



A.W. Heringa
Ph. Kiiver

Constitutions Compared

An Introduction to Comparative Constitutional Law

Second Edition

Biblioteca de la Corte Suprema	
Nº de Orden	124832
Ubicación	FSS06



TABLE OF CONTENTS

PREFACE TO THE SECOND EDITION	v
✓ CHAPTER 1: INTRODUCTION TO COMPARATIVE CONSTITUTIONAL LAW	1
1. Introduction	1
2. The Meaning of a Constitution	2
3. The Flexibility of Constitutions	5
4. Terminology	8
4.1. State	8
4.2. Country	9
4.3. Nation	9
4.4. Government	9
4.5. Republic	10
5. Further Reading	12
✓ CHAPTER 2: CONSTITUTIONS COMPARED: ORIGINS AND MAIN FEATURES	13
1. Overview	13
1.1. The Notion of Sovereignty	13
1.1.1. Popular versus Royal Sovereignty	14
1.1.2. Popular versus National Sovereignty	15
1.1.3. Popular versus State Sovereignty	15
1.1.4. Parliamentary Sovereignty	16
1.1.5. The Absence of Sovereignty	17
1.1.6. Sovereignty and European Integration	17
1.2. Parliamentary and Presidential Systems	19
1.3. Separation of Powers and Checks and Balances	21
1.4. The Role of Judges	23
1.5. State Structure: Unitarism and Federalism	23
1.6. Summary	24
1.7. Further Reading	25

2.	The United States	25
2.1.	Civil War and Reconstruction	26
2.2.	The US Constitution	26
3.	Germany	28
3.1.	National Unification	28
3.2.	Division and Reunification	30
3.3.	The Basic Law	31
4.	The United Kingdom	33
4.1.	Monarchy and Parliament	33
4.2.	The UK Constitution	35
4.3.	The UK and Europe	37
5.	France	37
5.1.	A Sequence of Constitutions	38
5.2.	The Constitution of the Fifth Republic	39
6.	The Netherlands	41
6.1.	Dutch Independence and the French Period	41
6.2.	The Kingdom of the United Netherlands	42
6.3.	The Dutch Constitution	43
6.4.	The Charter for the Kingdom	45
CHAPTER 3: FEDERALISM, UNITARISM AND DECENTRALIZATION		47
1.	Overview	47
1.1.	Degrees of Federalism and Devolution	49
1.2.	Types of Federalism and Devolution	50
1.3.	Federalism and the European Union	51
1.4.	Summary	52
1.5.	Further Reading	52
2.	The United States	53
2.1.	US Federalism: The Senate	53
2.2.	Federalism and the House of Representatives	54
2.3.	Vertical Separation of Powers	54
2.4.	Federalism at Presidential Elections	57
2.5.	Federalism and the Executive and Judicial System	57
3.	Germany	57
3.1.	German Federalism: The <i>Bundesrat</i>	58
3.2.	Federalism and the <i>Bundestag</i>	59
3.3.	The Competences of the Federal Lawmaker	60
3.4.	Federalism and the Election of the Federal President	61
3.5.	Federalism and the Executive and Judicial System	61
4.	The United Kingdom	62
5.	France	64

6.	The Netherlands	65
6.1.	Decentralization in the Netherlands	65
6.2.	The Overarching Kingdom	66
CHAPTER 4: PARLIAMENTS AND LAWMAKING		69
1.	Overview	69
1.1.	Principles of Elections	71
1.2.	Election Systems	72
1.3.	Bicameralism	74
1.4.	The Legislative Process	75
1.5.	The Government and the Head of State	77
1.6.	Summary	78
1.7.	Further Reading	78
2.	The United States	79
2.1.	The House of Representatives	79
2.2.	The Senate	80
2.3.	Federal Lawmaking	81
2.4.	The President	81
3.	Germany	82
3.1.	The <i>Bundestag</i>	82
3.2.	The 'Old' System	83
3.2.1.	Seat Distribution	83
3.2.2.	The Threshold	84
3.2.3.	Unconstitutionality	85
3.3.	The <i>Bundesrat</i>	86
3.4.	Federal Lawmaking	87
3.4.1.	The Legislative Process	88
3.4.2.	The <i>Bundesrat</i>	88
3.4.3.	The President	90
4.	The United Kingdom	90
4.1.	The Commons	91
4.2.	The Lords	91
4.3.	The Legislative Process	93
4.3.1.	Royal Assent	94
4.3.2.	The Lords	94
5.	France	95
5.1.	The National Assembly	95
5.2.	The Senate	97
5.3.	The Legislative Process	98
5.3.1.	The Senate	99
5.3.2.	Organic Statutes	100
5.3.3.	The President	100
5.3.4.	The Constitutional Council	101

6.	The Netherlands.....	103
6.1.	The Second Chamber.....	103
6.2.	The First Chamber	105
6.3.	The Legislative Process	105
6.3.1.	Statutes for the Netherlands in Europe.....	106
6.3.2.	The King.....	106
6.3.3.	Statutes for the Overall Kingdom	107

CHAPTER 5: GOVERNMENTS, THEIR PARLIAMENTS AND THEIR HEADS OF STATE..... 109

1.	Overview.....	109
1.1.	Heads of State and Government.....	109
1.2.	The Rank of the Prime-Minister.....	111
1.3.	Parliamentary Investiture.....	112
1.4.	Ministerial Accountability	114
1.5.	National Parliaments and the European Union.....	117
1.6.	The Immunity of the Head of State	118
1.7.	Dissolution of Parliament	120
1.8.	Summary.....	121
1.9.	Further Reading	122
2.	The United States	122
2.1.	The President and Vice-President.....	123
2.2.	The President and Congress.....	125
3.	Germany.....	126
3.1.	The Federal President.....	126
3.2.	The Chancellor and his Government	127
3.3.	Ministerial Accountability	128
3.4.	Confidence Question	130
4.	The United Kingdom.....	131
4.1.	The King.....	131
4.2.	The Prime-Minister and his Cabinet.....	132
4.3.	Ministerial Accountability	133
5.	France	134
5.1.	The President.....	135
5.2.	The Prime-Minister and his Government.....	136
5.3.	Ministerial Accountability	137
6.	The Netherlands.....	138
6.1.	The King.....	139
6.2.	The Prime-Minister and his Cabinet.....	140
6.3.	Ministerial Accountability	141
6.4.	Motions of No-Confidence	143
6.5.	The Government of the Kingdom.....	144

✓	CHAPTER 6: JUDICIAL REVIEW AND HUMAN RIGHTS.....	145
1.	Overview.....	145
1.1.	Constitutional Review of Legislation.....	145
1.2.	The Procedural Setting of Constitutional Review	147
1.3.	Review of Treaty Law Compliance	149
1.4.	European Union Law	150
1.5.	Summary.....	152
1.6.	Further Reading	152
2.	The United States	153
2.1.	The Court System.....	153
2.2.	Constitutional Review.....	154
2.3.	International Treaties.....	156
3.	Germany.....	156
3.1.	The Court System.....	156
3.2.	Constitutional Review.....	157
3.3.	International Treaties and the ECHR.....	159
3.4.	European Union Law	159
4.	The United Kingdom.....	160
4.1.	The Court System.....	160
4.2.	Constitutional Review.....	160
4.3.	International Treaties and the ECHR.....	161
4.4.	European Union Law	162
5.	France	163
5.1.	The Court System.....	163
5.2.	Constitutional Review.....	163
5.3.	International Treaties and the ECHR.....	164
5.4.	European Union Law	164
6.	The Netherlands.....	165
6.1.	The Court System.....	165
6.2.	Constitutional Review	165
6.3.	International Treaties and the ECHR.....	166
6.4.	European Union Law	166
7.	European Human Rights	166
8.	The ECHR, the European Union and the National Constitutions.....	168
✓	ANNEX 1: USEFUL LINKS.....	171
✓	ANNEX 2: GLOSSARY.....	173
✓	ANNEX 3: OVERVIEW OF CONSTITUTIONS COMPARED.....	178
✓	ANNEX 4: SELECTED ARTICLES AND AMENDMENTS FROM THE CONSTITUTION OF THE UNITED STATES	181

✓	ANNEX 5: SELECTED PROVISIONS FROM THE FRENCH CONSTITUTION.....	195
✓	ANNEX 6: FRENCH DECLARATION OF THE RIGHTS OF MAN	219
✓	ANNEX 7: SELECTED PROVISIONS FROM THE GERMAN BASIC LAW.....	223
✓	ANNEX 8: SELECTED PROVISIONS FROM THE CHARTER FOR THE KINGDOM OF THE NETHERLANDS	251
✓	ANNEX 9: SELECTED PROVISIONS FROM THE DUTCH CONSTITUTION.....	261
✓	ANNEX 10: SELECTED STATUTORY PROVISIONS FROM THE UNITED KINGDOM.....	281
✓	ANNEX 11: SELECTED PROVISIONS FROM THE ECHR.....	301
✓	ANNEX 12: SELECTED PROVISIONS FROM THE TREATY ON EUROPEAN UNION.....	315