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# Modern Constitutionalism as the Foundation of the Rule of Law: A Theoretical Review

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**Abstract**

*Modern constitutionalism has evolved as a fundamental concept in contemporary state governance that emphasizes the need to limit governmental power through constitutional mechanisms. This study conducts a Systematic Literature Review (SLR) using PRISMA 2020 guidelines to analyze the development, foundational pillars, and implementation challenges of modern constitutionalism as the basis of the rule of law. Fourteen relevant articles published between 2010 and 2025 were selected through a systematic database search and eligibility screening. The findings show that modern constitutionalism consists of core elements such as the rule of law, separation of powers, human rights protection, and restorative constitutionalism, which together reinforce state legitimacy and accountability. Its implementation varies across jurisdictions depending on legal systems, institutional capacity, and technological advancements. Contemporary challenges including populism, globalization, and algorithmic governance highlight the urgency for adaptive and innovative constitutional strategies. This study concludes that modern constitutionalism is not only a normative framework but also a practical foundation for maintaining an effective and sustainable rule of law state*.



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**Keywords: modern constitutionalism, rule of law, separation of powers, restorative constitutionalism, democracy.**

**BACKGROUND**

Modern constitutionalism is a fundamental concept in contemporary state governance as it asserts that state power must be limited by the constitution in order to prevent abuse of authority (McIlwain, 2005). Constitutionalism serves as a normative mechanism that stipulates government shall operate based on the principles of law and not the will of an individual or ruling elite (Tushnet, 2013). In classical views, constitutionalism is rooted in the idea that the constitution must be capable of protecting the rights of the people from despotic acts of rulers (Vile, 1998). Therefore, modern constitutionalism does not only contain the basic rules of the state but also emphasizes control of power through the principle of checks and balances (Madison, 1788).

In line with the development of times, constitutionalism has undergone a transformation from the traditional legalistic model toward a more substantive modern model oriented toward the protection of human rights (Habermas, 1996). Modern constitutionalism requires the state not only to have a written constitution, but also to ensure the real implementation of democratic values and the rule of law in state administration (Allan, 2001). This means that the existence of a constitution is insufficient if it is not accompanied by the practice of governance that respects the principles of the rule of law and democratic values (Raz, 1979). The rule of law itself emphasizes that all governmental actions must comply with applicable law and remain subject to independent oversight (Dicey, 1959). Thus, constitutionalism and the rule of law have a synthetic relationship that strengthens the legitimacy and accountability of the state (Allan, 2001).

In the context of the rule of law, the existence of the constitution becomes the highest source of legitimacy for all state policies (King, 2000). The rule of law is built on the belief that law is an instrument to protect citizens' rights and to limit governmental power (Raz, 1979). Thus, the rule of law not only demands compliance with the law but also requires the law to be just, rational, and reflective of moral values and public civility (Habermas, 1996). The consistent implementation of the rule of law represents the realization of modern constitutionalism, positioning law as the ethical and normative foundation for state administration (Allan, 2001).

The urgency of discussing modern constitutionalism as the foundation of the rule of law is increasingly relevant amid global political complexities marked by rising populism and the weakening of democratic institutions (Müller, 2016). The emergence of populist leaders in various countries has become a threat to constitutionalism as they often manipulate the law and state



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institutions to maintain power (Levitsky & Ziblatt, 2018). This phenomenon shows that a constitution may lose effectiveness if not grounded in strong constitutionalist values and upheld by independent institutions (Tushnet, 2013). In other words, the constitution may become a mere formal symbol without substantive force if constitutionalism principles are not enforced in governance practices (King, 2000).

In developing countries, the challenges of building a rule of law state include weak institutions, an underdeveloped legal culture, and political interference in judicial bodies (Carothers, 2006). Developing countries often exhibit the phenomenon of rule by law rather than rule of law, where law is used as a tool of power for political interests of the ruling elite (Peerenboom, 2004). This contradicts the spirit of constitutionalism which requires the supremacy of the constitution over all acts of the state (Vile, 1998). Therefore, the implementation of modern constitutionalism is crucial to ensure that the state not only has a good legal structure but also internalizes constitutional values among all political actors and state institutions (Habermas, 1996).

In Indonesia, the implementation of modern constitutionalism began to emerge after the 1998 reform era with amendments to the 1945 Constitution which strengthened limitations on executive power and enhanced the mechanism of checks and balances (Asshiddiqie, 2006). The establishment of new institutions such as the Constitutional Court is a manifestation of efforts to strengthen the rule of law through the judicial review of legislation (Jimly, 2007). Thus, Indonesia has adopted the foundation of modern constitutionalism in its constitutional system through the affirmation of constitutional supremacy (Mahfud MD, 2009). Nevertheless, challenges in its consistent implementation still arise, such as corruption, abuse of power, and a low level of legal culture in society (Butt & Lindsey, 2012). This indicates that modern constitutionalism has not been fully internalized in every layer of Indonesia's political and legal system (Asshiddiqie, 2006). Furthermore, modern constitutionalism demands active public participation in overseeing state administration (Habermas, 1996). Public participation in the political process is a prerequisite for the functioning of constitutionalism as it ensures social control over state power (Dryzek, 2000).

Therefore, a strong rule of law state can only be realized if the society possesses constitutional awareness and strong political participation in maintaining legal independence and democracy (Levitsky & Ziblatt, 2018). Thus, building constitutional awareness among citizens is a crucial aspect of strengthening modern constitutionalism (Müller, 2016).

Based on the above description, modern constitutionalism is not only a theoretical concept but the main foundation for sustaining a rule of law state and a civilized democracy (Allan, 2001).


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Strengthening modern constitutionalism is essential to prevent abuse of power, maintain the integrity of state institutions, and ensure the protection of citizens' rights (Tushnet, 2013). Therefore, research on modern constitutionalism as the basis of the rule of law is highly relevant for enhancing theoretical understanding as well as contributing to improvements in constitutional practice in Indonesia and other countries striving to uphold constitutional supremacy (Mahfud MD, 2009)

## METHOD

This study uses a Systematic Literature Review (SLR) method. The SLR process involves several main steps: establishing research questions, designing a protocol, conducting systematic literature searches, selecting studies based on inclusion–exclusion criteria, assessing the quality of studies, extracting data, analyzing and synthesizing findings, and reporting the results in a structured manner (using guidelines such as PRISMA 2020). The benefits of SLR include providing a comprehensive overview of existing findings, identifying research gaps, avoiding bias in literature selection, and strengthening the theoretical justification of the research.

The initial step of SLR is formulating research questions that are clear, focused, and traceable through literature review. Research questions must reflect research gaps and the aims of the study. Examples relevant to the theme of constitutionalism and the rule of law include:

- **RQ1**: How is the concept of modern constitutionalism defined and developed in studies from 2010–2025?
- **RQ2**: What is the conceptual relationship between modern constitutionalism and the principle of the rule of law in the context of contemporary governance?
- **RQ3**: What factors constitute the pillars or elements of modern constitutionalism as the foundation of the rule of law according to recent studies?
- **RQ4**: What are the challenges in the implementation of modern constitutionalism in the rule of law state across various jurisdictions?

The SLR protocol serves as a step-by-step guide ensuring the review process is transparent, systematic, and replicable. The protocol includes several components (Table 1).

**Table 1. Components and Content of the Protocol**

| Protocol Component | Content |
|---|---|
| Purpose of review | Identifying and synthesizing theories and research on modern |


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| Protocol Component | Content |
|---|---|
| | constitutionalism as the foundation of the rule of law |
| Research questions (RQ) | As listed in stage 1 |
| Time range of sources | 2010–2025 |
| Search databases | Google Scholar, Scopus, Web of Science, JSTOR, SSRN, and DOAJ |
| Keywords | "modern constitutionalism", "rule of law", "constitutional democracy", "legal state", "constitutional theory", "good governance and constitution" |
| Inclusion & exclusion criteria | Explained in stage 4 |
| Study quality assessment method | Using a checklist (JBI/Joanna Briggs Institute) |
| Synthesis method | Narrative (thematic synthesis) |

Synthesis was carried out using Thematic Analysis by:

1. Reading all selected studies in-depth
2. Grouping findings into themes (code–category–theme)
3. Developing major themes, including:
    - Pillars of modern constitutionalism
    - Relationship between constitutionalism and the rule of law
    - Models of modern constitutionalism implementation
    - Contemporary challenges in the rule of law state

**RESULTS**

After conducting a systematic literature search on the related theme, based on the SLR systematic process, the flow of literature selection can be described as follows:

- Identification through database searches: Google Scholar, Scopus, Web of Science, JSTOR, SSRN, and DOAJ — a total of 150 articles were found.
- Duplicated data were removed, leaving 120 articles.
- During title and abstract screening, 60 articles met the initial criteria.
- In the eligibility process, 40 full-text articles were reviewed, but 26 were later removed



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due to not aligning with the focus of modern constitutionalism or rule of law.

- Inclusion: 14 articles/chapters were included in the final analysis (Table 2).

**Table 2. Relevant Articles**

| No | Author (Year) | Title of Article/Chapter | Notes of Relevance |
|---|---|---|---|
| 1 | Khalil, A. (2010) | *From Constitutions to Constitutionalism in Arab States* | Explains the shift from constitutions to constitutionalism in Arab states — important to understand the modernization of constitutionalism. |
| 2 | Fombad, C. M. (2011) | *Reflections on Some Current Challenges and Future Prospects* | Discusses constitutionalism challenges in Africa; relevant to rule of law and constitutionalism concepts. |
| 3 | Zabokrytskyy, I. (2015) | *Rule of Law and Constitutionalism: Modern Approaches* | Focuses on the relationship between rule of law and constitutionalism — highly relevant as a foundation of the rule of law. |
| 4 | Barber, N. W. (2018) | *The Rule of Law*, in *The Principles of Constitutionalism* | Provides theoretical definitions of rule of law within modern constitutionalism. |
| 5 | Allan, T. R. S. (2023) | *Constitutionalism at Common Law: The Rule of Law and Judicial Review* | Analyzes constitutionalism in the common law system; helps understand variations of rule of law states. |
| 6 | Landau, D. E., & Dixon, R. (2024) | *Restorative Constitutionalism* | A new concept related to restoring constitutions and rule of law — suitable for theory and contemporary challenges. |
| 7 | Dixon, R. (2022) | *The Role of Restorative Constitutionalism* | Expands the idea of restorative constitutionalism and its dimensions in modern constitutionalism. |
| 8 | Ferioli, E. (2015) | *Rule of Law and Constitutional Democracy* | Explains rule of law as an essential element of democratic constitutionalism — directly relevant to the main topic. |
| 9 | Jaffe et al. (2021) | *Relation between* | Provides a quantitative perspective linking |



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| No | Author (Year) | Title of Article/Chapter | Notes of Relevance |
|---|---|---|---|
| | | *Constitutions, Socioeconomics and The Rule of Law…* | rule of law with socioeconomic stability. |
| 10 | Abramowitz et al. (2020) | *Founding and Amending a Constitution* | Focuses on constitutional amendments and their theoretical implications. |
| 11 | Leslie et al. (2021) | *Artificial Intelligence, Human Rights, Democracy, and The Rule of Law* | Relates constitutionalism and the rule of law with emerging technologies — adds a contemporary dimension. |
| 12 | Mei & Broyde (2025) | *Reclaiming Constitutional Authority of Algorithmic Power* | Links constitutionalism with algorithmic governance — relevant to modern constitutional theory. |
| 13 | Koniaris et al. (2015) | *Network Analysis in the Legal Domain* | Provides legal methodology insights relevant to legal structure in rule of law context. |
| 14 | Baer, S. (2013) | *Constitutionalism Today* | Discusses contemporary constitutionalism theoretically — solid theoretical foundation. |

**Detailed Thematic Analysis**

**Theme 1: Pillars of Modern Constitutionalism**

Pillars of modern constitutionalism include core elements forming the foundation of the rule of law (Table 3).

**Table 3. Pillars of Modern Constitutionalism**

| Code | Category | Study Findings |
|---|---|---|
| Rule of law | Law as foundation | Ferioli (2015) emphasizes rule of law as an essential element of democratic constitutionalism. |
| Separation of powers | Checks and balances | Barber (2018) explains the division of legislative, executive, and judicial powers as the core of constitutionalism. |
| Human rights | Protection of | Landau & Dixon (2024) show human rights as a |



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| Code | Category | Study Findings |
|---|---|---|
| | human rights | legitimacy indicator of rule of law states. |
| Restorative constitutionalism | Restoration of legal legitimacy | Dixon (2022); Landau & Dixon (2024) stress its role in addressing constitutional crises. |

Synthesis: These pillars form a conceptual framework that can be applied across various jurisdictions, while also providing a focal point for assessing the effectiveness of the modern rule of law.

**Theme 2: Relationship Between Constitutionalism and the Rule of Law**

Description: The relationship between constitutionalism and the rule of law emphasizes that constitutionalism without the rule of law will weaken the legitimacy of legal institutions (Table 4).

**Table 4. Relationship Between Constitutionalism and the Rule of Law**

| Code | Category | Study Findings |
|---|---|---|
| Principle of legality | Rule of law in practice | Zabokrytskyy (2015): rule of law as a fundamental basis of modern constitutionalism. |
| Institutional effectiveness | Legal implementation | Allan (2023) notes judicial review as a key instrument ensuring constitutionalism. |
| Socioeconomic relations | Impact of rule of law | Jaffe et al. (2021): correlation between rule of law, socioeconomic conditions, and political stability. |

Synthesis: Rule of law is not only a legal principle, but also a performance indicator of constitutionalism.

**Theme 3: Models of Modern Constitutionalism Implementation**

Description: The implementation models include the ways in which the principles of constitutionalism are applied across various legal systems and technological contexts (Table 5).


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**Table 5. Models of Modern Constitutionalism Implementation**

| Code | Category | Study Findings |
|---|---|---|
| Legal systems | Civil vs. common law variations | Allan (2023); Khalil (2010): variation and adaptability in different legal systems. |
| Technology & algorithm | Algorithmic governance | Mei & Broyde (2025): new risks and governance challenges. |
| Legal reforms | Constitutional adaptation | Fombad (2011): reforms needed to maintain relevance of constitutionalism. |

Synthesis: Implementation models must be adaptive to legal, social, and technological contexts in order for the principles of modern constitutionalism to be effectively applied.

**Theme 4: Contemporary Challenges in the Rule of Law State**

Description: Contemporary challenges refer to the obstacles faced by modern constitutionalism in real-world practice (Table 6).

**Table 6. Contemporary Challenges in the Rule of Law State**

| Code | Category | Study Findings |
|---|---|---|
| Populism | Risks to institutions | Müller (2016): populism threatens constitutional stability. |
| Globalization & legal complexity | Changing legal environment | Landau & Dixon (2024): flexibility needed against global change. |
| Technology | Algorithmic threats | Mei & Broyde (2025); Leslie et al. (2021). |
| Legitimacy crisis | Constitutional restoration | Dixon (2022) highlights restorative strategy. |

Synthesis: These challenges demand innovative and restorative approaches to ensure that the principles of modern constitutionalism remain relevant in the era of globalization and technological transformation.

**DISCUSSION**

The results of this systematic literature review indicate that modern constitutionalism is a dynamic concept that continues to develop to align with contemporary social, political, and



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technological contexts. The main pillars of modern constitutionalism — rule of law, separation of powers, human rights, and restorative constitutionalism — form not only a normative foundation but also an operational one for the rule of law state. The rule of law functions as a supporting principle ensuring that governmental institutions act lawfully, transparently, and accountably. Literature from Ferioli (2015) and Zabokrytskyy (2015) emphasizes that without the rule of law, constitutionalism loses legitimacy and becomes vulnerable to abuse of power.

Restorative constitutionalism, as studied by Landau & Dixon (2024) and Dixon (2022), adds an innovative dimension to classical constitutionalism theory. This approach enables the restoration of legal legitimacy and balance of power during political crises or institutional conflict. It is relevant in many modern jurisdictions where constitutional crises, populism, and socioeconomic pressures challenge the implementation of the rule of law. The restorative approach also facilitates dialogue between legal institutions and society, thereby creating sustainable legal legitimacy.

The relationship between constitutionalism and the rule of law is also found to be highly complex and multidimensional. Quantitative studies by Jaffe et al. (2021) indicate that effective rule of law has a significant correlation with socioeconomic stability. In other words, states that consistently enforce legal principles tend to possess stronger institutions, lower levels of corruption, and higher political legitimacy. This indicates that modern constitutionalism cannot be detached from socioeconomic conditions and the institutional capacity of a state.

The implementation models of modern constitutionalism vary depending on legal systems, political contexts, and technological factors. Allan (2023) highlights differences in common law systems compared to civil law systems (Khalil, 2010), while Mei & Broyde (2025) and Leslie et al. (2021) emphasize the influence of technology and algorithms on constitutional governance. This opens new perspectives that the principles of constitutionalism must be continuously updated to remain relevant in the digital era, including oversight of algorithms and automation systems in legislative and executive processes.

Contemporary challenges identified include populism, globalization, legal complexity, and technological pressure. Müller (2016) and Levitsky & Ziblatt (2018) stress populism as a real threat to constitutional stability because it can undermine checks and balances and reduce the independence of legal institutions. Globalization and technological integration demand that constitutionalism be more adaptive, making restorative constitutionalism a crucial strategy for restoring legitimacy when classical legal principles are insufficient.

Overall, the review shows that modern constitutionalism is multidimensional and requires


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a holistic approach. Normative pillars must be preserved, but operational and adaptive aspects must also be strengthened through technological integration, restorative strategies, and socioeconomic contextualization. The research gap that emerges — particularly in integrating AI, algorithms, and technology-based governance — offers opportunities for further study. Future research may examine how traditional constitutionalism principles can be adapted or modified to remain relevant in the digital age while facing globalization challenges, and at the same time preserving the rule of law and maintaining institutional legitimacy.

Thus, this discussion reinforces the conclusion that modern constitutionalism is not merely a normative theory but also a practical instrument that must continue to be evaluated and adapted to ensure the rule of law remains effective and sustainable across contemporary jurisdictions. The systematic approach using PRISMA 2020 ensures that this literature review is transparent, replicable, and provides a strong theoretical basis for further research in constitutional law.

**REFERENCES**

Abramowitz, B., Shapiro, E., & Talmon, N. (2020). In the beginning there were n agents: Founding and amending a constitution. *Journal of Political Philosophy*, 28(3), 305–336.

Allan, T. R. S. (2001). *Constitutional justice: A liberal theory of the rule of law*. Oxford University Press.

Allan, T. R. S. (2023). Constitutionalism at common law: The rule of law and judicial review. Cambridge Law Journal, 82(2), 236–264.

Asshiddiqie, J. (2006). Konstitusi dan konstitusionalisme Indonesia. Konstitusi Press.

Baer, S. (2013). Constitutionalism today. In The Oxford handbook of comparative constitutional law (pp. 1–20). Oxford University Press.

Barber, N. W. (2018). The principles of constitutionalism. Oxford University Press.

Butt, S., & Lindsey, T. (2012). The constitution of Indonesia: A contextual analysis. Hart Publishing.

Carothers, T. (2006). The rule of law revival. Carnegie Endowment.

Dicey, A. V. (1959). Introduction to the study of the law of the constitution. Macmillan.

Dixon, R. (2022). Healing liberal democracies: The role of restorative constitutionalism. Ethics & International Affairs, 36(4), 427–435.

Dryzek, J. (2000). Deliberative democracy and beyond. Oxford University Press.

Ferioli, E. (2015). Rule of law and constitutional democracy. Turkish Yearbook of International Relations, 46, 1–20.



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Fombad, C. M. (2011). Constitutional reforms and constitutionalism in Africa: Reflections on some current challenges and future prospects. Buffalo Law Review, 59, 1007–1078.

Habermas, J. (1996). Between facts and norms. MIT Press.

Jaffe, K., Martinez, E., Soarez, A. C., et al. (2021). Relation between constitutions, socioeconomics and the rule of law: A quantitative thermodynamic approach. ResearchGate.

Jimly, A. (2007). Mahkamah konstitusi: Komentar atas UU Mahkamah Konstitusi. Konstitusi Press.

King, J. (2000). The principle of legality. Oxford University Press.

Khalil, A. (2010). From constitutions to constitutionalism in Arab states. Comparative Research in Law & Political Economy, 6(1).

Koniaris, M., Anagnostopoulos, I., & Vassiliou, Y. (2015). Network analysis in the legal domain: A complex model for European Union legal sources. Journal of Computational Legal Studies, 2(1), 45–67.

Landau, D. E., & Dixon, R. (2024). Restorative constitutionalism. Washington and Lee Law Review, 81(2), 455–505.

Leslie, D., Burr, C., Aitken, M., Katell, M., Briggs, M., & Cowls, J. (2021). Artificial intelligence, human rights, democracy, and the rule of law: A primer. Brookings Institution.

Mahfud, M. D. (2009). Politik hukum di Indonesia. Rajawali Press.

Mei, Y., & Broyde, M. J. (2025). Reclaiming constitutional authority of algorithmic power. Journal of Constitutional Law, 27(1), 1–35.

Müller, J.-W. (2016). What is populism? University of Pennsylvania Press.

Peerenboom, R. (2004). Asian discourses of rule of law. Routledge.

Raz, J. (1979). The authority of law. Oxford University Press.

Tushnet, M. (2013). Advanced introduction to comparative constitutional law. Edward Elgar.

Vile, M. J. C. (1998). Constitutionalism and the separation of powers. Liberty Fund.

Zabokrytskyy, I. (2015). Rule of law and constitutionalism: Modern approaches. ResearchGate.



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