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Preambles: ‘Verfassungskitsch’ or Part and Parcel of the Constitution?

Posted on July 11, 2016 by Maarten Stremmer and Valérie Verschoor in [Public Law](#), [2](#)

 Preambles: ‘Verfassungskitsch’ or Part and Parcel of the Constitution?

Almost all countries in the world have a written constitution and most of them are equipped with a preamble, i.e. an introductory text stating the reasons for adopting the constitution, its purpose or its justification. In fact there is a global trend towards including a preamble in new constitutions. Yet constitutional preambles have received only scant attention in academic literature. This is a pity, and it has been one of the reasons for Professors Paul Cliteur, Wim Voermans and the first author of this blog post to start writing a book on constitutional preambles.

Preambles come in a wide variety of shapes and sizes. Some of them, like the preambles to the Greek and Peruvian constitution, are very short and consist of only one sentence. Other preambles, by contrast, cover multiple pages, for example the preambles to the constitutions of Iran and China. Preambles also display a great variety when it comes to their content; nonetheless they also share substantive features. Virtually all of them refer to the ‘author’ of the constitution that presumably gives the constitution its authority. The phrase ‘We the People’ from the preamble to the US constitution is the best example; it has been taken up in many other preambles. Most postcolonial preambles, to give another example, mention national sovereignty and national independence. Explicit commitments to democracy and the rule of law are also very common.

A very interesting aspect of constitutional preambles is their style: unlike most other legal texts, preambles are often written in a solemn or exalted tone. The people of Cambodia, for instance, portray themselves in their preamble as ‘heirs of a great civilization, a prosperous, powerful, large and glorious nation whose prestige radiated like a diamond’. And to express a commitment to the international community another preamble recites: ‘Micronesia began in the days when man explored seas in rafts and canoes. The Micronesian nation is born in an age when men voyage among stars; our world itself is an island. We extend to all nations what we seek from each: peace, friendship, cooperation, and love in our common humanity’.

One reason for the scant academic attention for constitutional preambles may be the widespread assumption that they do not have legal force or do not have legal value at all; in other words that they are merely *Verfassungskitsch*. This assumption, however, is not entirely justified. It is true that the preamble to the US constitution, for example, has never been regarded as a source of any substantive power for the federal government, or as a parameter for constitutional review. Other preambles, by contrast, clearly make a difference in terms of the law. The preamble of Cameroon, for instance, contains a catalogue of directly enforceable rights. And the French *Conseil constitutionnel* has declared the preamble to be an integral part of the constitution and has used it directly to review the constitutionality of legislation.

In other countries rights can be derived from the preamble in connection with the articulated provisions of the constitution. The preamble may also serve as an interpretative support, serving what the Germans call the ‘unity of the constitution’ (*Einheit der Verfassung*). This idea is expressed eloquently in Article 277 of the Egyptian constitution, which states that ‘the Constitution and its preamble and texts are a well-knit fabric that is non-divisible. Its provisions constitute one coherent unit’.

Preambles can also serve constitutional entrenchment. The values, principles and rights written down in the preamble may be deemed to have supreme legal value, in such a way that they exclude constitutional amendments that go against it. Article 7B of the constitution of Bangladesh, for example, prohibits

amendments that alter the preamble or the numbered articles relating to the 'basic structures' of the constitution. In a similar vein, but with different means, Article 141(3) of the constitution of Nepal prohibits the registration of political parties that prejudice 'the basic spirit and essence of the Preamble'.

These legal functions, however, are not typical. The legal value of most preambles is rather limited. What, then, is the added value of a preamble? We can think of five – partially overlapping – non-legal functions that preambles potentially fulfil. First, they express the underlying values and principles of the constitution. Second, they record the political, religious or ideological identity of the constitutional order. Third, preambles are a point of reference in the history of the state: they tie together its past, present and future. Fourth, by appealing to the citizens, preambles contribute to national unity and solidarity. Fifth and finally, by presenting the core values that underlie the constitution, preambles contribute to civic education.

These and other fascinating aspects of constitutional preambles will be discussed in the aforementioned book, which has the provisional title 'Constitutional Preambles: A Comparative Analysis'.