

A Comparison of East European Constitutional Rights

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This article examines the rights and liberties prescribed in East European constitutions. Using a modified classification framework developed by van Maarseveen and van der Tang and Blaustein, this article analyses 12 East European constitutions with regard to four categories of rights (fundamental, legal, economic and political). Individual and group-based rights in these countries are compared in order to determine if there is a difference between how countries define legal rights. The findings generally support the hypothesis that less repressive countries have less-enumerated rights. The findings also indicate that the extension of ethnic-based minority rights is often predicated on the constitutional recognition of a specific nation.

During the 1960s and 1970s, the assumption of many scholars was that communist constitutions had no influence on the protection of human rights. Therefore, the literature on constitutional development in communist countries tended to be edited collections of constitutions with little analysis of constitutional rights and guarantees.¹ However during the 1980s, there began to be an increased interest in constitutional development in the Soviet Union. Individuals such as Sharlet argue that constitutional development became an important reform under Gorbachev.² During the past decade, the process of East Europe and former Soviet Union (FSU) constitutional development has intensified this interest in constitutionalism. Accordingly since 1990, there has been a growing body of literature concerning constitutional development in East European and the FSU.³ Most of this literature examines either country-specific case studies⁴ or some institutional feature of constitutions such as constitutional courts.⁵ Few works have compared East European constitutional development in the area of guaranteed rights and liberties.

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HISTORICAL NOTION OF RIGHTS

The historical development of constitutional rights has proceeded in several stages. According to Finer there have been four stages of constitutional development: the model constitutions between 1776 and 1812, the 'great families' of constitutions during the nineteenth century, constitutions from 1918 to 1945 and the international and post-colonial constitutions since 1945.⁸ I argue that we are currently in a fifth stage, namely the constitutions of East Europe and the FSU since 1991.

The model constitutions include the 1776 Virginia Declaration of Rights, the 1789 American constitution, the 1791 French constitution and the 1812 Spanish constitution, the so-called Cadiz constitution. Even in these model constitutions, the definition of constitutional rights varied. The rights enshrined in the Virginia Declaration and the American constitution focused on individuals and political and civil rights. These political and civil rights are the so-called 'first generation' of constitutional rights. Unlike these American documents, the French and Cadiz constitution extended both group rights as well as economic and social rights. Title I, Section 3 of the French constitution guaranteed that there 'shall be created and organized a general establishment of public relief.' Moreover like the 1791 Polish constitution, the French constitution recognized specific groups (for example, active and passive citizens). This is not to argue that the American documents did not influence the creation of other constitutions. American notions of political and civil rights were borrowed and then extended in other model constitutions. For example, the Virginia Declaration served as a model for the French Declaration of Rights of Man and the Citizen. However, some authors argue that one of the reasons why the American constitutional model was not more widely adopted, specifically in terms of the definition of rights and institutions, is because of the uniqueness of American political culture. The conception of negative and positive rights as well as the role of the state was defined differently in the American constitution than in the French Declaration. 'The French concept of human rights (particularly in the Declaration of 1793) made the state responsible for the people's happiness. In the United States, the

Declaration of Independence and the Bill of Rights prevented the states from harming the citizen but did not make the states responsible for their happiness.⁹ There was an obvious distinction between American and European conceptions of institutions and rights that continues in the current East European constitutions.

The second stage of constitutional development during the nineteenth century witnessed a number of important constitutions; however, none was as important as the 1831 Belgian constitution or the 1875 French constitution. The 1831 Belgian constitution has been referred to as the 'principle European constitutional model' throughout the nineteenth century.¹⁰ Interestingly, unlike the French or Cadiz constitutions, the Belgian constitution did not recognize class distinctions or guarantee economic rights. However, the Belgian constitution was one of the first to provide social rights in the area of linguistic expression.

During the third stage of constitutional development, the definition of rights greatly expanded. Finer argues that the rights extended in the interwar constitutions began to include substantive material rights (that is, economic rights). This expansion of the definition rights increased during the fourth stage following World War II. The 1948 United Nations Universal Declaration of Human Rights broadened the definition of fundamental human rights. Other documents have followed since the United Nations Declaration, including the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights and the Optional Protocol to the Civil and Political Covenant. All of these documents form the 'international bill of rights'. The economic and social rights contained within these international documents are distinct from the American tradition, but the exact definition of these economic and political rights is unclear. What some international documents refer to as an economic right (for example, the right to join a trade union), other documents regard as a political right. The importance of these documents, however, is that they have served as a model for both West and East European countries. The period of re-democratization in Southern Europe during the 1970s was influenced not only by West European constitutionalism (such as French and German) but also international constitutionalism. The constitutional experiences of Spain and Portugal were very different than other democratic countries because these constitutions emerged following a dictatorship and marked a political transition.

In the current stage of constitutional development in East Europe and the FSU, these international documents have become even more important as a model for constitution-making. Not surprisingly, East

European constitutional development reflects many of the same attributes as constitutional development in Spain and Portugal in the 1970s. While scholars such as Linz and Stepan and Munck have noted the similarities between the democratic transitions in East Europe in the 1990s and Southern Europe in the 1970s, not enough attention has been focused on the constitution-making similarities.¹¹ Certainly the post-communist constitutional experience has much in common with the Iberian experience, principally because all these constitutions mark a re-orientation towards democratic constitutional principles enshrined in international documents. The language between these international documents and the constitutions of East Europe are often very similar. Howard states that East European bills of rights will be considered 'less familiar, and in some cases disturbing' to Americans because they embrace economic and social rights.¹² East European constitutional drafters have continued the twentieth century practice of enlarging the meaning of rights to include affirmative or positive rights, and this enlargement is due to the influence of international documents as well as Western institutions such as the Council of Europe and the European Union. 'Countries aspiring to membership in regional arrangements as the European Community want to be seen as having fundamental laws in line with principles accepted in Western Europe.'¹³

Because international and Western institutions influence these new constitutions, they are less of a product of the unique political culture in each society. As a consequence, Regulska concludes that the 'new constitutions thus threaten to impose foreign practices that will conflict with prevailing values and attitudes.'¹⁴ Constitutional development within the existing political culture is important in order for success. Although the Japanese and West German constitutional experiences were imposed during military occupation and are regarded as obvious successes, some attribute the government instability of Latin American countries to the imposition of American constitutionalism and institutions. How did Soviet constitutionalism affect the constitutional practice of East European countries?

THE CHANGING CONSTITUTIONAL ENVIRONMENT IN EAST EUROPE

A historical understanding of East European and FSU constitutional development is important because it provides insight into the current process of constitutional development. For all post-communist countries, their current constitutions reflect their prewar and interwar experiences. Moreover, the history of a country shapes the possibility of future constitutional success. Bogdanor categorizes constitutions as either

reactive or derived from past norms.¹⁵ Following a dictatorship, a reactive constitution is created to provide legitimacy to the new political order. These reactive constitutions are abrupt changes in constitutional development while a constitution based on past norms is evolutionary. Constitutions based on past norms embrace or modify previous constitutional principles. Although some argue that the East European constitutions are attempting to 'plant new constitutional norms',¹⁶ I believe that these constitutions are both reactive and evolutionary. While these constitutions have been promulgated following 50 years of totalitarian dictatorship, they have often reverted to previous constitutional norms.

The differences in the current constitutions reflect historical differences that can be traced over 200 years ago. The origins of East European constitutional history go back to the 1791 Polish constitution, which was the first constitution ratified in Europe, preceding the French constitution by four months and the second constitution of the modern era. Although influenced by French constitutional debates, the Polish constitution was much shorter and recognized group-based rights for the nobility. In contrast, the 1864 Bulgarian constitution was patterned on the 1831 Belgian constitution and did not extend any group rights. Similarly, Article 10 of the 1866 Romanian constitution declared that there were no recognized classes. Eventually, the group rights extended in the 1791 Polish constitution were eliminated in the so-called 'March Constitution' of 1921.¹⁷ Therefore, many of the East European pre-World War I and interwar constitutions did not include group-based rights.

Not surprisingly, the 1918 Russian Federation constitution embraced a group approach to rights. This approach was based on class in order to define the legal status of persons. 'The Soviet Union adopted a class approach to all aspects of social life which conflicted with Western individualism.'¹⁸ Therefore historically, there were significant differences between East Europe and Soviet constitutions. While some might reject the analysis of communist constitutions as meaningless, others regard communist constitutions as legitimate documents that provide insight into a country's political culture. Simons argues that although a communist 'constitution is not defined in the same way [as the Western tradition]...that does not necessarily mean that a constitution is therefore less respected and cherished in communist countries than it is in western nations.'¹⁹ Initially, East European communist constitutions were similar (based on the Soviet constitutional experience), but by the 1960s and the 1970s there was greater variation in communist constitutions which reflected country-specific political culture. Howard

states that even during the communist period, party leaders 'could not wipe out centuries of traditional ideas about constitutionalism.'²⁰ Therefore, the nineteenth century and interwar period had an influence even on communist constitutional development. Moreover, the communist constitutional experience is important because it serves as a legacy for constitutional development in East Europe.

In analysing current constitutional reforms in Russia and Ukraine, Sharlet finds that the reforms '[carry] forth baggage of the Soviet model of constitutional development'.²¹ This is also the case in East Europe, particularly in the areas of economic and social rights. The constitutions of East Europe are products of the communist constitutional legacy. For example, the group-based rights approach which most of these countries did not embrace before 1945 is an important element of the new constitutions. This is one of the communist legacies which Hayden argues deviates from accepted constitutional norms. In fact, he develops the term 'constitutional nationalism' to describe 'a constitutional and legal structure that privileges the members of one ethnically defined nation over residents in a particular state.'²² This is an important issue because 'in most of the drafts is the explosive question whether rights of national minorities are simply rights of the individuals who make up those minorities or take on the character of group rights.'²³

In addition to examining group-based rights for ethnic minorities, others have addressed the group-based rights for women in these new constitutions. Several constitutions have special gender provisions. For example, the Polish constitution has one of the strongest guarantees of women's rights. Article 33 of the constitution states that 'men and women shall have equal rights, in particular, regarding education, employment and promotion, and shall have the right to equal compensation for work of similar value, to social security, to hold offices, and to receive public honors and decorations.' However, Schepple argues that while several post-communist constitutions guarantee the equality of women and men or even provide special benefits to women, the reality is that women enjoy few economic or social rights.²⁴

THE CURRENT CONSTITUTIONAL ENVIRONMENT IN EAST EUROPE

Almost every East European country has passed a new constitution or is in the process of drafting a new constitution (see Appendix A).²⁵ The composition and length of these constitutions varies. Regulska states that more oppressed countries include more details in their constitutions (she gives Albania and Ukraine as examples) and that countries without the

same level of oppression show less concern with details.²⁶ There might be some truth to this argument because while the Czech Republic has one of the shortest constitutions, Bulgaria has one of the longest constitutions.²⁷

These constitutions extend a number of individual and group-based rights, many of which are patterned on the international bills of rights. For example in Slovenia, Article 18 states that 'no person may be subjected to torture, inhuman or humiliating punishment or treatment. It shall be forbidden to conduct any medical or scientific experiment on any person without his free consent.'²⁸ Neither the 1946 nor 1963 Yugoslav constitutions have this provision. However, Article 7 of the Civil and Political Covenant states that 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experiments.' This is just one example of how international rights have been incorporated into post-communist constitutions. In a discussion of the Slovakian constitution, the government reports that the 'drafters of the Constitution strictly followed such significant instruments as the Universal Declaration of Human Rights, Rome Convention of the Protection of Human Rights and Freedoms, Covenant on Social and Economic Rights, European Social Charter and all documents resulting from the Helsinki process.'²⁹

However in many other areas, the rights that these new constitutions extend are similar to the rights found in the communist constitutions. This is especially true in the areas of economic and social rights. For example, Article 48, Section 5 of the 1991 Bulgarian constitution guarantees workers a 'right to rest and leave'. Article 74 of the 1947 Bulgarian constitution guarantees that 'citizens have a right to rest'. As discussed later, this economic right, conceived in communist constitutional rights, is extended in several post-communist constitutions. The similarity between many of the post-communist and the communist constitutions is due to the fact that all East European countries used communist-era constitutions until their draft constitutions were ratified. In fact although the constitution has been amended frequently since 1989, Hungary is still functioning with the 1949 constitution, and Poland only passed its constitution in 1997.

No issue is as important and volatile in these regions as ethnic minority rights. While these group-based rights were extended in several communist-era constitutions (for example, the 1947 Bulgarian constitution, the 1949 Hungarian constitution and the 1965 Romanian constitution), they are much more problematic because enforcement is now expected by ethnic minorities as well as Western institutions such as

the Council of Europe and the EU. As countries move towards affirmative rights – what governments must do – the matter of enforcement becomes more difficult. Others have noted that it ‘is impossible to apply the same constitutional standards to personal and political rights and to economic and social rights because of the problems related to the enforcement mechanisms. It is impossible to enforce economic and social rights if the social and economic circumstances of the country are not conducive.’³⁰

Just as it was assumed that all communist constitutions were the same, much of the current literature has placed all East European constitutions into a single post-communist category. This analysis seeks to establish whether there are differences in how rights are defined between East European constitutions. Because these new constitutions are a product of a pre-communist and a communist legacy, I examine the causes of variation among constitutions that are normally viewed as uniform. These issues are just now being addressed by the political science literature. For decades, constitutionalism was not studied in political science because of the advent of behaviouralism; however, a resurgence in constitutional research has occurred because of the importance that scholars are beginning to attach to constitutions. In a recent article, Davenport finds that ‘constitutions do provide some insight into how governments will behave, even within situations that I might not expect.’³¹

FRAMEWORK

In order to analyse the rights that have been extended in the 12 East European constitutions, I adapted a classification system of rights developed by van Maarseveen and van der Tang and Blaustein. I analyse these rights in several broad categories including fundamental, legal, economic and political rights (see Tables 1–3). As noted earlier, the distinction between rights is sometimes unclear. Whether a right is political or economic in nature is subject to debate. Indeed Blaustein refers to his classification system as a ‘checklist in action’.³² However, these classification systems or checklists have proven useful in previous research in order to classify rights. I have adapted the classification system to include rights that have not been previously considered when constructing a checklist (for example, the right to privacy, the right not to be subject to scientific testing and the right to petition government). Some of the East European constitutions have not only created new rights, they have also created new protected groups. For example, Article 72 of the Slovenian constitution establishes the ‘protection of animals from cruelty’.

TABLE 1
 CLASSIFICATION SYSTEM FOR CONSTITUTIONAL RIGHTS:
 FUNDAMENTAL RIGHTS

- Citizenship
 - Acquisition
 - Loss
 - Prohibit Loss
 - Double
 - Status Non-Citizens
- Integrity of Person
 - Life
 - Liberty
 - Dignity
 - Privacy
 - Security
 - No Torture
 - Scientific Testing
- Equality
 - Before the Law
 - Equal Protection
 - Due Process
- Criminal Law
 - Warrant Arrest
 - Notice Pending Investigation
 - Limit Pre-Trial Detention
 - Unwarranted Detention, Relief
 - Counsel
 - Open and Public Trial
 - Confrontation at Trial
 - Interpreter
 - No Compelled Testimony
 - No Retroactive Law
 - Appeal for Error of the Law
 - Compensation if Miscarriage
 - Double Jeopardy
 - No Cruel or Unusual Punishment
 - Capital Punishment
 - No ad hoc/post facto
- Privacy
 - Home
 - Correspondence
 - Honour and Reputation
- Conscience, Religion
 - Choose Religion
 - Free Establishment
 - Proselytising

Source: Created by author.

TABLE 2
 CLASSIFICATION SYSTEM FOR CONSTITUTIONAL RIGHTS:
 POLITICAL AND ECONOMIC RIGHTS

- Expression
 - Hold Opinions
 - Receive/Impart Information
 - Establish Publications
 - Radio and Television
 - Ban Censorship
- Assembly
- Association
- Minority Culture
- Movement/Residence
- International Movement
 - Ban Exiles
 - Political Refugees
 - Limit Extradition
- Political Rights
 - Form Political Parties
 - Participate
 - Vote and to be Elected
 - Access to Public Service
 - Access to Government Information
 - Petition the Government
 - Initiative and Referendum
- Economic Rights
 - Free Economic Initiative
 - Contractual Freedom
 - Establish Corporations
 - Expropriation
 - Foreign Investment
 - Private and Public Property
 - Right to Work
 - Fair and Equal Wages
 - Safe Healthy Work Environment
 - Rest and Leisure
 - Social Security
 - Trade Union Formation
 - Strike
 - Collective Bargaining

Source: Created by author.

Recent articles on constitutional rights have examined specific rights rather than broader categories. For example, Davenport identifies only five rights in his analysis of 39 constitutions. He even excludes economic and social rights from his analysis because 'government is not responsible for (nor often capable of) socioeconomic rights and/or behavior.'³³ As numerous authors have suggested however, one of the defining characteristics of modern constitutions has been the incorporation of economic and social rights. Therefore, excluding economic and social rights from any constitutional analysis limits the validity of any study.

Based on Blaustein's classification system, fundamental rights include issues related to the integrity of person, equality, criminal law, religion and conscience, expression and various miscellaneous rights. Political rights include voting and elections, access to government information and to public servants. Economic rights include issues related to expropriation, foreign investment, private and public property, the workplace, social security and trade unions. Social rights include areas involving the family, women, children, senior citizens, education and cultural rights of expression.

TABLE 3
CLASSIFICATION SYSTEM FOR CONSTITUTIONAL RIGHTS:
SOCIAL AND CULTURAL RIGHTS, PROTECTION OF ANIMALS

Social Rights

- Family Rights
- Marry
- Equality of Spouses
- Procreative Choice for Women
- Working Mothers
- Child Labour
- Senior Citizens
- Education
- Health Care
- Housing
- Healthy Environment

Cultural Rights

- Language
- Education in Language
- Right to Culture

Animal Cruelty

Source: Created by author.

ANALYSIS

Certain patterns emerge when analysing the checklist of rights in East Europe constitutions. In terms of citizenship rights, Croatia, the Czech Republic, Poland and Slovenia provide few enumerated rights. This pattern continues with the rights of the integrity of person. The Czech Republic constitution includes no enumerated rights in the areas of life, liberty or dignity, and the situation in Poland was largely the same until the passage of the new 1997 constitution. Almost all East European countries grant equality before the law, but due process and equal protection are almost never mentioned.

In terms of the vast array of criminal rights, there is much less discussion of this category of rights than others, and there does not appear to be a uniform pattern among the countries. Indeed, Bosnia, Croatia, the Czech Republic, Poland and Romania mention very few criminal rights. The Czech constitution only provides for the right to an open and public trial. Interestingly, the Albanian and Slovakian constitutions guarantee more criminal rights than any other constitution. There is also no pattern with religious rights. Albania, Bosnia, the Czech Republic and Croatia rarely mention this class of rights while the Hungarian and Macedonian constitutions provide extensive religious rights. In addition, several constitutions mention specific denominations. The Macedonian constitution provides for the freedom of religious confession, but also specifically mentions the rights of the Macedonian Orthodox Church. The Polish constitution in Article 25 also specifically mentions the Catholic Church. 'The relations between the Republic of Poland and the Roman Catholic Church shall be determined by international treaty.' More research needs to be conducted on whether denominations that are mentioned in constitutions receive more favourable treatment from the government.

In terms of political rights, there are more rights granted in this category than in any other. Moreover, the enumeration of political rights is consistent throughout the East European constitutions. The right to form political parties and to participate is guaranteed in every constitution except for Bulgaria and the Czech Republic. Perhaps there are more political rights enumerated because these rights are generally negative rights. Political rights entail few obligations on the part of the state. The consistency found with political rights is completely eroded in the case of economic rights. This is one of the least uniform categories of rights, and one of the least mentioned in East European constitutions. Bosnia, Croatia and the Czech Republic do not really grant rights in this category. Within the category of economic rights, most constitutions that

grant these rights do so in the areas of expropriation, the right to work and to join trade unions. One of the reasons why these economic rights are so rarely mentioned is probably because economic rights are essentially positive rights of the state. For example, several constitutions guarantee the right to rest and leisure, and two constitutions guarantee the right to a holiday (the Polish and the Serbian constitution). It is unclear how these countries would actually enforce these positive rights.

Finally, many constitutions do not grant specific minority rights. Indeed, Article 11 of the Bulgarian constitution actually bans the formation of ethnically-based political parties. In fact, ethnic minority-based group rights are mentioned less often than other group-based rights for women, children and the elderly. Most ethnic group-based rights exist in countries that recognize a particular ethnic nation. Hayden points to Croatia and Slovenia as examples of countries that have identified the nation and people as an ethnic concept and therefore guarantee specific minority rights.³⁴ For example, Article 64 of the Slovenian constitution is entitled 'Special Rights of the Autonomous Italian and Hungarian Ethnic Communities in Slovenia' and is the longest article in the constitution. Other constitutions exhibit a similar position on ethnic minority rights. The Romanian constitution recognizes that 'national sovereignty resides with the Romanian people'. However unlike almost all other East European constitutions, Article 59 guarantees ethnic minorities a seat in the lower house. Conversely, countries that do not define an ethnic nation tend to have fewer ethnic-based rights. For example, the Bulgarian constitution refers to either the 'people' or 'citizens' of Bulgaria. While Bulgarian is the official language, there is no reference to a Bulgarian nation. Perhaps as a consequence, this is why Bulgaria bans the creation of ethnic-based political parties. The evidence seems to indicate that countries that recognize a particular nation are much more likely to extend minority rights.

CONCLUSION

While certain East European constitutions provide rights in all the major categories, other constitutions provide few enumerated rights (such as the Czech Republic). These findings generally support Regulska's hypothesis that less repressive countries have less enumerated rights. For example, the Czech Republic has the shortest constitution and generally provides fewer enumerated rights than any other country, whereas the Albanian constitution is one of the longest and provides more rights than almost any other East European constitution. The analysis also supports Hayden's contention that ethnic-based minority rights are predicated on

the constitutional recognition of a specific nation. The constitutions that recognize a specific nation generally provide greater ethnic-based minority rights than those that do not recognize a specific nation. One of the criticisms of this form of analysis is that in many East European countries, constitutional rights and constitutional realities are quite distinct. For example, Boulanger argues that while in principle the Slovakian constitution offers a basis for the consolidation of democracy, the 'empirical reality, however, look[s] different'.³⁵ This could probably also be said of countries such as Romania and Bulgaria. However, Regulaska argues that post-communist constitutional rights are 'aspirational rights'.³⁶ In other words, East European constitutions provide a map for where countries want to go. Until institutions such as constitutional courts and procuracies are well established, there will always be a lacuna between constitutional rights and practice. Especially in the area of positive rights, post-communist governments will continue to struggle, but at least, constitutional rights will provide a basis for government accountability as institutions develop.

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NOTES

1. Jan F. Triska (ed.), *Constitutions of the Communist Party-States* (Stanford: Stanford University Press 1968); F.J.M. Feldbrugge (ed.), *The Constitutions of the USSR and the Union Republics: Analysis, Texts, Reports* (Germantown, MD: Sijthoff & Noordhoff 1979).
2. Robert Sharlet, *Soviet Constitutional Crisis* (Armonk, NY: M.E. Sharpe 1992).
3. Robert M. Hayden, 'Constitutional Nationalism in the Formerly Yugoslav Republics', *Slavic Review*, Vol.51 (1992), pp.655–78; A.E. Dick Howard, 'Introduction', in A.E. Dick Howard (ed.), *Constitution Making in Eastern Europe* (Washington: Woodrow Wilson Center 1993); Rein Mullerson, *International Law, Rights and Politics: Developments in Eastern Europe and the CIS* (London: Routledge 1994); Jon Esler, Claus Offe and Ulrich K. Preuss, *Institutional Design in Post-Communist Societies* (Cambridge: Cambridge University Press 1998); Christian Boulanger, 'Constitutionalism in East Central Europe? The Case of Slovakia Under Meciar', *East European Quarterly*, Vol.33 (1999), pp.21–50.
4. Peter Paczolay, 'The New Hungarian Constitutional State: Challenges and Perspectives', in Howard (note 3); Azhar Kusainova and Gregory Gleason, 'Constitutional Reform and Regional Politics in Kazakstan', *Nationalities Papers*, Vol.26 (1998), pp.545–55.
5. Herman Schwartz, 'The New East European Constitutional Courts', *Michigan Journal of International Law*, Vol.13 (1992), pp.741–85.
6. Henc van Maarseveen and Ger van der Tang, *Written Constitutions: A Computerized*

- Comparative Study* (New York: Oceana 1978); Albert P. Blaustein, *Framing the Modern Constitution: A Checklist* (Littleton, CO: Fred B. Rothman 1994).
7. For this analysis, I included the ratified and draft constitutions of the following countries: Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Hungary, the Former Yugoslav Republic of Macedonia, Poland, Romania, Serbia, Slovakia and Slovenia. For a complete listing of the constitutions, see Appendix A.
 8. S.E. Finer, 'Notes Towards a History of Constitutions', in Vernon Bogdanor (ed.), *Constitutions in Democratic Politics* (Aldershot: Gower 1988).
 9. Alf J. Mapp, Jr., et al., 'Roundtable Discussion', in Kenneth W. Thompson and Rett R. Ludwikowski (eds), *Constitutionalism and Human Rights: America, Poland, and France* (Lanham, MD: University Press of America 1991), p.104.
 10. F. Reyntjens, 'Belgian Constitution of 1831', in Albert P. Blaustein and Jay A. Sigler (eds), *Constitutions that Made History* (New York: Paragon 1988), p.182.
 11. Juan Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (Baltimore: Johns Hopkins University Press 1996); Geraldo L. Munck, 'Bringing Postcommunist Societies into Democratization Studies', *Slavic Review*, Vol.56 (1997), pp.542-50.
 12. Howard, 'Introduction' (note 3), p.16.
 13. *Ibid*, p.18.
 14. Joanna Regulska, 'Self-Governance or Central Control? Rewriting Constitutions in Central and Eastern Europe', in Howard (note 3), p.150.
 15. Vernon Bogdanor, 'Introduction', in Vernon Bogdanor (ed.), *Constitutions in Democratic Politics* (Aldershot: Gower 1988).
 16. A.E. Dick Howard, 'The Essence of Constitutionalism', in Kenneth W. Thompson, and Rett R. Ludwikowski (eds), *Constitutionalism and Human Rights: America, Poland, and France* (Lanham, MD: University Press of America 1991), p.8.
 17. Mark F. Brzezinski, 'Constitutional Heritage and Renewal: The Case of Poland', *Virginia Law Review*, Vol.77 (1991), pp.49-112.
 18. Vladimir A. Kartashkin, 'Human Rights and the Emergence of the State of the Rule of Law in the USSR', *Emory Law Journal*, Vol.40 (1991), p.892.
 19. William B. Simons, 'Introduction', in William B. Simons (ed.), *The Constitutions of the Communist World* (Germantown, MD: Sijthoff & Noordhoff 1980).
 20. Howard, 'Introduction' (note 3), p.3.
 21. Sharlet (note 2), p.18.
 22. Hayden (note 3), p.655.
 23. Howard, 'Introduction' (note 3), p.17.
 24. Kim Lane Scheppele, 'Women's Rights in Eastern Europe', *East European Constitutional Review*, Vol.4 (1995), pp.66-9.
 25. Of the 12 East European countries included in this analysis, only Hungary has yet to ratify a new constitution. There have been repeated attempts to draft a new constitution, but so far, Hungary has relied on amending the 1949 constitution. For a discussion on constitution-making in Hungary, see Andrew Arato, 'The Constitution-Making Endgame in Hungary', *East European Constitutional Review*, Vol.5 (1996), pp.31-9. Bulgaria was the first East European country to ratify a constitution (July 1991) followed shortly thereafter by Macedonia (November 1991) and Romania (December 1991). Six East European countries ratified constitutions in 1992.
 26. Regulska (note 14), p.151.
 27. The Czech Republic Constitution has 113 articles while the Bulgarian Constitution has 169 articles.
 28. Moreover like many other East European constitutions, the Slovenian Constitution does not use gender-free language when possible. This fact provides further evidence for Scheppele's claim that while most of the new East European constitutions contain language providing for sexual equality, women still have a difficult time ensuring their rights.
 29. *Slovak Constitution*, 'On the Constitution of the Slovak Republic' (Bratislava 1992), p.9.

30. Mapp (note 9), p.154.
31. Christian A. Davenport, "Constitutional Promises" and Repressive Reality: A Cross-National Time-Series Investigation of Why Political and Civil Liberties are Suppressed', *Journal of Politics*, Vol.58 (1996), p.648.
32. Blaustein (note 6), p.XIII.
33. Davenport (note 31), p.637.
34. Hayden (note 3), p.650.
35. Boulanger (note 3), p.30.
36. Regulska (note 14), p.146.

APPENDIX

Albert P. Blaustein and Gisbert H. Flanz, 'Albania', in Albert P. Blaustein and Gisbert H. Flanz (eds), *Constitutions of the Countries of the World* (Dobbs Ferry, NY: Oceana 1995).

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Constitution of the Czech Republic (Prague 1992).

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Proposed Constitution of the Federation of Bosnia and Herzegovina (1994).