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Towards a theory of militant constitutionalism

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10 ACKNOWLEDGEMENT OF PREVIOUS PUBLICATIONS

Some of the research presented in this thesis builds on previously published work. Throughout the chapters, references to these earlier publications are provided where relevant. Special mention should be made of chapter 7, which presents a structured literature review of constitutional safeguards. This chapter is based on research initially conducted under the commission of the Dutch Ministry of Internal Affairs and Kingdom Relations. Due to this assignment, Professor Rijpkema and I were able to hire a student assistant to assist in conducting a structured literature review on the effectiveness of constitutional safeguards. This resulted in an online published research report. Drawing from that report, the two co-authors and I wrote a book on militant constitutionalism (*weerbare rechtsstaat*). Chapter 7 is an adapted version of a chapter from that book. I was the lead author of the research report and the book, and I have contributed significantly to the research output. I am deeply grateful to my co-authors, Bastiaan Rijpkema & Steven Bruintjes, for their collaboration on this project and for their support in including this work in my PhD thesis. I also wish to thank the Dutch Ministry of Internal Affairs and Kingdom Relations for the research assignment and for granting permission to publish the results in both book form and this thesis.

II APPENDIX A: PROTOCOL FOR THE STRUCTURED LITERATURE REVIEW

Methodology and results of the structured literature review

The studies in the dataset were gathered through a predetermined list of search words (keywords) entered into three different scientific search engines.⁹¹² We used a combination of narrow and broad keywords, such as ‘militant democracy’, ‘constitutions’ and ‘constitutional compliance’ in relation to keywords like ‘empirical’, ‘effectiveness’, and ‘democratic backsliding’ (see table below). We used the search engines Google Scholar, Web of Science and the Search Engine of the library of Leiden University. We only included studies that were published and accessible at the start of this research project, in October 2023.

The entered keywords resulted in approximately 900 individual studies. After reading the title and abstract of these individual studies, we determined whether the study had the potential to fulfil the predetermined ‘inclusion and exclusion criteria’.⁹¹³ After this initial selection, approximately 300 studies remained. All these studies have been carefully read to determine if they fulfil the three inclusion and exclusion criteria:

1. Criterion 1: Is the study about a safeguard that is enshrined in the constitution?
2. Criterion 2: Is the safeguard empirically tested?
3. Criterion 3: Are the effects of the safeguards tested in relation to democratic erosion?

After this second selection, approximately 100 studies remained. To limit the number of studies, we formulated two additional criteria:

4. Criterion 4: Is the study peer-reviewed?
5. Criterion 5: Are the safeguards tested using quantitative methods?⁹¹⁴

After this third selection, approximately 30 studies remained. Using the ‘snowball method’, all biographies of these studies were reviewed to determine if any studies had been missed that could have fulfilled all five criteria. Due to time constraints, we could only apply the

⁹¹² The protocol of the structured literature review is based upon the methods of Petticrew and Roberts and Gough, Olivier and Thomas. See: Petticrew and Roberts, *Systematic Reviews*; David Gough, Sandy Oliver and James Thomas, *An Introduction to Systematic Reviews* (Sage, 2017).

⁹¹³ Every study is reviewed by one researcher. Random checks were done to ensure that the criteria were applied as consistently as possible. If the researcher reviewing a study was unsure about the application of one of the criteria, the study was reviewed by a second researcher.

⁹¹⁴ For the classification ‘peer-reviewed’ of articles, we followed the classification as shown in the search engine of the library of Leiden University. In case of doubt, we hand-checked the publisher’s website to confirm whether the article was peer-reviewed. For books and book chapters, we assumed that those printed by an academic press were peer reviewed.

snowball method within reasonable boundaries. Furthermore, we manually added some studies to the dataset that were known to one of the three authors of the project to create as much comprehensiveness as possible.⁹¹⁵

Pre-determined list of keywords for literature search

Specific keywords (three databases)*	Broad keywords (two databases)**	Title search only (Google Scholar)***
‘effectiveness of constitutions’ AND ‘empirical’	‘effects of constitutions’ AND ‘empirical’	‘effectiveness of constitutions’
‘effectiveness of militant democracy’	‘constitution’ AND ‘democratic backsliding’ AND ‘empirical’	‘effects of constitutions’
‘effectiveness of militant constitutionalism’	‘constitution’ AND ‘democratic erosion’ AND ‘empirical’	‘constitution’ AND ‘democratic backsliding’
‘effects of militant democracy’	‘constitution’ AND ‘militant democracy’ AND ‘empirical’	‘constitution’ AND ‘democratic erosion’
‘effects of militant constitutionalism’	‘constitutional safeguards’ AND ‘empirical’	‘constitution’ AND ‘militant democracy’
‘constitutional endurance’ AND ‘empirical’	‘constitutional compliance’ AND ‘empirical’	‘constitutional safeguards’
‘constitutional survival’ AND ‘empirical’	‘constitutional design’ AND ‘empirical’	‘constitutional compliance’
‘constitutional resilience’ AND ‘empirical’		
‘constitutional self-defence’ AND ‘empirical’		
‘constitutional self-defense’ AND ‘empirical’		
‘democratic self-defence’ AND ‘constitution’ AND ‘empirical’		
‘democratic self-defense’ AND ‘constitution’ AND ‘empirical’		

* entered in the search engine of Universitaire Bibliotheken Leiden, Google Scholar and Web of Science

** entered in the search engine of Universitaire Bibliotheken Leiden, Leiden and Web of Science

*** only entered in Google Scholar with function Title Search.

⁹¹⁵ 2015 Petticrew and Roberts, *Systematic Reviews*, 79-124.

12 APPENDIX B: ORIGINAL DATASET

Andrews & Montinola 2004

J.T. Andrews & G.R. Montinola, 'Veto Players and the Rule of Law in Emerging Democracies', *Comparative Political Studies* (37) 2004, afl. 1, p. 55-87.

Ball, Dave & Dodds 2023

S. Ball, C. Dave & S. Dodds, 'Enumerating rights: more is not always better', *Public choice* (196) 2023, afl. 3/4, p. 403-425.

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J.L. Castro Montero, 'Constitutional replacement in five countries of South America. An Empirical Comparative Analysis', *Estudios de Derecho* 2017, afl. 164, p. 69-88.

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A.S. Chilton & M. Versteeg, 'Do Constitutional Rights Make a Difference?', *American Journal of Political Science* (60) 2016, afl. 3, p. 575-589.

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A. Fruhstorfer, 'Consistency in constitutional design and its effect on democracy', *Democratization* (26) 2019, afl. 6, p. 1028-1046.

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T. Ginsburg & J. Melton, 'Does the constitutional amendment rule matter at all? Amendment cultures and the challenges of measuring amendment difficulty', *International Journal of Constitutional Law* (13) 2015, afl. 3, p. 686-713.

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T. Ginsburg & M. Versteeg, 'Constitutional Correlates of the Rule of Law', in: M. Adams, A. Meuwese & E.M.H. Hirsch Ballin (red.), *Constitutionalism and the Rule of Law. Bridging Idealism and Realism*, Cambridge: Cambridge University Press 2017, p. 506-525.

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