



# Law and Legal Skills: the Dutch example (2025)

## II. Constitutional law

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*(State coat of arms of the Netherlands)*



# Lecture outline:

- ***Announcements: Amnesty International***
- **Introduction:** concepts & definitions
- **Rule of law** (*'Rechtsstaat'*)
- **Polity:** democracy; decentralized unitary state
- **Conclusion:** Dutch Monarchy



# Social Contract Philosophers



**Nature of Man**

**State of Nature**

**Social Contract**

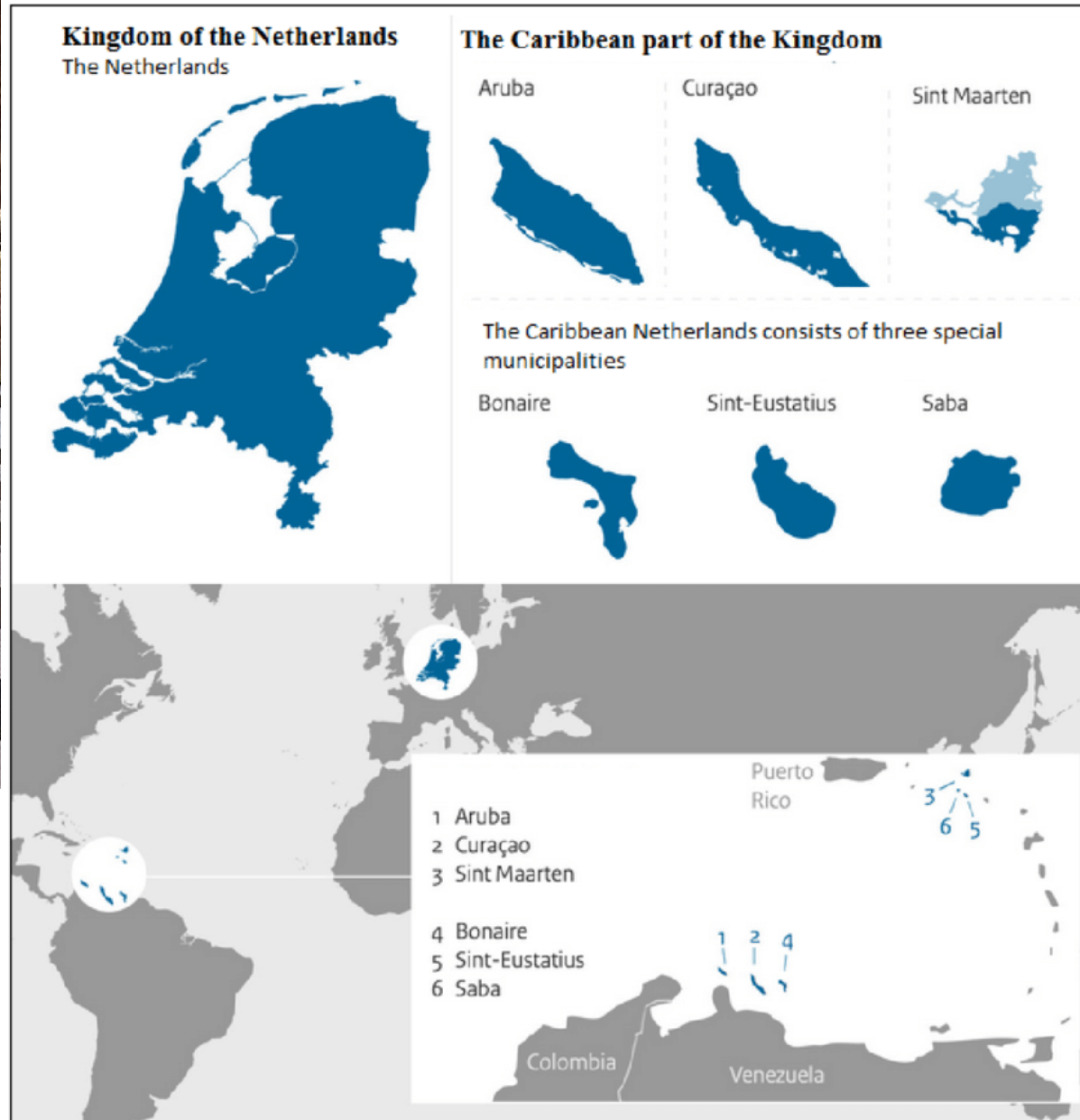
## Summary

	Human Nature	State of Nature	Social Contract
Hobbes	Man is a wolf unto his fellow man.	A state of War.	Leviathan
Locke	Man has perfect freedom.	Property is not secure.	Commonwealth
Rousseau	Man is free but 'immoral'.	No security or morality.	State guided by the general will.



His Royal Highness:  
**King Willem-Alexander**  
 (Claus George Ferdinand)  
 of the Netherlands  
 27 April 1967 (age 58) Utrecht,  
 Netherlands

## Constituent parts of the Kingdom of the Netherlands





**PRIVATE LAW**

**PUBLIC LAW**

**CONSTITUTIONAL  
LAW**

*ADMINISTRATIVE  
LAW*

*CRIMINAL  
LAW*

**Constitution  
(Gw./C.)**

...?

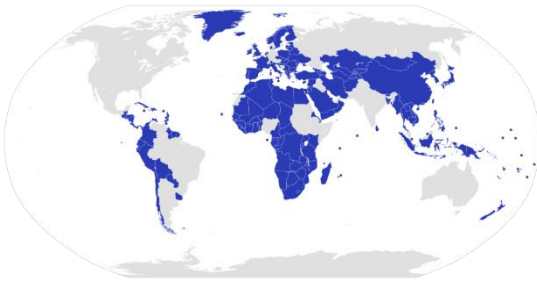


# Concepts & definitions (I)

**State**, definition:

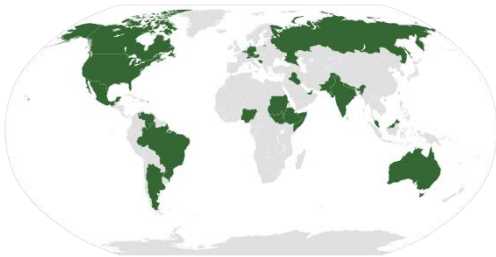
1. Defined territory
2. Permanent population
3. Effective + independent authority
- (4. Recognition by other states?)

# Concepts & definitions (II)



## UNITARY STATE

central government is supreme: any subnational units exercise only powers that their central government chooses to delegate.



## FEDERATION

a union of partially self-governing states or regions under a central (federal) government.



## CONFEDERATION

supremacy of individual states that unite for a common action. Marginal loss of sovereignty.



# Concepts & definitions (III)

## Monarchy ↔ Republic

### Enduring monarchies and ones that disappeared

Monarchies exist in many different forms and can be headed by a czar, emperor, emir, sultan, king or queen. Some monarchs have absolute power, while others defer to a constitution or parliament. Bhutan ended a century of absolute monarchy this year and Nepal is taking steps to abolish its monarchy.







# Always study structure

Ch. 1: Fundamental rights

Ch. 2: Government

Ch. 3: The States General

Ch. 4: Council of State, Court of Audit, National Ombudsman  
and permanent advisory bodies

Ch. 5: Legislation and administration

Ch. 6: The administration of justice

Ch. 7: Provinces, municipalities, water boards and other  
public bodies

Ch. 8: Revision of the Constitution



# Concepts & definitions (IV)

## The (European part of) the Netherlands:

- Constitutional monarchy (chapter 2 C.)
- Parliamentary democracy (chapter 3 C.)
- Decentralized unitary state (chapter 7 C.)



# Concepts & definitions (V)

## Dutch Constitution

- ❖ Dutch Constitution (Gw./C.): chapters
- ❖ prescribed by Constitution = 'organic laws'
  - ❖ Example: read art. 107 C. → *Civil Code, Penal Code etc.*
- ❖ provisions: 'vertical' ⇔ 'horizontal' effect



# Concepts & definitions (VI)

- ❖ Dutch Parliament (art. 57 C.) → *bicameral*:  
Second Chamber  
a.k.a. *House of representatives* - [www.houseofrepresentatives.nl/](http://www.houseofrepresentatives.nl/)  
First Chamber  
a.k.a. *Senate* - [www.eerstekamer.nl/begrip/english\\_2](http://www.eerstekamer.nl/begrip/english_2)
- ❖ Crown = King & ministers (art. 42-1 C.)
- ❖ Ministerial responsibility (art. 42-2 C.)



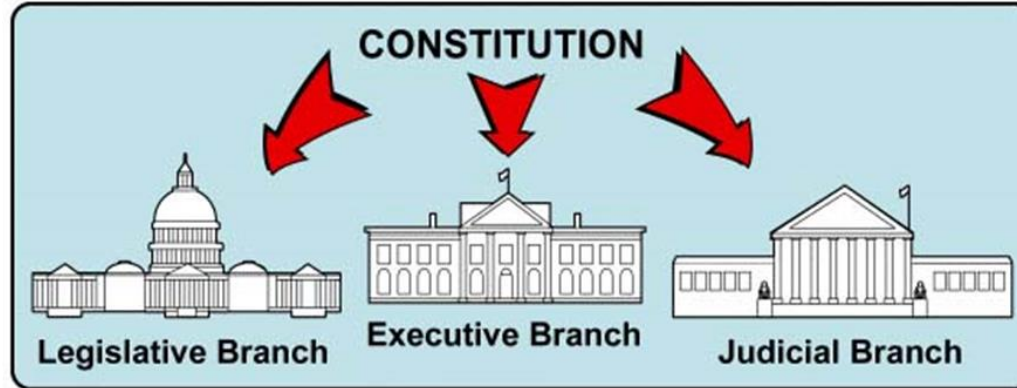
# Constitutional state

## ➤ Rule of law: '*Rechtsstaat*'

Elements:

1. Separation of political powers (*Trias Politica*)
2. Legality
3. Fundamental Rights
4. Judicial review

# 1. Trias Politica



## 1. Legislative Branch (NL: Parliament & Government)

- Makes generally binding regulation (statutes) art. 81 C.

## 2. Executive Branch (NL: Government)

- Implements acts/statutes
- Makes decisions (for individuals)  
→ Artt. 97(2) & 131 C.

## 3. Judicial Branch (NL: Judiciary)

- Resolves disputes in civil, criminal and administrative courts (artt. 112-113 C.)



# Trias – Legislative branch

Characteristics of *generally binding regulations*:

1. Written rule
2. Addressed to an indefinite number of people
3. Applicable in an indefinite number of cases
4. Binding – no deviation is possible





# More: 'checks and balances'

*Separation of political powers **not** absolute:*

## 1. Legislature

- Acts of Parliament: Parliament AND Government
- Enactment in individual cases (decision!). Eg. 28 C.

## 2. Executive

- Government co-legislator
- Independent rule-making competence  
(administrative order  $\approx$  UK: 'Order in Council').

## 3. Judiciary

- Sometimes administrative functions.  
Eg. appointment legal guardian (decision!)  $\rightarrow$  Executive.



## 2. Legality (I)

### Legality → consequences:

1. Public bodies are bound by law.
2. State activities require basis in law.
  - Negative activities: always, *nulla poena* (16 C.)
  - Positive activities: increasingly, *Fluoridation* case.

- Legal basis in law: **attribution** ⇔ **delegation**
- Attribution occurs on different levels:
  - check artt. 81, 89, 127 & 133 C.!



## 2. Legality (II)

### Delegation (and subdelegation)

- Transfers (original) power – incl. responsibility ! – to inferior public body.
- Explicit statutory basis needed: law making technique → terminology.
- Benefits: efficiency & more specific legislation.

Example:

Formal legislator → *Road Traffic Act*



Government → *Decree Alcohol Tests*



Minister → *Regulation on Breath Analysis*



# 3. Fundamental rights (I)

- Dutch Constitution, chapter 1.
- Treaties, for instance:
  - European Convention on Human Rights,
  - International Covenant on Civil and Political Rights (UN)
  - European Social Charter, etc.

Fundamental rights:

- Categories
- Characteristics
- Restrictions



# 3. Fundamental rights (II)

## I. Classic fundamental rights.

Eg. Right to equal protection, right to assembly.

- State is not allowed to interfere in these areas.
- Addressed to citizen: enforceable in court.

## II. Social fundamental rights.

Eg. Right to work, right to a habitable environment.

- State is ordered to do its utmost to realize these rights.
- Instruction norms for government; not enforceable (?)

# 3. Fundamental rights (III)

## Restrictions allowed on the exercise of fundamental rights?

NO:



**Absolute** fundamental right:

- Right to submit petition (art. 5 C)
- Prohibition on torture (art. 3 ECHR)

YES:



**Relative** fundamental right:

- Statutory basis required, often an Act of Parliament, but possibility to delegate.
- Legitimate aim:  
must be mentioned in provision  
eg. Prevention of disorder.



# 3. Fundamental rights (IV)

## Art. 6 C. Right to manifest one's religion or beliefs

§ 1: 'without prejudice to his responsibility under the law'

§ 2.: requires Act of Parliament; lists legitimate aims:

→ Only **formal legislator** can restrict exercise of right

→ 'public health / traffic, prevention of disorder'

→ **Manifestation Act** (= Act of Parliament):

- Requires permit in advance at mayors' office
- When and how to safely profess belief
- Ban on protest in extreme situations





## 4. Judicial review (I)

(C.: Chapter 6 – *The administration of justice*)

- **Judicial independence** (art. 117 C.):
  - ❖ appointed for life by Royal Decree
  - ❖ legal status regulated by statute
  - ❖ grounds for termination appointment:
    1. resignation
    2. pensionable age (70 years)
    3. suspension or dismissal by Supreme Court



## 4. Judicial review (II)

### **Hierarchy of generally binding regulations (*gbr*):**

- (1) Treaties
- (2) Charter of the Kingdom
- (3) Constitution
- (4) Statutes / Acts of Parliament
- (5) Royal Decrees (a.k.a. Orders in Council)
- (6) Ministerial regulations
- (7) Provincial by-laws
- (8) Municipal by-laws
- (9) Water Board by-laws



## 4. Judicial review (III)

### ➤ **Prohibition constitutional review statutes**

Review: art. 120 C.

→ *Ideal*: supremacy formal legislator

### ➤ **Backdoor method: superior rules**

Review: art. 94 C.

N.B. Fundamental rights also listed in international law.



## 4. Judicial review (IV)

Countries with constitutional review:

- **USA** → any court
- **Germany** → *Bundesverfassungsgericht*
- **France** → *Conseil Constitutionnel*



# Polity (I)

**Democracy** (*δῆμος* – dêmos, *κράτος* – kratos):

## 1. Direct democracy

- Ancient Greece
- Referenda

## 2. Indirect / representative democracy

- Elections (right to vote / eligibility)
- Sometimes combined with a referendum



# Polity (II)

## Democracy

### **Presidential democracy** ⇔ **Parliamentary democracy**

- |  |  |
|--|--|
| - USA                                  | - UK                                   |
| - Head of government<br>(Donald Trump) | - Head of government<br>(Keir Starmer) |
| = head of state                        | ≠ head of state                        |

**Netherlands:** parliamentary democracy

→ Location of sovereignty ???



# Polity (III)

## Parliament / States general

### Second Chamber

(→)

- 150 members
- Direct elections
- Proportional representation



### (←) First Chamber (Senate)

- 75 members
- Indirect elections  
(via provincial council)
- Proportional representation







# Polity (IV)

**States General** represent all the Dutch (art. 50 C.)  
→ political supremacy with Second Chamber

## Parliamentary system

- Right of interpellation (debate an issue, art. 68 C.)
- Right to approve and amend budget (art. 105 C.)
- Ministers accountable to Parliament, not to King
- Rule of confidence



# Polity (V)

## Local democracy

- Provincial & municipal councils
- Direct elections
- Proportional representation

## Dutch polity does not allow for:

- Elected prime minister, mayor, judge, district attorney
- Legally binding referenda (failed, literature outdated)



# Dutch Monarchy (I)

(C.: chapter 2 – *The King*)

House of Orange-Nassau (art. 24 C.)

## **Some important historical developments:**

1581 William I stadholder of Philips II

1815 Constitutional monarchy

→ strong position King, King very actively involved

1840s Decline of royal power

- criminal ministerial responsibility (art. 42 C.)
- requirement of countersignature (art. 47 C.)



# Dutch Monarchy (II)

1848 political ministerial responsibility (art. 42 C.)  
→ symbolic position King

1867 Luxemburg case: conflict Parliament ↔ Crown  
→ Crown cannot dissolve Parliament twice  
since then: ceremonial head of state

**Conclusion:** King of the Netherlands, no real power:

- Right to be consulted, to encourage and to warn (Bagehot)
- Speech from the throne (3rd Tuesday in September!)