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OPTION REPORTS

RIGHT TO BEAR ARMS

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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 bear arms is a popular concept in the United States, where the right is expressed in the Second Amendment to the Constitution, drafted in 1791. It has, however, had relatively little influence abroad. Overall, only 2.18% of constitutions have granted the right to bear arms. We describe below the constitutional provisions regarding the right to bear arms.

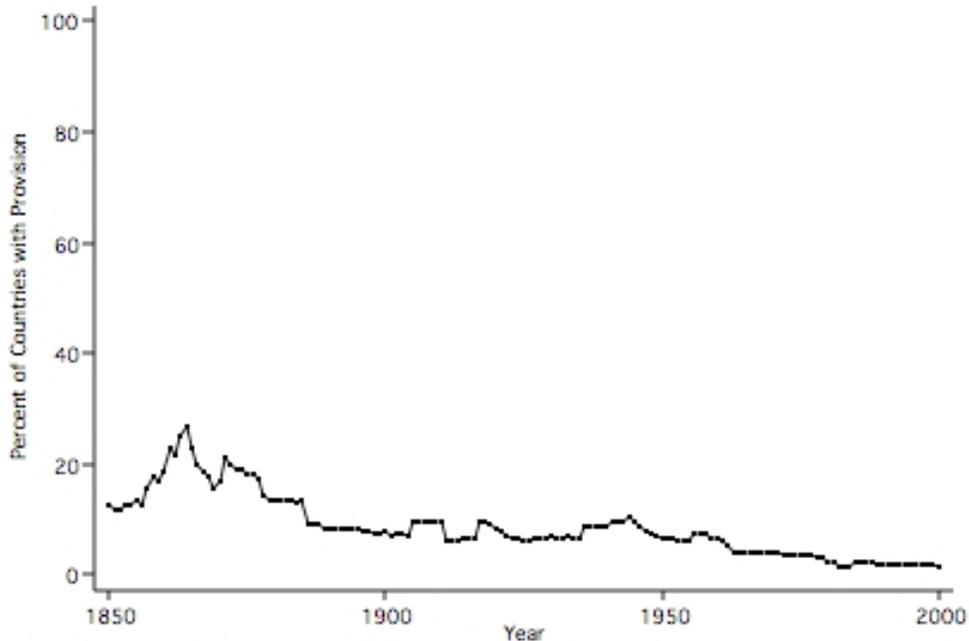
2. DATA SOURCE(S)

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

Figure 1 shows the percent of constitutions that grant the right to bear arms over time. As Figure 1 suggests, the right to bear arms has always been rare and has become even less popular over time. In 2000, only three countries in force had constitutional provisions regarding this right: Guatemala, Mexico, and the United States.

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



4. NOTES ON ATYPICAL CASES

Some constitutions provide for the right to bear arms, but specify that the possession of arms requires permission from competent authorities (i.e. Colombia 1886 and Iran 1989). In other cases (i.e. Panama 2004 and Uganda 1995), the possession of arms is regulated by non-constitutional law.

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. Right to bear arms
2. Permit requirements
3. Possession and use of firearms shall be regulated by law

5.1 Right to bear arms

Everybody has the right to possess a weapon to defend the public order and the institutions.

- *Bolivia 1871, Article 29*

There shall be freedom to possess arms and munitions and to engage in the commerce thereof in time of peace.

- *Colombia 1863, Article 15.15*

The right to bear arms is to be regulated by law. It is not a crime or misdemeanor to have arms for personal use in the home if they do not come under legal prohibitions.

- *Guatemala 1956, Article 76 and Guatemala 1965, Article 68*

The right to own weapons for personal use, not forbidden by law, in the person's home, is recognized. It will not be obligatory to hand them over except in cases ordered by a competent judge.

- *Guatemala 1993, Article 38*

The inhabitants of the Republic may possess and carry arms in accordance with provisions of law.

- *Honduras 1936, Article 68 and Honduras 1957, Article 90*

The people have a right to keep and to bear arms for the common defence. And as in time of peace armies are dangerous to liberty, they ought not to be maintained without the consent of the Legislature; and the military power shall always be held in exact subordination to the civil authority and be governed by it.

- *Liberia 1955, Article 1.12*

The inhabitants of the United Mexican States have the right to possess arms in their residences for their protection and legitimate defense, except such as are expressly forbidden by law or which have been reserved for the exclusive use of the Army, Navy, Air Force and National Guard. Federal law will determine the circumstances, conditions, requirements, and places in which the bearing of arms by inhabitants will be authorized.

- *Mexico 2003, Article 10*

Citizens shall have the following rights: 1. The right to vote, 2. the right to hold public office, and 3. the right to carry arms, all of which is subject to law.

- *Nicaragua 1905, Article 15*

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

- *United States of America 1992, Article 2a*

5.2 Permit requirements

The Government alone all import, manufacture, and have in their possession, arms and munitions of war.

No person shall be permitted to carry arms in a town without permission from the authorities. This permission shall in no case be given to persons attending political meetings, or elections, or sessions of assemblies, or public corporations, whether as members or spectators.

- *Colombia 1886, Article 48*

In accordance with the noble Qur'anic verse:

Prepare against them whatever force you are able to muster, and horses ready for battle, striking fear into God's enemy and your enemy, and others beyond them unknown to you but known to God...(8:60).

the government is obliged to provide a programme of military training, with all requisite facilities, for all its citizens, in accordance with the Islamic criteria, in such a way that all citizens will always be able to engage in the armed defence of the Islamic Republic of Iran. The possession of arms, however, requires the granting of permission by the competent authorities.

- *Iran 1989, Article 151*

5.3 Possession and use of firearms shall be regulated by law

The Government alone may possess arms and implements of war. For their manufacture, importation and exportation, previous permission is required from the Executive Authority. Arms which are not considered as arms of war, and their importation, manufacture and use shall be defined and regulated by law.

- *Panama 2004, Article 312*

Parliament shall make laws to regulate the possession and use of firearms and ammunition.

- *Uganda 1995, Article 222*

6. APPENDIX

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

[ARMS]-Does the constitution provide for the right to bear arms?

1. Yes
2. No

96. other, please specify in the comments section

97. Unable to Determine

Instructions: If the parliament or another body will regulate the possession and use of arms, please code "no" and comment. If the possession of arms requires "permission from competent authorities," please code "other, please specify in the comments section" and put a comment. If the text provides for the "right to protect one's family" or the obligation for defense for every "man capable of bearing arms," please code "no".

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.