

## TABLE OF CONTENTS

|                                                                   |    |
|-------------------------------------------------------------------|----|
| PREFACE TO THE THIRD 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 .....                                              | 9  |
| 4.1. State.....                                                   | 9  |
| 4.2. Country .....                                                | 10 |
| 4.3. Nation.....                                                  | 10 |
| 4.4. Government.....                                              | 10 |
| 4.5. Republic.....                                                | 11 |
| 5. Further Reading.....                                           | 13 |
| CHAPTER 2: CONSTITUTIONS COMPARED: ORIGINS AND MAIN FEATURES..... | 15 |
| 1. Overview.....                                                  | 15 |
| 1.1. The Notion of Sovereignty .....                              | 15 |
| 1.1.1. Popular versus Royal Sovereignty .....                     | 16 |
| 1.1.2. Popular versus National Sovereignty .....                  | 17 |
| 1.1.3. Popular versus State Sovereignty .....                     | 17 |
| 1.1.4. Parliamentary Sovereignty .....                            | 18 |
| 1.1.5. The Absence of Sovereignty .....                           | 19 |
| 1.1.6. Sovereignty and European Integration.....                  | 19 |
| 1.2. Parliamentary and Presidential Systems.....                  | 20 |
| 1.3. Separation of Powers and Checks and Balances.....            | 22 |
| 1.4. The Role of Judges.....                                      | 24 |
| 1.5. State Structure: Unitarism and Federalism .....              | 25 |
| 1.6. Summary.....                                                 | 26 |
| 1.7. Further Reading.....                                         | 26 |

|                                                                   |                                                           |           |
|-------------------------------------------------------------------|-----------------------------------------------------------|-----------|
| 2.                                                                | The United States.....                                    | 27        |
| 2.1.                                                              | Civil War and Reconstruction .....                        | 27        |
| 2.2.                                                              | The US Constitution.....                                  | 28        |
| 3.                                                                | Germany.....                                              | 30        |
| 3.1.                                                              | National Unification.....                                 | 30        |
| 3.2.                                                              | Division and Reunification .....                          | 32        |
| 3.3.                                                              | The Basic Law.....                                        | 33        |
| 4.                                                                | The United Kingdom .....                                  | 35        |
| 4.1.                                                              | Monarchy and Parliament .....                             | 35        |
| 4.2.                                                              | The UK Constitution.....                                  | 37        |
| 4.3.                                                              | The UK and Europe.....                                    | 39        |
| 5.                                                                | France .....                                              | 40        |
| 5.1.                                                              | A Sequence of Constitutions.....                          | 40        |
| 5.2.                                                              | The Constitution of the Fifth Republic .....              | 41        |
| 6.                                                                | The Netherlands .....                                     | 43        |
| 6.1.                                                              | Dutch Independence and the French Period .....            | 44        |
| 6.2.                                                              | The Kingdom of the United Netherlands.....                | 45        |
| 6.3.                                                              | The Dutch Constitution .....                              | 45        |
| 6.4.                                                              | The Charter for the Kingdom .....                         | 47        |
| <b>CHAPTER 3: FEDERALISM, UNITARISM AND DECENTRALIZATION.....</b> |                                                           | <b>49</b> |
| 1.                                                                | Overview .....                                            | 49        |
| 1.1.                                                              | Degrees of Federalism and Devolution .....                | 51        |
| 1.2.                                                              | Types of Federalism and Devolution.....                   | 52        |
| 1.3.                                                              | Federalism and the European Union .....                   | 53        |
| 1.4.                                                              | Summary .....                                             | 54        |
| 1.5.                                                              | Further Reading.....                                      | 55        |
| 2.                                                                | The United States.....                                    | 55        |
| 2.1.                                                              | US Federalism: The Senate.....                            | 56        |
| 2.2.                                                              | Federalism and the House of Representatives .....         | 56        |
| 2.3.                                                              | Vertical Separation of Powers .....                       | 57        |
| 2.4.                                                              | Federalism at Presidential Elections.....                 | 59        |
| 2.5.                                                              | Federalism and the Executive and Judicial System .....    | 59        |
| 3.                                                                | Germany.....                                              | 60        |
| 3.1.                                                              | German Federalism: The <i>Bundesrat</i> .....             | 61        |
| 3.2.                                                              | Federalism and the <i>Bundestag</i> .....                 | 62        |
| 3.3.                                                              | The Competences of the Federal Lawmaker .....             | 62        |
| 3.4.                                                              | Federalism and the Election of the Federal President..... | 63        |
| 3.5.                                                              | Federalism and the Executive and Judicial System .....    | 63        |
| 4.                                                                | The United Kingdom .....                                  | 64        |
| 5.                                                                | France .....                                              | 66        |

|                                                   |                                            |           |
|---------------------------------------------------|--------------------------------------------|-----------|
| 6.                                                | The Netherlands .....                      | 68        |
| 6.1.                                              | Decentralization in the Netherlands .....  | 68        |
| 6.2.                                              | The Overarching Kingdom .....              | 69        |
| <b>CHAPTER 4: PARLIAMENTS AND LAWMAKING .....</b> |                                            | <b>71</b> |
| 1.                                                | Overview .....                             | 71        |
| 1.1.                                              | Principles of Elections .....              | 74        |
| 1.2.                                              | Election Systems .....                     | 76        |
| 1.3.                                              | Bicameralism .....                         | 78        |
| 1.4.                                              | The Legislative Process .....              | 79        |
| 1.5.                                              | Referendums .....                          | 81        |
| 1.6.                                              | The Government and the Head of State ..... | 83        |
| 1.7.                                              | Summary .....                              | 84        |
| 1.8.                                              | Further Reading .....                      | 84        |
| 2.                                                | The United States .....                    | 85        |
| 2.1.                                              | The House of Representatives .....         | 85        |
| 2.2.                                              | The Senate .....                           | 86        |
| 2.3.                                              | Federal Lawmaking .....                    | 87        |
| 2.4.                                              | The President .....                        | 88        |
| 3.                                                | Germany .....                              | 89        |
| 3.1.                                              | The Bundestag .....                        | 89        |
| 3.2.                                              | Election System .....                      | 89        |
| 3.2.1.                                            | Seat Distribution .....                    | 90        |
| 3.2.2.                                            | The Threshold .....                        | 91        |
| 3.2.3.                                            | Unconstitutionality .....                  | 92        |
| 3.3.                                              | The Bundesrat .....                        | 93        |
| 3.4.                                              | Federal Lawmaking .....                    | 94        |
| 3.4.1.                                            | The Legislative Process .....              | 95        |
| 3.4.2.                                            | The Bundesrat .....                        | 96        |
| 3.4.3.                                            | The President .....                        | 98        |
| 4.                                                | The United Kingdom .....                   | 98        |
| 4.1.                                              | The Commons .....                          | 99        |
| 4.2.                                              | The Lords .....                            | 100       |
| 4.3.                                              | The Legislative Process .....              | 101       |
| 4.3.1.                                            | Royal Assent .....                         | 102       |
| 4.3.2.                                            | The Lords .....                            | 103       |
| 5.                                                | France .....                               | 104       |
| 5.1.                                              | The National Assembly .....                | 104       |
| 5.2.                                              | The Senate .....                           | 105       |
| 5.3.                                              | The Legislative Process .....              | 107       |
| 5.3.1.                                            | The Senate .....                           | 108       |
| 5.3.2.                                            | Organic Statutes .....                     | 109       |
| 5.3.3.                                            | The President .....                        | 109       |
| 5.3.4.                                            | The Constitutional Council .....           | 110       |

|                                                                                 |                                                   |            |
|---------------------------------------------------------------------------------|---------------------------------------------------|------------|
| 6.                                                                              | The Netherlands .....                             | 112        |
| 6.1.                                                                            | The Second Chamber .....                          | 112        |
| 6.2.                                                                            | The First Chamber .....                           | 114        |
| 6.3.                                                                            | The Legislative Process .....                     | 115        |
| 6.3.1.                                                                          | Statutes for the Netherlands in Europe .....      | 115        |
| 6.3.2.                                                                          | The King .....                                    | 116        |
| 6.3.3.                                                                          | Statutes for the Overall Kingdom .....            | 116        |
| <b>CHAPTER 5: GOVERNMENTS, THEIR PARLIAMENTS AND THEIR HEADS OF STATE .....</b> |                                                   | <b>119</b> |
| 1.                                                                              | Overview .....                                    | 119        |
| 1.1.                                                                            | Heads of State and Government .....               | 119        |
| 1.2.                                                                            | The Rank of the Prime-Minister .....              | 122        |
| 1.3.                                                                            | Parliamentary Investiture .....                   | 123        |
| 1.4.                                                                            | Ministerial Accountability .....                  | 124        |
| 1.5.                                                                            | National Parliaments and the European Union ..... | 128        |
| 1.6.                                                                            | The Immunity of the Head of State .....           | 130        |
| 1.7.                                                                            | Dissolution of Parliament .....                   | 131        |
| 1.8.                                                                            | Summary .....                                     | 133        |
| 1.9.                                                                            | Further Reading .....                             | 133        |
| 2.                                                                              | The United States .....                           | 134        |
| 2.1.                                                                            | The President and Vice-President .....            | 134        |
| 2.2.                                                                            | The President and Congress .....                  | 136        |
| 3.                                                                              | Germany .....                                     | 138        |
| 3.1.                                                                            | The Federal President .....                       | 138        |
| 3.2.                                                                            | The Chancellor and his Government .....           | 139        |
| 3.3.                                                                            | Ministerial Accountability .....                  | 141        |
| 3.4.                                                                            | Confidence Question .....                         | 142        |
| 4.                                                                              | The United Kingdom .....                          | 143        |
| 4.1.                                                                            | The King .....                                    | 143        |
| 4.2.                                                                            | The Prime-Minister and his Cabinet .....          | 144        |
| 4.3.                                                                            | Ministerial Accountability .....                  | 146        |
| 5.                                                                              | France .....                                      | 147        |
| 5.1.                                                                            | The President .....                               | 148        |
| 5.2.                                                                            | The Prime-Minister and his Government .....       | 149        |
| 5.3.                                                                            | Ministerial Accountability .....                  | 150        |
| 6.                                                                              | The Netherlands .....                             | 151        |
| 6.1.                                                                            | The King .....                                    | 151        |
| 6.2.                                                                            | The Prime-Minister and his Cabinet .....          | 153        |
| 6.3.                                                                            | Ministerial Accountability .....                  | 153        |
| 6.4.                                                                            | Motions of No-Confidence .....                    | 155        |
| 6.5.                                                                            | The Government of the Kingdom .....               | 156        |

|                                                                      |            |
|----------------------------------------------------------------------|------------|
| <b>CHAPTER 6: JUDICIAL REVIEW AND HUMAN RIGHTS .....</b>             | <b>159</b> |
| 1. Overview .....                                                    | 159        |
| 1.1. Constitutional Review of Legislation.....                       | 160        |
| 1.2. The Procedural Setting of Constitutional Review.....            | 161        |
| 1.3. Review of Treaty Law Compliance .....                           | 163        |
| 1.4. European Union Law .....                                        | 165        |
| 1.5. Summary .....                                                   | 167        |
| 1.6. Further Reading.....                                            | 168        |
| 2. The United States.....                                            | 168        |
| 2.1. The Court System .....                                          | 168        |
| 2.2. Constitutional Review .....                                     | 169        |
| 2.3. International Treaties .....                                    | 171        |
| 3. Germany.....                                                      | 172        |
| 3.1. The Court System .....                                          | 172        |
| 3.2. Constitutional Review .....                                     | 172        |
| 3.3. International Treaties and the ECHR.....                        | 174        |
| 3.4. European Union Law .....                                        | 175        |
| 4. The United Kingdom .....                                          | 176        |
| 4.1. The Court System .....                                          | 176        |
| 4.2. Constitutional Review .....                                     | 177        |
| 4.3. International Treaties and the ECHR.....                        | 177        |
| 4.4. European Union Law .....                                        | 179        |
| 5. France .....                                                      | 180        |
| 5.1. The Court System .....                                          | 180        |
| 5.2. Constitutional Review .....                                     | 180        |
| 5.3. International Treaties and the ECHR.....                        | 181        |
| 5.4. European Union Law .....                                        | 181        |
| 6. The Netherlands .....                                             | 182        |
| 6.1. The Court System .....                                          | 182        |
| 6.2. Constitutional Review .....                                     | 183        |
| 6.3. International Treaties and the ECHR.....                        | 183        |
| 6.4. European Union Law .....                                        | 184        |
| 7. European Human Rights.....                                        | 185        |
| 8. The ECHR, the European Union and the National Constitutions ..... | 187        |
| ANNEX 1: USEFUL LINKS .....                                          | 189        |
| ANNEX 2: EXERCISES AND MODEL EXAM QUESTIONS.....                     | 191        |
| ANNEX 3: GLOSSARY .....                                              | 197        |
| ANNEX 4: OVERVIEW OF CONSTITUTIONS COMPARED.....                     | 202        |
| ANNEX 5: THE CONSTITUTION OF THE UNITED STATES .....                 | 205        |

|           |                                                             |     |
|-----------|-------------------------------------------------------------|-----|
| ANNEX 6:  | THE FRENCH CONSTITUTION .....                               | 219 |
| ANNEX 7:  | THE FRENCH DECLARATION OF THE RIGHTS OF MAN .....           | 241 |
| ANNEX 8:  | THE GERMAN BASIC LAW .....                                  | 243 |
| ANNEX 9:  | THE CHARTER FOR THE KINGDOM OF THE NETHERLANDS.....         | 287 |
| ANNEX 10: | THE DUTCH CONSTITUTION .....                                | 299 |
| ANNEX 11: | SELECTED STATUTORY PROVISIONS FROM THE UNITED KINGDOM ..... | 315 |
| ANNEX 12: | THE ECHR.....                                               | 331 |
| ANNEX 13: | THE TREATY ON EUROPEAN UNION.....                           | 345 |