

Exploring the Breadth and Range of Constitutional Provisions
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7 December 2005

A wide survey of constitutions drafted in less-developed countries over the last thirty years produced evidence of both convergence and divergence. Many documents contain a similar range of provisions, though the content of these provisions varies. No 'cookie cutter' constitutional form seems to have emerged; while most contain provisions for similar matters, many, if not all, contain elements, institutions, or combinations of provisions that make them unique. This paper presents findings about similarities that emerged over the 165 constitutions studied and highlights some of the nationally unique provisions these documents contain. A description of the spatial and temporal domain of the sample opens the paper, along with a summary of the data collection process. The paper proceeds then to the substantive elements of constitutions, beginning with institutional features of the main branches of government (executive, legislative, and judicial), issues of federalism and decentralization, and additional constitutionally mandated institutions. Finally it presents the policy domains of human rights provisions, social policy, economic policy and state-market relations, and defense and security policy.

Case Selection and Data Collection

The data collection effort on which this essay is based is part of a larger project headed by Jennifer Widner. Through an initial grant from the US Institute of Peace, the first phase of the project collected data on constitutional drafting processes from 1975-2003 in countries with

¹ Beth Katz and Valenta Kabo were also involved in large-scale data collection. Special thanks to Katherine Gorman, Scott Humphrey, Bob Mushroe, Andre Radojcich, and Fran Deering for assistance with additional data collection and input. All errors are, of course, my own.

GDP per capita under \$6,000.² To qualify for coding, the country in question had to adopt either a new constitution or significant amendments that fundamentally changed the nature of the political system (e.g., adding a bill of rights or provisions for multiparty elections, creation of a federal structure), in a political environment where some opposition to the proposed document or changes was possible.³ The preliminary case list was developed through surveying the contents of Blaustein and Flanz's *Constitutions of the Countries of the World* (various years), as well as through general research, and then narrowed by further research based on the criteria above. The final process dataset contains 180 cases.

The same case list was then used in the second phase of the project, though fifteen cases were dropped for a lack of source documents or other reasons.⁴ This phase coded the substantive provisions of the constitutions themselves. The primary source for constitutional texts was Blaustein and Flanz's highly respected series, followed by the University of Berne's *International Constitutional Law* web archive.⁵ In some cases, these sources were supplemented by government websites or official publications available in book form.⁶ Coders read each constitution and used a standardized codebook to record information about institutional structures and relationships, electoral law, rights and federalism provisions, horizontal accountability structures, and the military and security forces. Substantial efforts were made to ensure inter-coder reliability, including one coder (the author) who conducted independent

² GDP data were from the Penn World Tables.

³ This condition excluded frequent changes of constitutions inside single-party states, where the single party dominated the process and no effective change resulted. Including these cases would have introduced a number of problems, not the least of which was simply identifying all of the relevant cases. Very little information was available about these closed or semi-closed political systems, meaning that identified cases with sufficient data would be a highly biased subset of the true set of cases.

⁴ These cases are predominantly recent constitutions from small countries, though Tanzania's 1975 and 1977 cases are also unavailable in unamended form. A number of constitutional monarchies also dropped from the sample; while we did collect data on the role of the monarch, these questions were established later in the coding process and so earlier cases are consequently incomplete. This latter set of dropped cases is unlikely to bias the sample for its current use, though the former is of some concern.

⁵ Sources for specific documents consulted by the coders are found in the dataset itself and are not reported here.

⁶ National constitutional courts in particular quite frequently had the constitution available on their websites.

coding of approximately three-quarters of the cases, and efforts by other coders to harmonize coding of multiple cases from the same country.

This paper is explicitly not an effort to characterize the data in quantitative terms or to provide descriptive statistics, though where possible I have provided some of this information. The goal is to characterize general qualitative trends observed during the process of reading and coding the constitutions as well as to present some of the nationally unique provisions contained in them.⁷ While almost all constitutions contain all of these sections or elements, most contain at least one or two provisions that reflect or react to particular national concerns or experiences. Hopefully, readers will recognize that these provisions are often strongly shaped by the circumstances surrounding constitutional drafting, no matter how curious these provisions may seem to outside observers.⁸

Institutional Architecture and Constraints: *The Executive*

The data indicate an overwhelming trend toward dual-executive political systems with both a president and a prime minister - 89 of 165, or 60.95 percent. Most of these cases (63 of the 89) occurred in the 1990s, with 44 in the 1990-94 period alone. Our cases also include forty-six presidential systems, five purely parliamentary systems,⁹ five hybrid systems,¹⁰ and six

⁷ Most observations are cross-sectional rather than sequential. Cases were not coded in the order of their drafting, so making generalized time-trend inferences is difficult in the absence of specifically collected data.

⁸ To simplify notation, we cite all constitutions by country and year; a colon separates the year and the citation within the document. Since the internal organization structure of each document is different, we adopted a simplified citation style involving whatever numbering system the document itself employs, with each element separated by a period.

⁹ The small number of systems coded as 'purely parliamentary' is an artifact of our requirement that these systems have no directly elected head of state or government, and our classification of constitutional monarchies (including those with governors-general, such as the Solomon Islands) as monarchies rather than parliamentary systems. South Africa 1996 is coded as parliamentary, for example.

¹⁰ Hybrid systems are characterized as having one individual as head of state and head of government. This individual is directly elected but is functionally the leader of a parliamentary system: The legislature is easily dismissed, the head of state/government requires parliamentary confidence to retain office, and either of those provisions trigger new elections if invoked.

constitutional monarchies.¹¹ Algeria (1976) and Niger (1989) have optional prime ministers under what is effectively a presidential system.¹² Figure 1 displays the distribution of cases across time, region, and regime type.

[Figure 1 about here]

As one might expect, constitutions usually include a large section delimiting the president's powers and the conditions under which he or she may exercise them. Of the 149 systems with presidents, 113 have direct election, twenty-seven have indirect election (usually by the legislature in a dual-executive system), three have constitutionally mandated appointment by the largest parties in parliament,¹³ and five use some other system.¹⁴ One case, Central African Republic (1981) allows for either direct or indirect election in a manner to be determined by law; Latvia (1993) contains only four articles of the 1933 constitution and does not specify a presidential selection mechanism.¹⁵ In thirty-five of the dual-executive cases, the president is clearly a figurehead in an effectively parliamentary system, having few (if any) powers beyond naming the formatteur (usually under constraints), dissolving the government (under constraints), and/or requiring countersignature on all substantive acts. Most constitutions with figurehead presidents also explicitly absolve the president of all political responsibility for his actions and lay that responsibility on the prime minister. Coding rules required, however, that all of these systems remain collapsed in the dual-executive category rather than separating the effectively

¹¹ This category includes both systems with a monarch and prime minister (regardless of the power distribution between the two) and those with a governor-general and prime minister.

¹² These cases are coded as presidential regimes.

¹³ This coding required the constitution to use some term other than 'elect' for the means of nominating the president.

¹⁴ This usually involves appointment by a non-democratic body or other institution, such as Fiji's (1990, 1997) process of having a body of (unelected) tribal chiefs appoint the president.

¹⁵ These cases are coded as 'missing' in the data set.

parliamentary systems and pooling them with the legally parliamentary cases.¹⁶

We observe 91 cases where the president has no substantive decree powers; 62 do provide decree powers of varying extents.¹⁷ The two most common types of decree authority include extensive powers under limited circumstances, as in a state of emergency, but which explicitly require legislative ratification at a later date (26 instances), and decree powers only as explicitly delegated by the legislature (20 instances). A large set of presidents, 59 of 157 (37.5%), have no constitutionally defined ability to initiate legislation; another 76 (48.4%) share the right of legislative initiative with other actors. Most of the seventeen who do have exclusive initiative rights have it only in selected spheres, usually budgetary; only two cases (Chile 1980 and Afghanistan 1997) give the president exclusive initiative in all spheres. Eighty-three presidents (52.8%) have no ability to propose legislative referenda; thirty-one have a limited or constrained ability to do so and thirty-six have unlimited powers to initiate legislative referenda.¹⁸

We have no instances of presidents with absolutely no veto power. Eighty-two presidents (55%) have a package veto, while forty-three have both package veto and some form of partial, selective or line-item veto (28.9%). Two presidents have line-item vetoes on financial matters only and package vetoes for all other issues (Palau 1992, Federated States of Micronesia 1975).¹⁹ The process of overriding vetoes varies as well. The president of Equatorial Guinea (1991) has an absolute veto with no possibility of override; Ecuador (1978) has a veto that can be overturned by a national referendum or by a supermajority of the legislature. Sixty-two presidents can be overridden by a supermajority vote (either of the whole body or of a quorum);

¹⁶ This is true even in those dual-executive cases where the constitution explicitly declares the system of government to be parliamentary.

¹⁷ We do not code for decreeing national holidays, ambassadorial appointments, diplomatic recognition or acceptance of credentials, etc., or cases where the president's 'decrees' are formal proclamations of things decided by the prime minister.

¹⁸ Nigeria 1999 does not contain an discussion of the duties of the federal president and is coded missing; Latvia 1993 is missing for the usual reason.

¹⁹ Guinea-Bissau 1991 and Latvia 1993 are missing.

twenty require an absolute majority of the assembly and one allows overrides with a simple majority (Equatorial Guinea 1982). Thirty-six cases allow the president a very limited right to return legislation for reconsideration; of these, nineteen are in cases of figurehead presidents. Haiti (1983) allows override with a unanimous vote of its 35-member legislature; seven cases (including Latvia 1993) do not specify the majority necessary for override though with the exception of Latvia 1993 the documents do make explicit provision for override.²⁰

Togo (1992: 62) requires that presidential candidates have three doctors provide sworn testimony about their “general state of physical and mental wellbeing” before entering the candidate on the ballot. In Colombia (1991), those who previously acted as president “under any title whatsoever” are barred from running for election (197), and the current vice president must wait a term before running for the presidency (204). This is similar to a number of cases, mostly Latin American, where the president must wait a full constitutional period after the expiry of his term before running for re-election. In general, most constitutions do place term limits on presidents. Twenty-eight cases have unlimited presidencies; of these, six are non-democratic systems and four are in cases where the president is clearly a figurehead. One hundred place strict limits on presidential re-election, either in terms of a fixed number of elections or terms, or in maximum years; twenty-six more place weaker limits on re-election, usually allowing re-election for a maximum presidency exceeding fifteen years or allowing re-election after a waiting period (with no cap on maximum repetitions of this process).²¹

Once elected, the president of Colombia cannot leave the country during his first year in office without the permission of the Senate (Colombia 1991: 196). Bolivia (1994: 98) requires the president to “visit the various centers of the country at least once during his term of office in

²⁰ These seven cases and Haiti 1983 are coded as missing.

²¹ As usual, Latvia’s 1993 constitution is incomplete on this issue and is coded as missing.

order to study their needs.” Many countries restrict the president’s ability to engage in any other occupation or trade for profit, though Gambia (1996:68.4.a) makes an exception to allow the president to engage in “agricultural business, including farming, horticulture, livestock rearing, or artisianal fishing.”

Guinea-Bissau (1991: 66) requires that both the president and prime minister swear allegiance to the goals of the former single party, the PAIGC, despite the amendments in that constitution to allow multiparty competition. Guinea (1990: 32) provides for its president to “be protected against offenses, vilification, and slander under conditions which the law determine”; while the intention behind this clause may be acceptable, its wording raises concerns for civil liberties and political freedoms. Palau (1992: VIII.10), on the other hand, provides for the population to recall the president and/or vice president via a referendum.²² Finally, a substantial number of cases – perhaps as many as half – include explicit provisions that the president ceases to hold office upon his (or her) death. This provision itself may seem curious, but it functions as a legal mechanism to trigger the succession process. In this respect, then, which half is of more interest is itself a question: the half which do contain it, or the half which do not.

The Legislature

The vast majority of cases, ninety-one of ninety-four,²³ provide for a directly elected legislature. The exceptions are Guinea-Bissau 1984 and 1991, and USSR 1990, which as communist systems featured a series of hierarchical assemblies, each of which elected members to the level above it. The USSR constitution does provide, however, that “a citizen of the USSR

²² We note, though, that Palau 1992 is one of the hybrid systems, blending a directly elected president with a requirement of parliamentary confidence.

²³ Seventy-one cases do not specify any form of electoral mechanism for the national legislature.

may not be simultaneously be a deputy to more than two soviets of people's deputies" (1990: 96). Thirteen additional cases provide for one house of a bicameral legislature, or part of one house of a bicameral legislature, to be indirectly elected.²⁴ Among the 165 cases, 54 provide bicameral legislatures, 107 provide unicameral legislatures, and one (South Africa 1983) provides a tricameral legislature. One constitution, Ethiopia 1978, contains no legislature at all.²⁵

A substantial number of constitutions include provisions for removal of legislators by means other than retirement, death, or loss of election. Explicit recall provisions are rare and exist only in a scant handful of cases; Palau (1992: IX.17) includes provisions for recall elections but prohibits these against freshman legislators in the first year of their first term. Malawi (1995: 65.1) declares that a legislator leaving the party of his or her election and joining another party is cause for declaring a seat vacant. At least fifteen constitutions contain similar provisions in an effort to improve party discipline; some are more restrictive than the Malawian language and allow removal for simply voting against the government on legislation the government deems critical. The 1990 São Tomé constitution allows the National Assembly to dismiss one of its members by a two-thirds vote if the member is "gravely omissive of his duties" (85.2). About a dozen constitutions make provision for the impeachment or other legalized removal of deputies, usually for neglect or corruption.

²⁴ Haiti 1983 specifies that election requires an absolute majority in 'electoral assemblies'; the text is not clear on whether these are the legislative constituency units or a form of indirect election. Fiji 1990 and 1997, Thailand 1991, and Lesotho 1993 provide for a directly elected lower house and a fully appointed upper house. Malawi 1995, Poland 1997, the Republic of the Congo 1992, Comoros 1992, Zimbabwe 1979, and Pakistan 1985 include a directly elected lower house and an indirectly elected upper house. Madagascar's upper house is 2/3 indirectly elected and 1/3 appointed; the selection mechanism for the lower house is unspecified. Algeria 2002 also has 2/3 of its upper house indirectly elected and 1/3 appointed, but the lower house is directly elected. The unicameral legislature in Algeria 1996 includes 2/3 indirect election and 1/3 appointed.

²⁵ Ethiopia 1978 has this variable coded as missing. In the case of Oman (1996), the major amendment to the constitution which caused the case to fall into our data set was a provision for the sultan to create a bicameral legislature; while the institution itself was not described or even formally created within the document, we have chosen to code this as 'other' (v33 = 4) rather than missing or not applicable to preserve the spirit of the amendment.

Legislative committee use and structure are not mentioned in most constitutions. A small number, probably fewer than ten, create a set of permanent standing committees usually designated by policy area. The most common here are committees related to defense or national security, which are often tasked with interacting with the president or prime minister on behalf of the entire legislature during a period of national emergency or state of siege, or else with explicit oversight of the armed forces. Still, both of these are fairly rare, occurring in perhaps two or three cases each. A slightly larger number of cases reference the creation and functioning of non-permanent committees, though this number is still likely under twenty. Even here, we see contradictory language in different cases, with no clear norm emerging. In Ecuador (1998: 134), “the creation of occasional [non-permanent legislative] commissions is prohibited.”²⁶ In Georgia (1995: 56.2), on the other hand, parliament is encouraged to form non-permanent (“temporary investigative”) committees but the constitution explicitly prohibits these committees from having more than one-half of their members drawn from the majority party.

Perhaps a dozen cases explicitly permit proxy voting, though most limit the number of proxies any one legislator may cast at a given time. A smaller number prohibit proxy voting; most documents are silent. Finally, Ghana (1992: 119) explicitly provides that members of parliament are immune from jury duty.

Legislative-Executive Relations

Legislative consent is usually required to impeach the executive. Impeachment powers are rather diverse. Five cases allow for impeachment with a simple or absolute majority; another

²⁶ Bracketed language is included in the CCW translation.

105 allow it with a supermajority.²⁷ The supermajority is usually two-thirds though some do designate a three-quarters majority. The most extreme case in this category is Haiti (1983), which required unanimity of its thirty-five member legislature to impeach the president (147), censure the Council of Ministers (131), or override an executive veto (87).²⁸ Among systems with presidents, twenty cases do not provide for impeachment,²⁹ and another eighteen provide for impeachment but do not specify the requisite majority.³⁰

Among the 150 cases with explicit provisions for political parties,³¹ four have constitutional provisions specifying unity governments: Fiji 1997, Nigeria 1978 and 1989, and Rwanda 2003. In the case of Nigeria, the cabinet's composition is specified on the basis of geographic representation, but the geographic regions align quite closely with both ethnic groups and political parties, so we chose to code this as a unity government requirement.

Among constitutions with provisions for votes of no confidence, slightly less than half include some restriction on proposing additional votes of no confidence after one fails. These usually take the form of a waiting period before a person, group, or party which proposed deposing the government may make another such motion, or a waiting period before the

²⁷ Of these, 96 only permit impeachment for a specified range of reasons. Sometimes these reasons are rather broad, but we coded them as a limited range nonetheless to distinguish from cases where the constitution contained no restrictions at all on grounds for impeachment.

²⁸ Under the 1983 constitution, the parliament can impeach but not censure the President-for-life. Since unanimity is required for censure of the prime minister, we code this as no power to censure since the high bar for doing so effectively prevents its usage.

²⁹ This includes hybrid systems, presidential-parliamentary systems, presidential systems, and most systems coded as 'other.' The twenty cases with no impeachment power are divided among the systems: three presidential, zero hybrid, thirteen dual-executive, and four other. The dataset does not distinguish on this question between dual-executive systems which are effectively presidential and those which are effectively parliamentary. We note that even among dual-executive systems which are effectively parliamentary, provisions for the removal of the president for illegal behavior and/or misconduct are fairly common. The non-providers are largely cases of autocratic revisions, though a handful are cases of (attempted though ultimately incomplete) transitions to multipartyism. Venezuela 1999 provides for no legislative role in impeachment; both the charging and conviction phases of impeachment proceedings would be conducted by a special judicial council.

³⁰ These cases are coded as missing in the data set.

³¹ The dataset contains twelve cases of single- or no-party systems, in which the concept of a unity government is irrelevant, and three cases are coded as missing which do not reference political parties (Federated States of Micronesia 1975, Latvia 1993, and Bosnia-Herzegovina 1995).

legislature may consider another such motion regardless of its source. About a quarter of the cases reviewed include provisions for a waiting period after a vote of no confidence *succeeds* before another one may be considered, to give the new government a chance to succeed and (hopefully) increase political stability.³² Only four cases include explicit provisions for votes of constructive no-confidence (defined here as in the German model). In Slovenia (1991:116), Togo (1992: 98), and Lesotho (1993: 87.8), those proposing the vote of no confidence must only nominate a proposed prime minister rather than a full cabinet. Of the thirty-nine cases with a parliamentary confidence requirement and a bicameral legislature, thirty-one require the confidence of both houses of the legislature.³³

Cases of presidential or largely-presidential systems with executive accountability to the legislature are very interesting. In Gambia (1996), the constitution requires a referendum to confirm a vote of no confidence in the hybrid system's president. In addition, seventeen cases allow for censure of cabinet members though not of the president; these cases are largely Latin American. In five cases, parliament may censure the president but the president may dissolve the assembly in response. Twelve cases, concentrated mostly in presidential or functionally presidential dual-executive systems, include provisions for the legislature to censure members of the cabinet, but these censures are only advisory and impose no binding obligation on the president to remove the censured official.³⁴

³² Within reasonable limits, none of these provisions are coded as limitations on the ability to censure. The exception is Haiti 1983, where the legislature must wait a full year before considering another censure motion; this was coded as a restriction (v27 =2). The one-year delay vastly exceeded the more common provisions of thirty or sixty days and was deemed to constitute a substantial barrier to legislative control of the executive rather than a device intended to enhance political stability.

³³ Six have accountability only to the lower house: USSR 1990, Tajikistan 1999, Yugoslavia 1992, Lesotho 1993, Kazakhstan 1995, and Romania 1991. Those which do have accountability to both houses (or in the case of South Africa 1983, all three houses) contain an interesting mix of federal systems (Comoros 1992, Pakistan 1985, 1997) and semi-authoritarian systems, particularly ones with a strongly executive-biased upper house (e.g., Nepal 1990, Afghanistan 1987, Haiti 1987).

³⁴ See, e.g., Kazakhstan 1993: 88, 1995: 57.5.

Among dual-executive systems, presidents name prime ministers through a wide variety of processes. No clear trend appears in the data, with the modal category (n = 28) being unconstrained presidential nomination with no need for legislative confirmation or investiture. These cases are distributed across both fully democratic systems, where the president is the more powerful of the executives and the constitution often defines the prime minister's role as assisting the president to achieve his legislative agenda, and also in some less-than-democratic systems. The process for naming the cabinet, on the other hand, exhibits two prominent models. In the first (n = 56), the president has unconstrained power to name the cabinet; 31 of these are presidential systems but sixteen are dual-executive. In the second (n = 59), the president formally names or appoints ministers after their nomination by the prime minister; these are dual-executive systems where the prime minister is often but not always the dominant executive.

Additionally, no consensus seems to have emerged in these systems on the role of ministers in parliament. Some require ministers to be drawn from parliament but then provide for replacement by by-election or by the next candidate on the party's list from the appropriate district. Others allow ministers to retain their seats and vote normally, and variations exist between these two extremes. Regardless, the majority of dual-executive cases explicitly provide for ministers to have a right to speak on behalf of the government, and sometimes to have priority to speak, during debates on government bills.

No consensus seems to have emerged in dual-executive systems which are functionally parliamentary on the prerogative of the president to initiate legislation. Some allow it as ordinary legislation; some allow it on 'matters of extreme national importance' similar grounds. Others allow it only during a state of emergency or with the consent of the government. In these systems and in wide range of others, the constitution allows for priority consideration of the

government's bills, even during peacetime, under 'urgency' procedures or something similar. These usually include an expedited timetable for consideration, though some impose stiffer hurdles for passage (a supermajority, for example) to counteract the limited debate. Finally, the Ugandan constitution provides that Parliament's rules of procedure must include provisions for Attorney General's office to provide "professional assistance" to any member drafting a private member's bill (1995: 94.4.c).

The Judiciary

The level of detail provided on judicial procedure varies dramatically across constitutions. Neither Latvian constitution (1993, 1998) contains any reference to the judiciary. The 1993 constitution is a restoration of the 1922 constitution, most of which was immediately suspended save those articles which established Latvia as an independent state. 1998 was a new document, though, written with advice and input from the OSCE's Venice Commission and volunteer experts from the American Bar Association's Central and Eastern Europe Legal Initiative, so the absence of a judiciary chapter is rather striking.

Separation of the high court of general jurisdiction and the court or judicial body with the power to interpret the constitution or rule on constitutional conformity appears to be quite common.³⁵ The relationship between these two bodies is often quite vague, though, which is somewhat troubling. Few documents even clarify whether the 'Constitutional Court' is formally a court in the judiciary or whether it is an independent, free-standing institution.³⁶ Most address the constitutional body in a separate chapter or section of the constitution from the rest of the

³⁵ This was unexpected; in fact, only a small minority of cases combined both roles in the same body.

³⁶ Perhaps six to eight constitutions, certainly no more than ten, enumerate the set of courts and other judicial institutions that constitute the judiciary branch.

judiciary, but they often describe the justices of the constitutional body as having the same qualifications, immunity, salary, privileges, etc., as the justices of the high court of general jurisdiction.³⁷ A small number of cases (7) provide for neither a high court of general jurisdiction or a constitutional court; besides the Latvian cases, these include Oman 1996, Cambodia 1981,³⁸ Lebanon 1990, Tunisia 1988, and Sri Lanka 1978.

One particular role that constitutional courts often play in dual-executive systems is as an arbitrator for jurisdictional disputes between the executives. Of the eighty-eight cases of dual executive systems for which we have data, twenty-five include explicit provisions for arbitration of inter-executive disputes. In twenty-two of these cases, the Constitutional Court is the designated arbitration body. In the three remaining cases – Venezuela 1999, Rwanda 2003, and Haiti 1987 – the system includes no separate constitutional court. Venezuela uses the Supreme Tribunal of Justice, a quasi-judicial institution for political matters, for this role, while Rwanda and Haiti use their Supreme Courts, which function as both high courts of general jurisdiction and constitutional courts.

Provisions for judicial review proved difficult to code. While some cases were unambiguously limited judicial review – only certain categories of legislation could be reviewed, only certain institutions or groups (e.g., the legislature or the executive) could request a review, legislation could only be reviewed at selected stages of the legislative process, only the constitutionality of the legislative procedure was subject to review – others were much less clearly so. We were particularly vexed by cases where local judges could not overturn legislation but instead had to postpone the trial and refer the question to the constitutional body,

³⁷ In one case, São Tomé 1990, a high court exists and has power to rule on the constitutionality of acts and legal provisions, but the legislature reserves the right of constitutional interpretation to itself and explicitly gives itself the ability to overturn this court's decisions.

³⁸ This case is formally known as the Peoples' Republic of Kampuchea.

or in which the judge had to apply the law as written and then the afflicted party had to pursue the full appeals process to the high court. The issue is one over whether the limits on judicial review were substantive or procedural. The final coding rule was that if all types of legislation could, *in principle*, be reviewed *and* overturned, no matter the stage of the process or the identity of the overturning authority, the case was coded as full powers of review. If any other qualifications existed, these were coded as limited powers of review. This resulted in a final tally of 85 cases of full review, 31 cases of limited review, and 44 cases of no review.³⁹ Nevertheless, users of the data should interpret findings using this variable with utmost caution, particularly if the element of concern is the location of review.

One case, Sudan 1998, presents a clear example of contradicting language over final interpretation and constitutionality. Article 96 notes that “no court or other authority shall interfere with the functioning of the national assembly or pass judgment on any law or resolution passed by the National Assembly.” Article 105, on the other hand, provides that “the constitutional court is the guard of the constitution; its jurisdiction is to review and rule in any matter concerning the explanation or execution of the constitution.” The combination suggests that laws passed by the National Assembly cannot be ruled unconstitutional, and even that serious procedural lapses are insufficient to overturn laws.

Verbal statements of judicial independence are also common. Of our sample, only thirty-three countries did not include a statement of judicial independence.⁴⁰ Those cases include

³⁹ Seven cases contain no high court of general jurisdiction or constitutional court, so the question was generally unanswerable; see list above. These cases are coded as missing.

⁴⁰ The inclusion of such a verbal statement was deemed sufficient to code the case as $v78 = 1$, even in the presence of mitigating clauses or other constitutional provisions that gutted judicial independence. 129 cases included such a provision; three cases are coded as missing. Latvia 1993 includes no judicial provisions, and the confederal Yugoslavia 2003 constitution (formally The State Union of Serbia and Montenegro) gives competence on all judicial matters excepting inter-federal relations to the subnational units. Algeria 1976 contains contradictory provisions; Article 173 reads, “The judge is to contribute to the defense and protection of the socialist revolution. He is

Federated States of Micronesia (1975), Kiribati (1979), Trinidad and Tobago (1976), and Palau (1992); the absence of such a statement in these cases is most likely an effect of the entrenched British legal system, where judicial independence was already presumed. Security of tenure for judges of the high court is guaranteed fully in 61 cases and partially in 52 cases.⁴¹ Only a minority of cases (26) specify that the salary of judges of the high court cannot be lowered during the term of office; these are predominantly former British colonies or territories, though Bosnia-Herzegovina (1995), Nepal (1990), and Albania (1998) are also in this set.⁴²

At least two Latin American cases, including Nicaragua (1986: 35), establish separate juvenile justice systems. A substantial number of cases, perhaps as many as a third, explicitly establish separate prison arrangements for convicted offenders and the accused awaiting trial. Most constitutions also specify, either in the judicial section or in the rights section, the maximum period of time that may elapse between arrest and presentation before a judge for an initial hearing. While arrest and trial procedures are discussed more fully in the rights portion of this essay, one case goes so far as to make its judges personally responsible for illegally detained individuals. Restitution for such instances of illegal detention is the personal responsibility of the judge who ordered the detention, and the judge potentially faces disciplinary action for it.⁴³

protected against all forms of pressure, intervention, or maneuvering of a nature prejudicial to the performance of his duties or his honesty.”

⁴¹ The number of partial cases is likely an overstatement. The coding rules specified that if provisions for the justices of the constitutional court and the high court of general jurisdiction differed in ways that warranted different codings for the two institutions, the lower coding (partial) dominated. The most common tenure guarantee for constitutional court judges was a fixed term of appointment with possibility of renewal. We coded this as partial or limited security of tenure since justices who displeased the appointing political body during their terms risked losing their offices. The combination of these two coding rules contributes, then, to a probable understatement of the number of fully secure high courts and an overstatement of the number of partially secure courts.

⁴² Yugoslavia 2003 and Latvia 1993 are missing; see fn 37.

⁴³ I was not able to re-locate this example in time to submit it. If people are curious, I can go looking for it.

Only one case, Chile 1980, provides explicitly for the compiling and public release of detainee lists; another four provide for collecting this data but not for publishing it.⁴⁴

One final element of judicial systems deserves note, the system for disciplining aberrant judges. A substantial plurality of cases vest final authority to discipline judges or the ability to recommend a judge's removal in national Judicial Commission. This is sometimes, but not always, composed of some combination of justices from the high court of general jurisdiction,⁴⁵ the constitutional court (if a separate one exists), and legal scholars. In more democratic systems, these often include at least one political figure, usually a member of the legislature. If the commission itself does not have the power to remove judges, it makes a recommendation to do so to the legislature or executive, whichever has responsibility for appointing and removing judges. These commissions often figure prominently in certain styles of British-inspired postcolonial constitutions, where removal of a judge or most other public figures requires investigation by the relevant commission and then final disposition determined by a three-member tribunal.⁴⁶

⁴⁴ Marshall Islands 1979 is coded missing for unclear language; Latvia 1993 is missing for the usual reasons. We do note that provisions for both collecting and publishing this information are more frequently present during a state of emergency; this is particularly true for constitutions drafted along the post-British model. Perhaps another dozen cases include this provision; see, e.g., Ghana 1992: 32.1.d.

⁴⁵ In a small number of cases, perhaps as many as five to seven, the full bench of the high court of general jurisdiction serves this role. These situations exist primarily where the high court of general jurisdiction is also responsible for constitutional interpretation and judicial review.

⁴⁶ Where the constitution provides for this commission-and-tribunal removal system for members of the high court of general jurisdiction, these cases were coded as having security of tenure provided that the appointment mechanisms for both the commission and the tribunal were reasonably independent. We usually required the language of 'not subject to' any outside influence or something similar to make this determination. In cases of conflicting or insufficient language, we erred on the side of cautiousness and chose to code these as a limited guarantee of security of tenure.

Federalism

Fully developed federalism is not a common feature of constitutions; however, the vast majority of states, even those which proclaim themselves to be unitary, include at least a minimal level of constitutionally authorized or mandated devolution. Among our cases, thirteen were federal and thirty-nine cases contained provisions for decentralization or devolution.⁴⁷ Two unique forms of decentralization were identified and coded separately; these were devolution to a single or small number of specialized regions, and states organized on the principle of ‘democratic centralism.’ The latter involves layers of hierarchical sub-national legislative bodies. Each of these bodies, though, is subordinate to the layer above it, making even local bodies subject to the will of the national legislature. This was a feature of certain types of Afrosocialist or similar single-party systems, meaning that the supposed decentralization was instead a stronger means for the national party to impose its will on the countryside. Because of their single-party systems, these states are coded as having a regime type of ‘other.’⁴⁸

Special, regionally-specific devolution occurred in nine cases. These were almost entirely ethnic or cultural units within an otherwise relatively homogenous state, and in most cases, the region in question had a history of violence or secessionist tendencies. These cases include Azerbaijan 1995 (Kakhichevan Autonomous Republic), Ukraine 1996 (the Crimea), Tajikistan 1994/1999 (Gorny Badakhshan Autonomous Oblast), Portugal 1982 (Madeira and Azores archipelagos), Uzbekistan 1992 (the Republic of Karakalpakstan), the Philippines 1987

⁴⁷ To be coded as federal, a state had to explicitly use the term ‘federal.’ Anything else, including South Africa 1996, was coded as decentralization provided that the constitution included references to or provisions for elected sub-national legislative or policymaking bodies. Decentralization excludes unitary states with provisions for elected bodies at the community, town, or “local” level; we explicitly sought a tier of elected government between national and community institutions. The data set also includes two confederal cases, Bosnia and Herzegovina (1995) and Yugoslavia (The State Union of Serbia and Montenegro) (2003). Latvia 1993 is coded missing for the usual reasons.

⁴⁸ Three cases of this occur in the dataset: Suriname 1987, Guinea-Bissau 1984, and Cambodia 1981. While the USSR also practiced democratic centralism in its legislative hierarchy, it was also formally federal and was coded as such.

(unspecified in the constitution but research suggests Muslim-dominated southern islands), and Nicaragua 1995 (indigenous “Communities of the Atlantic Coast”). The only case of regionally specific devolution that is strictly geographic (rather than ethnic or cultural) is the São Tomé (1990) provisions for the island of Príncipe. The extent of the constitutional provisions on devolution vary as well. Some, such as the Azeri regions, have rather detailed discussions of competences and institutions, and others, such as Príncipe, have only an article specifying that devolution would occur.

Enumeration of powers is one feature that tends to separate decentralized unitary systems from federal, though this is not a hard and fast criterion. Among the cases with enumerated powers, five reserve all unenumerated powers to the center, while sixteen reserve unenumerated powers to the sub-national units.⁴⁹ Both the extent and substance of these powers varies widely. Though it is not fully federal by our definition, the 1996 Republic of South Africa constitution is by far the most extensive in its enumeration of powers.⁵⁰ South Africa’s enumeration of powers consumes two extensive schedules annexed to the constitution (rather than embedded in the document itself, as is customary for fully federal systems). It includes provisions assigning wide range of policy issues to national, provincial, and local governments; the latter set is not commonly enumerated in constitutions, even for federal systems. Most federal systems content themselves with enumerating potentially contentious policy domains, such as education, language, spending, and judicial systems. South Africa’s constitution goes significantly beyond this; see Table 1 for a sample of South African provisions.

⁴⁹ Eighteen cases with enumerated powers do not specify, or do not specify clearly, the disposition of remaining powers and are coded as missing; an additional twenty-two cases specify that the subnational units will have legislative competence in policy spheres as defined by law.

⁵⁰ Russia 1993 is a distant second, with the various Nigerian documents in third.

[Table 1 about here.]

We also see states acknowledging tension between the units of their federations; Ethiopia explicitly includes a right of secession for nationalities, including detailed provisions for how such a secession would be proposed, certified, and conducted, and on what constitutes a nation or nationality for these purposes (1994: 39). Though not widely known for high levels of interprovincial tension, Argentina prohibits its provinces from waging war on one another (1994: 127), and provides that the federal government may intervene militarily in a province if the legal government requests, “to support or reestablish them,” should that government have been “deposed by sedition or invasion from another province.” (1994: 6)

Other Institutions

Most constitutions rarely limit themselves to discussing the three major branches of government and any decentralization provisions. The vast majority include additional provisions – sometimes rather extensive ones – establishing an assortment of supportive structures such as commissions for human rights, the judiciary, and the civil service, an electoral commission, a central bank, ombudsmen, attorneys- and auditors-general, and advisory economic and social or inter-ethnic/inter-racial councils. A handful establish the national university as having a special position in the policymaking process, with at least one having the ability to initiate legislation on matters related to it.⁵¹ Table 2 summarizes the existence of constitutionally mandated inter-group

⁵¹ This is a Latin American case, most likely Guatemala or Honduras, that I was not able to confirm in time.

and customary-leader councils, independent attorneys- and auditors-general,⁵² independent civil service commissions, independent electoral commissions,⁵³ independent human rights commissions,⁵⁴ and independent central banks.⁵⁵ This table understates the prevalence of these institutions as it only identifies cases where the institutions are clearly politically independent of the rest of the government. The true values, including politically dependent institutions, could easily be twice the values reported here for central banks electoral commissions, and auditors- and attorneys-general, and perhaps one and a half times the values reported here for most other bodies.

[Table 2 about here.]

Among the more unique national institutions, Bolivia requires that its universities “maintain institutes for the cultural, technical, and social training of workers and low-income sectors.” (1994: 189) Ghana provides fairly detailed instructions for the creation of a "National Commission for Civic Education" (1992: 231-239). Finally, the Guyana constitution creates an ombudsman and establishes detailed procedures and practices for it; the constitution quite explicitly provides that the dead may not petition the ombudsman, but “duly authorized” individuals may petition on their behalf (1980: 192.7).

⁵² This category excludes cases of special court of audit or a specially formed bench of the high court of general jurisdiction with a mandate to audit spending. While in principle these could be considered ‘independent’ auditing bodies if the judicial system was sufficiently independent, most constitutions did not provide enough details on the extent of judicial independence for us to feel that coding here was warranted.

⁵³ This category excludes cases where oversight of the electoral system and electoral processes is given to either a regular court (usually the high court of general jurisdiction) or a specially convened electoral court.

⁵⁴ If the ombudsman met the usual criteria for sufficient political independence and had human rights monitoring as a primary and explicit function, usually including a special process for citizen petitions regarding human rights infringement, it was usually counted as an independent human rights agency.

⁵⁵ We did not code for judicial commissions or some other types of similar bodies.

The National Budget

Constitutional provisions allocating control over budget proposal proved incredibly difficult to code. The question asked primarily about presidential control over proposing and amending the budget. The prime minister has legal responsibility for proposing the budget in a large number of dual-executive systems, including a substantial group of cases that are functionally presidential systems with a ‘president’s henchman’ prime minister. For a large fraction of our cases, then, we were unable to clearly determine the locus of budgetary drafting. Reasons for this included the previously described issue on the independence or separation of the executives, an absolute lack of references to the budget in the constitution, or because the language on rights of legislative proposal did not clearly indicate responsibility for budget.

We did identify a rather striking set of provisions in recent Latin American documents about the allocation of government funding across issue areas in the budget. Paraguay (1992) stipulates that educational funding must be at least 20% of the national budget (85), and that the court system receives at least 3% (249). Ecuador (1998: 71) also places a strong value on education, allocating “not less than 30% of the normal total revenue of the central government” to this purpose. Guatemala (1985) makes designated mandatory budget allocations of general revenue to the University of San Carlos de Guatemala (minimum 5% [81]), national sports efforts (minimum 3% [91]), and the judiciary (minimum 2% [213]). Later amendments to the constitution also create an obligation for the government to “make copies of the budget accessible at universities and national libraries” (Guatemala 1994: 237).

Elections, Parties, and Electoral Institutions

A substantial number of states place constitutional limits on a citizen's right to vote. Restrictions beyond the standard list of age, citizenship, and commission of a felony exist in 78 cases; 85 have no qualifying restrictions.⁵⁶ The most common restriction is bankruptcy, followed by a current prison sentence or legal detention. Among our cases, fourteen make explicit provisions for voting rights for the diaspora; another nineteen explicitly require residence as a condition of the franchise. The vast majority of cases (130) do not specify.⁵⁷

The ability to form a political party or run for political office is restricted in 69 cases and unrestricted in 91 cases. Coding in this category requires that the constitution specify or reference the existence of other elective offices beyond the national legislature; Oman 1996 is coded as not applicable on this basis.⁵⁸ Permissible reasons to prohibit running for political office or forming a political party include holding other elective or judicial office, state employment, membership in a military or security organization, or having the right to vote. With the exception of the right to vote, these are relatively innocuous provisions; any individual disqualified from running for office under one of these conditions can regain that ability by resigning.⁵⁹ The decision to exclude having the right to vote as a restriction is somewhat more problematic. In the majority of our cases, this seemed plausible and inoffensive. Combined with the presence of other restrictions on the franchise, though, it could potentially result in serious

⁵⁶ One case is coded as missing, Latvia 1998 (for the usual reason). Additionally, we did not code for provisions prohibiting the members of the security forces from voting, or provisions that required voters to be registered or to live in the district of registration. We interpret the 'felony' provision as meaning judicial conviction for criminal acts with a prison term beyond some constitutionally specified limit; no documents explicitly use the term 'felony.'

⁵⁷ Again one not applicable (Oman 1996), one missing (Latvia 1993). Coding for diaspora voting rights does not include provisions granting citizens abroad 'the same rights and duties' as citizens at home, or provisions that guarantee the state's protection of the rights of citizens abroad.

⁵⁸ Oman 1996 is coded as -9 not applicable for not having any elected offices. Kenya 1983 and Tanzania 1984 are coded -8 not applicable for being one-party and no-party states, respectively. Iran 1989 and Kirbati 1979 are coded as missing for having no political parties.

⁵⁹ Perhaps a handful of states make provision for those in state employment to take a leave of absence to run and then resign if elected. Another handful provide for only management of state companies and parastatal enterprises to be excluded; ordinary line workers are still permitted to run.

restrictions on the ability to hold office. As with our decision to exclude citizenship as a restriction, we based this decision on the likely distortion that coding it as a restriction would cause. The noise introduced by such a coding would obscure the true set of restrictions of interest, those which placed substantial anti-democratic conditions on running or party formation.

A wide range of restrictions on multiparty competition exist. Thirteen cases are single-party or ‘movement’ systems; four cases, Guinea 1990, Bangladesh 1975, Burkina Faso 1977, and Nigeria 1989, have a restricted number of parties. Explicit provisions for the free formation of political parties exists in ninety-three cases; another forty-three provide no explicit restrictions but do at least mention parties.⁶⁰ One case, Kenya 1983, provides for both a movement system and a multiparty system, and establishes popular selection between the two by means of a national referendum. One case, Oman 1996, makes no references to political parties or elections at all and is coded as not applicable.

Constitutions also frequently place restrictions on the appeals political parties can make. Forty states explicitly provide the freedom to form political parties; another thirty-seven mention political parties but make no explicit statement referencing restrictions. Sixty-four cases, however, do include restrictions on party appeals. These most frequently prohibit appeals on the basis of ethnicity or religion, though several prohibitions on, e.g., parties advocating a ‘totalitarian’ ideology do exist. We code as restrictions any provisions to ban parties which work against ‘national unity’; we do not, though, count as restrictions any provisions prohibiting parties that advocate against the constitutional order or against territorial integrity (i.e., secessionist parties). The distinction between these is on the basis that the former could be

⁶⁰ Twelve cases are coded as missing as they contained no reference to political parties: Kiribati 1979, Federated States of Micronesia 1975, Maldives 1997, Palau 1992, Bosnia and Herzegovina 1995, Iran 1989, Lebanon 1990, State Union of Serbia and Montenegro (Yugoslavia) 2003, Qatar 2003, and Tunisia 1988.

abused very easily to repress dissent, and that the latter are fully compatible with widely accepted democratic ideals.⁶¹

Table 3 shows the correlation between these various types of restrictions on political activity including the right to vote, the right to form parties or run for office, restrictions on the number of political parties, or restrictions on party appeals. As is evident from the only moderate levels of correlation between these variables, restrictions are spread fairly widely instead of being concentrated in only a few highly-restricted systems.

[Table 3 about here.]

Policy Domains: *Rights Provisions*

This section includes rights and duties of citizens, and it also includes a selection of rights and duties of the state and elected officials which do not fit elsewhere in this essay. In the vast majority of our cases, human rights provisions are both quite extensive and quite prominently placed. This trend becomes more pronounced in more recent cases, with most of the 1990s cases placing their rights sections immediately behind the introductory articles establishing the state, identifying the state's formal name, stating the nationality adjective for citizens, or the like. Two cases did not include the rights provisions in the constitution itself. In the case of Latvia 1993, citizen rights are enumerated in the declaration of sovereignty from the Soviet Union. This document is annexed to the constitution and is considered to be part of the constitution. Because the document is explicitly included as part of the constitution and has constitutional status, we

⁶¹ Ten cases are coded as missing; one case (Qatar 2003) is coded as not applicable by virtue of having no references to political parties in the document. Twelve additional cases are coded as not applicable on the basis of having either a constitutionally defined one-party or single ideology political system.

have coded its rights provisions here. In Bosnia-Herzegovina, the constitution briefly establishes a list of major rights (1995: 3), but also states, “The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law” (1995: 2). We thus code restrictions and limitations on rights in this case on the basis of the European Convention.

No cases totally omit rights provisions; even the most egregiously rights-violating states still include these in the constitution. Often these rights are qualified with provisions allowing the restriction of rights in the interests of national unity or national security, for the sake of public morals and/or public order, or something similar.⁶² These effectively eviscerate the rights provisions; any document with a sweeping clawback clause of this nature is coded as having only limited provisions of rights unless the document also contains an explicit reference to limiting restrictions only to the extent that they are “reasonably justifiable in a democratic society.”⁶³

Restrictions on rights were quite common, with the extent of restrictions varying by right. Few states used the accepted language of “reasonably justifiable in a democratic society.” Perhaps a handful used this language and another handful used something similar though not meeting the full standard. Among less than fully-democratic states, rights restrictions generally came from a single sweeping clawback clause. The more common approach among more-democratic states was to enumerate particular reasons why a given right could be restricted.

⁶² In one of the odder clawbacks in the dataset, Togo provides that “All people of sound minds shall be entitled to enjoy the rights guaranteed by this constitution inasmuch as they are compatible with their natures” (1992: 10).

⁶³ We code both positive and negative rights; that is to say, ones phrased in terms of “The citizen shall have the right to ...,” and also implicit rights created through clauses saying, “The state shall not ...” Only the expression “reasonably justifiable in a democratic society” or a very close equivalent, such as that contained in Lesotho 1993, was accepted as negating limitations. The frequently observed expression “reasonably justifiable” was considered insufficient without the qualifier of “democratic society” and codes as a limitation on rights.

Sometimes these provisions were quite elaborate and extensive. Estonia, for example, restricts the right of assembly “for the purpose of national security, public order or morals, traffic safety, and the safety of the participants in such meetings or to prevent the spread of infectious diseases.” (1992: 47) Indeed, infectious disease reoccurs as a reason for the restriction of rights no fewer than four times in the document, though traffic safety only occurs this once.

In one case, Burundi (1982: 19), an error in translation created a provision which appeared to prohibit the government from seizing property under eminent domain and/or paying for it.⁶⁴

One interesting theme of rights, perhaps best described as bodily rights or a right to bodily privacy, deserves note. Uzbekistan (1992: 26) and a surprising number of other post-communist systems contain an explicit right that citizens may not be subjected “to any medical or scientific experiments without [their] consent.” Needless to say, the implications of this were slightly disturbing. Paraguay also provides the curious right that “the law will regulate the freedom to dispose of body parts, but only for scientific and medical purposes” (1992: 4).

Ukraine joins a small number of other states, perhaps half a dozen, in granting citizens access to international human rights tribunals for enforcement of rights “after exhausting all domestic legal remedies”(1996: 55). In the case of Ukraine, the highest domestic human rights authority is the parliament’s “Authorized Human Rights Representative” (1996: 55).⁶⁵

⁶⁴ The CCW text read “It [private property] cannot be expropriated in the case of proven public necessity or in view of establishing social rapport and equitable economic standing among the members of the collectivity, subject to a fair indemnity and under conditions prescribed by law.” Law librarians at Princeton University helped to obtain a copy of the original French text, which clearly reads, ““Il ne peut y être atteinte que dans le case de nécessité publique constatée où en vue d’établir des rapports sociaux et économiques équitables...sous reserve d’une indemnité equitable et dans les conditions déterminées par la loi.”” The translator seems to have overlooked the “que” of “ne...que,” which converts “not” into “not...except.”

⁶⁵ A significant number of states, perhaps twenty or so, have an agent of the legislature as the highest human rights authority. Another substantial number, again perhaps as many as twenty or so, give the ombudsman a notable role in human rights provision enforcement. Assigning such a role to the legislature is problematic to code, given that legislative independence varies across states. Where appropriate, independent ombudsmen with human rights enforcement powers are coded as independent human rights agencies/commissions; no legislative agents are coded as this. See footnote 54.

Explicit constitutional duties are more frequent than we expected. Of the 165 cases, 88 (53.3%) contain at least one duty beyond paying taxes, obeying the law, and/or serving for national defense in conditions defined by law.⁶⁶ The most frequent obligations include a duty to vote or to register to vote.⁶⁷ Several states explicitly link duties and rights, as in Ghana (1992: 41), where a citizen's duties also include an obligation "to declare his income honestly to the appropriate and lawful agencies" (1992: 41.j). Uganda (1995) also imposes a similar duty to "combat corruption and misuse or wastage of public property" (17.1.i), and adds to it an obligation to "protect and pressure [sic] public prosperity" (17.1.d). Nicaragua (1995: 59) obligates its citizens "to respect determined sanitary measures." Haiti (1983: 56) states that "the landowner has an obligation to the community to cultivate, work and protect his land, particularly against erosion." Finally, Guatemala (1985: 35) requires that "the owners of mass communications media will have to provide social and economic coverage to their reporters through the purchase of life insurance."⁶⁸

In other miscellaneous rights, Slovenia provides that "[t]he protection of animals from torture is defined by law" (1991: 72). Togo provides its constitutionally elected leaders with the right to call on treaty and alliance partners in the event of a coup (1992: 150). Argentina establishes that "navigation of the inland rivers of the nation is free to all flags, subject only to regulations that are enacted by the national authority." (1994: 26) Finally, Comoros prohibits the state from forbidding the reception of humanitarian aid from abroad (1990: 57.3).

⁶⁶ We did not code so-called 'trivial' duties, such as a duty to respect one's parents, to protect the environment, to care for one's children, or to provide humane treatment to animals. Duties to learn the official language or honor national symbols *were* coded as duties, though, since these potentially impinge on citizen rights. Duties were coded as 'present' or 'absent,' without regard to the total number of them in the document.

⁶⁷ See, for example, Uganda (1995: 17.1.h).

⁶⁸ This appears to be a reaction to the practice of assassinating journalists that both government- and rebel-supported death squads carried out in an effort to conceal their behavior.

The Rights of Children

Approximately a dozen states include an article (e.g., Slovenia 1991: 56) or even sections of the rights provisions (e.g., Nicaragua 1995) enumerating the rights of children. In Nicaragua (1995: 71) “Childhood enjoys special protection and all the rights that its status may require [and][sic] for this reason, the International Convention on the Rights of Children is fully applicable.” A number of these cases provide, as Colombia (1991:44) does, the right of children to have “love and care”; several more, including Uganda (1995: 17.1.c), include a duty of citizens “to protect children and vulnerable persons against any form of abuse, harassment and ill treatment.” Nicaragua gives its citizens the right “to investigate paternity and maternity” (1986: 78), and Colombia provides for food subsidies for pregnant females who are abandoned and/or unemployed (1991: 43). El Salvador (1983: 42) notes that “[t]he law shall not regulate the obligation of employers to provide and maintain beds and nurseries for the children of female workers.”

Uganda and several other countries, mostly African, provide that children under a certain age found within national territory and whose parents are not known are automatically assumed to have citizenship by birth. Uganda (1995: 11.1) specifies an age of five years. Such provisions reflect the sad facts of life for children in the midst of the AIDS crisis. Finally, Nigeria explicitly extends the right to vote to legally emancipated minors (1999: 7).

Discrimination and Non-Discrimination

Provisions against discrimination increasingly exceed the minimums set in international standards of race, gender, ethnicity, age, and religion. Among our cases, 124 include nondiscrimination statements that fully meet international standards. Another 29 provide

nondiscrimination statements which fall short of international standards; nonetheless, these are usually fairly extensive. The most common reasons that a state's nondiscrimination clause fails to meet international standards are no provisions for religious nondiscrimination in cases where a state religion exists, and lack of provisions prohibiting ethnicity- or nationality-based discrimination (as different from racial discrimination). Only eleven cases include no statement about the right to non-discriminatory treatment.⁶⁹

Several states make additional provisions to prevent discrimination against the disabled. Ecuador includes an extensive article on the rights of "vulnerable groups," and explicitly provides for "the right of persons with disabilities to communicate through alternative means, such as Ecuadorian sign language for the deaf, lip reading, the Braille system and others" (1998: 53). Ghana declares that, "as fair as practicable, every place to which the public shall have appropriate facilities for disabled persons" (1992: 29.6). Others, such as Ecuador (1998: 23.3) most notably, extend protection from discrimination to sexual orientation as well.⁷⁰ In a final note, Lesotho (1993:18.7) provides a detailed list of places to which discriminatory access is prohibited, including "access to shops, hotels, lodging houses, public restaurants, eating houses, beer halls or places of public entertainment."

Crime, Trial, and Punishment

Constitutional provisions for the procedures of criminal justice vary widely. We attempted to code for the provision of the right to a fair trial, but a surprisingly small number of cases – fewer than a dozen – use that language or the parallel 'due process.' Instead, most

⁶⁹ Statements prohibiting "all discrimination on any basis whatsoever," without enumerating the potential bases, are considered to fully meet the international standard.

⁷⁰ For additional references, see also Ecuador 1998: 23.21, 23.24, and 24.10. Additional provisions in other states regarding sexual orientation are addressed below under Social Policy.

articulate a list of rights which collectively provide for what we know as a ‘fair trial’: provisions for a timely trial before a judge, the right to self-defense, the right to defense counsel, and the right to evidence provision. Establishing a consistent minimum list to qualify as ‘provision of a fair trial,’ however, was impossible. Even cases providing an extensive list of rights of the accused in a criminal trial, such as Argentina 1994 , Bolivia 1994, and Estonia 1992, failed to meet the standards implied by the five elements listed above. The most frequent cause of failure to reach full provision here was no specification of a timely trial. Most documents included the right of habeas corpus, but these usually were specified to refer to the time elapsed between arrest and initial presentation before a judge to be charged with a crime or to have the arrest upheld.

Many documents also included provisions against double jeopardy or self-incrimination, illegal search or seizure, retroactive laws, and punishment for activities not crimes at the time of their commission; documents often provided for adequate time to prepare a defense and/or a presumption of innocence. A right against self-incrimination was construed to imply a right to testify on one’s own behalf. Neither double jeopardy nor the right to prepare the defense, however, entered the coding rules, and these provisions were ignored along with any other rights pertaining to criminal trials. Right to a public trial was coded as separate question; 62 cases provide for the right of public trial but impose some limitations or qualifications, and another 48 provide it with no limitations or with only very strict and limited reasons for conducting trials privately.⁷¹

⁷¹ The acceptable justifications here included the rights and privacy of minors, cases of family and marriage law, public morals, and cases where the presiding judge deemed publicity harmful to the unbiasedness or independence of the judicial process. Provision for closed trials in situations as established, foreseen, or provided by law usually scored as limited provision in the absence of other language stressing openness. The question also focuses solely on the conduct of trials rather than simply the public announcement of verdicts, which was provided in perhaps a dozen of the 53 cases coded here as no provision.

Cambodia (1993: 64) specifies that “the state shall ban and severely punishes [sic] those who import, manufacture, sell illicit drugs, counterfeit and expired goods which affect the health and life of the consumer.” It also notes that “any offense affecting cultural and artistic heritage shall carry a severe punishment.” (70) Several other states, primarily post-communist states in Eastern Europe, have similar provisions for national monuments, the cultural heritage, or cultural property. Macedonia (2001: 29) provides that “foreign subject[s] cannot be extradited for political criminal offenses,” but it specifically notes in the next sentence that “[a]cts of terrorism are not regarded as political criminal offenses.” Colombia (1991: 35) also bans extradition of aliens for political crimes or “for their opinions.” Finally, Brazil (1988: 5.L) provides that “female inmates shall be assured conditions under which they may remain with their children during the period when they are breastfeeding.”

Social Policy: Social Rights

The prevalence of social rights provisions in constitutions was somewhat surprising. We define social rights to include any obligation of funds by the government to provide some social service. The most prominent rights include provisions of public education, unemployment insurance and old-age insurance or pensions. Health care also appears frequently. The ‘right to work’ is also included here, though two conflicting interpretations of this exist. In one interpretation, a provision of the right to work implies that the government commits itself to pursuing full-employment economic policies and providing employment for all citizens, with state-owned industries or public employment available for those who are unable to obtain jobs in the market. This, a provision for ‘the right to [have] work,’ appears to be the common

understanding among socialist or some post-socialist states. The market-oriented interpretation, on the other hand, is that the right to work means that the state cannot bar individuals from employment; this seems common among the majority of post-socialist states and in functioning market economies. Ukraine (1996: 43) expresses this right as “the right to labour, including the possibility to earn one’s living by labour that he or she freely chooses or to which he or she freely agrees.”⁷² Among our 164 cases, 28 provide no social rights,⁷³ 41 include social rights but explicitly place fiscal limits on some or all of these rights, and 97 include at least one social right with no explicitly fiscal limitations.⁷⁴ Finally, Guatemala (1985) notes that electrification, particularly in rural areas is a “matter of national emergency.”

Marriage and Families

Several constitutions contained provisions for and against homosexual marriage. The most prominent provision against is in Bulgaria (1991: 46.1); other cases define marriage as between a man and a woman (see, e.g., Ukraine 1996: 51 or Nicaragua 1995: 73). A handful of other cases, though, explicitly include sexual orientation in their nondiscrimination clause, with the most unexpected (and also the most extensive) of these appearing in Ecuador (1998: 23.3; see also 23.21, 23.24, 24.10). As an effort to slow the spread of AIDS, Malawi (1995: 22.8) provides that “the state shall actually discourage marriage between persons where either of them is under the age of 15.”⁷⁵

⁷² We also suspect this is the interpretation used when this clause appears with or immediately after the nondiscrimination clause.

⁷³ A substantial number of these cases, perhaps as many as half, actually do include social rights in the constitution, but they place these in non-justiciable sections on principles of public policy or founding principles.

⁷⁴ Latvia 1993 is missing.

⁷⁵ Anti-AIDS claim made by Jennifer Widner.

Economic Policy and State-Market Relations

Perhaps a third of the constitutions reviewed here explicitly designate the state's economic structure; the majority of these are post-communist systems declaring the creation of a market economy or a social market economy (e.g., Poland 1997: 20), though some, as Croatia (2000: 49.1), declare that “[e]ntrepreneurial and market freedom shall be the basis of the economic system.” A small number of socialist economies do appear in the sample. State provisions for market oversight and social-market relations vary; none of the cases in the sample include constitutionally-mandated tripartism. A small number of cases, mostly African and including Togo (1992: 132), provide for an economic and social council which must review social, fiscal, and economic legislation prior to its passage. All of our cases create solely a review power (rather than a veto) for this body.⁷⁶

Several states, including Ecuador (1998: 36) recognize unpaid domestic work and family farming as productive labor. Among its exhaustively detailed social provisions, Guatemala (1985: 102.j) requires that employers pay a Christmas bonus equal to one month's salary or more.⁷⁷ Khmer citizens of Cambodia have “the right to sell their own products” (Cambodia 1993: 60); this appears to be a limited institution of a market economy in a formerly socialist state.

Taxation and Revenue

Among our cases, twenty-seven explicitly provide proportional, graduated or progressive income taxes. Another handful of cases provide for social justice to be used in the determination

⁷⁶ This is not to say that these bodies may not have vetoes granted by other domestic legislation, only that no vetoes are constitutionally provided.

⁷⁷ The extent of constitutionally mandated social provisions in Guatemala (1985) is almost staggering. Most are related to state economic policy and the rights of business and labor, but the document itself is highly detailed; social and economic provisions comprise the first half (and perhaps as much as two-thirds) of the constitution.

of tax policy; for coding purposes this was deemed insufficient though the intent is generally there. Colombia provides that

[r]evenues obtained in the exercise of the monopoly of games of chance will be earmarked exclusively to the public health service. Revenues obtained in the exercise of the liquor monopoly will be earmarked on a preferential basis to the health and educational services (1991: 336).

Comoros (1990: 49.5), Macedonia (2001: 59), and Croatia (2000: 49.5) guarantee the free transfer of capital and repatriation of profits to foreign investors; this is particularly interesting in the distribution of these provisions over time (as early as 1990) and also in their enshrinement in the constitution. While a number of other states provide for free transfer of capital and profit repatriation, this is normally statutory rather than constitutional.⁷⁸

Defense and Security Policy

Several constitutions included no references to military or security forces; these include the two Latvia cases (1993, 1998) and Marshall Islands 1978. Several other countries, primarily Pacific Islands (Kiribati 1979 and Solomon Islands 1978), explicitly have no military forces. In the case of Kiribati, the constitution enumerates the “disciplined forces” of the country, which include the prison guards, a domestic police agency, and a modest coast guard (Kiribati 1979). Latin America joins the Pacific Islands in a general trend towards enumerating the security forces, though this trend seems to have slowed after the late 1980s.⁷⁹

The slightly surprising element here was the relative scarcity of documents explicitly stating that the state’s armed forces can only be created by legislative consent; only eighteen

⁷⁸ An interesting test might examine the differential effects of constitutional, statutory, regulatory, verbal, and no commitment to this on capital flows.

⁷⁹ In the case of Latin America, this appears to be a reaction to the creation of formal and informal government-sponsored paramilitary units during the civil wars of the early 1980s.

contain this provision.⁸⁰ To some degree, the current tally understates the true number for two reasons. First, a fairly common power of the legislature is to fix the size, composition, and/or budget of the armed forces, which exerts a similar (though not as explicit) constraint; perhaps a quarter of the constitutions contain this provision.⁸¹ Second, the enumeration of the state's 'disciplined forces' could be construed as a limit on the ability of state organs to create new types of forces, but the ability of this provision to produce the desired effect depends on both the extent of the provisions establishing the disciplined forces and the strength and independence of domestic judicial and other constitutional enforcement mechanisms. Needless to say, both of these vary widely across cases. For these reasons, we opted not to count these as restrictions on establishment of armed forces.

The number of constitutions which provide explicit non-responsibility for manifestly illegal orders is larger than those which provide explicit statement forbidding obedience to illegal orders, though both are rare. Non-responsibility appears in perhaps a dozen constitutions at most; fifteen cases include the not-to-follow provision.⁸² Colombia splits the difference, making civilians executing manifestly illegal orders liable for their actions regardless of the presence of orders from a superior; it then continues on to note that "[t]he military in service are exempted

⁸⁰ We do find forty additional cases where the constitution explicitly prohibits the formation of armed associations, usually as a restriction on the freedom of association, but does not go so far as to limit the creation of military units to the legislature. (Since this restriction of freedom of association is not fundamentally incompatible with democratic norms, and indeed in most cases where it exists is it intended to bolster the ability of democracy to survive, we opted not to code it as a limitation in the rights provisions.) Brazil (1988: 17.4.4) notes that "[p]olitical parties are forbidden to use paramilitary forms of organization"; similar language about parties exists in several cases, though the more common form restricts armed associations of any type.

⁸¹ Legislative control over the size, composition, and budget of the armed forces was not sufficient to code the document as providing legislative oversight of defense forces."

⁸² This was somewhat surprising; the primary investigator had expected a substantial number of more-recent documents to contain the latter wording about disobeying illegal orders, so the codebook only asked about this provision. The distribution of explicit non-responsibility statements comes from reading the constitutions as well as from coders' additional handwritten comments.

from this provision. As far as they are concerned, responsibility will fall exclusively on the superior officer who gives the order” (1991: 91).⁸³

Also contrary to our expectations, we see little inclusion of the international standard making members of the security forces responsible for their behavior under military law both on- and off-duty. In fact, we see only two cases of this language; a handful of additional cases explicitly delegate authority to civilian courts to try crimes committed by off-duty security forces, or else give priority to civilian courts over military ones.⁸⁴ Given the cases where this provision appears, we suspect that this is heavily influenced by fears of continued antidemocratic tendencies within the military rather than any other motivation.

Provisions for legislative oversight of defense forces are substantially more frequent than similar provisions for oversight of other security forces.⁸⁵ Of the 162 cases referencing any type of military or security forces, 27 explicitly provide for full legislative oversight of defense forces and 41 provide for some limited form of oversight, but only 35 provide for any oversight – full or limited – over non-defense security forces.⁸⁶

In other specific provisions related to the military, Palau’s constitution gives only members of the armed forces and law enforcement officials the right to possess firearms and ammunition (1992: XIII.12). Violation of this provision is punishable by a minimum of fifteen years in jail (1992: XIII.2), and overturning it requires a referendum and support from a majority of votes

⁸³ The full text of Article 91 reads, “In the case of a manifest infraction of a constitutional precept [to] the disadvantage of any individual, order from a superior does not absolve the executing agent from responsibility. The military in service are exempted from this provision. As far as they are concerned, responsibility will fall exclusively on the superior officer who gives the order.”

⁸⁴ Latin America seems to be the source of most of these cases.

⁸⁵ Indeed, the vast majority of cases which mention defense forces contain no reference to any other type of (domestic) security institutions or organizations.

⁸⁶ For reasons similar to those discussed under the creation of legal military bodies, we do not code provisions giving the legislature powers over the size and organization of such forces, or about legislative powers to ratify or declare war. We do note that explicit reference to legislative powers over size and organization of non-defense security forces is incredibly rare and exists in perhaps only one or two cases from our sample.

cast (1992: XIII.12). Iran's constitution explicitly states that "[a]ll forms of personal use of military vehicles, equipment, and other means, as well as taking advantage of Army and chauffeurs [sic] are forbidden" (1989: 148).⁸⁷ Brazil's political parties are prohibited from using paramilitary forms of organization (1988: 17.4.4). Finally, "the kingdom of Cambodia shall not permit any foreign military base on its territory and shall not have its own military base abroad, except within the framework of a United Nations request" (Cambodia 1993: 52). Angola (1992: 17) and Nicaragua (1995: 92) have a similar restriction on foreign bases on national territory, but Nicaragua does permit the government to request permission for "[t]he transit or stationing of foreign vessels, aircraft, or military equipment for humanitarian reasons," which the National Assembly must then vote to ratify (1995: 92).

Several states in the Pacific as well as a small number of Latin American countries explicitly prohibit possession, manufacture, transport or storage of weapons of mass destruction on national territory. Paraguay (1992: 8) includes such a provision and extends it also to prohibit "the introduction of toxic waste into the country. Palau (1992: XIII.6) also notes that wastes from nuclear or chemical weapons may not be stored or disposed of on national territory; this provision requires the support of three-quarters of the voters in a referendum to overturn it.

Conclusion

The world's constitutions regularly exceed the expected litany of executive-legislature-judiciary-rights provisions, and they often do so in unexpected ways. Highly detailed social rights and provisions on state-society-economy relations are surprisingly common, as are the

⁸⁷ This text is quoted from the CCW edition; we suspect that a word is missing from the translation, between 'and' and 'chauffeurs.'

creation of additional governmental institutions and provisions related to civil-military relations. The only even plausible ‘cookie cutter’ form that the documents reveal is a similar pattern of content and secondary institutions among post-British colonies. Indeed, this series of cases – Kenya 1991, Zambia 1991 and 1996, Gambia 1996 – provides the majority of the ‘hybrid’ cases, where the new state seems to have attempted to combine the familiarity of a Westminster model with a head of government who also functioned as a non-monarch head of state.

Generalizing about constitutional contents is virtually impossible. Cambodia 1981 does not identify its chief of state or the mechanism for selecting that individual; it only notes that a president of the collective executive will exist. Not all constitutions contain rights provisions; Latvia (1993) and the Czech Republic (1992) integrate prior declarations of rights into their constitutions, and Bosnia-Herzegovina (1995) relies on an international agreement for its rights provisions. We cannot even say that all constitutions contain legislatures, because Oman 1996 does not. Perhaps the only safe generalization is that we cannot generalize across the contents of constitutions.

References

Sommers and Heston, Penn World Tables

Constitutions of the Countries of the World (CCW). Various years and issues. Dobbs Ferry, NY: Oceana Publications.

Table 1. South Africa (1996) Constitutional Provisions on Division of Powers.

| | |
|--|---|
| <p><u>Concurrent Provincial and National Legislative Competence:</u>^{jjj} Administration of indigenous forests Airports other than international and national airports Animal control and diseases Casinos, racing, gambling and wagering, excluding lotteries and sports pools Media services directly controlled or provided by the provincial government Nature conservation, excluding national parks, national botanical gardens and marine resources Population development Road traffic regulation Soil conservation Vehicle licensing</p> | <p><u>Exclusive Provincial Legislative Competence:</u>^{lll} Abattoirs Ambulance services Archives other than national archives Libraries other than national libraries Liquor licences Museums other than national museums Veterinary services, excluding regulation of the profession</p> |
| <p><u>Concurrent Provincial and National Legislative Competence, with Local Government Administrative Competence:</u>^{kkk} Building regulations Child care facilities Electricity and gas reticulation Firefighting services Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto Stormwater management systems in built-up areas Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems</p> | <p><u>Exclusive Provincial Legislative Competence, with Local Government Administrative Competence:</u>^{mmm} Beaches and amusement facilities Billboards and the display of advertisements in public places Cemeteries, funeral parlours and crematoria Cleansing Control of public nuisances Control of undertakings that sell liquor to the public Facilities for the accommodation, care and burial of animals Fencing and fences Licensing of dogs Licensing and control of undertakings that sell food to the public Municipal abattoirs Noise pollution Pounds Refuse removal, refuse dumps and solid waste disposal Street lighting Traffic and parking</p> |

^{jjj} Republic of South Africa Constitution (1996) Schedule 4, Part a.

^{kkk} Republic of South Africa Constitution (1996) Schedule 4, Part b.

^{lll} Republic of South Africa Constitution (1996) Schedule 5, Part b.

^{mmm} Republic of South Africa Constitution (1996), Schedule 5, Part b.

Table 2. Other National Institutions.*Number of constitutions containing an independent ...*

| | Yes | No | Missing |
|--------------------------------|--------------------|-----------|----------------|
| Attorney-General or Prosecutor | 47 ⁿⁿⁿⁿ | 116 | 2 |
| Auditor or Comptroller-General | 58 | 106 | 1 |
| Civil Service Commission | 23 | 141 | 1 |
| Electoral Commission | 40 | 123 | 2 |
| Human Rights Commission | 15 | 149 | 1 |
| Central Bank | 22 | 142 | 1 |

Table 3. Correlations Among Restrictions on Political Activity.*Existence of limitations on ...^a*

| | Right to vote | Diaspora franchise | Number of parties | Party appeals | Right to form parties or run for office |
|--------------------------------|---------------|--------------------|-------------------|---------------|---|
| Right to vote | 1.0000 | | | | |
| Diaspora franchise | 0.6500 | 1.0000 | | | |
| Number of parties | 0.5700 | 0.5188 | 1.00 | | |
| Party appeals | 0.1554 | 0.0896 | 0.5407 | 1.0000 | |
| Form parties or run for office | 0.4981 | 0.4004 | 0.4363 | 0.2987 | 1.000 |

^a See main text for descriptions of qualifying limitations.

ⁿⁿⁿⁿ This value represents 33 cases of a fully independent prosecutor/attorney-general and 14 cases of an attorney-general or prosecutor with some explicit but incomplete or constrained provisions for independence. This was the only supplemental institution to have this three-part coding; all others are dichotomized in the data.

Figure 1. Distribution by Era, Region, and Colonial Parent.

