

The Constitutional Codification of Academic Freedom Over Time and Space

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1. Introduction

Academic freedom is an inherently liberal ideal, rooted in the notion of enlightenment of individual and collective self-determination, and the promise of emancipation through reason and science (Kumm 2022). In this tradition, the fundamental purpose of higher education and research has been defined as the search for “truth” (Beaud 2020, 612). Various studies have shown that higher education has massively expanded at a global level over the second half of the 20th century, challenging earlier models of society that were fearful of “over-educating” the population (cf. Schofer & Meyer 2005, 902). These fears were replaced by a developmental model that today strongly promotes higher education as “instrumental in fostering growth, reducing poverty, and boosting shared prosperity” (World Bank 2021). However, just as important is the observation that this global expansion took place under the dominance of the “liberal script” (Börzel & Zürn 2020), which endorsed a liberal, open and individualistic order of society (Schofer & Meyer 2005, 902). In a recent analysis, Schofer, Lerch and Meyer directly link growth in higher education to this “liberal world society” and dismiss exclusively economy-focused explanations (2021, 34). As a consequence, we need to consider to what extent this expansion under liberal influences has been accompanied by an adoption of the norm of academic freedom that lies at the heart of a liberal model of higher education and research.

To address this question, the present paper aims to map the spread of academic freedom as a global norm over the past two centuries on the basis of national constitutions. The goal is to develop a systematic understanding of whether, when and in what form different countries have adopted academic freedom norms. It emerges from this mapping that academic freedom is, unlike other liberal concepts, still far from becoming a norm that is universally referenced in constitutions worldwide. On the basis of this descriptive analysis, combined with additional data sources, I offer three main hypotheses that may explain variations in adoption patterns of constitutional academic freedom guarantees, namely the emergence of a temporary regional momentum that facilitated state-to-state diffusion, internal and external efforts at norm signaling, and the size of a country’s higher education sector.

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2. Methodological approach

2.1 On constitutions as indicators of norm diffusion

The primary interest of this paper is the diffusion of academic freedom as an ideological concept, and thus the focus is on countries' declaratory adherence to academic freedom norms in the form of constitutional commitments, and much less so the reality of their implementation. Constitutions are the "natural place" for state's symbolic accession to international norms (Beck, Drori & Meyer 2012: 484). They reflect the values and political principles that serve as orientation to a nation state (or that it purports to follow). This makes these texts in fact a perfect basis for studying the degree to which academic freedom norms were considered to be an accepted international or regional norm at different points in time from the perspective of countries across the world. For the same reason, the analysis of constitutional texts is not done from a legal but rather from a discursive perspective, meaning that the focus is on whether *any* references to academic freedom are made, and not on potential constraints placed on their implementation either in the constitution itself, elsewhere in legislation, or indeed in practice.

2.2 The dataset

In order to develop a systematic mapping of constitutional academic freedom provisions across time and space, I coded a comprehensive timeseries dataset that indicates for each country in each year since 1789 whether any reference to academic freedom was included in the text of the constitution in force at the time. In this effort, I heavily relied on the Comparative Constitutions Project (CCP)'s Chronology of Constitutional Events dataset (Elkins, Ginsburg & Melton 2020).² Combing through nearly a thousand constitutional texts, I classified academic freedom references into three main categories: "academic freedom" (matching the exact phrase), "scientific freedom" (in a broad sense, also including freedom of higher education teaching), and "university autonomy" (in a broad sense, also including independence of higher education institutions).³ In addition, for countries where no such reference was made, I coded as a separate variable provisions on "freedom of teaching" or "freedom of education" that had no clear connection to higher education or research. Moreover, for purpose of comparison, I coded the date of a country's *first* inclusion of provisions on the freedom of expression or of the press.⁴

Where possible, I coded based on the original-language version⁵ of the constitution, given that translations often distort the specific meaning. For example, the Spanish phrase "libertad de cátedra," which broadly equals to "academic freedom" even though

2 CCP does actually have its own variable capturing academic freedom provisions, but its content-based coding currently only covers about 56% of country-years (Elkins & Ginsburg 2021). Moreover, the reliability of their ACFREE variable is lower than the average reliability across variables of their dataset as coders often disagreed on whether a particular concept counts as academic freedom provision or not (cf. Spannagel et al. 2020, 11). The relatively low reliability and availability of CCP's ACFREE variable thus made a recoding necessary to allow for a comprehensive mapping.

3 For a detailed list of different types of wordings and how they were classified, see the codebook.

4 I combined press and expression freedoms due to their conceptual proximity and frequent overlap (e.g. "everyone has the right to publish his ideas without censorship").

5 In languages other than English, German, French, Spanish or Portuguese, I consulted with native speakers when translations seemed wrong or ambiguous. Not all historic texts are available in their original language, however.

with its own connotation,⁶ has been variably translated as “freedom of the professorate,” “freedom to lecture,” or even “freedom of teaching.” I relied on four main sources for constitutional texts: Heinonline’s World Constitutions Illustrated database (Heinonline n.d.), Constitute’s database of contemporary constitutions (Constitute n.d.), the International Constitutional Law (ICL) repository (Tschtscher n.d.) and the Digithèque MJP (n.d.). For further details on the coding process and classification decisions see the codebook in the annex.

3. Historic and geographic distributions

A summary analysis of the dataset tells us that there have so far been 110 countries across the world that ever had an academic freedom provision in their constitution, 99 of which are contemporary countries that still have such a provision today. Many of these 99 countries adopted academic freedom into their constitution once and have kept it ever since, but more than 60% actually changed their constitutional academic freedom protection at least once – either by deleting and reinstating them or by changing the type of provision, for example by adding provisions on university autonomy. Furthermore, the vast majority of academic freedom clauses were added at the time of adoption of a new constitution; in only 14 countries were such inclusions done via constitutional amendments. Although amendment practices vary greatly between countries,⁷ this pattern suggests that the inclusion of academic freedom is typically part of a larger change in the constitutional identity of a state.

An overview of all countries with academic freedom provisions, organized by world region⁸ and sorted by date of first adoption, is provided in Figures 1a and 1b (see page 18/19). The timeline chart shows for each country at what point in time it adopted or deleted constitutional academic freedom provisions, with distinction between provisions referencing “academic freedom,” the freedom of science (or higher education teaching), or the autonomy of universities.

In terms of early appearances, we can see that in the 19th century, any references to academic freedom are sporadic. The first such mention appears in Germany in the Frankfurt Constitution (*Paulskirchenverfassung*) of 1848/49 that was born out of a liberal-democratic revolutionary movement seeking to establish a German state (Wollstein 2008). The movement quickly collapsed and the Basic Rights of the German People that had been included in the constitution and that contained the reference to freedom of science were formally abrogated in 1851.⁹ Two decades later, an identically phrased provision (“Science and its teaching is free.”) appears in the Basic Law of 1867 of Austria-Hungary.¹⁰ Around the same time, two academic freedom references briefly

6 More literally, it means “freedom of the academic chair” (Beiter, Karran & Appiagyeyi-Atua 2016, 115).

7 For instance, some countries like Japan have not amended their constitution even once over many decades, others like Mexico amend it almost annually, and yet others regularly adopt new constitutions at short intervals of a few years, such as Thailand or Ecuador.

8 The regional partition is based on V-Dem’s *e_regionpol_6C* classification (Coppedge et al. 2022), which itself draws on the Quality of Government Standard Dataset.

9 The Frankfurt Constitution was promulgated on March 27, 1849 by the deputies of the Frankfurt Parliament that had been elected a year prior by people in all of Germany and the German-speaking areas of Austria-Hungary. However, the rulers of the individual German states rejected the constitution, so that it never really entered into force. In coding the German constitutional history, I therefore indicated the period 1848-1851 when the Basic Rights, which became part of the constitution, were legally in force.

10 The Basic Law was only applicable to Austria; thus it is merged with Austria in Figure 1a.

appear in Latin America, namely in Peru (1867)¹¹ and in El Salvador (1871).¹² However, these one-year constitutions referred not to science but to the freedom of higher education teaching, and need to be read in the context of the then very common constitutional inclusion of the freedom of teaching (or of education). The maps in Figure 2 (see page 20) illustrate this point: such provisions first emerged in some prominent Western European constitutions (France, Belgium, Netherlands) but then extensively spread across South and Central America throughout the second half of the 19th century. The two constitutions in Peru and El Salvador formed exceptions in that in all other cases, these provisions included no reference to higher education, and need to be understood primarily in the context of balancing state and church claims over primary and secondary education (e.g., Caiceo Escudero 2015). The maps also show that most such provisions were eventually complemented or replaced by academic freedom provisions over the course of the 20th century.

A comparison of the three different types of academic freedom provisions reported in Figures 1a and 1b reveals that the concept of autonomy or self-governance of universities emerged only in the 20th century. Intriguingly, it first appears in national constitutions almost simultaneously in Uruguay (1918), Finland (1919), Estonia (1920) and Georgia (1921), though they all put it in very different words.¹³ Partly due to Uruguay's key influence on the so-called Córdoba higher education reform movement in the early to mid-20th century (Van Aken 1971), provisions on university autonomy became particularly prominent in Latin America, where almost every constitution that contains an academic freedom reference guarantees university autonomy today. Following the end of the Cold War, many post-Communist countries also included such provisions in their constitution alongside references to freedom of science.

“Academic freedom” as a term, on the other hand, first appears another decade later, in the Spanish constitution of 1931 (“libertad de cátedra”) and may have spread from there into Latin American and Caribbean constitutions, where a combination of “academic freedom” and university autonomy (green in the chart) became the most frequent constellation. Interestingly, the Filipino and Japanese constitutions of the 1940s, drafted under US colonial rule in the former and by the US occupants in the latter case, also include the phrase. Although the concept is entirely absent from the US constitution, the term's use has a long tradition in US higher education (cf. Barendt 2010). Otherwise the “academic freedom” term was hardly used in national constitutions until the Liberian constitution of 1986 anticipated a cascade of such provisions in Sub-Saharan Africa in the 1990s.

Overall, drawing on Figures 1a and 1b, we can distinguish seven historic ‘waves’ in the constitutional codification of academic freedom (of any type), here defined as six or more countries that, geographically or otherwise connected, adopted such provisions within a few years from each other. They are listed in Table 1; I will discuss them in more detail in section 5.1.

11 Art. 24: “Son completamente libres la enseñanza primaria, media y superior, y la fundación de Universidades [...]”

12 Art. 125: “Es libre la enseñanza secundaria y superior [...]”

13 Uruguay 1918: Art. 100: “Los diversos servicios que constituyen [...] la instrucción superior [...] serán administrados por Consejos autónomos.”

Finland 1919: Section 77: “(1) The right of self-government of the University of Helsinki shall be maintained” (see Holmén 2022 for more details).

Estonia 1920: Art. 12: “[...] Higher education institutions are guaranteed autonomy [...]”

Georgia 1921: Art. 109: “The arts and sciences and their institutions are free [...]”

Table 1: Waves of constitutional codifications of academic freedom.

	Region	Period	Context
1	Western & Eastern Europe	1920s	new constitutional orders after World War I
2	Latin America	1930s/40s	Córdoba reform movement
3	Asia, Western & Eastern Europe	1940s/50s	new constitutional orders after World War II
4	Middle East & North Africa	1960s/70s	wave of new (independence) constitutions
5	Sub-Saharan Africa	1980s/90s	wave of constitutional reforms
6	Eastern Europe & Central Asia	1990s	new constitutional orders after Cold War
7	All world regions	since 2000s	

Moreover, Table 2 summarizes for each world region the share of countries with constitutional academic freedom provisions across time and today, as well as the dominant type of references used. The lowest shares of such provisions can be found in Western Europe & North America (none actually in the latter) at 36% and even lower in Asia & Pacific at 19%; neither of the two regions have clearly dominating wording choices for such constitutional guarantees. Eastern Europe & Central Asia, on the other hand, is the region with the most comprehensive coverage at 90% of all current constitutions. One major contributing factor to this high adoption rate has likely been the fact that the model Soviet constitution of 1977 included a reference to the freedom of science. Almost identical constitutions were subsequently adopted in republics across the Soviet Union and influenced the transitional constitutions of the early 1990s (see further below).

Table 2: Share & type of academic freedom references in constitutions by world region.

Region	Share across time	Share today	Dominant type of reference
Western Europe & North America	36%	36%	mixed
Latin America & Caribbean	64%	61%	autonomy (+academic freedom)
Middle East & North Africa	75%	63%	freedom of science
Eastern Europe & Central Asia	88%	90%	freedom of science (+autonomy)
Asia & Pacific	24%	19%	mixed
Sub-Saharan Africa	51%	47%	academic freedom / freedom of science

4. Assessing the global spread of academic freedom provisions

One key question I set out to address is whether academic freedom as a constitutional concept has spread across the world in its own right or whether it was typically adopted as part of a ‘package’ of provisions that diffused as human rights and freedoms reached a prescriptive status for constitutions across the world (Beck, Drori & Meyer 2012). When comparing the inclusion of academic freedom provisions with that of freedom

of expression or the press, I found that it has taken states on average 45 years between the two. 86 of 196 countries with expression/press provisions have so far never introduced academic freedom clauses in their constitutions. This finding alone already strongly suggests that academic freedom as a constitutional concept has spread relatively independently from the broader liberal script. Figures 3a and 3b (see page 21/22) visualize this comparison in more detail, showing for each country the time that elapsed between the first expression/press and the first academic freedom provision (if any), organized by region and ordered by first expression/press provision.

The graphs also display the time of adoption of each country's first constitution.¹⁴ We can see that the first expression/press provisions typically coincide with that date (in 76% of countries), suggesting that they are almost constitutive of the modern state. Academic freedom, in contrast, is only included in a minority of first-ever constitutions (16%), with the post-Communist constitutions in Eastern Europe & Central Asia forming a notable exception. Table 3 shows for fixed panels of countries the share with constitutional academic freedom provisions in each decade¹⁵ since 1900. The panels are assembled based on countries' date of the first constitution (also grouped by decade), analogous to Boli-Bennett and Meyer's analysis of constitutional concepts of childhood over time (1978). We can see that - in contrast to their finding on childhood concepts - there is no linear progression of academic freedom adoption rates in first constitutions (grey cells). The highest adoption rates among newcomers before the 1990s (82%) were in the 1900s (29%), 1920s (22%) and 1940s (20%). Since 2000, only four new countries adopted their first constitution, of which two included academic freedom (Kosovo, South Sudan) and two did not (Serbia and Montenegro, Timor-Leste).

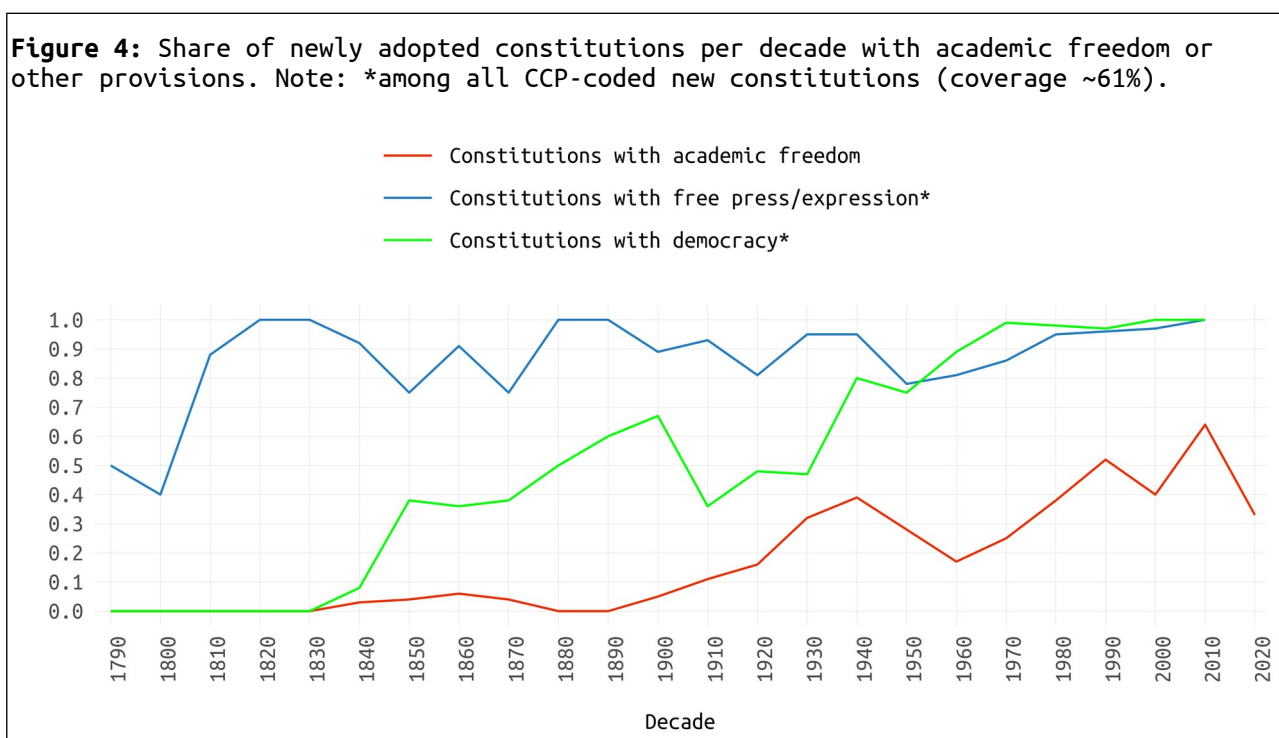
Table 3: Share of countries with acfree provision over time, grouped by year of first constitution.

Date of country's first constitution by decade	Share of countries per group with acfree provision, by decade											
	1900	1910	1920	1930	1940	1950	1960	1970	1980	1990	2000	2010
Pre-1900 (47 countries)	0,02	0,07	0,09	0,20	0,30	0,33	0,38	0,47	0,51	0,64	0,65	0,72
1900 (7 countries)	0,29	0,29	0,33	0,33	0,50	0,50	0,50	0,67	0,50	0,71	0,71	0,71
1910 (10 countries)		0,10	0,20	0,20	0,40	0,43	0,43	0,57	0,57	0,70	0,78	0,78
1920 (9 countries)			0,22	0,29	0,25	0,25	0,38	0,38	0,38	0,44	0,44	0,38
1930 (3 countries)				0,00	0,33	0,33	0,33	0,33	0,67	0,67	0,33	0,67
1940 (15 countries)					0,20	0,20	0,07	0,13	0,13	0,13	0,21	0,29
1950 (12 countries)						0,00	0,00	0,09	0,09	0,18	0,27	0,45
1960 (44 countries)							0,07	0,05	0,05	0,18	0,20	0,30
1970 (28 countries)								0,18	0,23	0,36	0,37	0,41
1980 (6 countries)									0,17	0,17	0,17	0,17
1990 (17 countries)										0,82	0,76	0,76
2000 (3 countries)											0,33	0,50
2010 (1 country)												1,00

14 The first constitutions data are based on coding by the Comparative Constitutions Project (Elkins, Ginsburg & Merton 2020), with few corrections (see codebook in annex). Dates are truncated at 1789.

15 If countries adopted several constitutions in one decade, of which some with and some without academic freedom provisions, they are counted as "with provision."

However, we do see in the table an overall share increase for most panels over time (white cells), several of which have by now achieved more than 70% coverage even though they started out with low coverage in the decades of their first adoption. Has academic freedom by now become part of the ‘liberal canon’ of constitutional provisions and achieved a similar prescriptive status to other human rights? Figure 4 also shows shares of constitutions with academic freedom guarantees per decade – though not focused on first constitutions, nor on all constitutions in force, but on constitutions that were *newly adopted* in that decade, as they represent primary opportunities for new inclusions. For comparison, the graph also includes the shares of newly adopted constitutions that contain references to freedom of expression/press or to democracy.¹⁶ We can see that academic freedom still lags far behind the other two concepts. Only since the 1990s have slightly more than half of new constitutions (51%) included such guarantees, compared to 97% and 98% that include references to freedom of expression/press or to democracy according to the CCP dataset.



Although the uptake of the concept has been overall increasing over the course of the 20th century, we therefore cannot really consider academic freedom to be an inherent part of the liberal canon (yet). This overall lower adoption rate can partly be explained by the fact that academic freedom has not been codified internationally to the same degree as other human rights (cf. Börzel 2022). There is only one binding international treaty that stipulates the freedom of scientific research, namely the International Covenant on Economic, Social and Cultural Rights, Art. 15(3), which places this freedom in the context of the right to science. However, only very few national constitutions have adopted references that are reminiscent of this concept. I could identify a total of ten constitutions in force in 2021 that mention the “right to enjoy the benefits of scientific progress” or include similar formulations, and only seven of them did also guarantee academic freedom. Compared to the case of other universal human rights (cf. Beck, Drori & Meyer 2012), academic freedom adoption

¹⁶ Note that the latter two rely on coding by the Comparative Constitutions Project (Elkins & Ginsburg 2021), which covers only 61% of all newly adopted constitutions over the entire period and 81% of those adopted since 1990.

patterns thus do not to the same degree reflect a “global environment” of standardized norms (ibid.). Boli-Bennett and Meyer note in their paper on childhood ideology that “national constitutions [...] reflect legitimating ideas dominant in the world system at the time of their creation” (1978, 805). The fact that still only half of the world’s countries feel compelled to include academic freedom when adopting a new constitution tells us that the concept can not be considered a “dominant” legitimating idea at the world stage at this time. This finding makes it all the more interesting to investigate what could explain why some states adopt such provisions while others do not.

5. Explaining variation

The individual reasons why and contexts in which a state adds academic freedom guarantees to its constitution may differ from case to case, but there are various explanations that can advance our understanding of the broader adoption patterns across space and time. In the following, I want to discuss three tentative, complementary hypotheses derived from empirical patterns in the constitutions data: a regional impetus for academic freedom adoption, an effort at norm signaling – both internal and external, and the size of a country’s higher education sector.

5.1 Regional impetus and state-to-state diffusion

The overview analysis in section 3 showed that there were several ‘waves’ of constitutional academic freedom adoptions. Most of them were clustered in a particular world region, which may be indicative either of an event or development that affected countries in that region in a very similar way – or of an impetus for change that originated in and was driven by countries or institutions in that region. I will come back to the former further below when discussing the role of democratization. The regional impetus hypothesis is most eminently supported by the case of Latin America and the evident roots of its academic freedom adoption wave in the 1930s/40s in the higher education reform movement that is often dubbed *Córdoba movement*. Led by students in countries across the subcontinent, the movement sought to democratize universities, to make them more accessible to the wider society and to improve student welfare (Patterson 2019; Van Aken 1971). The movement had very significant and lasting effects on Latin American higher education (Altbach 2001, 210), and inspired the constitutional codification of academic freedom – and university autonomy in particular – in countries across the region. However, we can find evidence of such a regionally-anchored impetus in other world regions as well.

Such effects were present – but very limited – in Western Europe, where the initial German provision “Die Wissenschaft und ihre Lehre ist frei.” was taken up in identical form in Austria two decades later. Similarly, the updated formulation of the Weimar constitution of 1919 can be found in the Greek constitution of 1925 (“Art, science and their teaching are free”). In 1975, Greece drew again on the German Basic Law for its own constitution and also added the sentence that was included there after World War II (1949): “[...] freedom of teaching shall not exempt anyone from his duty of allegiance to the Constitution” – a phrase that is otherwise unique in the world.

A more compelling case of regionally limited state-to-state diffusion is the case of the Middle East and North Africa, where in the 1960s and early 1970s a series of states included academic freedom provisions in their constitution in practically identical

wording: starting with Egypt in 1956, almost all states in the region that adopt relevant provisions in subsequent years use a slight variation¹⁷ of the formulation “freedom of opinion and scientific research are safeguarded,” namely North Yemen (1962), Kuwait (1962), Iraq (1963) and Bahrain (1973) – some of which are first constitutions, but not all. Exceptions are Turkey (1961), which follows a different constitutional tradition (Çitak 2019) and South Yemen’s provision (1970), which was influenced by the Socialist constitutions of Eastern bloc countries (Müller 2016, 9). Interestingly, constitutions adopted by other North African countries at that time (Tunisia 1959, Morocco 1962, Algeria 1963) did not include any academic freedom clauses, nor did that of Qatar (1970) or the UAE (1971), though Qatar adopted a formulation reminiscent of the Egyptian one in 2004. Algeria’s Socialist constitution of 1976, on the other hand, drew on a formulation (“freedom of intellectual, artistic and scientific creation”) that was typical for Eastern bloc countries. The region’s newly adopted constitutions of 2011 (Jordan, Morocco, Libya), 2012 (Syria) and 2014 (Tunisia) vary greatly in their specific formulations – probably a reflection of the increasing availability of constitutional texts and the decline in significance of particular regional or ideological models.

Eastern Europe & Central Asia is another very interesting case. Four of the constitutions that were adopted immediately after World War I included academic freedom provisions (Estonia 1920, Georgia, Poland and Yugoslavia 1921). They were differently worded, although in combining the freedom of art and science, the Estonian, Georgian and Yugoslavian versions all remind at least partially of the Weimar text of 1919. Yugoslavia adopts a differently worded clause in 1963 (“scientific and artistic creativity shall be unrestricted”), which may have influenced the relevant provision¹⁸ in the USSR constitution adopted in 1977 and the near-identical texts passed across the 15 republics of the union in 1978 (Uibopuu 1979).¹⁹ These precedents help to explain the serial adoption of academic freedom guarantees in the region in the early 1990s, which almost all refer to the freedom of science, and many of which actually still include references to the “freedom of artistic, scientific, and technical creativity” or similar. However, one curiosity relates to the fact that about half of those new constitutions in the region incorporated an (additional) reference to the autonomy of universities, which had not been included in the Soviet or Yugoslavian models. The only two prior examples of such clauses in the region were Estonia (1920-1940) and Georgia (1921).²⁰ Judging from the relatively uniform or even identical wording choices (“the autonomy of universities is guaranteed”) across different countries, it seems very likely that draft constitutions circulated among lawmakers in the region, which were in fact supported by various overlapping networks of transnational jurists (cf. Parau 2013, 518f.).²¹ It may also be interesting to some readers that the original Russian

17 The slight differences may in fact stem from their translations; not all historic constitutions are available in their original language.

18 Though the translation by Novosti Press Agency reads “citizens [...] are guaranteed freedom of scientific, artistic and technical work” (cf. Beard 1996), the literal translation is closer to “freedom to create scientifically, technologically and artistically” (special thanks to Sonya Sugrobova for her help on this). This may explain why many Socialist-inspired constitutions around the world used or use the phrase “scientific creativity” or “creation,” as the Algerian example above illustrates.

19 CCP’s coding is unfortunately inconsistent when it comes to these Soviet constitutions: although all 15 Soviet republics adopted the new constitution in 1978, only Armenia, Ukraine, Moldova and Russia are recorded in the dataset, of which only the latter two are coded through to the following constitution. I will adjust this coding for a revised version of my dataset.

20 See supra note 13.

21 The earliest draft text containing the autonomy of universities that I could find was put forward by the Slovenian Writers’ Association in 1988, which sounded differently, however: “universities and other higher education institutions determine their internal organization

draft constitution proposed by Boris Yeltsin in 1990 did also include such a clause on university autonomy, which was later dropped in the constitution adopted in 1993.²²

Finally, there is the intriguing cluster of constitutions in Sub-Saharan Africa in the 1990s. With the exception of Somalia in 1960, which included the autonomy of universities, none of the African independence constitutions of the late 1950s through early 1970s referred to academic freedom at all - despite the fact that almost all of them mentioned the freedom of expression or of the press (cf. Figure 3a). After a seemingly isolated adoption by Sudan (1971), two dominant models emerge in the region. First come the three Portuguese-speaking countries of São Tomé and Príncipe (1975), Cape Verde (1980) and Guinea-Bissau (1984), which all adopt identical provisions ("intellectual, artistic and scientific creation are free") that are interestingly similar to the typical Socialist phrasing and which are, moreover, akin to Portugal's constitution of the same period (1976). Over the following years, many more African countries follow this model: Ethiopia (1987), Mozambique (1990), Mauritania (1991), Burkina Faso (1991), Comoros (1996), Eritrea (1997), DRC (2003) and Angola (2010) were all using references to the freedom of scientific "creativity," "creation," or "creative activities in science."

A different model is followed by numerous other countries in the region, starting with Liberia in 1986, which use the exact phrase "academic freedom" (cf. Figure 1b). Aside from Latin America, this term had rarely been used in prior constitutions and may suggest that - similarly to the two cases in Asia - notions from the US higher education tradition informed the wording choice. Some of the African countries following this model use a variation of the formula "freedom of expression includes academic freedom" (Liberia 1986, Sierra Leone 1991, Kenya 2010), but more frequent is "freedom of thought, conscience and belief include academic freedom" (Namibia 1990, Ghana 1992, South Africa 1993, Malawi 1994, Uganda 1995, Gambia 1996). In recent years, similarly to the MENA region, the models have become more blurred: Zimbabwe's constitution of 2013 includes both "academic freedom" as part of freedom of expression and a reference to the freedom of "scientific research and creativity", whereas South Sudan in 2011 uses a new formula, also combining the two.²³ Moreover, Madagascar in 2010 only refers to the autonomy of universities.

These clusters of reference types - and often exact wordings - used by countries within the same region clearly evidence that states are looking to fundamental texts in neighboring countries for inspiration when drafting their constitution. Apart from the Latin American case, it remains largely unclear, however, to what extent these academic freedom provisions were explicitly and deliberately included in this process, as opposed to being taken up without particular attention as part of lists of rights and freedoms emulated from elsewhere. Either way, such regional standard models appear to be a key explanatory factor in why states adopt academic freedom provisions and why we can find regionally focused 'waves' of the concept's constitutional uptake.

autonomously within the limits of the law" (Slovenian Writers' Association 1988). Possibly it was the Estonian text of 1921 that ultimately served as example, as it similarly stated that "higher education institutions are guaranteed autonomy."

22 For further background on the process of constitution-making in post-Soviet Russia, see Sakwa 1996.

23 "The national government shall guarantee academic freedom in institutions of higher education and protect the freedom of scientific research."

5.2 Internal & external norm signaling

A more substantive explanation is that of norm signaling, which can have both internal and external components and may be sincere or disingenuous. Overall, the distribution of academic freedom adoptions over time and space suggests that such uptake is often linked to a preceding period of academic freedom suppression that the authors of a new constitution seek to remedy – a mostly internal signal that academic freedom norms should be respected in the new era. This was the case in Germany in 1848, for instance, following the Carlsbad Decrees of 1819 that sought to suppress liberal and nationalistic movements in the individual German states. These decrees included a repressive University Law that provided for supervision and surveillance of higher education institutions, for the censorship of academic activities, and for banning professors and students who had been dismissed from readmission and public office (Karlsbader Beschlüsse 1819). This experience inspired the inclusion of the freedom of science and its teaching in the revolutionary Frankfurt Constitution of 1848/49 (Grimm 2021, 18), at which time the Carlsbad Decrees were also abrogated. Similarly, the adoption of academic freedom provisions in Latin America were the constitutional expression of the Córdoba movement's demands for liberalizing and democratizing reforms in the higher education sector. Moreover, the series of such guarantees included in constitutions after World War II, as well as in Eastern Europe & Central Asia (Altbach 2001, 214) and in Sub-Saharan Africa in the 1990s are closely connected with democratization processes that these countries were undergoing.

The top chart in Figure 5 (see page 23) illustrates how these constitutions' aspirational promises did in many cases translate into significant real-world changes in the levels of academic freedom in those countries: using the Academic Freedom Index (AFI),²⁴ the figure shows ten-year trends in de facto freedom at universities for countries that included academic freedom provisions in their constitution for the first time; grouped by those with significant improvement, those with similar levels after ten years, and those with significant deterioration.²⁵ In fact, most of the countries in the third chart that display deteriorations, such as Spain (1931) or Chile (1971), also fall in the categories of countries that constitutionally adopted academic freedom provisions as expression of an aspirational ideal, which was then quashed shortly afterwards by a civil war, coup or other authoritarian turn.

The other type of pattern relates to countries in Figure 5's second chart: those whose academic freedom levels remained largely unchanged after constitutional academic freedom adoptions. At the upper end of the AFI scale, we find countries whose constitutions eventually catch up after long periods of high de facto academic freedom (e.g. Switzerland 1999) and those that adopted their constitution a few years into their democratic transition process at which point academic freedom levels had already improved (e.g. Portugal 1976, Eastern European & Central Asian countries in 1990s, Argentina 1994 or Tunisia 2014).

More interesting are those countries that adopt academic freedom provisions at a low point of de facto academic freedom, which subsequently *remains* low. In most cases, this can be understood as a form of disingenuous norm signaling, which may serve as an internal smokescreen designed to pacify domestic political opposition and/or express an external desire to be accepted in an international order centered around liberal values

²⁴ For more information, see Spannagel, Kinzelbach & Saliba 2020 and Kinzelbach et al. 2022.

²⁵ For the purpose of this chart, significant changes are defined as changes of 0.05 or more on the Academic Freedom Index' 0-1 scale.

(cf. Hirschl 2013, 169; Boli-Bennett & Meyer 1978, 800; Risse & Sikink 1999). For academic freedom provisions to manifest in this way, there actually needs to be a relatively well-accepted international or regional norm. Even though I noted earlier that academic freedom norms are not part of the ‘liberal canon’ yet, they thus still seem to confer a certain level of legitimacy. Interestingly, these types of adoptions first²⁶ appear in the 1930s in Latin America (cf. Figure 5), where such a norm had actually emerged by that time. Eight of the academic freedom adopters with AFI scores that were and remained below 0.2 are, however, from the MENA region: Egypt, Iraq, Bahrain, Sudan, Algeria, Qatar, South Sudan and Syria. In fact, before 2010, there was not a single country from this region whose AFI patterns suggest a ‘sincere’ constitutional adoption of academic freedom.

These adoptions by low-freedom countries have meant that the average AFI scores of first-time adopters has at times been significantly under the global AFI average of all countries (e.g. 0.26 vs. 0.43 in the 1970s, 0.48 vs. 0.64 in the 2000s). Combined with deteriorations in academic freedom levels in some countries with existing constitutional provisions, this has meant that the average AFI scores has periodically been lower for countries *with* than those *without* relevant guarantees, including in recent years. In fact, in 2021, constitutional academic freedom provisions were at 73% most strongly represented in the group scoring lowest on the AFI (<0.2). Paradoxically, it thus appears that those countries that least respect academic freedom do most often invoke its legitimacy as a global norm.

5.3 Higher education expansion

When discussing the spread of academic freedom, we cannot overlook the fact that unlike most other universal human rights and freedoms, it pertains to a specific context, namely that of higher education research and teaching. Where no university, research facility or other higher education institution exists, it makes little sense to expect that countries include academic freedom provisions into their constitutions. In addition to regional influences and norm-signaling behavior, the existence and size of the higher education system may therefore serve as a third explanatory factor for constitutional academic freedom adoptions.

Indeed, if we consider the years of countries’ foundation of their first higher education institution,²⁷ we find that many did not have such an institution when they first laid down freedom of expression/press clauses in their constitution. Some of these countries add academic freedom clauses shortly after the foundation of their first university. One such example is Panama, where one of the co-founders of the University of Panama in 1935, José Dolores Moscone, took part in the drafting process of the 1946 constitution and is reported as having been the driving force behind the inclusion of quite detailed academic freedom and autonomy provisions (Flores Castro 2020). However, such immediate inclusions are rather the exception than the rule: most countries with newly founded higher education sectors never add academic freedom or only do so significantly later. The mere existence of higher education institutions does therefore not seem a good predictor for such constitutional provisions.

26 Disregarding the Greek case of 1925, where the adoption was actually followed by a brief period of improvement.

27 The data on foundations of higher education institutions was coded on the basis of the original dataset behind V-Dem’s v2cauni indicator (Spannagel, Kinzelbach & Saliba 2020), complemented by additional research (see codebook).

A more nuanced measurement is the relative size of the higher education sector, which can be captured by countries' tertiary school enrollment ratio. This measure indicates what share of the age group that officially corresponds to tertiary education is actually enrolled in a higher education institution in a given year.²⁸ Figure 6 shows boxplots²⁹ indicating since 1970 the distribution of higher education enrollments for three groups: countries with new constitutions during that time that *did not* include academic freedom provisions, countries with new constitutions that *did* include such provisions, and (a subset of the latter) those that did so for the first time.³⁰

Figure 6: Boxplots of tertiary school enrollment ratios in countries with new constitutions since 1970. NB: Using decade mean of enrollment ratio per country to improve data availability. Enrollment data source: World Bank (2021).



There we can see that countries with the highest enrollment ratios (>50%) have without fail included academic freedom provisions in new constitutions since 1970, two of which (Fiji and Dominican Republic) have recently done so for the very first time. It is further worth noting that nearly³¹ all “no provision” countries with enrollment ratios higher than 20% have actually had such a provision in prior constitutions (Georgia, Kazakhstan, Philippines, Poland, Thailand) and/or have included one since then (Argentina, Azerbaijan, Dominican Republic, Latvia, Lithuania, Sweden, Tunisia) – some of them via amendments, which are not captured by this chart. Especially for those countries that had earlier academic freedom provisions, the non-inclusion cannot be explained by the lack of an academic freedom norm but rather points to a deliberate choice of omission. Further research on the ‘deletion’ of academic freedom guarantees from countries’ constitutional texts should shed more light on these interesting cases.

The most obvious conclusion from Figure 6 relates, however, to the fact that countries that adopt constitutions without academic freedom provisions tend to have significantly lower tertiary enrollment ratios than those that adopt constitutions inclusive of such

28 More precisely, the gross enrollment ratio divides the number of enrollments of any age by the number of people in the designated age group. The data available from the World Bank currently only covers the period since 1970, and it is spotty for many countries, which is why the graph in Figure 6 uses the decade mean of enrollment ratios for each country.

29 The horizontal line in a boxplot represents the median value; the box encompasses the first and third quartile of the data (i.e. the medians of the upper and lower half of the dataset); and the lines (whiskers) extend from the box to the highest or lowest value of up to 1.5 times the interquartile range, excluding outliers.

30 Note that each data point represents one constitution, meaning that countries that adopted several constitutions since 1970 are included several times in the chart.

31 The only exception are the Bahamas with a reported enrollment ratio of 28% around the time of adoption of their first and so far unchanged constitution of 1973.

guarantees. Small higher education sectors therefore seem to be a relatively good predictor of non-inclusion, although there are exceptions; of the 25 first-time adopters with the lowest enrollment rates (<10%), 20 are from Sub-Saharan Africa, whose wave of inclusions may thus be better explained by regional influences and/or different kinds of norm signaling.

6. Conclusion

The history of constitutional codifications of academic freedom is an eventful one and stretches over some 175 years. Academic freedom provisions, in the form of references to the freedom of science, of higher education teaching, of the autonomy or self-governance of universities, or the exact phrase of “academic freedom,” have overall become more frequent over time, though the progression is not a linear one. Rather, such adoptions can usually be attributed to regional clusters or ‘waves’ of codification, which appear at one point in time and die down at another.

Over the past three decades, there has been about a 50/50 chance for a new constitution to include an academic freedom reference, which does not support the idea that the norm has entered the liberal ‘canon’ of rights and freedoms that form the basis of nearly every modern constitution. Yet the inclusions do not occur at random. Next to the evident role of regional constitutional standards and state-to-state influences, we can also discern patterns of norm signaling. This explanation comprises two main groups of countries: those that, typically at the beginning of a democratic transition process, include academic freedom as an aspirational ideal to be achieved; and those that continue to perform low on de facto academic freedom but wish to tap into the norm’s legitimacy by recognizing it on paper. Lastly, the size of a country’s higher education sector plays an important role. Countries with very low tertiary enrollment rates clearly tend to omit academic freedom from their constitutions, whereas those with large higher education sectors tend to include it when drafting a new constitution.

The three complementary hypotheses offered in this paper seek to explain variation in the patterns of constitutional academic freedom adoptions, but are tentative and derived primarily from empirical patterns emerging from the data. More thorough theory-testing could be undertaken using a multivariate statistical analysis that exceeds the scope of the current paper. Additional research should further look into the context and reasons for the about 60 ‘deletions’ of academic freedom provisions from constitutional texts over time, including whether these provisions were targeted alone or alongside other rights and freedoms. Such an analysis could provide useful additional insights into the explanatory factors of variation in adoption patterns, and provide interesting examples of academic freedom contestations.

An issue to grapple with when considering constitutional provisions is that of implementation. Even though the focus of this paper was deliberately on constitutional references to academic freedom as a concept, and thus the formal acknowledgment of the norm and not its de facto implementation, the above comparison with the Academic Freedom Index data allows to tentatively answer this question: In and of themselves, constitutional guarantees of academic freedom do not translate into such practices. Instead, much seems to depend on the intention of their constitutional inclusions as well as the political environment that ensues their adoption.

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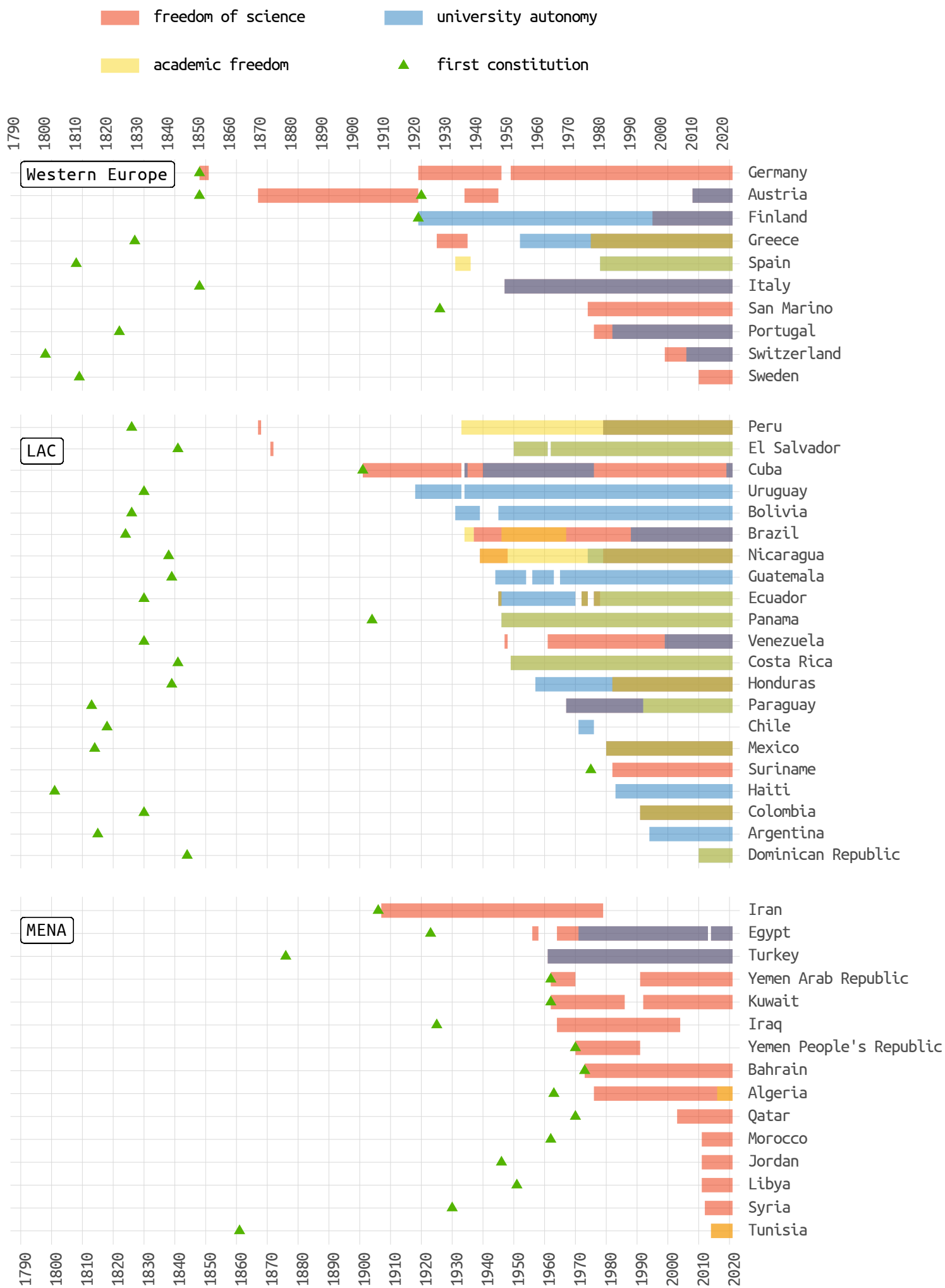


Figure 1a: Wording of acfree provisions over time, by region (1/2).

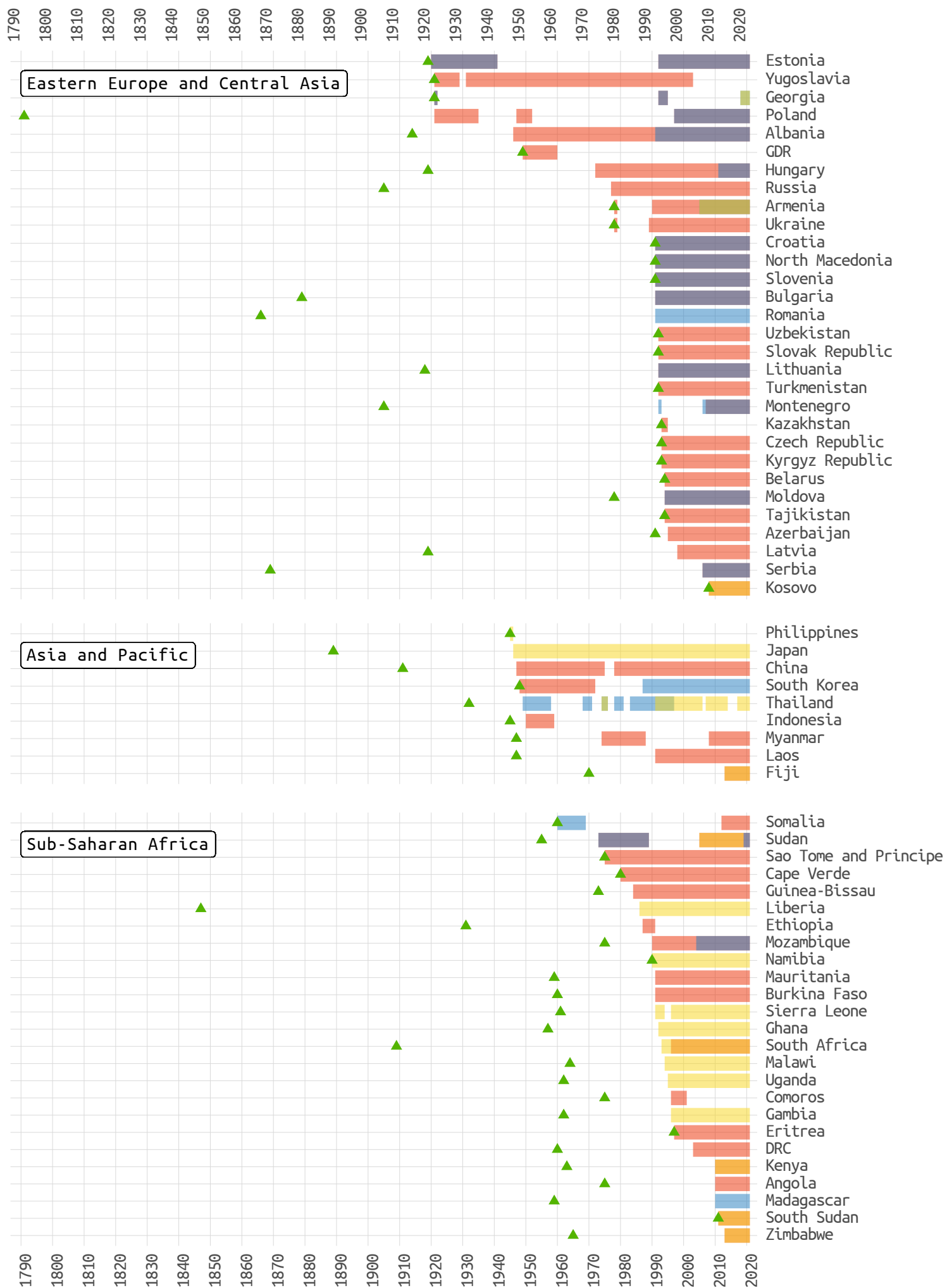


Figure 1b: Wording of acfree provisions over time, by region (2/2).

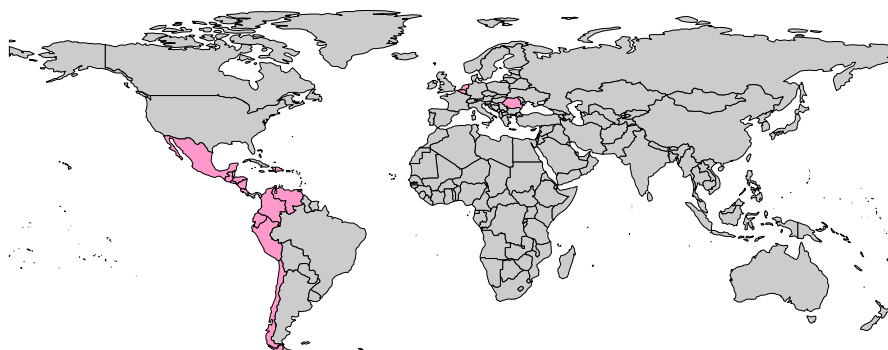
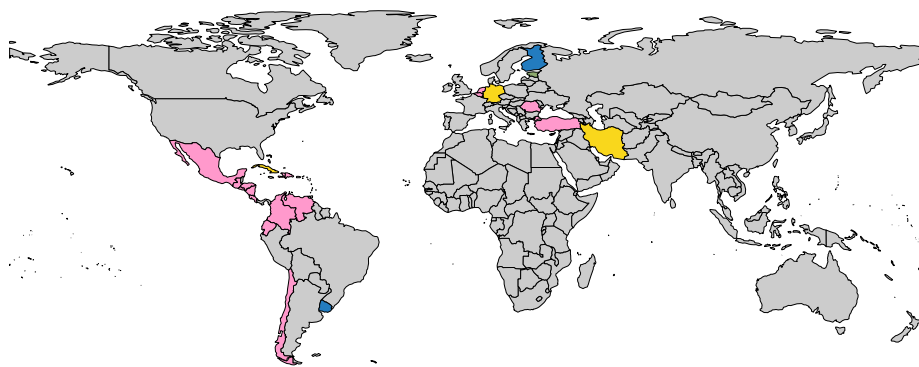
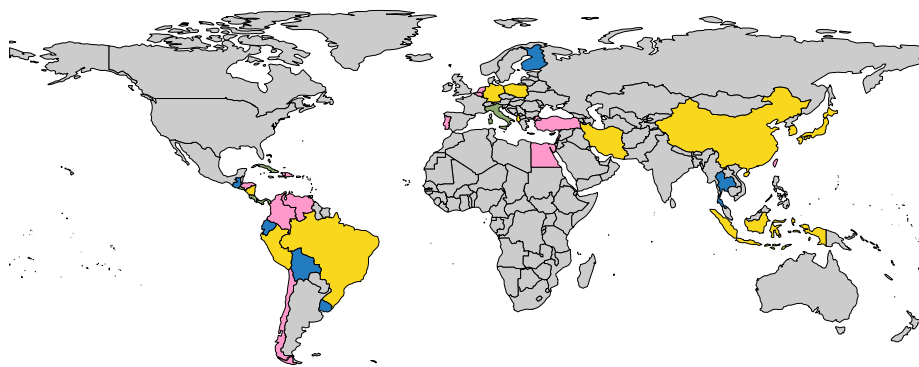
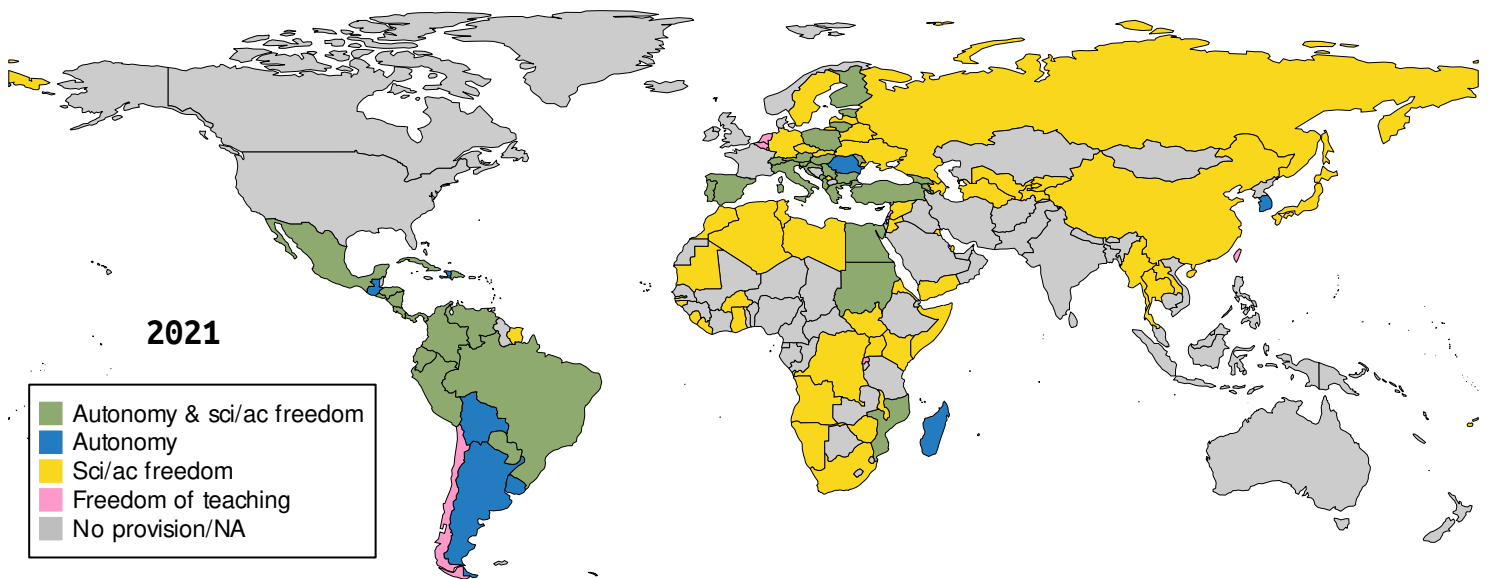


Figure 2: Worldwide wordings of acfree provisions in 2021, 1950, 1920 and 1900.

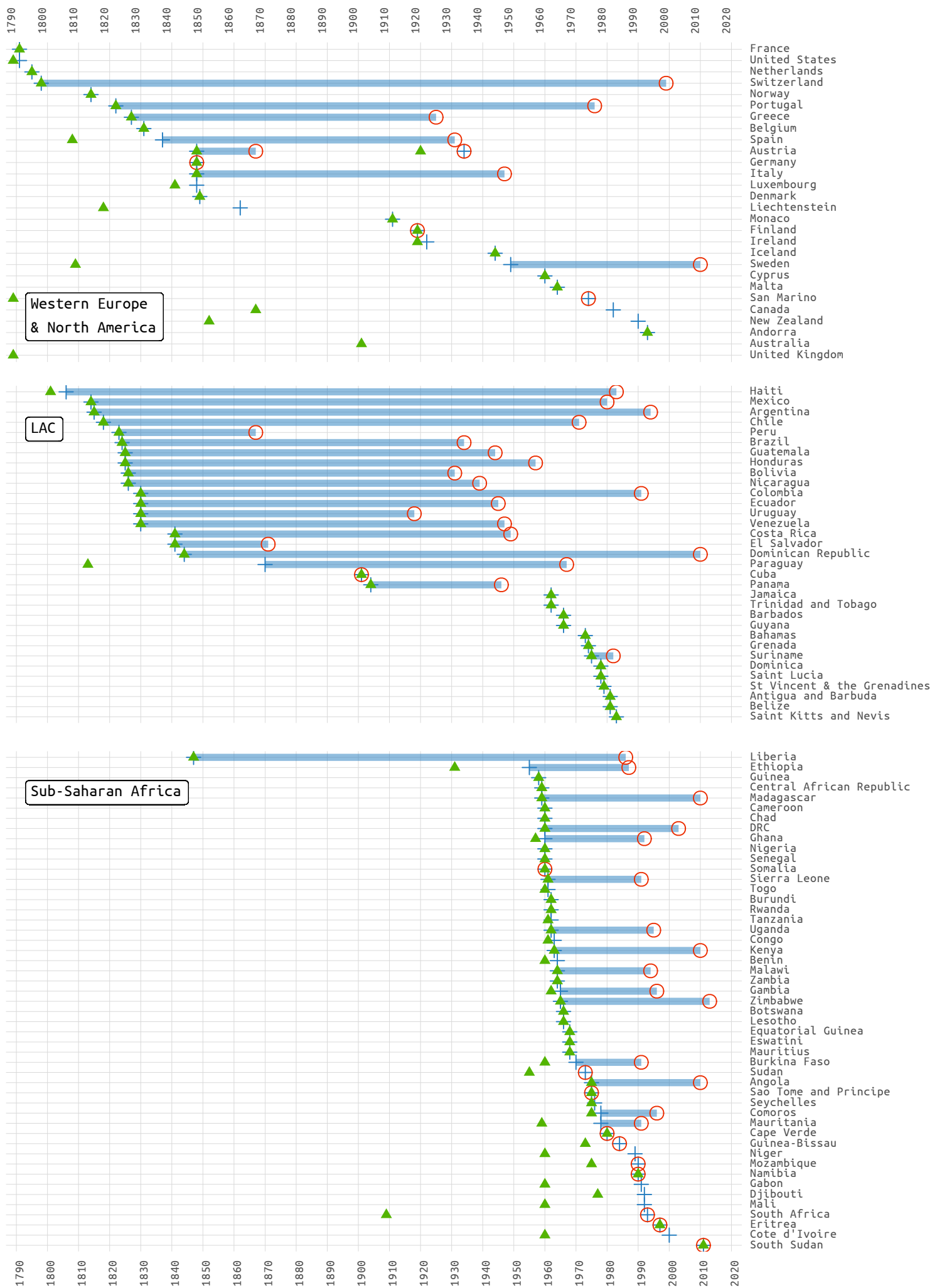


Figure 3a: Time from first adoption of free expression/press provision to first adoption of acfree provision (1/2). NB: Austria-Hungary & Austria were merged for this graph.

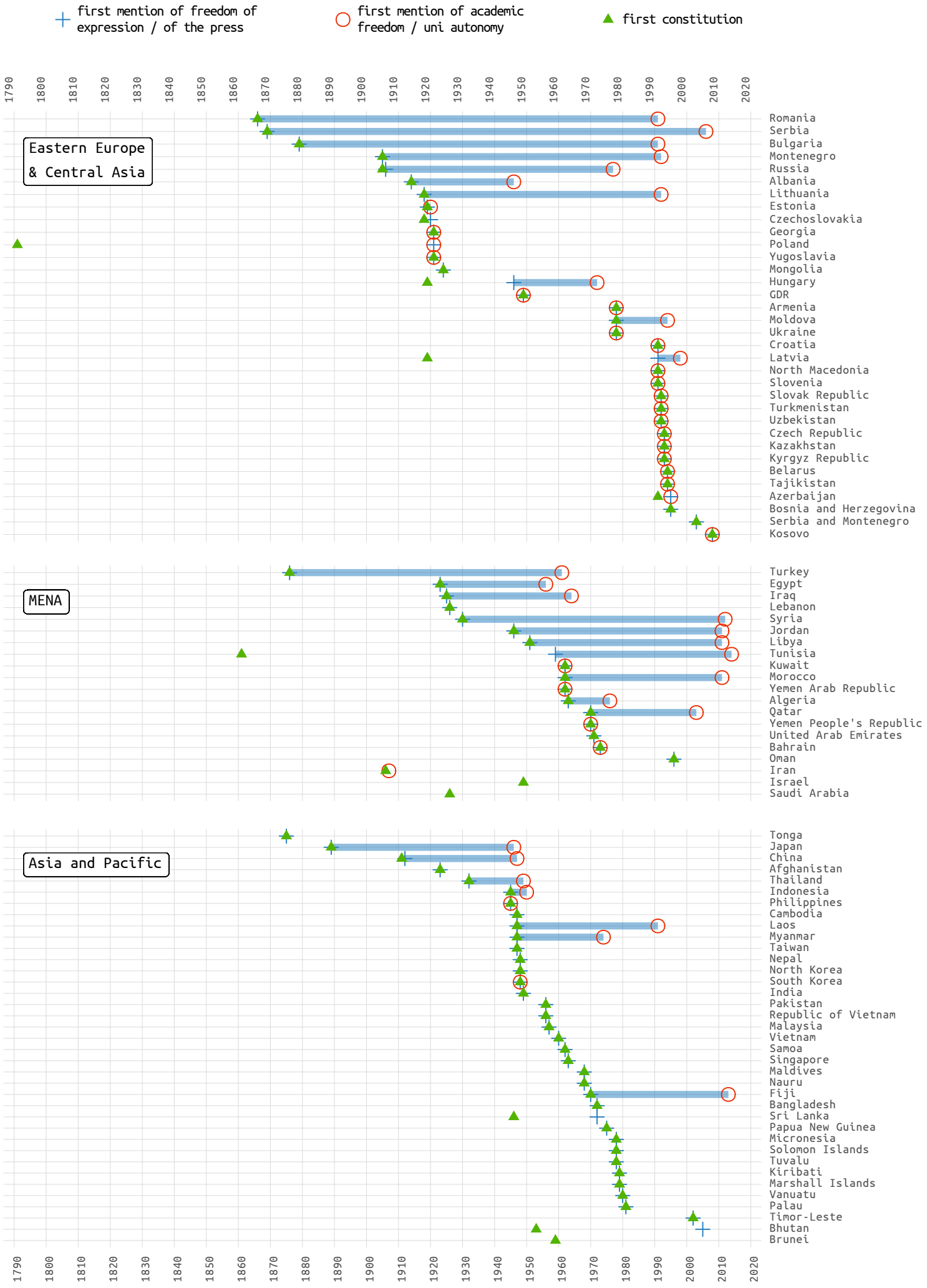


Figure 3b: Time from first adoption of free expression/press provision to first adoption of acfree provision (2/2).

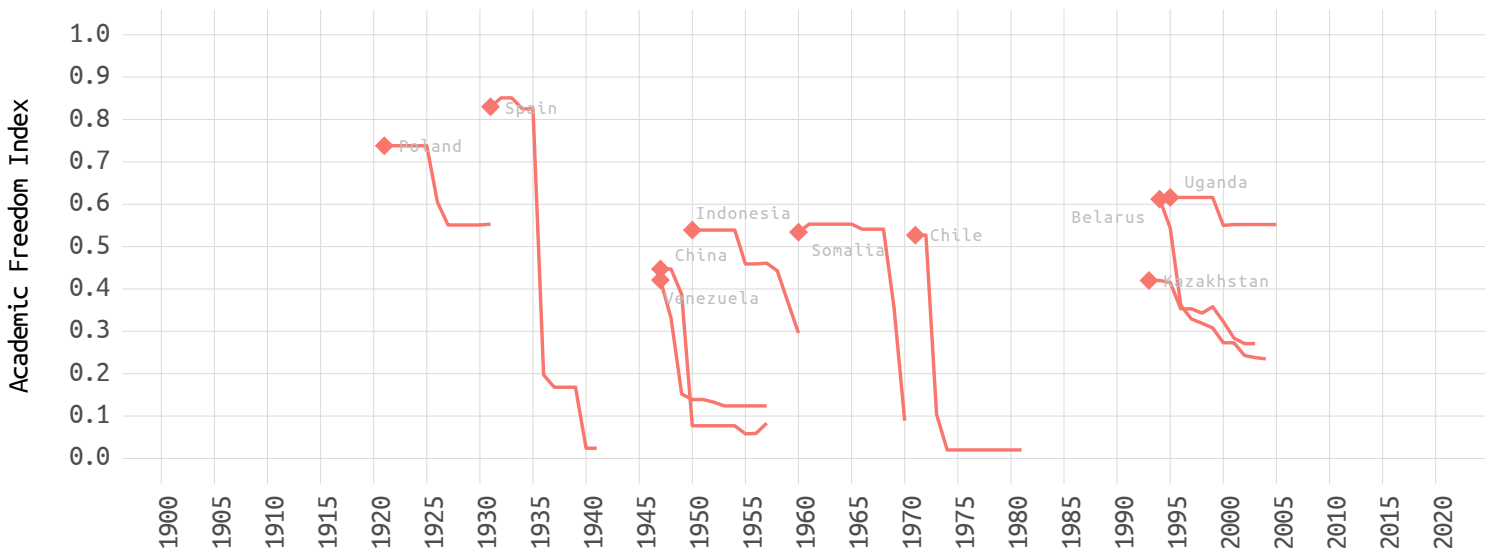
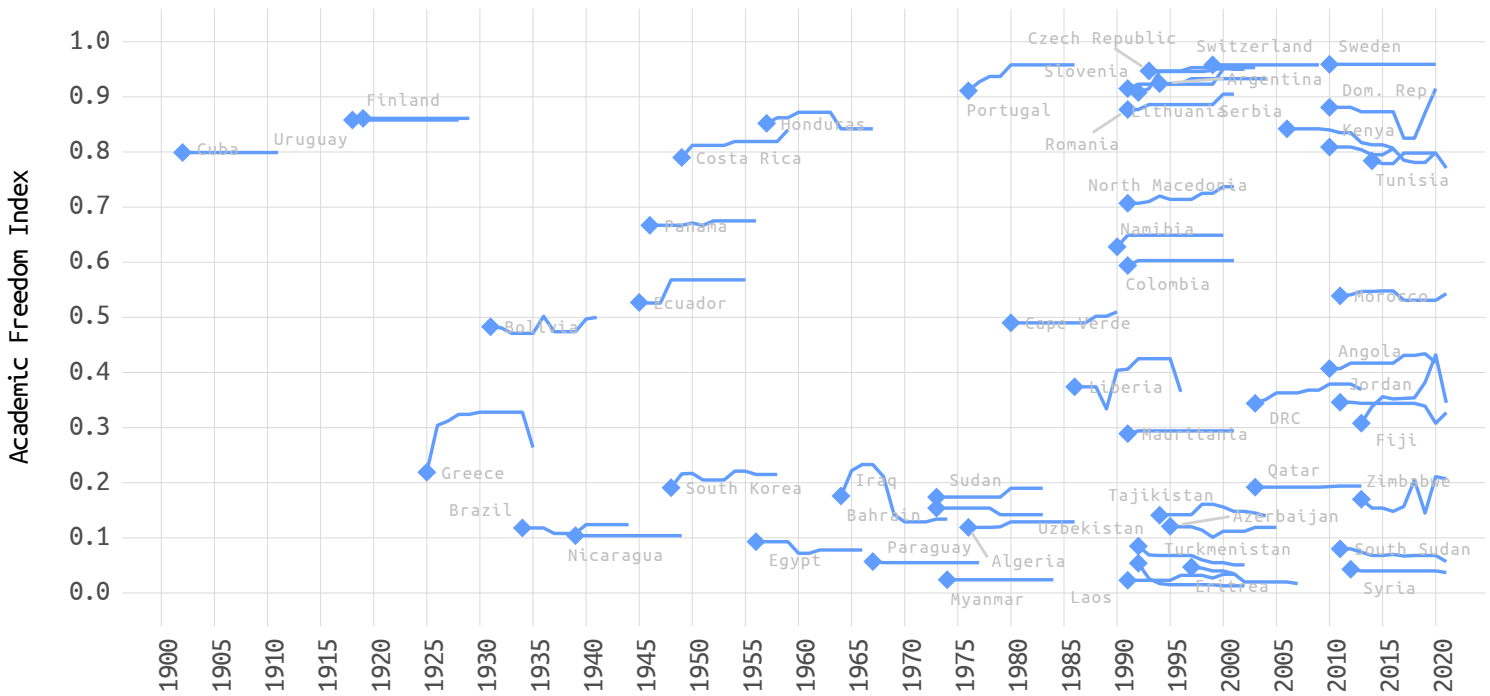
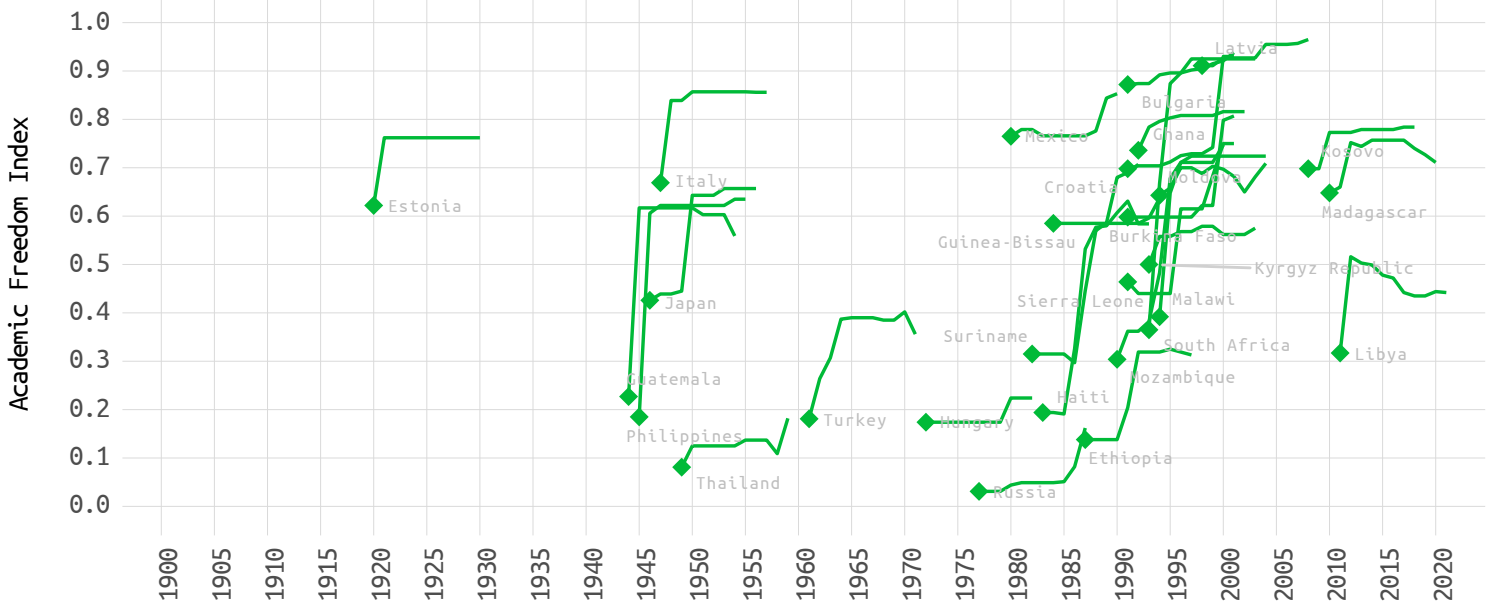


Figure 5: Ten-year trends in academic freedom levels for first-time AF adopters. Diamonds represent date of first adoption. Academic Freedom Index data source: V-Dem (2022): v12.