

## 8. Constitutional drafting in Latin America: a quantitative perspective\*

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### I. INTRODUCTION

Generalizations about the practice of constitutional drafting within a region as diverse as Latin America are bound to be inherently imprecise. A single region can be home to considerable constitutional heterogeneity.<sup>1</sup> It is also clear, however, that there exist geographical and regional patterns in the adoption of formal legal rules.<sup>2</sup> Distinctive regional characteristics can endure in the face of globalization for a multitude of reasons. In the case of Latin America, for example, they may be borne of historical, religious, linguistic, and geographical ties, or they may reflect the existence of shared concerns and experiences, such as American hegemony or a legacy of strongman rule.

This chapter offers an empirical overview of constitutional drafting patterns and trends in Latin America over the last 60 years. We use various quantitative measures and indices of constitutional content to contrast Latin America with other regions and shed light on whether and in what ways constitutional drafters in Latin America have responded to frequent concerns such as excessive American influence, overconcentration of executive power, and human rights abuses.

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\* Our thanks to James Melton and deepest gratitude to Mila Versteeg for generously sharing updated data and similarity scores.

<sup>1</sup> See, e.g., Tom Ginsburg (2014), "East Asian constitutionalism in comparative perspective", in Albert H.Y. Chen (ed.), *Constitutionalism in Asia in the Early Twenty-First Century*, pp. 32, 41 (noting the existence of "three broad types of constitutional system" within Asia: "liberal-democratic, hybrid, and socialist-Leninist").

<sup>2</sup> See, e.g., Everett M. Rogers (2003), *Diffusion of Innovations*, 5th edn (New York: Free Press), pp. 276–77, 320–21 (discussing the diffusion of policy innovations among neighboring American states and within regions); Zachary Elkins and Beth Simmons (2005), "On waves, clusters, and diffusion: A conceptual framework", *Annals Amer. Academy Pol. & Soc. Sci.*, **538**, 33, 34 (noting that diffusion research seeks to explain the existence of "temporal and spatial clusters of policy reform").

Section II examines the extent to which Latin American countries continue to use the U.S. Constitution as a model for their own constitutions. In both scope and substance, Latin American constitutions are becoming increasingly dissimilar to the U.S. Constitution over time. Indeed, not only has Latin America become increasingly divergent from the model of the U.S. Constitution, but it has become more divergent than the rest of the world.

Section III compares constitutions in Latin America with those of other regions along a number of substantive dimensions. Relative to other regions, constitutional drafting in Latin America is characterized by a stingy approach to executive power and a generous approach to the protection of rights. Latin America's combination of extensive de jure rights, on the one hand, and a long history of autocratic leaders and human rights abuses, on the other, is a reminder that governments do not always deliver in practice what they promise on paper. Prior work suggests that levels of actual respect for rights have improved over the last two decades, with the result that the gap between the promise and the reality of Latin American constitutionalism may be narrowing.<sup>3</sup> As interesting as that line of research happens to be, however, this chapter focuses exclusively on how constitutions are drafted, rather than how they are interpreted or implemented. Accordingly, we deliberately limit our analysis to the text of the constitutions themselves. Our findings suggest that constitutional drafting is characterized to some degree by variation along regional lines, and that there is at least some substance to the notion of a Latin American approach to constitutional drafting.

## II. AMERICA ANXIETY: LATIN AMERICA'S ESCAPE FROM THE SHADOW OF THE U.S. CONSTITUTION

As Latin American countries gained their independence and embarked upon drafting a slew of constitutions over the course of the nineteenth century, their constitutional drafters looked routinely to the U.S. Constitution as a model – perhaps too much so in some cases.<sup>4</sup> The earliest

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<sup>3</sup> David S. Law and Mila Versteeg (2013), “Sham constitutions”, *California Law Review*, **863**, 907–11.

<sup>4</sup> George Athan Billias (2011), *American Constitutionalism Heard Round the World, 1776–1989: A Global Perspective* (New York: NYU Press), pp. 129–40; Zachary Elkins, Tom Ginsburg and James Melton (2009), *The Endurance of National Constitutions* (New York: Cambridge University Press 2009), p. 26;

constitutions of Mexico and Venezuela, adopted in 1824 and 1811 respectively, borrowed heavily from the American model, while portions of Argentina's 1853 Constitution and Brazil's 1891 Constitution were copied verbatim from the U.S. Constitution.<sup>5</sup>

It is clear, however, that Latin America's days of using the U.S. Constitution as a model are long over. Different methods of measuring constitutional similarity yield the same conclusion: similarity to the U.S. Constitution among Latin American constitutions declined precipitously over the twentieth century. This trend is evident whether we consider Latin America as a whole or individual countries within the region. Of course, Latin America is not unique in turning away from the U.S. Constitution as a model for constitutional drafting. The declining similarity of new constitutions to the U.S. Constitution is a global trend that holds true of common law and civil law countries, U.S. military allies and non-allies alike.<sup>6</sup> However, the decline in Latin America has outpaced the decline in the rest of the world.

Latin American constitutions exhibit growing dissimilarity to the U.S. Constitution in both their scope and their substantive content. Elkins, Ginsberg and Melton employ a measure of constitutional similarity that focuses on the extent to which constitutions are similar in scope, meaning that they address or omit the same topics.<sup>7</sup> The underlying data from the Comparative Constitutions Project (CCP) encompasses provisions relating to structural matters (such as federalism, presidentialism, and separation of powers) as well as provisions relating to the content and enforcement of rights. The similarity in scope between any two constitutions is calculated by adding up the number of topics that the two constitutions both address or omit, then dividing by the total number of possible topics. The resulting score ranges between 0 and 1: a score of 0 means that two constitutions cover precisely the opposite topics from one another, while a score of 1 means that two constitutions both address and omit exactly the same topics. As Figure 8.1 illustrates, newer Latin American constitutions have over time become increasingly dissimilar to the U.S. Constitution in terms of scope.

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Carlos F. Rosenkrantz (2003), "Against borrowings and other nonauthoritative uses of foreign law", *International Journal of Constitutional Law*, **1**, 269; Roberto Gargarella (2013), *Latin American Constitutionalism 1810–2010: The Engine Room of the Constitution* (New York: Oxford University Press).

<sup>5</sup> Billias (n 4), at 105, 124–40.

<sup>6</sup> David S. Law and Mila Versteeg (2012), "The declining influence of the United States Constitution", *New York University Law Review*, **87**, 762–858.

<sup>7</sup> Elkins, Ginsberg and Melton (n 4), at 24–26.

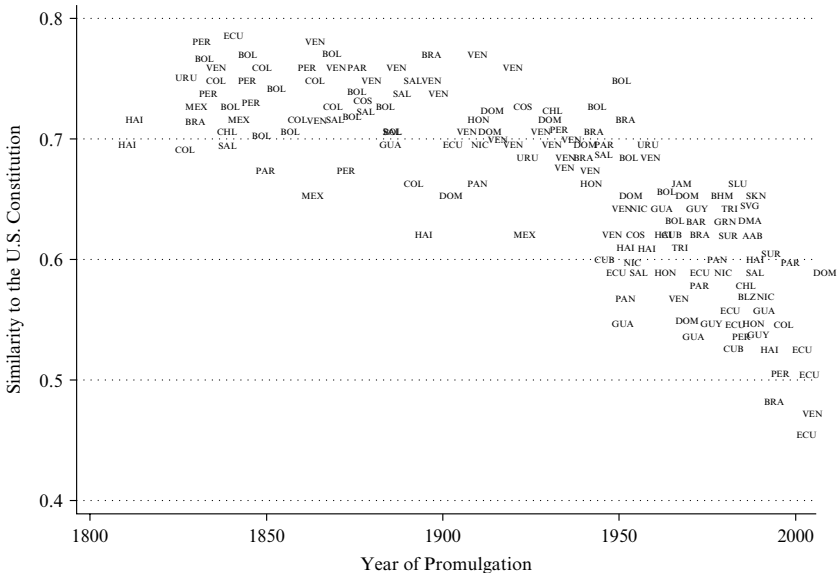


Figure 8.1 Similarity between Latin American constitutions and the U.S. Constitution over time

Another approach to measuring constitutional similarity is to compare the substance of common constitutional elements. This is the approach followed by Law and Versteeg,<sup>8</sup> who employ a constitutional similarity index consisting of 60 rights-related provisions: the more of these 60 provisions that two constitutions share in common, the higher their similarity score. We use an updated version of the data used by Law and Versteeg<sup>9</sup> that captures the presence or absence of these 60 index provisions in every national constitution from 1946 through 2012.<sup>10</sup> Over this period,

<sup>8</sup> Law and Versteeg (n 6).  
<sup>9</sup> David S. Law and Mila Versteeg (2011), “The evolution and ideology of global constitutionalism”, *California Law Review*, **99**, 1163; Law and Versteeg (n 6).

<sup>10</sup> The approach of focusing only on constitutional rights, and omitting structural provisions from the analysis, somewhat ameliorates the problem of how to weight highly dissimilar provisions for purposes of arriving at a single numerical measure of substantive constitutional similarity. It is one thing to say, for example, that provisions guaranteeing a right to asylum and freedom of expression should count equally for purposes of measuring constitutional similarity between two countries; it is another thing to say that the existence of presidentialism should count the same as the existence of a right to asylum.

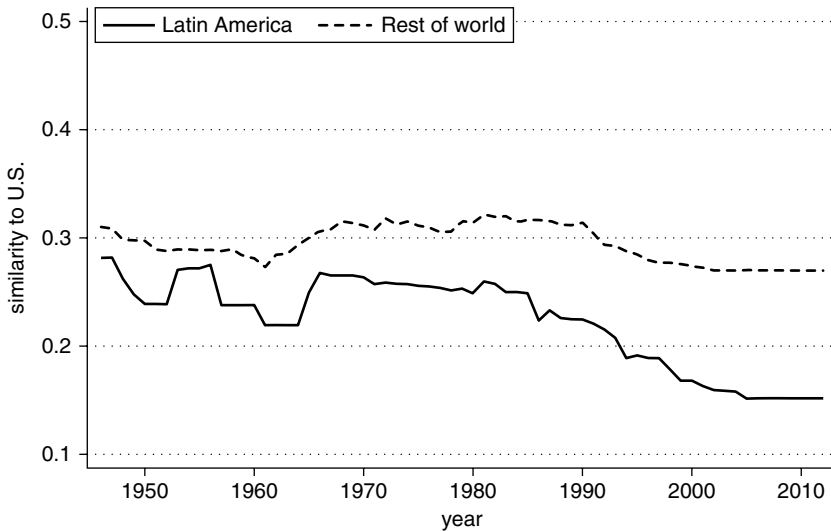


Figure 8.2 Constitutional similarity to the United States in Latin America and the rest of the world

average levels of similarity to the U.S. Constitution declined not only in Latin America, but also in the rest of the world. However, as Figure 8.2. shows, the decline has been much more marked in Latin America: the average level of similarity to the U.S. Constitution started at a lower level and has subsequently declined more precipitously in Latin America than elsewhere. Nor does this decline in similarity appear to be limited to the post-World War II period: analysis of the CCP data, which covers an overlapping set of rights dating all the way back to 1789, suggests that the decline has been underway for well over a century.<sup>11</sup>

The overall trend for Latin America as a region holds true for every individual Latin American country as well. Not a single country traditionally identified as part of Latin America exhibits greater constitutional similarity to the United States now than immediately following World

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Consistent with Law and Versteeg ((n 8), at 799 fn 75), “Latin America” is defined as consisting of Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela.

<sup>11</sup> Zachary Elkins, Tom Ginsburg and James Melton (2012), “Comments on Law and Versteeg’s *The Declining Influence of the United States Constitution*”, *New York University Law Review Online*, 87 (11), 15.

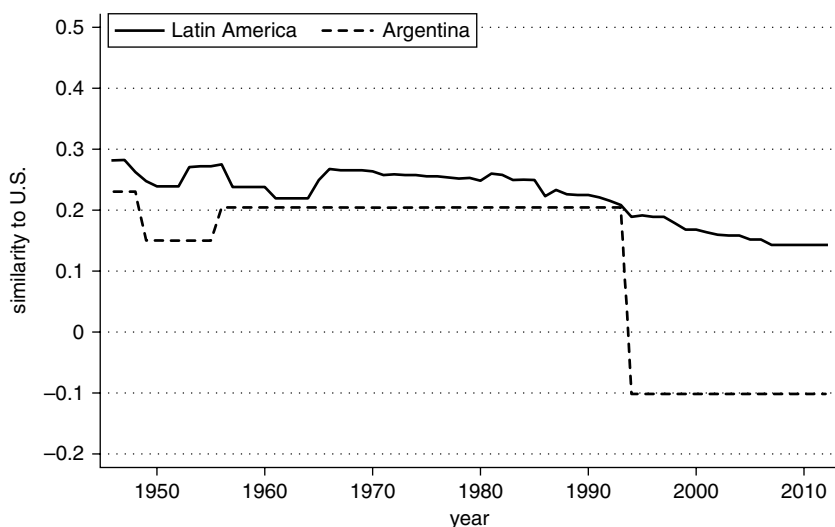


Figure 8.3 *Constitutional similarity between Argentina and the United States*

War II.<sup>12</sup> A stark example of this turn away from the American model is Argentina, which has swung from slavish imitation to the opposite extreme. Nowhere was the influence of the U.S. Constitution greater than in nineteenth-century Argentina, where U.S. Supreme Court cases were treated as having precedential value.<sup>13</sup> Since Argentina's constitutional amendments of 1994, however, the similarity score between Argentina and the United States has turned negative (see Figure 8.3), which means that the constitutional dissimilarities between the two countries now outnumber the similarities (as measured by their rights-related provisions). Within

<sup>12</sup> Suriname's constitutional similarity to the United States is marginally higher now than in 1975, the year that it gained independence from the Netherlands. However, although Suriname is included in the data used to calculate the trend in Latin America as a whole, there are at least two reasons not to include Suriname in generalizations about post-war constitutional patterns in Latin America. First, although Suriname is located on the South American continent, it is Dutch-speaking and often identified as a part of the Caribbean rather than Latin America. Second, the fact that Suriname did not gain independence or possess its own constitution until 1975 prevents comparisons over the entire post-war period.

<sup>13</sup> Jonathan Miller (1997), "The constitutional authority of a foreign talisman: A study of U.S. practice as authority in 19th century Argentina and the Argentine elite's leap of faith", *American University Law Review*, 46, 1483.

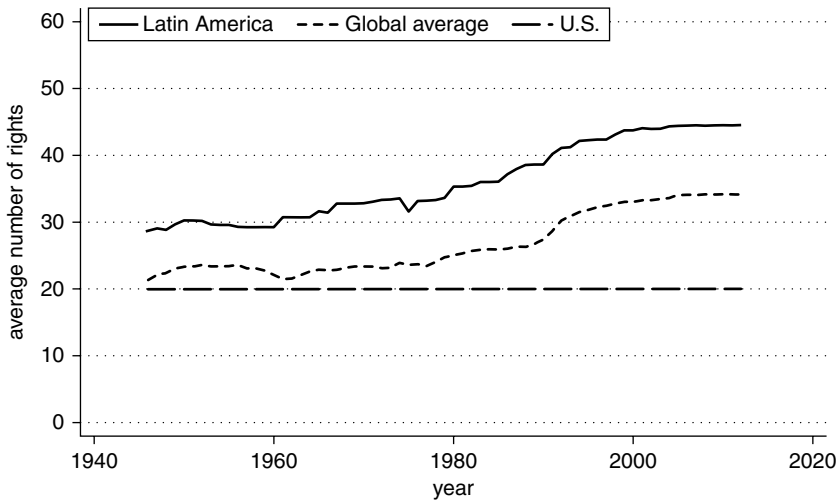


Figure 8.4 Growth in the average number of index rights

Latin America, only the Venezuelan constitution is more dissimilar to the U.S. Constitution than the Argentinian Constitution.

At least part of the explanation for why constitutions around the world, and especially in Latin America, exhibit declining similarity to the U.S. Constitution lies in the fact that the number of rights in the U.S. Constitution has remained fixed at a relatively low level rather than expanding in tandem pace with global trends. One of the most conspicuous global trends in constitutional drafting has been “rights creep”, or the tendency of constitutions to incorporate a growing number of rights over time.<sup>14</sup> In 1946, constitutions contained an average of 21 out of the 60 rights-related provisions that make up the Law–Versteeg index of substantive constitutional similarity. With 20 out of 60 rights, the U.S. Constitution was squarely in the global mainstream at that time, at least in terms of the sheer number of rights that it contained. By 2012, however, the global average had grown to 34, while the U.S. Constitution’s tally remained fixed at 20.

In sharp contrast to the United States, Latin America has been at the forefront of the global trend of adding new rights. Figure 8.4 contrasts the degree of rights creep in Latin America and the rest of the world, measured in terms of the average number of index provisions found in a given region’s constitutions. At present, Latin American constitutions contain

<sup>14</sup> Law and Versteeg (n 9), at 1194–98.

*Table 8.1 Latin America's rank in each category among all eight regions*

Category	Rank
Endurance	5
Rights	1
Political	1
Economic	2
Criminal	1
Executive Power	5
Legislative Power	5
Scope	3
Detail	2

an average of 45 of the 60 rights-related provisions in the Law–Versteeg similarity index.<sup>15</sup> As noted in Table 8.1, Latin American constitutions lead the world in terms of the number of civil, political, and criminal procedure rights that they boast and are second only to Central and Eastern European constitutions in the number of economic rights.

Declining similarity among Latin American constitutions to the U.S. Constitution is at least partly a by-product of this expansion in the number of rights that they contain. The sharp drop in Argentina's similarity score seen in Figure 8.3 illustrates how rights creep can cause dissimilarity to the U.S. Constitution. Its 1994 constitutional amendments made explicit a variety of guarantees on matters ranging from consumer rights and gender discrimination to voting rights. As a result, the number of index provisions found in the Argentinian Constitution jumped sharply from 26 to 41, or double the number of index rights found in the U.S. Constitution.

Not all Latin American countries have turned away from the parsimonious American model to the same extent. Chile, in particular, stands out within Latin America for a relatively high level of constitutional similarity to the United States, behind only Guyana and Belize (see Figure 8.5). It is also distinguished by a noticeable rebound in similarity to the U.S. Constitution following the Pinochet regime's adoption of a new constitution in 1980. Even with this rebound, however, constitutional similarity to the United States failed to regain its 1946 levels, and it is now declining again.

Like Chile, Venezuela has experienced fluctuations in constitutional similarity to the United States. Its constitution-making processes of 1946, 1953, and 1961 marked a period of peaks and valleys. Unlike Chile,

<sup>15</sup> The exact mean for Latin America is 44.5.



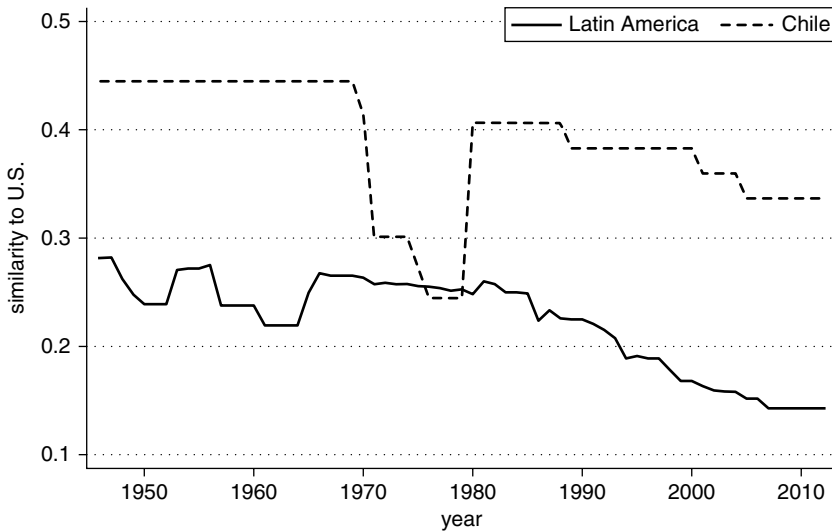


Figure 8.5 Constitutional similarity between Chile and the United States

however, Venezuela did not veer back in the direction of the United States. Instead, it has narrowly edged out Argentina to lay claim to the lowest level of constitutional similarity to the United States in all of Latin America (see Figure 8.6). As is also true of the Argentinian Constitution, the dissimilarities between Venezuela's 1999 Constitution and the U.S. Constitution outnumber the similarities, at least in the area of rights.

The trends in Brazil and Colombia have been less erratic and more typical of the region as a whole. In Brazil, constitutional similarity to the United States fell sharply with the adoption of the 1989 Constitution but recovered slightly with the amendments of 2005, which brought the country more in line with the regional average (see Figure 8.7). Colombia, meanwhile, has acted as a kind of constitutional bellwether for Latin America. One could say that it has tracked the overall regional trend more closely than any other individual country, but it might be more accurate to say that Colombia has instead *anticipated* regional trends. For decades, it held constant at a level slightly below the regional average until the rest of the region drifted down to the same level (see Figure 8.8). It then fell below the regional average again with its adoption of a new constitution in 1991, but the overall trend in the region once again followed suit.

A ranking of all Latin American constitutions in descending order of similarity to the U.S. Constitution as of 2012 reveals an intriguing coincidence. As seen in Table 8.2, Guyana and Belize top the list, but they also

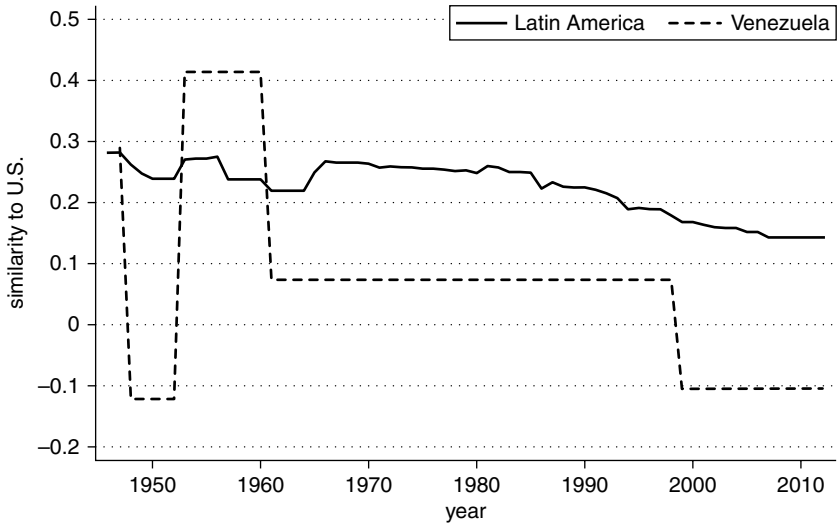


Figure 8.6 *Constitutional similarity between Venezuela and the United States*

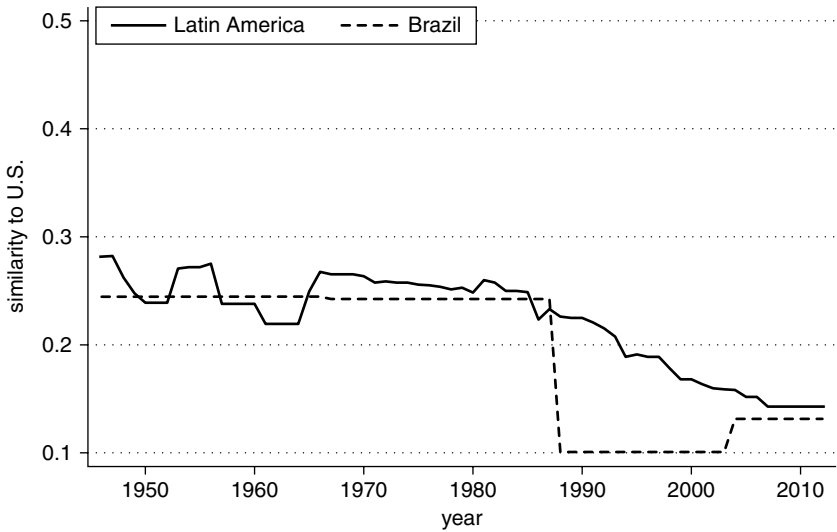


Figure 8.7 *Constitutional similarity between Brazil and the United States*

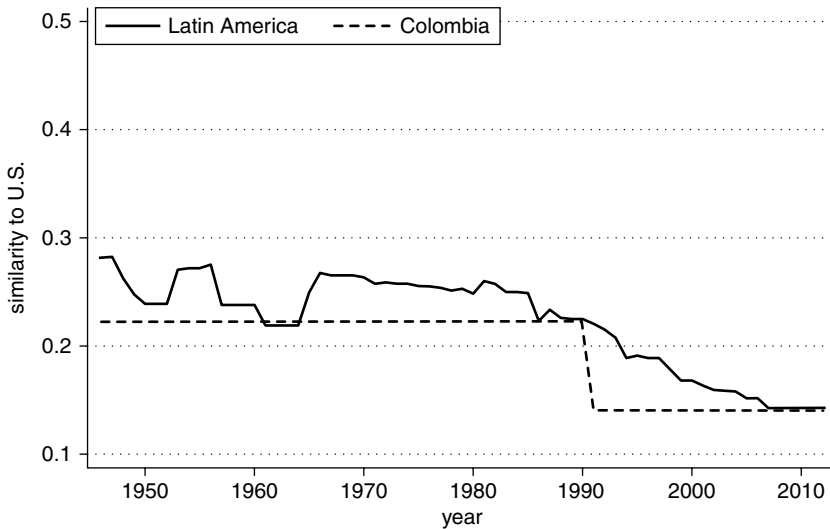


Figure 8.8 Constitutional similarity between Colombia and the United States

Table 8.2 Latin American constitutions ranked by similarity of rights provisions to the U.S. Constitution as of 2012

Country	Similarity to U.S.
Guyana	0.4348
Belize	0.3852
Chile	0.3367
Mexico	0.3222
Suriname	0.2891
Bolivia	0.2288
Honduras	0.2054
Costa Rica	0.1958
Uruguay	0.1721
Nicaragua	0.1578
Colombia	0.1406
Panama	0.1315
Brazil	0.1315
Paraguay	0.0822
El Salvador	0.0466
Guatemala	0.0175
Ecuador	0.0116
Peru	-0.0469
Argentina	-0.1014
Venezuela	-0.1048

happen to share the distinction of being the only two English-speaking countries in the region. Whether linguistic ties play a role in fostering constitutional similarity or are merely a proxy for the actual causes of the similarity, it may be more than a coincidence that the two countries with the greatest constitutional similarity to the United States also happen to be the only two countries that speak the same language as the United States. At the opposite end of the rankings, Argentina and Venezuela compete for the title of having the most dissimilar constitution to the U.S. Constitution. Although Venezuela edges out Argentina, Argentina's negative score suggests that its repudiation of the American model is complete.

### III. A COMPARISON OF LATIN AMERICA WITH OTHER REGIONS

This section offers a descriptive account of how Latin American constitutions as a whole rank globally along a number of substantive dimensions, such as the extent to which they purport to protect various kinds of rights and the degree of executive power that they contemplate. The measures and rankings reported here rely on the wide-ranging data collected by the Comparative Constitutions Project (CCP). Table 8.3 presents the global comparisons for all of the substantive indices, divided further by region to facilitate comparison with Latin America. Each index is described further below.

#### A. Scope and Detail

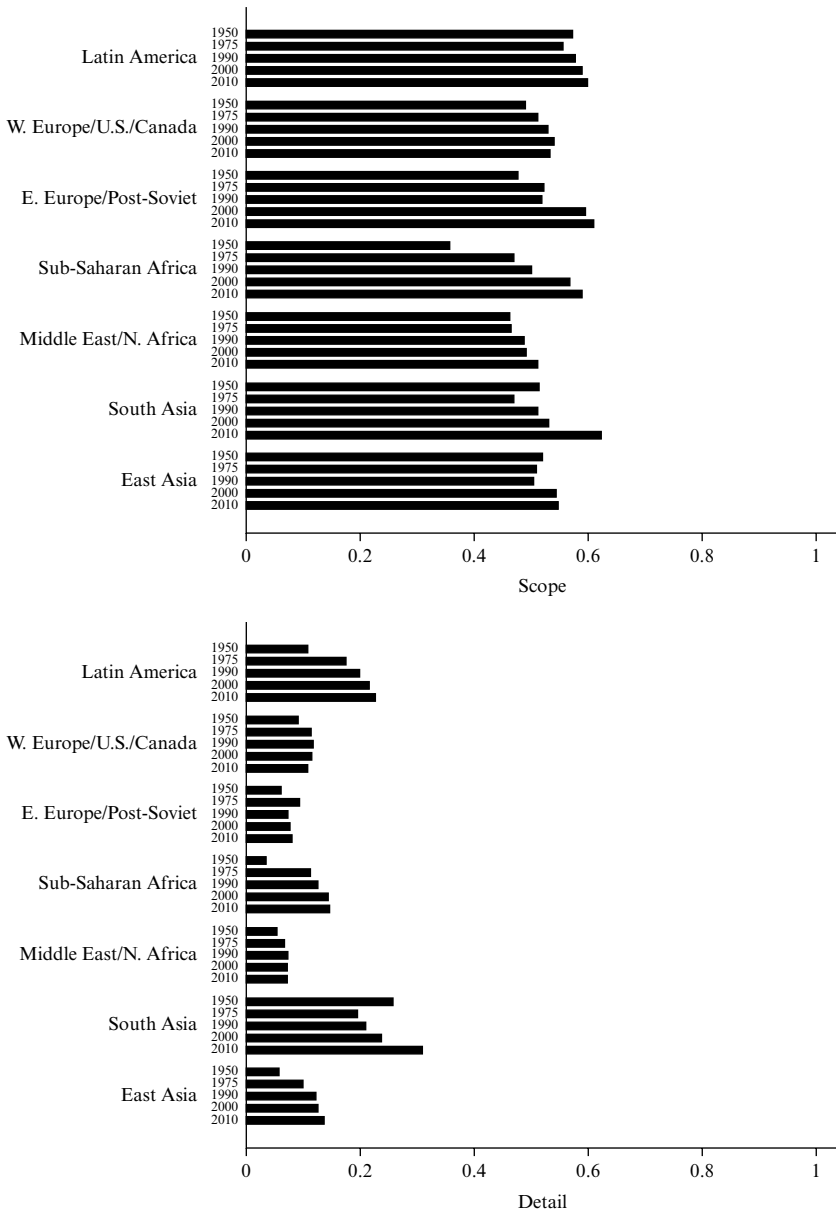
We use quantitative measures of the scope and detail of national constitutions developed by Elkins, Ginsberg and Melton,<sup>16</sup> where *scope* refers to the sheer number of topics addressed by the text of the constitution (out of a total of 92 possible topics) and *detail* refers to the number of words per addressed topic. The results, shown in Figure 8.9, reveal that Latin American constitutions have historically exhibited a relatively high level of scope and detail relative to constitutions in other regions. In terms of scope, Latin America led the world along these dimensions in the immediate post-World War II period but was edged out by Eastern Europe and South Asia around the turn of the twenty-first century. In terms of detail, Latin America is second only to South Asia, but the gap is more conspicuous. Middle Eastern and North African constitutions have, on the whole, exhibited the least breadth and detail.

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<sup>16</sup> Elkins, Ginsberg and Melton (n 4).

Table 8.3 Regional differences in constitutional content

Region	n	Mean Age	Rights Indices			Powers Indices			Specificity	
			Overall	Political	Economic	Criminal	Executive	Legislative	Scope	Detail
<b>Latin America</b>	<b>33</b>	<b>28</b>	<b>0.51</b>	<b>0.66</b>	<b>0.45</b>	<b>0.5</b>	<b>0.33</b>	<b>0.26</b>	<b>0.59</b>	<b>0.23</b>
W. Europe/North America	24	79	0.34	0.50	0.30	0.34	0.42	0.27	0.53	0.11
East Europe/post-Soviet	32	15	0.51	0.72	0.49	0.44	0.47	0.34	0.61	0.08
Sub-Saharan Africa	47	16	0.41	0.64	0.36	0.37	0.41	0.29	0.59	0.16
Middle East/N. Africa	19	33	0.25	0.43	0.22	0.16	0.46	0.23	0.51	0.07
South Asia	7	19	0.42	0.52	0.41	0.41	0.29	0.22	0.62	0.30
Oceania	14	56	0.27	0.42	0.07	0.41	0.18	0.18	0.42	0.19
East Asia	17	34	0.34	0.51	0.33	0.26	0.30	0.32	0.55	0.14
<i>Global Average</i>	<i>193</i>	<i>32</i>	<i>0.40</i>	<i>0.59</i>	<i>0.36</i>	<i>0.38</i>	<i>0.38</i>	<i>0.28</i>	<i>0.57</i>	<i>0.15</i>



*Figure 8.9 Constitutional scope and detail, by region and over time*

## B. Executive and Legislative Power

Latin America's history of political authoritarianism renders the formal constitutional allocation of powers among government institutions a topic of particular interest. Accordingly, we consider the degree of *executive power* and *legislative power* conferred by Latin American constitutions. Following the approach of Ginsburg,<sup>17</sup> we employ an index of executive power that captures such factors as the maximum number of years that the executive can remain in office and the level of constitutional detail surrounding the selection and removal of the head of state. Our index of legislative power, meanwhile, consists of 32 binary indicators drawn from the CCP data set that correspond to the components of Fish and Kroenig's<sup>18</sup> additive index of de facto legislative power. Figures 8.10 and 8.11 depict the

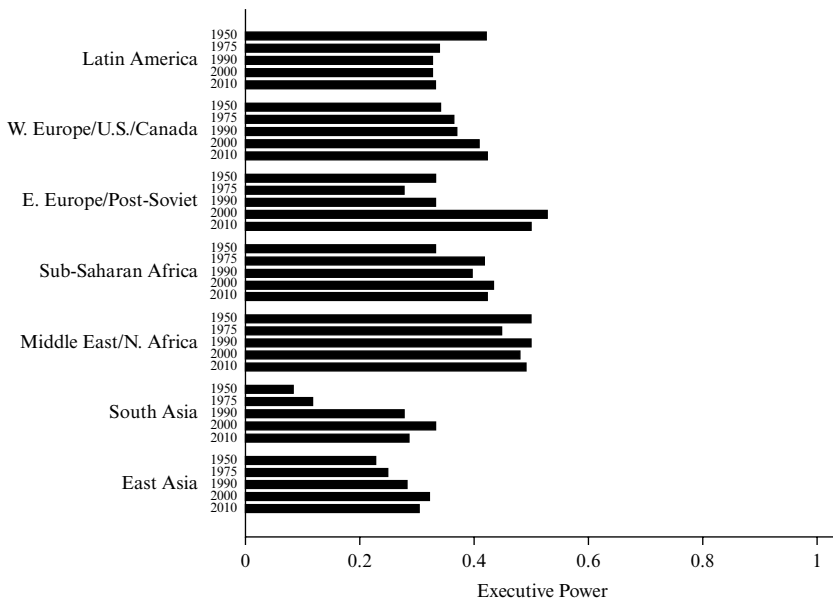


Figure 8.10 Extent of executive power found in constitutions, by region and over time

<sup>17</sup> Tom Ginsburg (2009), "The Constitutional Court and the judicialization of Korean politics", in Andrew Harding and Penelope Nicholson (eds), *New Courts in Asia* (London: Routledge).

<sup>18</sup> M. Steven Fish and Mathew Kroenig (2009), *The Handbook of National Legislatures: A Global Survey* (New York: Cambridge University Press).

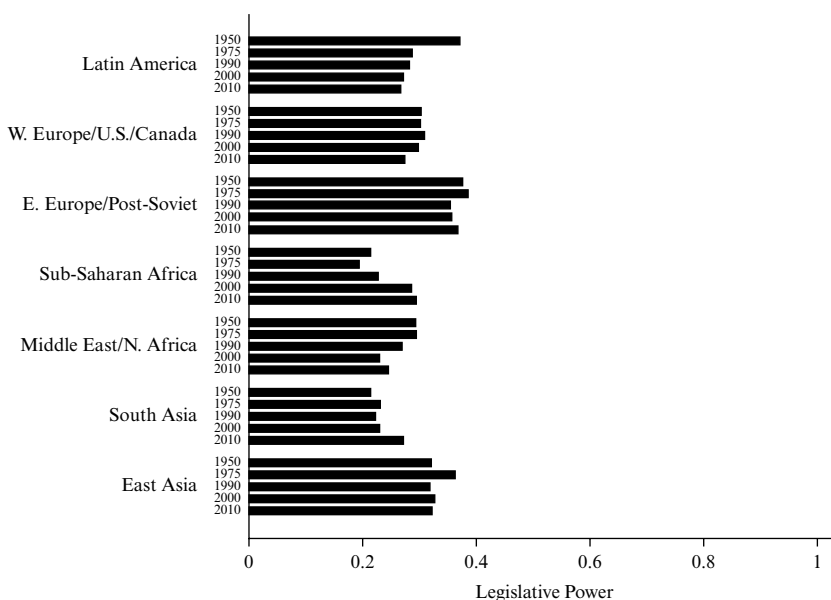


Figure 8.11 Extent of legislative power found in constitutions, by region and over time

levels of executive and legislative power found over time in Latin American constitutions as well as constitutions elsewhere.

The level of formal executive power found in Latin American constitutions declined sharply between 1950 and 1975 as constitutional drafters reacted to a long and problematic history of strong presidentialism and *caudillismo*. In 1950, Latin American constitutions were second only to Middle Eastern constitutions along the dimension of formal executive power; now, Latin America ranks a mere fifth out of eight regions. The relatively stingy *de jure* rules governing executive power belie the relatively high degree of *de facto* executive power that continues to be exercised in Latin American countries such as Bolivia, Colombia, and Venezuela, among others. But efforts to constrain power have resulted in shorter formal tenure of leaders (see Figure 8.12), and modestly higher detail on how executives are selected (see Figure 8.13).

Middling levels of *de jure* executive power in Latin America are matched by middling levels of *de jure* legislative power. Latin American constitutions are thus unlike either Middle Eastern constitutions, which favor legislative power over executive power, or East Asian constitutions, which exhibit the opposite bias in favor of executive power.



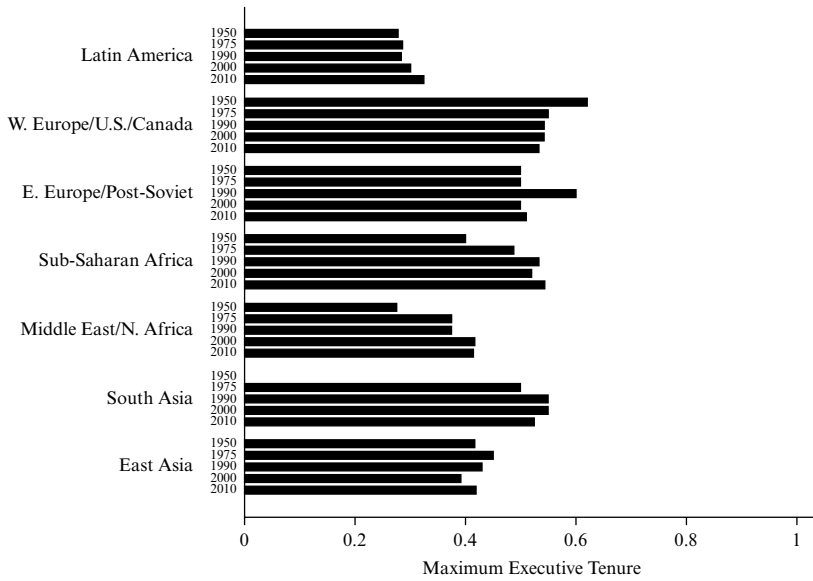


Figure 8.12 Details of executive tenure, by region and over time

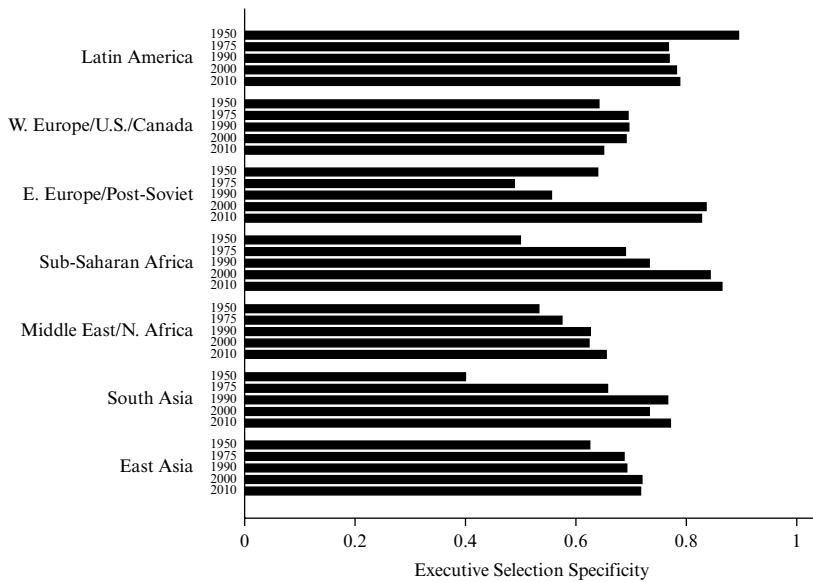


Figure 8.13 Details of executive selection specificity, by region and over time

### C. Rights

To measure the degree to which constitutions purport to protect rights, we employ several different indices that correspond to different categories of rights. The first, captured in Figure 8.14a, is an overall rights index, which is simply the percentage of rights included in the constitution, out of a total of 81 rights covered by the CCP data set. (This index overlaps with, but is distinct from, the Law–Versteeg index employed above.) We also created sub-indices for criminal procedure rights, economic rights, and civil and political rights (see Figures 8.14b, c and d). The sub-indices cover a total of 19 civil and political rights, 25 criminal procedure rights, and 19 economic rights. For each type of right, the corresponding sub-index indicates the percentage of that type of right in a given constitution. Thus, for example, a constitution that contains 5 of the 25 rights in the criminal procedure category would receive a score of 0.2, or 20 percent, in that category.

On paper, Latin America boasts the highest levels of protection for civil and political rights as well as the rights of criminal defendants. In the area of economic rights, Latin America ranks second only to Eastern Europe, where protection for economic rights surged dramatically in the 1990s as one country after another sought to repudiate the legacy of communism

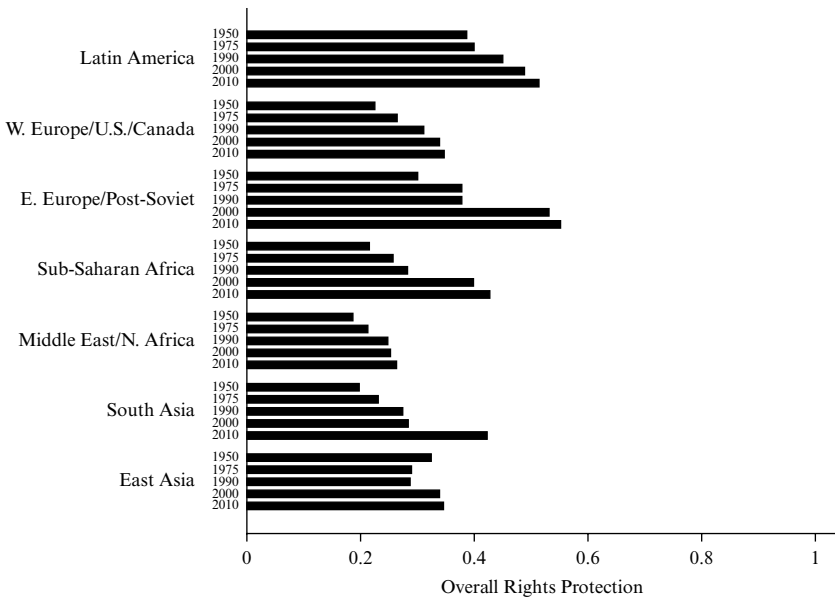


Figure 8.14a Overall level of rights protection, by region and over time

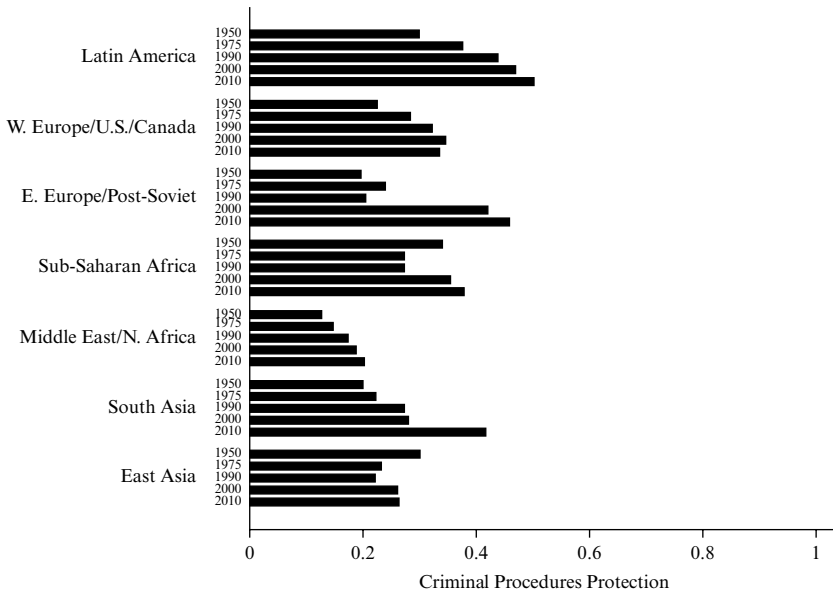


Figure 8.14b Criminal procedure rights, by region and over time

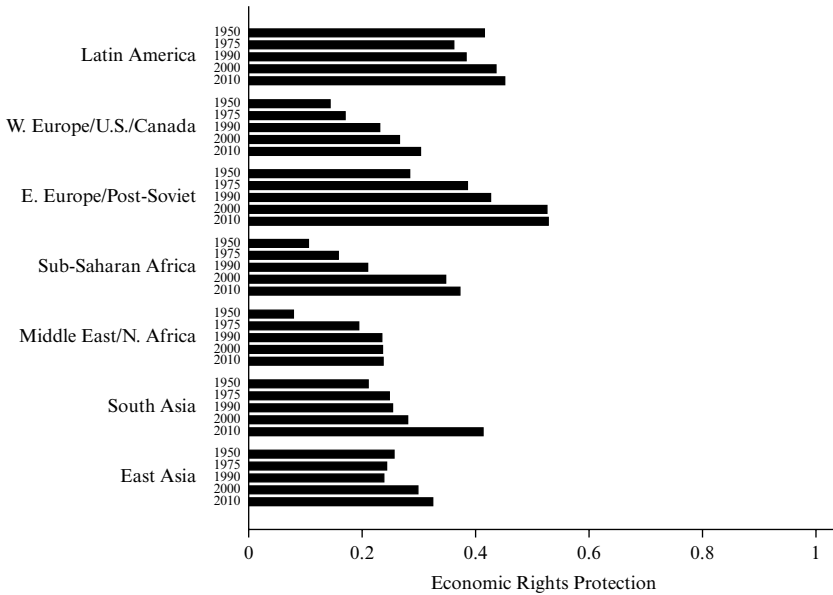


Figure 8.14c Economic rights, by region and over time

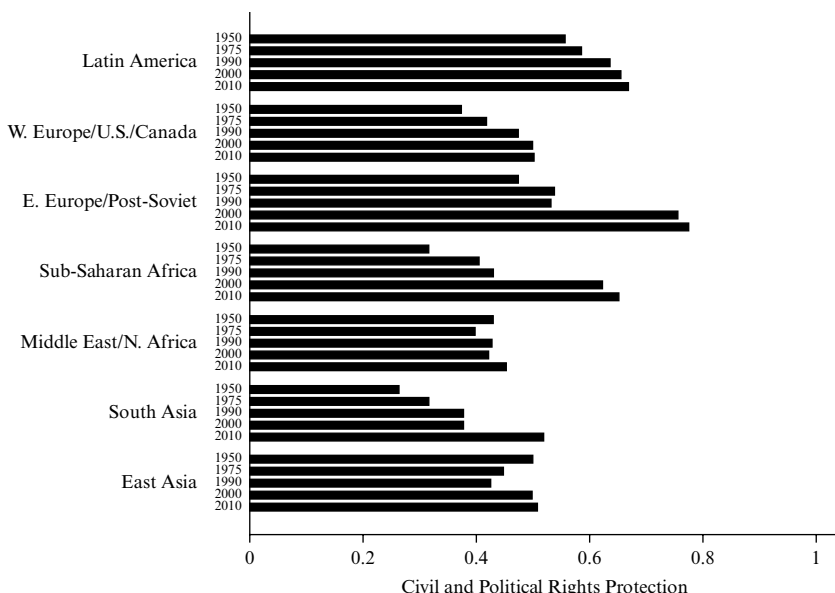


Figure 8.14d Civil and political rights, by region and over time

following the collapse of the Soviet Union. By contrast, Latin American constitutions started from a relatively high baseline and experienced steady and moderate growth in the formal protection of rights over the postwar period.

In practice, of course, respect for human rights has not always been a strong suit of Latin American regimes. This does not necessarily mean, however, that the growing number of rights found in Latin American constitutions are merely hollow promises. The various measures of constitutional compliance used by Law and Versteeg<sup>19</sup> suggest that actual respect for civil, political, socioeconomic, and group rights has improved in Latin America since the early 1990s. Law and Versteeg further find that these real-world performance improvements have outpaced the addition of new constitutional rights over time. The result is a trend in Latin America away from ineffective or sham constitutions toward relatively strong constitutions that boast growing protection for rights in both theory and practice. Compared to other regions, Latin America ranks slightly above average at fulfilling constitutional rights guarantees. It trails Western Europe, North

<sup>19</sup> Law and Versteeg (n 3), at 907–11.

America, East Asia, and the Pacific region but ranks ahead of Central and Eastern Europe and Central Asia, which in turn fare better than Africa and the Middle East. The largest gap between what rights are promised on paper and what rights are upheld in practice is found in South Asia.<sup>20</sup>

#### D. Stability

Latin America's history of constitutional instability matches its history of political upheaval and regime instability. Frequent constitutional replacement in the region has followed no set pattern but instead involved a combination of "churn", "cycling",<sup>21</sup> and "evolution". Not surprisingly, Latin American constitutions continue to rank below average in terms of their longevity. Constitutional longevity in Latin America has, however, improved somewhat in recent decades, with the result that the gap is not enormous. By global standards, constitutional longevity in Latin America is better described as middling than poor. As reported in Table 8.3, the average age of constitutions in Latin America is currently 28, while the global average is 32. This places Latin America near the middle of the pack: it ranks fifth out of eight regions and is ahead of South Asia, sub-Saharan Africa, or Eastern Europe, which brings up the rear with an average constitutional lifespan of just 15 years.

## IV. CONCLUSION

Latin American constitutionalism is rich with opportunities for comparative inquiry thanks to the region's long tradition of adopting formal constitutional texts. Scholars have examined these texts using a variety of methods,<sup>22</sup> but as the other chapters in this volume illustrate, the existing literature has barely begun to exhaust the possibilities. This chapter has taken the still relatively novel approach of identifying and examining textual patterns over time on the basis of quantitative or "large-n" data.<sup>23</sup> Quantitative research of this type does not purport to capture all

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<sup>20</sup> Ibid.

<sup>21</sup> Elkins, Ginsberg and Melton (n 4), at 25.

<sup>22</sup> Gargarella (n 4); Gabriel Negretto (2013), *Making Constitutions: Presidents, Parties and Institutional Choice in Latin America* (New York: Cambridge University Press).

<sup>23</sup> David S. Law (2010), "Constitutions", in Peter Cane and Herbert M. Kritzer (eds), *Oxford Handbook of Empirical Legal Studies* (Oxford: Oxford University Press), p. 379.

the details of formal constitutional texts, but it does offer a clear, systematic, and transparent basis for challenging stereotypes and preconceived notions about constitutional drafting patterns.

In the case of Latin America, quantitative analysis suggests that, at least in the aggregate and on average, the following constitutional stereotypes may now be outdated: (1) Latin American constitutions tend to emulate the model of the U.S. Constitution; (2) Latin American constitutions contemplate excessive executive power; and (3) the rights provisions found in Latin American constitutions are essentially hollow promises. Relative to constitutions in other regions of the world, Latin American constitutions tend to be relatively detailed and to contemplate levels of formal executive power that are both relatively moderate and declining over time. Moreover, while they also tend to contain an extensive catalog of rights; the actual implementation of these rights is improving in the region, on average.

Our findings also highlight the need for comparative constitutional scholarship that adopts a regional as opposed to a national or global focus. With the obvious and predictable exception of Europe – where regional integration has generated a complex and widely studied body of regional constitutional law – studies that adopt a regional perspective are considerably less common in the literature than studies that focus on individual countries or even, for that matter, on global patterns. Scholars are certainly justified in taking a cautious approach to generalizing about geographical regions as vast and diverse as Latin America, Africa, and Asia. Too much caution, however, means that we run the risk of overlooking or failing to investigate genuinely regional phenomena. And empirical research increasingly suggests that regional phenomena do exist. Our conclusions with respect to Latin America are consistent with previous findings to the effect that geographic regions exhibit distinctive patterns of constitutional drafting.<sup>24</sup> This persistent finding of regional constitutional patterns, notwithstanding either the homogenizing effects of globalization or the heterogeneity that can exist even among neighboring countries, merits further inquiry and explanation.

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<sup>24</sup> For example, Tom Ginsburg (2013), “East Asian constitutionalism in comparative perspective”, in Albert H.Y. Chen (ed.), *Constitutionalism in Asia in the Early Twenty-First Century* (Cambridge: Cambridge University Press); Law and Versteeg (n 3).

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