

# CONSTITUTIONS OF THE WORLD: 1776 TO THE PRESENT. PRESENTATION OF TWO PUBLICATION PROJECTS

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1. Almost two hundred years ago, the first collection of historical constitutions, including the constitution actually in force, was published. It is not much known today as it was an unusual collection published at an unusual place. Friedrich Saalfeld, a young Göttingen history professor in what was then the Napoleonic Kingdom of Westphalia published two volumes of legal documents of France: one containing the “lois constitutionnelles” starting with the Declaration of the Rights of Man and Citizen of 26 August 1789 and ending with the Statutes on Nobility of 1 March 1808; the second volume assembling the “réglemens d’administration”.<sup>1</sup> The reason Saalfeld offered for his pioneering publication clearly expressed a sensibility for this new genre of documents: “La plupart des ouvrages historiques qui ont paru sur cette époque à jamais remarquable de l’histoire françoise, ne présentent que trop souvent des données vagues et fautives et ce n’est que par l’étude même de la législation constitutionnelle et administrative de la France dans ces derniers tems, ce n’est qu’en poursuivant les changemens successifs que la constitution et son administration interne ont subis aux différentes époques de la révolution, qu’on peut se former une juste idée de l’état actuel de cet empire.”<sup>2</sup>
2. Nonetheless, it took about a decade for the next scholar to take up Saalfeld’s idea. Much broader in scope than his predecessor, Karl Heinrich Ludwig Pölitz, though anonymously, started in 1817 to publish his magisterial collection of the *Constitutionen der europäischen Staaten seit den letzten 25 Jahren* [*Constitutions of the European States during the preceding 25 years*].<sup>3</sup> He was convinced of the importance of “these historical monuments [...] for the history of our age and for the instruction of coming generations”.<sup>4</sup> The reason he gave for his edition as well as for a comparative constitutional history is as valid today as it was more than 180 years ago: “For if no experiment can be considered more important for a State than a new constitution or one modified according to the exigencies of the time and the particular necessities and cultural

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<sup>1</sup> Friedrich Saalfeld, ed., *Recueil historique des lois constitutionnelles et des réglemens généraux d’administration, publiés en France depuis le commencement de la révolution jusqu’à présent*, 2 vols., Göttingen: Jean Frédéric Roewer, 1809-1810.

<sup>2</sup> *Ibid.*, I, v-vii.

<sup>3</sup> [Karl Heinrich Ludwig Pölitz, ed.,] *Die Constitutionen der europäischen Staaten seit den letzten 25 Jahren*, 4 vols., Leipzig und Altenburg: F. A. Brockhaus, 1817-1825.

<sup>4</sup> *Ibid.*, I, v.

conditions of its people, then such a political experiment requires not only the most exact knowledge and consideration of these particular necessities of the people to whom a constitution is given or whose constitution is to be modified. Also the great lessons history provides with the attempted or already extinct constitutions and those still in vigor in other European realms should not be lost for the statesmen and executives in their efforts to deal with the most important and most consequential matters of States, with a new constitution.”<sup>5</sup> Before any new constitution was drafted it was, according to Pölitz, imperative “to compare all constitutions of the new Europe and impartially to conceive their essence and their difference”.<sup>6</sup>

3. It took Pölitz and his publisher eight years to publish the four volumes of the first edition, and a substantially enlarged and updated second edition followed in 1832-33.<sup>7</sup> It contained about 340 documents – constitutions and related documents – from Norway to Greece and Portugal to Poland in German or German translation. Though the collection was, inevitably, not complete, and despite its flaws and the lack of the original language other than German, it proved to be to be remarkably accurate and reliable, which still makes it an indispensable reference work today.
4. Whether it is for its long-standing respectability and success or due to the magnitude of the task: for more than 150 years, no one has ever attempted to replace Pölitz by a modern edition of historical constitutions. Apart from some minor and very restrictive collections,<sup>8</sup> only two Latin American publications come close to it, Fraga Iribarne’s never completed *Constituciones Hispanoamericanas*<sup>9</sup> and, though definitely more restricted in scope, *El Pensamiento constitucional hispanoamericano hasta 1830* of the Venezuelan National Academy of History.<sup>10</sup> Of course, national collections of historical constitutions, generally leading up to the one currently in effect, exist for numerous countries, and some

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<sup>5</sup> Ibid., vi-vii.

<sup>6</sup> Ibid., vii.

<sup>7</sup> Karl Heinrich Ludwig Pölitz, ed., *Die europäischen Verfassungen seit dem Jahre 1789 bis auf die neueste Zeit*, 3 vols., Leipzig: F. A. Brockhaus, 1832-1833. A fourth volume, edited by Friedrich Bülow, was published in 1847. A reprint of these four volumes was published in 1999 by the Georg Olms company in Hildesheim.

<sup>8</sup> Cf. Nino Cortese, ed., *Le Costituzioni italiane del 1848-49*. In appendice: *Le Costituzioni francesi e belga del 1830-31 e del 1848*, Naples: Libreria scientifica, 1945; Günther Franz, ed., *Staatsverfassungen*, Munich: Oldenbourg, 1950, 3<sup>rd</sup> ed. Darmstadt: Wissenschaftliche Buchgesellschaft, 1975 (with 30 constitutions from nine countries); Albert P. Blaustein, Jay A. Sigler, eds., *Constitutions That Made History*, New York: Paragon House, 1988 (with 18 constitutions until 1920 from thirteen countries); Joaquín Varela Suanzes, ed., *Textos básicos de la historia constitucional comparada*, Madrid: Centro de Estudios políticos y constitucionales, 1998 (21 documents from eight countries), and others.

<sup>9</sup> Manuel Fraga Iribarne, ed., *Las Constituciones Hispanoamericanas*, 18 vols., Madrid: Instituto de Estudios Políticos, 1951-1968 (Mexico, Colombia, Chile, Paraguay, and the Dominican Republic are missing).

<sup>10</sup> Academia Nacional de la Historia, ed., *El Pensamiento constitucional hispanoamericano hasta 1830*, 5 vols., Caracas: Sesquicentenario de la Independencia, 1961.

remarkable editions have been published in recent years, among them those for France,<sup>11</sup> Spain,<sup>12</sup> Portugal,<sup>13</sup> and Austria,<sup>14</sup> but also for Latin American countries, as for example for Colombia<sup>15</sup> and Costa Rica.<sup>16</sup> Beside these historical collections, since the days of Pölitz compilations of contemporary constitutions have been undertaken. The pioneering work by Dufau<sup>17</sup> is an editorial monument comparable to the achievement of Pölitz. With its almost 3500 pages it is much broader than the latter and includes a number of historical constitutions for several European countries and some thirty constitutions from North and South America. But other than Pölitz and especially regarding the non-European constitutions it lacks precision, as in not always making it evident which constitution really is being reproduced. The most recent collection of constitutions in force was inaugurated by Blaustein and is now continued by Flanz.<sup>18</sup> The compilation is restricted to the national constitutions of every country in the world – state constitutions are assembled in a separate collection<sup>19</sup> – which are normally published in the original language and an English translation, some only in translation, though sometimes these translations appear to be less accurate than one might wish them to be.

5. To sum up this brief bibliographical overview,<sup>20</sup> we have to admit that due to the lack of accessible sources our knowledge of the documents of more than two hundred years of modern constitutionalism is shamefully

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<sup>11</sup> The best known and continuously updated editions are those by Jacques Godechot, ed., *Les Constitutions de la France depuis 1789* (Paris: Flammarion, 1979, latest ed. 1996), Maurice Duverger, ed., *Constitutions et documents politiques* (Paris: Presses Universitaires de France, 1957, 14<sup>th</sup> ed. 1996) and Charles Debbasch and Jean-Marie Pontier, eds., *Les Constitutions de la France* (Paris: Dalloz, 3<sup>rd</sup> ed. 1997)

<sup>12</sup> Raquel Rico Linage, ed., *Constituciones históricas*, Sevilla: Universidad de Sevilla, Secretariado de Publicaciones, 1989, 3<sup>rd</sup> ed. 1999.

<sup>13</sup> Jorge Miranda, ed., *As Constituições portuguesas de 1822 ao texto actual da constituição*, 4<sup>th</sup> ed., Lisbon: Livraria Petrony, 1997.

<sup>14</sup> Ilse Reiter, ed., *Texte zur österreichischen Verfassungsentwicklung, 1848-1955*, Vienna: WUV-Universitätsverlag, 1997.

<sup>15</sup> Carlos Restrepo Piedrahita, ed., *Constituciones políticas nacionales de Colombia. Compilación*, Bogotá: Universidad Externado de Colombia, 2<sup>nd</sup> ed. 1995.

<sup>16</sup> Marco A. Mena Brenes, ed., *Colección de Constituciones de Costa Rica. Del Pacto de Concordia a la Constitución Política de 1949*, San José, Costa Rica: Imprenta Nacional, 2000.

<sup>17</sup> Pierre-Armand Dufau, Jean-Baptiste Duvergier u. Joseph Guadet, eds., *Collection des Constitutions, Chartes et Lois fondamentales, des peuples de l'Europe et des deux Amériques*, 7 vols., Paris: J. L. Chanson, 1821-1830.

<sup>18</sup> Gisbert H. Flanz, ed., *Constitutions of the Countries of the World*, Dobbs Ferry, N.Y.: Oceana Publications, 1971- (in 20 binders).

<sup>19</sup> Albert P. Blaustein, ed., *Constitutions of Dependencies and Special Sovereignities*, Dobbs Ferry, N.Y.: Oceana Publications, 1975- (in 11 binders).

<sup>20</sup> For a more detailed bibliographical survey, cf. Horst Dippel, "Prolegomena zu einer europäischen Verfassungsgeschichte", in: Michael Wala, ed., *Gesellschaft und Diplomatie im transatlantischen Kontext. Festschrift für Reinhard R. Doerries zum 65. Geburtstag*, Stuttgart: Franz Steiner, 1999, 355-384.

poor. Not more than fragments are, so far, at our disposal, and even where more is available the information is scattered over a bewildering array of languages, of which hardly anyone is able to master more than a restricted number at a time. To increase our knowledge thousands of constitutions created from the end of the eighteenth century until today and harking from all over the world not only have to be easily available, in numbers and in languages. At the same time, this effort constitutes the essential precondition for finally investigating and writing the still completely unknown history of modern constitutionalism, the vast *terra incognita* of a trans-national modern constitutional history.

6. Two projects were launched in 2001-2002 to fill this gap. Their ambitious aim is to publish all constitutions, declarations of rights, and all official but failed projects of both kinds, which had their own legitimization but for whatever reasons were never adopted or put into practice, from 1776 to the present, national and state, from all countries of the world. For the years 1776 through 1849, the time frame of the first project,<sup>21</sup> they will be published in the original language(s) and an English translation, for the second project, 1850 to the present, publication will be in the original language(s) and an English translation, if available.
7. The dates delimiting the two projects suggest themselves from historical circumstances. In 1776 the first modern declarations of rights and constitutions came into being in the revolting British colonies in North America: This was the very birth of modern constitutionalism.<sup>22</sup> In constitutional law 1849 marks the final year of the great European revolutionary biennium. In 1789 modern constitutionalism had arrived in Europe; the European revolutions of 1848-49 constituted the second, decisive moment in the history of modern constitutionalism. As opposed to preceding movements this new broad wave of European constitution-making firmly implanted the still embattled principles of modern constitutionalism across Europe, with the subsequent reaction attempting but ultimately failing to uproot them again. What is true for Europe applies to other parts of the world also, though with somewhat different time frames, for which the European experience was decisive, however. Generally speaking, the years from 1776 through 1849, therefore, constitute the formative period of modern constitutionalism.
8. This era is set apart from the subsequent 150 years and presented methodically in a different way for a further reason. With the rise of modern legislation the authenticity of legal documents becomes a major concern, and this applies to constitutional documents in particular. In the United States these documents were published by authorized printers, with subsequent amendments on a national scale to be published as

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<sup>21</sup> The Rise of Modern Constitutionalism, 1776-1849, editor-in-chief Horst Dippel, <http://www.modern-constitutions.de>, and: Munich: Saur, 2003-.

<sup>22</sup> Cf. Horst Dippel, "Modern Constitutionalism: A History in the Need of Writing", of which a Spanish and a Portuguese translation are currently being prepared and expected to be published in 2004.

resolves of Congress, and in the states normally to appear in the state session laws collections. Time and experience were needed to improve this mode of publication and to make the published texts as accurate and authentic as possible. An exclusive reliance on what may be considered as the original official edition may not be sufficient to establish an authentic version in this early period.

9. In Europe, the approach was different. With the *Bulletin des lois* France had started in 1793 to publish its laws in an official, legally binding journal, which from 1799 on regularly included also the constitution and its amendments.<sup>23</sup> It was this form of the official, legally binding state journal that was subsequently adopted in Europe during the first half of the nineteenth century. These official publications may contain textual errors, as some of them indeed did, but in terms of law even the wrong text constituted an authentic text in spite of its deviation from the originally drafted and adopted version.
10. These developments in America and Europe during the first half of the nineteenth century suggest a different methodical approach for the constitutions before 1850 from those adopted in the latter half of the nineteenth and in the twentieth centuries. The risk of publishing defective texts when relying exclusively on contemporary published versions is much greater during the formative period than in later decades.
11. The first project, which is supported by the Deutsche Forschungsgemeinschaft, is being realized in partnership with the University Library of Göttingen and with the K. G. Saur Company in Munich. It will provide modern digitized facsimiles of all documents (images), which are created from the original official edition of the document or, if there was no original publication, from the original manuscript. The host server for these images will be at the University Library of Göttingen, which will provide free access to the images. In a second step contributing editors in the respective countries will convert these facsimiles into a standardized electronic format and correct and annotate them so as to create authentic versions of the documents. The editions as well as their English translations will be indexed in order to allow highly individualized searches. Editions and translations will be linked with the images, but in contrast to the latter access will be licensed. A model with five documents displaying the intention, principles and scope of the project is available in the net at [www.modern-constitutions.de](http://www.modern-constitutions.de).
12. The editions and translations will also be published in print form, in some thirty volumes, by the K. G. Saur Company. The first project will publish some 800 constitutions and declarations of rights from Europe and both Americas, plus Liberia and the Sandwich Islands. Together with the amendments, additional official languages and the English translations

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<sup>23</sup> For the period up to 1849, cf. *Bulletin des Lois*, I/1-X/2, Paris: Imprimerie nationale des lois, an II [1793]-1849.

nearly 2500 texts will be published. Publication is scheduled to begin in the second half of 2003, and the electronic version should be completed by 2006. The first three printed volumes, containing the constitutions of the United States of America up to 31 December 1849, are bound to appear in late 2003 and in 2004.

13. The second project, ranging from 1850 to the present, proceeds along the same criteria with the sole exception that an English translation is provided only when available. In both projects countries will be arranged alphabetically according to their English designations and the present geo-political status quo. Thus, e.g., everything pertaining to Cyprus is listed under Cyprus and not alternately, according to political suzerainty, under Turkey, the United Kingdom, or Cyprus. Distinguishing between independent and dependent entities within a country, respective constitutions are listed chronologically for each system. Historical states, whether independent or dependent, which, like numerous principalities or duchies of the nineteenth century and some Communist states of the twentieth century, no longer exist as political entities, are listed under the respective successor states. Thus the entry for Italy also encompasses the constitutions of the kingdoms of Sardinia and Sicily as well as the grand duchy of Tuscany. The constitutions of Prussia and of the German Democratic Republic are to be found in the entry for Germany. According to political geography, the constitutions of the former Austrian duchy of Carniola (Krain) will be found under present-day Slovenia. All constitutions of Yugoslavia are subsumed under today's Serbia and Montenegro and the constitutions of the Soviet Union under Russia.
14. The major difference between this and the first project is that all the documents will be published on microfiche by the K. G. Saur Company.<sup>24</sup> With regard to the enormous quantity of material the edition comprises, microfiche is clearly the preferable publication format. The complete edition will be published in about thirty installments and will contain some 6000 microfiches. Publication started in September 2002 with Part I: Europe. So far three installments have been published, containing, in alphabetical order, the constitutions of Albania through Monaco. For the remainder of 2003, installments n° 4 through n° 6 are scheduled to be published comprising the constitutions of the Netherlands through Switzerland. By March 2004 a seventh installment will have completed part I, including additions to previous installments. Part II, covering the Americas, will immediately follow in 2004-05 with the constitutions of Asia, Africa, and Australia to be published afterwards.
15. As in the first project, each constitution will be published in all its official languages, with all subsequent amendments duly added. Where possible, the first official version of the document is filmed. Where a pre-1850 constitution has been modified or amended after 1850, the first full-text version to be published after 1850 is provided. Subsequent

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<sup>24</sup> Constitutions of the World 1850 to the Present/Verfassungen der Welt 1850 bis zur Gegenwart. Microfiche Edition, editor-in-chief Horst Dippel, Munich: Saur, 2002-.

modifications and amendments are added as published. Should the wording of a constitution have been changed substantially by several amendments, the last version in force will be published in full text as well.

16. In order to locate documents quickly, a printed English-German interim index accompanies each installment. Listing the documents in the order of filming, the index also provides their titles in the original language along with English and German translations. The date upon which a constitution took effect, microfiche number, and bibliographic sources are given as well. Upon completion of the part dedicated to Europe, an index of European constitutions will be published, comprising a detailed academic introduction, a list of all filmed documents alphabetically arranged by country, a chronological index of constitutions, an index of constitutional drafts and a concordance of states.
17. Together, both editions open up the possibility of tracing the history of modern constitutionalism from its humble origins in the late eighteenth century through the early years of the twenty-first century. They will also allow making comparisons and identifying connections between the constitutions of different states during a given period. Last but not least, the constitutional heritage of e.g. the European Union can be studied, as well as the constitutional history of individual states. Both projects will not only stimulate research and open new scholarly vistas: just as Pölitz professed almost two hundred years ago they may also serve as a source of inspiration for developing new ideas and solutions about how to assure individual liberty and the rule of law along with the proper functioning of government. In preserving the heritage, they are directed towards the future.