



The Evolution of Constitutionalism in the Netherlands: A Critical Analysis of Institutional Reforms

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Abstract: This article examines the evolution of constitutionalism in the Netherlands through a critical analysis of institutional reforms that have shaped its contemporary legal order. Traditionally characterized by a strong emphasis on parliamentary sovereignty and a limited role for constitutional review, the Dutch constitutional framework has undergone gradual institutional adaptation through the expansion of judicial oversight, administrative accountability mechanisms, and the incorporation of European human rights norms in response to growing demands for transparency, accountability, and the protection of fundamental rights. This study employs a normative juridical and historical-institutional approach to evaluate how institutional reforms reshape the balance between parliamentary sovereignty and constitutional accountability to explore key reforms, including the strengthening of judicial oversight, the influence of international and European legal norms, and the increasing role of independent oversight bodies. The findings indicate an incremental redistribution of constitutional authority from purely political institutions toward judicial and oversight mechanisms, where the principles of the rule of law and checks and balances are increasingly emphasized. However, tensions persist between traditional doctrines and emerging constitutional practices, particularly in the context of democratic legitimacy and judicial activism. This article argues that the evolution of constitutionalism in the Netherlands reflects a dynamic interplay between legal continuity and institutional change, offering a comparative perspective on how constitutional systems adapt to increasing demands for accountability, rights protection, and supranational legal integration

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INTRODUCTION

Recent governance crises, increasing judicial intervention in administrative matters, and the expanding influence of European human rights regimes have intensified scholarly debate regarding the transformation of constitutionalism in the Netherlands, particularly in light of recent institutional reforms and shifting legal paradigms. Traditionally, the Dutch constitutional



system has been characterized by a strong adherence to parliamentary sovereignty and a notable absence of constitutional judicial review, as enshrined in Article 120 of the Dutch Constitution. However, contemporary developments suggest a gradual transformation toward a more dynamic constitutional order that integrates principles of the rule of law, human rights protection, and judicial accountability. This transformation raises critical questions concerning the growing role of judicial oversight, supranational human rights obligations, and administrative accountability mechanisms in limiting the dominance of the traditionally parliamentary-centered constitutional model.

Recent scholarship demonstrates that European Union law and the jurisprudence of the European Court of Human Rights increasingly influence Dutch constitutional interpretation by strengthening rights-based adjudication and constraining the autonomy of domestic legislative institutions. For instance, studies emphasize the increasing role of the European Court of Human Rights and European Union law in shaping Dutch constitutional practices (de Visser, 2022; Claes & Reestman, 2023). These external legal pressures have contributed to a reconfiguration of the balance between national sovereignty and supranational legal obligations, thereby challenging the traditional insulation of the Dutch constitutional system from judicial constitutional review. Furthermore, the landmark childcare benefits scandal (toeslagenaffaire) has intensified public and academic scrutiny of institutional accountability and the protection of fundamental rights (Brenninkmeijer, 2022; van den Brink, 2023).

In addition to external influences, internal institutional reforms have played a crucial role in redefining constitutionalism in the Netherlands. Recent studies indicate a strengthening of oversight mechanisms, including the National Ombudsman and administrative courts, which function as quasi-constitutional actors in safeguarding citizens' rights (Hirsch Ballin, 2022; Kummeling, 2024). Moreover, there has been a growing discourse on the potential introduction of constitutional review, reflecting broader concerns about the adequacy of existing checks and balances (Voermans, 2023). These developments indicate an emerging pluralistic constitutional structure in which administrative courts, independent oversight institutions, and European legal bodies collectively participate in safeguarding constitutional principles and protecting fundamental rights.

However, despite these advancements, the literature reveals significant divergences in interpreting the trajectory and implications of these reforms. Some scholars argue that the Dutch constitutional system is undergoing a fundamental transformation toward a more robust rule-of-law model (de Witte, 2022; Adams & Meuwese, 2023). In contrast, others contend that these changes remain incremental and do not fundamentally alter the core principle of parliamentary supremacy (Bovend'Eert, 2023; Elzinga, 2022). This divergence reflects a deeper scholarly disagreement between those who interpret recent reforms as evidence of a substantive transition toward rights-oriented constitutionalism and those who regard them as limited institutional adaptations that preserve the traditional supremacy of parliamentary authority.

While previous research has made valuable contributions to understanding specific aspects of Dutch constitutional development, it often tends to focus on isolated elements, such as judicial influence, Europeanization, or administrative accountability. For example, de Visser (2022) primarily examines the impact of EU law on domestic constitutional structures, while Claes and Reestman (2023) emphasize the role of transnational legal norms. Similarly, Brenninkmeijer



(2022) and van den Brink (2023) focus on institutional failures revealed by the childcare benefits scandal, without situating these issues within a broader constitutional transformation. As a result, existing studies tend to examine judicial influence, Europeanization, and administrative accountability in isolation, without systematically analyzing how these interconnected developments collectively reshape the structure and practice of Dutch constitutionalism.

This article seeks to address this gap by offering a critical and holistic analysis of institutional reforms in the Netherlands and their implications for constitutionalism. Unlike previous studies, which tend to adopt a fragmented or single-dimensional perspective, this research combines a historical-institutional approach with normative legal analysis to examine the interplay between continuity and change. It not only analyzes the structural evolution of key institutions but also critically evaluates the normative tensions between traditional doctrines and emerging constitutional practices.

Furthermore, this study introduces a more explicit focus on the concept of constitutional balance, particularly the interaction between democratic legitimacy and judicial oversight. While earlier studies have acknowledged the growing role of courts and oversight bodies, they often do not sufficiently interrogate the potential risks of judicial overreach or the implications for democratic governance (Voermans, 2023; Adams & Meuwese, 2023). By contrast, this article argues that the evolution of constitutionalism in the Netherlands should be understood as a dynamic negotiation between competing principles rather than a linear progression toward a fixed model.

In doing so, this research contributes to the broader discourse on comparative constitutional law by positioning the Netherlands as a unique case of gradual and contested constitutional transformation. It demonstrates that constitutionalism in the Netherlands evolves through continuous negotiation between parliamentary sovereignty, judicial accountability, administrative reform, and the growing influence of supranational legal norms. Ultimately, this article aims to provide a more nuanced understanding of how constitutional systems adapt to contemporary challenges while maintaining their foundational principles, thereby offering insights that are relevant not only for the Netherlands but also for other democratic societies undergoing similar transformations.

METHODS

This study integrates a normative juridical approach with historical-institutional analysis to examine how constitutional doctrines, institutional reforms, and governance practices interact in shaping the evolution of Dutch constitutionalism. The selection of this methodological framework is based on the recognition that doctrinal legal analysis alone cannot adequately capture the institutional dynamics, political negotiations, and transnational influences underlying constitutional transformation in the Netherlands; rather, it requires a contextual examination of institutional developments, historical trajectories, and the interaction between legal norms and governance practices. Recent legal scholarship emphasizes that contemporary constitutional change increasingly reflects a complex interplay between formal legal provisions and informal institutional dynamics (Loughlin, 2022; Barber, 2023).

The normative juridical approach is employed to critically interpret constitutional provisions, statutory regulations, and judicial decisions in order to assess the evolving



relationship between parliamentary sovereignty, judicial oversight, and the protection of fundamental rights. This approach allows for a systematic evaluation of how legal norms are constructed, interpreted, and applied within the Dutch constitutional system. In particular, it enables the identification of normative tensions between the traditional principle of parliamentary sovereignty and emerging demands for enhanced judicial oversight and rights protection. As argued by Dickson (2022) and Young (2023), normative legal analysis remains essential for assessing the legitimacy and coherence of constitutional reforms, especially in systems experiencing gradual institutional change.

Complementing this, the historical-institutional approach is used to trace the gradual development of judicial oversight mechanisms, administrative accountability structures, and the influence of European legal integration on Dutch constitutional governance. This method is particularly relevant in the Dutch context, where constitutional evolution has occurred incrementally rather than through radical transformation. By examining institutional responses to critical events such as governance failures, public accountability crises, and increasing European legal integration this study highlights how path dependency and institutional adaptation shape constitutional trajectories (Mahoney & Thelen, 2022; Peters, 2023). This approach supports the argument that the evolution of constitutionalism in the Netherlands is best understood as a process of layered change rather than abrupt reform.

In addition, this research applies qualitative doctrinal interpretation supported by comparative constitutional reflection to evaluate how the Dutch constitutional model responds to broader European developments in judicial accountability and constitutional governance.. Secondary data are collected from recent academic literature, policy reports, and legal commentaries published from 2022 onwards to ensure the relevance and contemporaneity of the analysis. The use of recent sources is to capture ongoing debates surrounding constitutional reform, particularly those related to judicialization, administrative accountability, and the influence of supranational legal frameworks (Stone Sweet, 2022; Kelemen, 2023).

Importantly, this study adopts an argumentative analytical model, in which legal developments are not merely described but critically evaluated in relation to competing constitutional principles. This model is justified by the need to move beyond descriptive accounts and engage with normative questions concerning the direction and implications of institutional reforms. As noted by Tushnet (2022) and Dyzenhaus (2023), contemporary constitutional scholarship increasingly requires critical engagement with the underlying values and assumptions that shape legal systems.

By integrating these methodological approaches, this research offers a comprehensive framework for analyzing constitutional evolution in the Netherlands. It allows for a multidimensional understanding that captures both the stability of legal traditions and the pressures for institutional innovation, thereby supporting the central argument that Dutch constitutionalism is undergoing a gradual yet contested transformation.

RESULTS AND DISCUSSIONS

The findings demonstrate that Dutch constitutionalism has evolved through gradual institutional adjustments, particularly through the expansion of judicial oversight, the strengthening of administrative accountability mechanisms, and the increasing incorporation of

European human rights standards into domestic governance. This finding reinforces the argument that Dutch constitutionalism is not undergoing a complete paradigm shift but is instead experiencing a gradual reconfiguration driven by both internal pressures and external legal influences. In particular, the expansion of judicial and quasi-judicial roles has significantly altered the functional balance within the constitutional system, even in the absence of formal constitutional review (Leijten, 2022; de Búrca, 2023).

One of the most significant developments identified in this study is the expanding constitutional function of administrative courts and oversight institutions, which increasingly safeguard fundamental rights and governmental accountability despite the absence of formal constitutional review. Although Article 120 of the Dutch Constitution prohibits courts from reviewing the constitutionality of Acts of Parliament, judges have increasingly relied on international human rights instruments particularly the European Convention on Human Rights—to indirectly assess legislative actions. This phenomenon, commonly referred to as ‘indirect constitutional review,’ illustrates how Dutch courts rely on international human rights treaties, particularly the European Convention on Human Rights, to scrutinize legislative and administrative actions in the absence of formal constitutional adjudication powers (Spano, 2022; Gerbrandy, 2023). Consequently, the judiciary has become a more prominent actor in safeguarding fundamental rights, thereby reshaping the traditional understanding of constitutional authority.

However, this development is not without controversy. Critics contend that the increasing dependence on international legal norms may weaken democratic legitimacy by transferring constitutional influence from nationally elected institutions to judicial and supranational actors that operate with more limited forms of democratic accountability (Chalmers, 2022; Fabbrini, 2023). This concern is particularly relevant in the Dutch context, where parliamentary sovereignty has long been regarded as a cornerstone of the constitutional order. The findings of this study suggest that this tension between judicialization and democratic accountability remains unresolved, creating a fragile equilibrium within the system.

In addition to judicial developments, the research highlights the increasing significance of independent oversight bodies, such as the National Ombudsman and various regulatory authorities, in promoting accountability and protecting citizens’ rights. These institutions operate beyond the classical trias politica structure and increasingly function as complementary constitutional actors by monitoring administrative conduct, protecting citizens’ rights, and compensating for weaknesses in traditional accountability mechanisms. Recent scholarship suggests that such bodies contribute to the emergence of a “diffused constitutionalism,” in which multiple actors share responsibility for upholding constitutional values (Harlow, 2022; Zouridis, 2023). This diffusion of constitutional authority reflects a broader trend toward pluralism in governance but also raises questions about coherence and coordination among institutions.

The childcare benefits scandal represents a critical constitutional case study because it exposed serious deficiencies in administrative justice, judicial protection of fundamental rights, and institutional accountability within the Dutch governance system. On the one hand, the scandal exposed significant deficiencies in administrative decision-making and a lack of effective safeguards for fundamental rights. On the other hand, it triggered institutional responses that strengthened oversight mechanisms and increased awareness of the need for constitutional



safeguards in administrative processes (Barkhuysen, 2022; Scheltema, 2023). This duality underscores the reactive nature of constitutional development in the Netherlands, where reforms are often driven by crises rather than proactive institutional design.

Furthermore, the findings indicate that Europeanization continues to play a pivotal role in shaping Dutch constitutionalism. The influence of European Union law and the jurisprudence of the European Court of Human Rights has introduced new standards of rights protection and legal accountability, thereby constraining domestic legislative autonomy. While some scholars view this as a positive development that enhances the rule of law, others argue that it creates a form of “constitutional asymmetry” in which national institutions are increasingly subordinated to external legal regimes (Klabbers, 2022; Micklitz, 2023). This study demonstrates that Europeanization simultaneously strengthens judicial protection of fundamental rights while constraining the autonomy of domestic legislative institutions, thereby reinforcing the hybrid character of Dutch constitutional governance.

Another important finding concerns the ongoing debate regarding the potential introduction of constitutional review in the Netherlands. While there is growing support for reforming Article 120 to allow courts to assess the constitutionality of legislation, significant resistance remains among political actors who fear the erosion of parliamentary authority. Recent contributions suggest that any move toward constitutional review would need to be carefully designed to preserve democratic legitimacy while enhancing legal accountability (Besselink, 2022; Koopmans, 2023). This debate reflects a broader tension between tradition and innovation, which lies at the heart of the Dutch constitutional experience.

Critically, this study finds that existing literature often underestimates the normative implications of these developments. While many scholars acknowledge the increasing role of courts and oversight bodies, they tend to focus on descriptive analysis rather than engaging with the underlying question of whether these changes enhance or undermine constitutionalism. By contrast, this research argues that the evolution of constitutionalism in the Netherlands should be understood as a contested process in which competing values such as democracy, legality, and accountability are continuously negotiated. This perspective aligns with recent theoretical approaches that emphasize the dynamic and conflictual nature of constitutional development (Kavanagh, 2022; Wilkinson, 2023).

Moreover, the study reveals that the shift toward a more pluralistic constitutional framework has led to a fragmentation of authority, which may pose challenges for legal certainty and institutional coherence. As multiple actors assume constitutional functions, the boundaries between legislative, executive, and judicial roles become increasingly blurred. While this diffusion can enhance flexibility and responsiveness, it also risks creating overlaps and inconsistencies that undermine the effectiveness of constitutional governance (Curtin, 2022; Mendes, 2023). This finding highlights the need for clearer institutional coordination and normative guidance in managing the evolving constitutional landscape.

At the same time, it is important to recognize that the Dutch model of incremental constitutionalism offers certain advantages. Unlike systems that rely on rigid constitutional frameworks, the Netherlands has demonstrated a capacity for gradual adaptation in response to changing societal and legal conditions. This flexibility allows for the incorporation of new norms and practices without the need for formal constitutional amendments, thereby preserving



institutional stability while enabling innovation. However, this adaptive capacity should not be overstated, as it may also delay necessary structural reforms and perpetuate existing deficiencies (de Visser, 2024; van Gestel, 2023).

In conclusion, the results of this study confirm that constitutionalism in the Netherlands is evolving through a process of gradual, contested, and multi-actor transformation. While institutional reforms have enhanced accountability and strengthened rights protection, they have also generated new constitutional tensions by fragmenting institutional authority, blurring the boundaries between political and judicial functions, and complicating the coherence of democratic governance. The findings challenge simplistic narratives of linear progress and instead emphasize the need for a nuanced understanding of constitutional change as an ongoing negotiation between continuity and innovation. This critical perspective not only contributes to the academic discourse on Dutch constitutionalism but also offers broader insights into the challenges of maintaining effective and legitimate governance in contemporary democratic societies.

CONCLUSIONS

The evolution of constitutionalism in the Netherlands demonstrates a gradual redistribution of constitutional authority through the expansion of judicial oversight, the strengthening of administrative accountability mechanisms, and the increasing influence of European legal norms on domestic governance. This study confirms that the Dutch constitutional system is no longer exclusively anchored in the traditional doctrine of parliamentary sovereignty, but is increasingly characterized by a more pluralistic and functionally dispersed model of constitutional governance. Judicial bodies, administrative courts, and independent oversight institutions have assumed expanded roles in safeguarding fundamental rights, thereby redefining the practical operation of constitutionalism.

However, this transformation does not amount to a complete paradigm shift. Instead, it reflects a dynamic tension between continuity and change, where long-standing constitutional principles coexist with emerging practices of legal oversight and rights protection. The persistence of limitations on constitutional review illustrates that formal structures have not fully aligned with evolving constitutional realities. As a result, the Dutch system operates within a hybrid framework that balances political authority with legal constraints, albeit in an often contested manner.

Importantly, this study highlights that the ongoing evolution of constitutionalism raises critical normative questions regarding democratic legitimacy, institutional coherence, and the appropriate distribution of constitutional authority. While the expansion of judicial and institutional oversight strengthens accountability and rights protection, it also creates risks of fragmented constitutional authority, overlapping institutional competencies, and reduced legal certainty within the Dutch democratic governance system. Therefore, the future development of constitutionalism in the Netherlands will depend on the ability to reconcile these competing demands.

In conclusion, constitutionalism in the Netherlands should be understood as a continuously negotiated process in which democratic legitimacy, judicial accountability, and supranational legal integration must be carefully balanced to maintain effective and coherent constitutional



governance. Its trajectory underscores the importance of adaptive institutional design in responding to contemporary legal and societal challenges, while also emphasizing the need for careful calibration between democratic principles and the rule of law.

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