

CONSTITUTIONS COMPARED

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An Introduction to Comparative Constitutional Law

Aalt Willem HERINGA

4th edition



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PREFACE TO THE FOURTH EDITION

The first three editions of *Constitutions Compared* have proven to be valuable teaching tools. Students of comparative constitutional law continue to appreciate the book's clarity and user-friendly structure: comparative overviews of certain aspects of constitutional law (like federalism, election systems or the role of judges) are followed by more detailed country chapters on that specific aspect. Country chapters initially covered the US, Germany, the UK, France and the Netherlands, which in their diversity help illustrate broader concepts of constitutional law.

The first three editions were a joint effort of Philipp Kiiver and Aalt Willem Heringa. Philipp Kiiver however has opted for a career outside academia in European institutions. It was a pleasure working with him for many years on this book. This book therefore remains the result of our joint work; however, the changes made in this fourth edition, and also therefore the overall result of this fourth edition, are my sole responsibility. I do remain grateful to Philipp Kiiver for his energy, input and devotion.

In this fourth edition, I have expanded several paragraphs and chapters to provide for even more detail on national legal systems and constitutional comparison. In addition, I have updated the discussion wherever necessary. Thus, the fourth edition most notably takes account of the new election system in Germany; the operation of the constitutional review procedure in France; the Scottish referendum and its aftermath in the UK; the new procedure for the formation of a government in the Netherlands; the discussion about the accession of the EU to the European Convention on Human Rights; and notably the effects on domestic constitutional law in the EU member states by EU membership, the EMU, the political dialogue between national parliaments and the Commission, the banking union and many other relevant developments. The EU has therefore more extensively been woven into this book, as a constitutional system per se and as an international organization which heavily impacts upon domestic constitutional law. It may appear odd at first sight and from a theoretical perspective to include the EU in a book on comparative constitutional law. However, the great impact the EU has on constitutional legal issues and balances in member states would in itself deserve to put more focus on the EU, in order to make clear to readers how precisely this impact is present and expressed. And that in itself does also necessitate for those readers with less knowledge of the EU to include basic information on the EU in this book. Also, although being an

international organization, the EU has gradually developed in an organisation per se, which shows many similarities with states and is interwoven with the member states and exercises a great deal of state functions. Even a wide variety of sovereign powers of member states have been transferred to and/or shared with the EU. In teaching constitutional law it seems self evident to me that also EU law has to be included: comparative constitutional law also has this vertical, European, important aspect of a multi-level constitutional order. That means attention to the EU in the different chapters as one of the systems under comparison, and also to the EU as an impact on domestic constitutional law of the member states.

To the benefit of both students and teachers, I have updated the catalogue of possible exam questions at the end of this book, to facilitate and encourage self-testing and to provide suggestions for possible exam question formats.

It has been pointed out that this book might cover more systems, including non-Western systems. However, as in the foregoing editions I decided to keep the current selection of five constitutional systems in the fourth edition as well, be it expanded with an addition of the EU. These systems represent generic models of constitutional solutions across the world, and understanding these five systems in turn makes most other systems much easier to understand. The presidential systems of Brazil and the Philippines will be more accessible to readers who have already familiarized themselves with the US system; those who know the federal systems of Germany and the US, including their differences, will quickly gain a grasp of Australia, Nigeria or India; knowledge of the British and Dutch monarchies opens insight into the monarchies of Norway, Spain and Thailand; the French semi-presidential system offers a point of reference for the study of the systems in Romania and Russia; bicameral parliaments, election systems and constitutional courts around the world can be put into context based on the different models and blueprints that are discussed in this book. However, specifically in the first chapters I have included more references to other constitutional systems than the selected ones.

Like it was said in the preface to the first three editions, I believe that comparative law is an essential element in the curriculum of any law student. Specifically this is the case in the EU context of multi-level governance and constitutionalism, the collaboration between national political systems and the EU, and the construction of an EU model which meets our requirements and expectations of constitutionalism, legitimacy, democracy and rule of law. May this book continue to help promote the mainstreaming of comparative constitutional law in the main body of legal education.

With Sascha Hardt I have edited a book about *Sources of Constitutional Law* (Intersentia 2014), containing constitutions and fundamental provisions from the USA, France, Germany, the Netherlands and the UK, including the ECHR and the EU Charter of Fundamental Rights. That book is also available to

students and interested readers who wish to acquire insight into constitutional issues and concepts and comparative knowledge. For readers searching for a comparative collection of treaties, international instruments, laws and statutes and regulations for the purposes of comparative law, I refer them to Sascha Hardt and Nicole Kornet, *The Maastricht Collection, Selected National, European and International Provisions from Public and Private Law* (two volumes, 4th edition, Europa Law Publishing, 2015).

Finally I would like to thank those readers and students who have commented on the specific phrases in this book. Their contribution was extremely valuable.

Prof. Aalt Willem Heringa
Maastricht, March 2016

Note: Constitutional offices or functions, such as King, Prime Minister, or candidate, shall be referred to in the masculine form. All offices and functions can of course be exercised by both men and women, unless indicated otherwise.

A Brexit?

Before this book went to press, the UK Brexit referendum was held on 23 June 2016. 52% voted in favour of leaving the European Union (EU) and 48% voted in favour of remaining in the EU. What this will mean for constitutional developments in the United Kingdom is too early to tell, and so is how and when (whether?) a Brexit will eventually be effectuated under art. 50 TEU.

For this reason I have opted only to mention the UK Brexit referendum in various places in this book, without speculating about its consequences. That will have to wait for the next, fifth, edition.

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