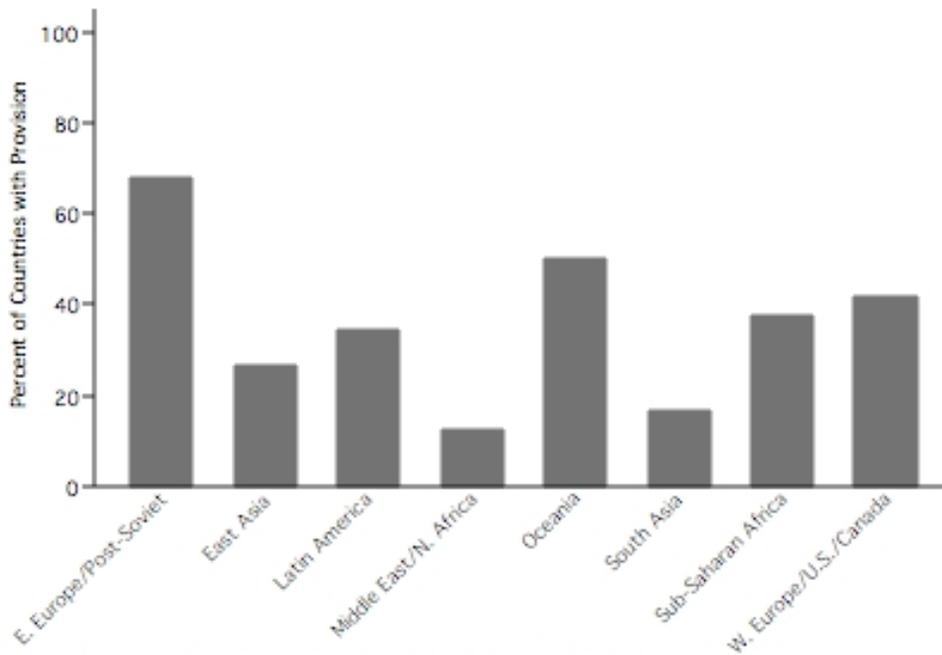
Overall, 24% of constitutions in the sample have provided for the right to appeal judicial decisions. As Figure 1 suggests, incorporation of this legal principle in constitutional texts has increased after World War II, and especially after 1970. In 2000, almost 40% of constitutions in force incorporated the right to appeal judicial decisions. As Figure 2 suggests, provisions regarding this legal principle are most common in Eastern Europe, Oceania, and Western Europe, and least common in the Middle East, South Asia, and East Asia.

Figure 1. Percent of Constitutions That Provide for the Right to Appeal by Year (N=550)



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

Figure 2. Percent of Constitutions That Provide for the Right to Appeal in 2000 by Region (N=191)



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

4. NOTES ON ATYPICAL CASES

A number of constitutional texts do not explicitly specify the right to appeal judicial decisions. In such cases, the constitution either mentions a court that handles appeals or provides for procedural aspects specific to the appeal process. We have coded such cases as “other” in the data underlying this report (see Appendix).

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 settlement of personal disputes and other matters between subjects falls within the province of the courts of justice and other official departments connected therewith, and such persons as are not satisfied with a decision and order of a court may appeal to higher authorities up to the ministry concerned and, if still not satisfied, to the Prime Minister and His Majesty the King.

- *Afghanistan 1931, Article 24*

Any citizen sentenced shall have the right to appeal to the competent court or to the Supreme Court against the judicial decision taken in accordance with the law.

- *Angola 1992, Article 41*

Everyone has the right to appeal to a higher court for reconsideration of the verdict passed with respect to him in the order specified by law as well as appeal for pardon and for mitigating the punishment.

- *Azerbaijan 2002, Article 65*

All judgments are written and substantiated. They are pronounced at a public hearing.

The right to appeal against a judgment is guaranteed to all. It is exercised in the manner determined by law.

- *Democratic Republic of Congo 2005, Article 21*

Where an accused is convicted, he shall have the right to appeal. No person shall be liable to be tried again for any criminal offense on which judgment has been rendered.

- *Eritrea 1997, Article 17.8*

Rights of charged persons

(1) Every person charged with an offence has the right:

...

(j) if found guilty, to appeal to a higher court.

- *Fiji 1998, Article 28.1.1*

The accused and the public prosecutor exercise the right of challenge as in other cases.

- *France 1848, Article 96*

The injured parties may appeal to the competent Courts, without previous authorization, to prosecute either the principals or agents.

- *Haiti 1950, Article 10*

In the case of a petty violation, the accused shall be referred to a justice of the peace, who shall then hand down a final decision.

In the case of more serious offenses or crimes, an appeal may be filed, without prior permission, simply by addressing a petition to the presiding judge of the competent civil court, who, on the basis of the oral statement of the prosecutor, shall rule on the legality of the arrest and detention, in a special session of the court, without postponement or rotation of judges, all other cases being suspended.

- *Haiti 1987, Article 26-1*

A judgment of a court of first instance, other than a judgment of the Supreme Court, shall be appealable as of right.

- *Israel 1984, Article 17*

The right of an appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable. The legislature shall prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal.

- *Liberia 1986, Article 20.b*

Everyone is guaranteed the right to an appeal or some other legal remedy against the decisions deciding on his rights or interests based on the law.

- *Montenegro 2006, Article 17*

Any accused has the right, under equal conditions, to the following minimal guarantees:

...

9. To appeal to a higher court so that one's case may be reviewed should the accused be sentenced for any crime.

- *Nicaragua 2000, Article 34.9*

Every party has the right to appeal against judgments and decisions made at first instance.

Exceptions to this principle and the procedure for such appeals are specified by law.

- *Poland 1997, Article 78*

Everyone sentenced for a crime has the right to have the sentence reviewed by a higher court according to the procedure instituted by federal law, and also the right to ask for clemency or mitigation of the sentence.

- *Russia 1993, Article 50.3*

Every person convicted of an offence shall be entitled to appeal in accordance with law against the conviction, sentence and any order made on the conviction.

- *Seychelles 1996, Article 19.11*

Every accused person shall have the right to a fair trial, which shall include the right

...

(h) to have recourse by way of appeal or review to a higher court than the court of first instance;

- *South Africa 1993, Article 25.3.h*

Every condemned person has the right to have the judgment reviewed by a higher court. The cases where the Federal Supreme Court sits as a court of sole instance are reserved.

- *Switzerland 2002, Article 32.3*

The right to appeal against the refusal of a bail is protected as provided by law.

- *Thailand 1992, Article 239*

In the case where any person was inflicted with a criminal punishment by a final judgment, such person, an interested person, or the Public Prosecutor may submit a motion for a review of the case. If it appears in the judgment of the Court reviewing the case that he or she did not commit the offense, such person or his heir shall be entitled to appropriate compensation, expenses and the recovery of any right lost by virtue of the judgment upon the conditions and in the manner provided by law.

- *Thailand 1997, Article 247*

Human and citizens' rights and freedoms are protected by the court. Everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers.

Everyone has the right to appeal for the protection of his or her rights to the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine.

After exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant.

Everyone has the right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law.

- *Ukraine 1996, Article 55*

Due process will be applied to all the judicial and administrative actions, and in consequence:

1. The defense and the juridical assistance are inviolable rights in all stages and levels of the investigation and of the procedure. Any person has the right to be notified of the charges on which he is being investigated, to have access to the evidence and to have the time and means adequate to exercise his defense. The evidence obtained by way of

violation of due process, will be null. Any person declared guilty has the right to appeal the verdict, with the exceptions established in this Constitution and the law.

- *Venezuela 1999, Article 49.1*

Right to equal protection of rights and legal remedy

Equal protection of rights before courts and other state bodies, entities exercising public powers and bodies of the autonomous province or local self-government shall be guaranteed.

Everyone shall have the right to an appeal or other legal remedy against any decision on his rights, obligations or lawful interests.

- *Yugoslavia 2006, Article 36*

6. APPENDIX

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

[RGHTAPP] – Do defendants have the right to appeal judicial decisions?

1. Yes
2. No
96. other, please specify in the comments section
97. Unable to Determine
98. Not specified

Instructions: Please code YES only when "right to appeal" is explicitly specified. Any other mention of appeal (e.g. court of appeals mentioned, procedure in appeal specified, supreme court handles appeals. court decisions are subject to appeal) should be coded OTHER.

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.