

# **WRITTEN CONSTITUTIONS**

## **A Computerized Comparative Study**

# WRITTEN CONSTITUTIONS

A Computerized Comparative Study

*by*

**Henc van Maarseveen**

*Professor of Constitutional Law  
Erasmus University, Rotterdam*

*and*

**Ger van der Tang**

*Assistant Professor of Constitutional Law  
Erasmus University, Rotterdam*

1978

OCEANA PUBLICATIONS, INC.  
Dobbs Ferry, New York

SIJTHOFF & NORDHOFF  
Alphen aan den Rijn, Netherlands

**Library of Congress Cataloging in Publication Data**

**Maarseveen, H. Th. J. F. van.**  
Written constitutions.

Includes indexes.

1. Constitutions. 2. Constitutional law.

I. Tang, Ger van der, 1943- joint author.

II. Title.

K3165.M3 342.02 78-9171

ISBN 0-379-20361-8 (Oceana)

90 286 0918 0 (Sijthoff)

© Copyright 1978 by Oceana Publications, Inc.

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, xerography, or any information storage and retrieval system, without permission in writing from the publisher.

Manufactured in the United States of America

## **TABLE OF CONTENTS**

|                                                                                                                                                                                                                                                                |           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>INTRODUCTION</b>                                                                                                                                                                                                                                            | <b>2</b>  |
| 1. Terminology                                                                                                                                                                                                                                                 | 2         |
| 2. Contents                                                                                                                                                                                                                                                    | 2         |
| 3. Research motives                                                                                                                                                                                                                                            | 2         |
| 4. Public interest                                                                                                                                                                                                                                             | 3         |
| 5. Reasons of professional interest                                                                                                                                                                                                                            | 5         |
| 6. Personal interest                                                                                                                                                                                                                                           | 7         |
| 7. Two questions                                                                                                                                                                                                                                               | 8         |
| 8. Further information for the constitutional lawyer                                                                                                                                                                                                           | 8         |
| <br><b>PART ONE: DATA ON CONSTITUTIONS</b>                                                                                                                                                                                                                     |           |
| <br><b>Chapter One: The data research</b>                                                                                                                                                                                                                      | <b>11</b> |
| 1. Why and what?                                                                                                                                                                                                                                               | 11        |
| 2. Synopsis of Part One                                                                                                                                                                                                                                        | 13        |
| 3. Selected items                                                                                                                                                                                                                                              | 13        |
| 4. The research design                                                                                                                                                                                                                                         | 16        |
| 5. The choice of the design                                                                                                                                                                                                                                    | 17        |
| 6. The research subject                                                                                                                                                                                                                                        | 18        |
| 7. Other methodological problems                                                                                                                                                                                                                               | 19        |
| 8. Data source                                                                                                                                                                                                                                                 | 20        |
| 9. The process of data collection                                                                                                                                                                                                                              | 21        |
| 10. Reliability and validity                                                                                                                                                                                                                                   | 22        |
| <br><b>Chapter Two: Survey of national states, listing the constitutional documents included in the inquiry and the closing dates of the chronologies as printed in Blaustein and Flanz's "Constitutions of the Countries of the World" per March 31, 1976</b> | <b>23</b> |
| <br><b>Chapter Three: Survey of the questionnaire listing the results in prospect of each variable</b>                                                                                                                                                         | <b>38</b> |
| 1. Introductory questions                                                                                                                                                                                                                                      | 38        |
| 2. Documentary constitution and the structure of government                                                                                                                                                                                                    | 54        |
| 3. Documentary constitution and the legal system                                                                                                                                                                                                               | 74        |

|                                                                                                                                                                                          |            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 4. The forms of documentary constitutions                                                                                                                                                | 85         |
| 5. Documentary constitutions and universal values and norms                                                                                                                              | 88         |
| a. Questions with regard to values and norms that have particular reference to the relationship between the state and its citizens, and to governmental institutions and their operation | 88         |
| b. Questions with regard to civil and political rights                                                                                                                                   | 103        |
| c. Questions with regard to social and economic rights                                                                                                                                   | 114        |
| d. Questions with regard to cultural rights                                                                                                                                              | 118        |
| e. Questions with regard to civil duties                                                                                                                                                 | 121        |
| f. Final questions                                                                                                                                                                       | 124        |
| 6. Documentary constitution and aspects of cultural life                                                                                                                                 | 126        |
| 7. Documentary constitution and state- and nation-building                                                                                                                               | 130        |
| <b>Chapter Four: Similarities between constitutions</b>                                                                                                                                  | <b>137</b> |
| 1. Definition of similarity                                                                                                                                                              | 137        |
| 2. Qualification of similarities                                                                                                                                                         | 138        |
| 3. Notification of similarities                                                                                                                                                          | 138        |
| 4. Points of similarity                                                                                                                                                                  | 139        |
| 5. Summary                                                                                                                                                                               | 154        |
| 6. Degree of uniformity                                                                                                                                                                  | 158        |
| 7. What do constitutions contain?                                                                                                                                                        | 161        |
| 8. Developments between 1788 and 1975                                                                                                                                                    | 162        |
| 9. Conclusions                                                                                                                                                                           | 164        |
| Appendix to Chapter Four                                                                                                                                                                 | 165        |
| <b>Chapter Five: The length of constitutions</b>                                                                                                                                         | <b>174</b> |
| 1. Introduction                                                                                                                                                                          | 174        |
| 2. Views on the length of constitutions                                                                                                                                                  | 175        |
| 3. Scheme of research on length of constitutions                                                                                                                                         | 176        |
| 4. Research into the various factors                                                                                                                                                     | 177        |
| 5. A combination of factors                                                                                                                                                              | 184        |
| 6. Conclusions                                                                                                                                                                           | 186        |
| <b>Chapter Six: National constitutions and the Universal Declaration of Human Rights</b>                                                                                                 | <b>189</b> |
| 1. Introduction                                                                                                                                                                          | 189        |
| 2. The influence of the Universal Declaration                                                                                                                                            | 189        |
| 3. Aim of research on relationship between the content of the Universal Declaration and that of the constitutions                                                                        | 190        |
| 4. Value references in the U.N. Declaration                                                                                                                                              | 191        |
| 5. Personal and political rights and freedoms                                                                                                                                            | 195        |
| 6. Social rights                                                                                                                                                                         | 198        |

|                                                          |     |
|----------------------------------------------------------|-----|
| 7. Constitutions established 1949 or later               | 201 |
| 8. Constitutions of single-party states                  | 205 |
| 9. The inspirational effect of the Universal Declaration | 207 |
| 10. Summary                                              | 208 |

## **Chapter Seven: Constitutions as instruments of state- and nation-building** 212

|                                                           |     |
|-----------------------------------------------------------|-----|
| 1. Introduction                                           | 212 |
| 2. Elements of state- and nation-building                 | 213 |
| 3. The scores in respect of the nation-building variables | 215 |
| 4. Closer examination of the results                      | 217 |
| 5. Some conclusions                                       | 226 |

## **PART TWO: THEORETICAL REFLECTIONS**

### **Chapter Eight: Constitutional specialism** 231

|                                                            |     |
|------------------------------------------------------------|-----|
| 1. Introduction                                            | 231 |
| 2. The narrow meaning of "constitution"                    | 231 |
| 3. The impossibility of providing a substantive definition | 232 |
| 4. New tendencies                                          | 233 |
| 5. A formal definition                                     | 234 |
| 6. Existence of constitutional specialism                  | 235 |
| 7. Theoretical levels                                      | 236 |
| 8. Approaches                                              | 237 |
| 9. Which approach?                                         | 239 |
| 10. Conclusion                                             | 240 |

### **Chapter Nine: Typology of constitutions** 241

|                                     |     |
|-------------------------------------|-----|
| 1. What is constitutional typology? | 241 |
| 2. Why typology?                    | 242 |
| 3. Classifying constitutions        | 244 |
| 4. Sorts of classifications         | 245 |
| 5. Obsolete classifications         | 248 |
| 6. Formal classifications           | 249 |
| 7. Material classifications         | 254 |
| 8. Dubious typology                 | 260 |
| 9. Constitutional archetypes        | 261 |

### **Chapter Ten: Constitutional models** 263

|                                       |     |
|---------------------------------------|-----|
| 1. What is a model?                   | 263 |
| 2. Physical models of constitutions   | 265 |
| 3. Conceptual models of constitutions | 265 |
| 4. Other models                       | 267 |

|                                                   |            |
|---------------------------------------------------|------------|
| 5. Model constitution                             | 268        |
| 6. A basic model?                                 | 270        |
| <b>Chapter Eleven: Functions of constitutions</b> | <b>272</b> |
| 1. The word "function"                            | 272        |
| 2. The various functions of constitutions         | 273        |
| 3. Four general functions                         | 275        |
| 4. Transformation                                 | 275        |
| 5. Information                                    | 277        |
| 6. Regulation                                     | 279        |
| 7. Canalization                                   | 280        |
| 8. Functional effectiveness                       | 281        |
| 9. Dysfunctionality                               | 282        |
| 10. Final remarks                                 | 282        |
| <b>Chapter Twelve: Some other problems</b>        | <b>283</b> |
| 1. Constitutional analysis                        | 283        |
| 2. Constitutional concepts                        | 283        |
| 3. Constitutional families                        | 284        |
| 4. Making and amending constitutions              | 285        |
| 5. Final remarks                                  | 287        |
| <b>Chapter Thirteen: Concluding notes</b>         | <b>288</b> |
| 1. Past and present                               | 288        |
| 2. Similarity                                     | 288        |
| 3. An international orientation                   | 289        |
| 4. Neutrality                                     | 289        |
| 5. Human aspects                                  | 289        |
| 6. Human rights in constitutions                  | 290        |
| 7. The universal aspect of constitutions          | 291        |
| 8. Why important?                                 | 292        |
| 9. Conclusion                                     | 292        |
| <b>APPENDIX: Bibliography</b>                     | <b>294</b> |
| Introduction                                      | 294        |
| A. Collections of constitutions                   | 297        |
| B. General theory                                 |            |
| 1. Books                                          | 299        |
| 2. Articles in periodicals etc.                   | 304        |
| C. Comparative theory                             |            |
| 1. Books                                          | 312        |
| 2. Articles in periodicals etc.                   | 316        |
| D. Special subjects                               | 320        |

|                                                              |            |
|--------------------------------------------------------------|------------|
| <b>INDEX OF TABLES</b>                                       | <b>323</b> |
| <b>INDEX OF RESEARCH VARIABLES</b>                           | <b>328</b> |
| <b>INDEX OF SUBJECTS DEALT WITH IN THE<br/>QUESTIONNAIRE</b> | <b>332</b> |