

Constitutional Silences, Executive Power, and Democratic Fragility in Small States

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ABSTRACT

This article examines how constitutional silence, understood as the absence of clear rules on emergency authority, delegated legislation, appointments, legislative oversight, and ex ante constitutional review, creates opportunities for executive aggrandizement in small states. The argument is that democratic fragility often arises not only from openly authoritarian legal texts but also from ambiguities that allow concentrated political actors to expand power under the rhetoric of necessity, speed, or national interest. In small political systems, where institutions are often thinly staffed and personal networks are dense, constitutional gaps can become structural pathways for domination. Drawing on contemporary democracy and rule-of-law scholarship, the article argues for a design-oriented response: stronger parliamentary controls, enforceable judicial review, protected minority rights, and constitutional clarity on delegated authority. The core claim is that democratic endurance depends as much on constitutional precision as on constitutional aspiration.

Keywords- constitutional design; executive power; democratic backsliding; rule of law; small states.

I. INTRODUCTION

In constitutional democracies, danger does not emerge only from explicit assaults on the separation of powers. It also emerges from what the constitutional text fails to settle. Constitutional silence may appear harmless in stable political moments, but in periods of electoral polarization, emergency governance, or institutional weakness, silence becomes a transfer mechanism by which the executive accumulates discretion. International IDEA has shown that global democratic erosion has increasingly involved the weakening of countervailing institutions rather than the dramatic abandonment of constitutional order (International IDEA, 2023a, 2023b). The problem is therefore not merely illegality; it is the normalization of legally arguable concentration of power (Ginsburg & Huq, 2018; Levitsky & Ziblatt, 2018).

Small states are especially exposed. Their constitutional systems often combine Westminster inheritances, thin administrative capacity, and heavy political personalization. Where parliament is weak, the opposition numerically marginal, and independent agencies underdeveloped, ambiguity over appointments, emergency action, budget reallocations, or delegated legislation can quickly become executive advantage. In such settings, constitutional design is not a technical luxury. It is the first line of democratic self-defense (International IDEA, 2023; World Justice Project, 2024).

II. CONSTITUTIONAL SILENCE AS AN INSTITUTIONAL RISK

Constitutional silence should be understood as a category of institutional risk. It arises where a

constitution does not clearly define the scope, limits, or reviewability of executive action; does not entrench meaningful rights of legislative minorities; or leaves critical checks to ordinary legislation that can be altered by simple majorities. The Venice Commission's updated Rule of Law Checklist emphasizes that legislative and executive power must be reviewable for constitutionality and legality by an independent judiciary, and that constitutional review mechanisms should be protected against contingent political majorities (Venice Commission, 2025). Where that architecture is absent or weak, executive overreach can proceed through interpretation rather than brute force (Elkins et al., 2009; North, 1990).

This matters because constitutional abuse today is often incremental. Leaders seldom begin by suspending the constitution. They govern through decree, use appointments to soften oversight, overload parliamentary procedure, or invoke urgency to bypass deliberation. The constitution remains formally intact while accountability weakens in practice. Democratic backsliding, in this sense, is frequently engineered through ordinary-looking institutional moves that exploit undefined spaces in the legal order (International IDEA, 2023b) (Ackerman, 2006; International IDEA, 2023).

In small states, silence surrounding emergency powers is particularly dangerous. The executive may claim broad implied authority to regulate movement, finance, procurement, or speech, even where the constitutional text provides no calibrated test of necessity, duration, review, or legislative renewal. Similar risks arise where the constitution is silent on caretaker conventions, coalition breakdown, or interim appointments. Because elite circles in small systems are relatively compact, the capture of one oversight node can have cascading effects across the judiciary, legislature, media environment, and administrative agencies (Ginsburg & Huq, 2018; Levitsky & Ziblatt, 2018).

III. WHY SMALL STATES REQUIRE GREATER CONSTITUTIONAL PRECISION

The conventional argument against detailed constitutional design is that flexibility allows a political system to adapt. That argument has force in large, mature democracies with dense conventions and multiple independent centers of power. It is far less persuasive where informal norms are weak and politics is intensely personalized. Douglas North's institutional analysis remains relevant here: durable development depends on rules that reduce uncertainty and constrain opportunism (North, 1990). In fragile constitutional environments, ambiguity does the opposite. It rewards opportunism by making politically convenient interpretations easier to defend (International IDEA, 2023; World Justice Project, 2024).

Greater constitutional precision in small states should therefore be viewed not as rigidification but as risk management. At minimum, constitutions should more clearly regulate: delegated legislation; emergency declarations and extensions; independent appointments and removals; legislative committee rights; budgetary reallocations; anti-defection rules where relevant; and constitutional access for minorities, ombuds institutions, and public-interest litigants. Constitutions should also entrench a reviewable standard for necessity and proportionality where rights restrictions are imposed (Elkins et al., 2009; North, 1990).

Precision also has a signalling effect. It lowers the room for self-serving interpretation by officeholders and lowers the burden on courts asked to police executive boundaries under political pressure. In small states, where judges may face intense scrutiny and reputational exposure, clearer textual benchmarks help convert judicial review from a heroic act into an ordinary constitutional duty (Ackerman, 2006; International IDEA, 2023).

IV. A DESIGN AGENDA FOR DEMOCRATIC RESILIENCE

A practical reform agenda would place emphasis on four areas. First, constitutions should protect effective parliament, not merely elected parliament. This means enforceable notice rules, committee powers, opposition access to information, and meaningful time for scrutiny of delegated legislation. Second, constitutions should secure constitutional review. Ex ante review for certain categories of legislation, expedited review during emergencies, and standing for opposition minorities can reduce the damage caused by fast-moving executive action (Venice Commission, 2025). Third, independent appointments should require plural participation or supermajority mechanisms, especially for courts, electoral bodies, audit institutions, and prosecutors. Fourth, rights-limiting measures should automatically sunset unless renewed through transparent legislative processes (Ginsburg & Huq, 2018; Levitsky & Ziblatt, 2018).

The central lesson is simple: where political power can be concentrated quickly, constitutional design must slow it down deliberately. Democratic constitutions are not merely expressions of values. They are devices for distributing time, veto points, and burdens of justification across the state. When constitutions fail to do this with sufficient clarity, the executive becomes the default interpreter of its own limits (International IDEA, 2023; World Justice Project, 2024).

V. COMPARATIVE LESSONS FROM DEMOCRATIC EROSION

Comparative experience shows that democratic erosion is rarely driven by a single unconstitutional

rupture. It is more commonly advanced through cumulative advantages: emergency framing, loyalty-based appointments, selective use of prosecutorial power, and procedural manipulation that remains formally arguable even when substantively abusive. Where constitutions are sparse, governing coalitions can convert ambiguity into precedent and then cite that precedent as evidence of constitutional normality. This is why scholars of democratic backsliding emphasize not only elections, but also the durability of counter-majoritarian institutions, the social legitimacy of opposition, and the ability of courts and legislatures to resist normalization of exceptional power (Ginsburg & Huq, 2018; Levitsky & Ziblatt, 2018).

For small states, the lesson is not to mimic large constitutional systems clause for clause. It is to identify the specific nodes at which concentrated political power can bypass review. Those nodes usually include appointments, procurement during emergencies, public finance reallocation, and the use of security legislation against dissent. A constitution that names these risks expressly performs a disciplining function even before litigation arises, because it narrows the field of plausible interpretation and strengthens the position of officials who refuse unlawful instructions (Ackerman, 2006; Elkins et al., 2009).

VI. IMPLEMENTATION PRIORITIES FOR CONSTITUTIONAL REFORM

A credible reform programme should therefore proceed in layers. The first layer is textual precision: emergency powers should be time-limited, renewable only through explicit legislative approval, and reviewable by the courts on defined grounds. The second layer is institutional hardening: appointments to electoral management bodies, anti-corruption institutions, and superior courts should be insulated through supermajority procedures, public hearings, and transparent criteria. The third layer is documentary transparency: delegated legislation, emergency directives, and fiscal reallocation instruments should be published promptly, indexed centrally, and made challengeable without procedural obstruction (International IDEA, 2023; World Justice Project, 2024).

Constitutional reform, however, cannot be reduced to drafting techniques. It also requires a political

coalition committed to constitutional fidelity after adoption. Civic education, parliamentary procedure reform, and legal profession engagement are therefore part of democratic design rather than external add-ons. In small states, where elite networks are dense and reputational pressure matters, constitutional resilience often depends on converting constitutional norms into expectations that public office is fiduciary, reviewable, and temporary. Precision in text must be accompanied by precision in constitutional culture (North, 1990; Ginsburg & Huq, 2018).

VII. CONCLUSION

Constitutional silence is often treated as benign incompleteness. In vulnerable democracies, it is better understood as latent executive capacity. Small states, because of their scale and institutional concentration, are especially susceptible to this risk. The answer is not maximal constitutional detail for its own sake, but strategic clarity where executive power, oversight, and review intersect. Democratic resilience depends not only on who governs, but on how difficult the legal order makes it for any single institution to govern without scrutiny. In that sense, constitutional precision is a democratic safeguard before it is a drafting preference (Elkins et al., 2009; North, 1990).

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