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Towards a theory of militant constitutionalism

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Stellingen behorende bij het proefschrift
Towards a theory of militant constitutionalism
van Jorieke Manenschijn

1. Empirical (legal) research is an important addition to the more traditional research methods in law, as it can support theoretical and dogmatic arguments, provide inspiration for new arguments and theories and provide insight into the effectiveness of legal measures.
2. The issue of constitutional backsliding, in contrast to democratic backsliding, reanimates the inherent tension between democracy and constitutionalism, prompting extensive debates on the scope and definition of constitutional backsliding, complicating the effort to delineate the core principles of constitutional democracy.
3. It is important to create awareness about which legal provisions in the constitution are essential for the functioning of constitutional democracy amongst both academics and citizens, as this makes it easier to recognise and counter (problematic) constitutional backsliding.
4. A theory of militant constitutionalism, understood as a theory proposing the use of far-reaching instruments, should aim to protect only the essential structures of constitutional democracy that are necessary to safeguard its survival, and leave open as much space as possible for democratic decision-making.
5. In the academic debate on the resilience of constitutional democracy, there often seems to be a focus on either formal instruments or informal instruments; however, formal and informal instruments are inherently connected and should, in the end, be studied in cohesion.



6. While social rights are a vital component of a flourishing constitutional democracy, they are less suited for protection through (militant) constitutional safeguards and, due to their nature, more appropriately secured through the cultivation of a strong constitutional and/or democratic culture.
7. While the concerns about the state of the Dutch constitutional democracy are valid, we should be cautious about prematurely declaring its decline, as such heavy warnings should be saved for those instances in which the existence of constitutional democracy is under threat, so as not to erode the meaning of the warning.
8. The added value of decentralised constitutional review in the Netherlands is exaggerated by politicians, placing courts in a difficult position as they must either disappoint citizens who are counting on extended rights protection or make themselves prone to the critique of judicial activism.
9. Academics should not forget that PhD students are working towards obtaining their qualification to become academics and are not yet 'fully qualified'; hence, at conferences, lectures and during peer review, attention should be given to how feedback is provided to PhD students to prevent 'soul-crushing' experiences.
10. While academic freedom is one of the fundamental pillars of academia, academics should respect the boundaries of their expertise to protect the academic freedom that truly matters; to be free in conducting research.

