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Towards a theory of militant constitutionalism

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TOWARDS A THEORY OF MILITANT CONSTITUTIONALISM

Jorieke Manenschijn

TOWARDS A THEORY OF MILITANT CONSTITUTIONALISM

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FOREWORD

In the summer of 2023, I watched the Barbie movie with a colleague. When I returned home, my partner asked me how the movie was. While he might have been expecting a feminist lecture, I instead lectured on constitutional design. The constitution of Barbie-land and the ‘Ken Revolution’ highlighted the disastrous consequences of bad constitutional design in multiple ways. My main takeaway from the film being that even in a fictional doll-world the relevance of my dissertation shines through. The grimace on my partner’s face told me that perhaps the fact that I even started seeing my research in the Barbie movie meant that I was getting a little bit too invested in my work, and that the time had come to start wrapping it up. Luckily, the fact that you are reading this thesis that lies before you means that everything turned out okay, and I have, albeit almost three years later, indeed managed to complete it.

Writing this dissertation was a fun, shaky and, at some points, scary ride, and I have to admit that I am happy to leave the mental rollercoaster of being a PhD student. Nevertheless, I look back at the past five years with much happiness. Being a PhD student allowed me to do many things I would not have envisaged I would ever be doing. I presented my work at both national and international conferences, meeting people from all over the world. I spent a semester at LSE Law in London, which was a truly enriching experience. Somehow, I even ended up on the national news as an expert on the United Kingdom. I thoroughly enjoyed the shared project I worked on with Bastiaan Rijpkema & Steven Bruintjes, which culminated in a book on the importance of constitutional safeguards. Due to the unfortunate rise of the radical right in the Netherlands, my work on militant constitutionalism has gained considerable attention. This even led to an invitation from the State Secretary for Legal Protection to come and speak. I had the opportunity to debate with politicians, write policy papers for parliament, appear on podcasts and radio, and engage in public debates. However, most importantly, doing a PhD gave me complete freedom to spend four years researching, teaching, and speaking on a topic I genuinely care about, and it allowed me to pursue a career in constitutional law. In the real world, though, and not in Barbie-land, although I would have seized the opportunity if given.

These four years have not only resulted in this thesis, but also allowed me to publish separate papers, book chapters and even a book on militant constitutionalism. Some parts of this thesis are based on these earlier publications. Where relevant, references are made to earlier published work. This mainly applies to parts 2 and 3. Chapter 7 of part 3, the structured literature review of constitutional safeguards, is based upon two earlier publications from a joint research project with Professor Rijpkema. An assignment from the Dutch Ministry of Internal Affairs enabled us to hire a student assistant to conduct a structured literature review of the effectiveness of constitutional safeguards. This resulted in an online research report. Based on this rapport, the two co-authors and I wrote a book on militant constitutionalism (*weerbare rechtsstaat*). Chapter 7 is an edited and extended version of a chapter in this book and the earlier research report. I was the first author of the research report and the book, and I have contributed significantly to the research output. I am immensely grateful to my co-authors, Bastiaan Rijpkema & Steven Bruintjes, for conducting this process with me and allowing me to publish it as a part of my PhD thesis.

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When I started my PhD project, a second PhD student, Tessa van Buchem, was appointed. The original idea was that Tessa and I would both work on a similar project, allowing us to function as a tandem bike. Although this did not work out for the research, we did manage to synchronise our PhD processes. We shared the ups and downs and tackled many problems together. Not only did she keep me sane by allowing me to rant to her during one of our many iced coffee breaks, but she also made the process a lot more fun. Thank you, Tessa, for being you. Michael Klos, my office roommate, also played an important role in keeping me sane. Not only did he always seem to know when I needed a Coca-Cola to keep going, but he also shared his wisdom and (slightly bad) jokes with me. Thank you for all the great years we shared in our office. I could not have imagined a better office roommate.

Furthermore, I would like to thank my other colleagues, Arie-Jan Kwak, Bart La buschagne, Jip Stam, Mees van Rees, and all the others I have had the pleasure of working with at some point. You all made me feel at home in Leiden. The same applies to Prof. Loughlin and my fellow PhD students at LSE Law, especially the ‘second cohort’. Thank you for making me feel at home in London.

Finally, I would like to thank my friends and family for the support and love they have all shown me. A special thanks to my partner, Luuk van der Zee. Not only because he did not leave me over all the PhD-related nightmares I had, but also for always being there for me. Without your support, it would have been a lot harder.