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Postcolonial Constitutionalism and Advisory Bodies: A Comparative Study of the Conseil d'État in Madagascar and Wantimpres in Indonesia

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Article	Abstract
<p><i>Received: Des 2, 2025</i> <i>Reviewed: Jan 7, 2026</i> <i>Accepted: Feb 9, 2026</i> <i>Published: Feb 26, 2026</i></p>	<p>This paper examines how executive advisory institutions, the Conseil d'État in Madagascar and the Presidential Advisory Council (Wantimpres) in Indonesia, are structured and positioned within postcolonial constitutional orders. Rather than proposing concrete reforms or measuring policy effectiveness, the study focuses on mapping and interpreting their constitutional design and institutional logic. Using a normative-juridical and comparative method, it analyses constitutional provisions, organic laws and regulations with secondary literature in postcolonial constitutionalism, legal transplant and institutional isomorphism. The analysis shows that Madagascar embeds advisory functions in a supreme administrative court that also issues binding rulings, producing a highly judicialized and structurally faithful variant of the French Conseil d'État model. Indonesia, by contrast, locates advice in a non-structural presidential council whose members depend on the President and whose opinions are confidential, resulting in a more politically embedded and flexible advisory body. A postcolonial reading highlights how coercive, normative and mimetic pressures have produced hybrid institutions that borrow similar ideas yet follow divergent trajectories of adaptation. The paper's contribution is therefore primarily descriptive and analytical: it clarifies the constitutional place of these bodies and offers a conceptual basis for later work on their value-added and possible reform.</p> <p>Keywords: postcolonial constitutionalism; advisory bodies; Conseil d'État; Wantimpres; legal transplant; institutional isomorphism; comparative constitutional law</p>

A. INTRODUCTION

A postcolonial constitutionalism in Madagascar and Indonesia displays the different historical places and cultural context of both countries since independence from colonial

masters. It shows how the two countries' colonial pasts have been refracted through their constitutional architectures with significant consequences for national identity and politics. In Indonesia, the Pancasila is the guiding political philosophy listed in the 1945 Constitution. This philosophy is key in reconciling the historical and cultural intricacies of a society that is home to several ethnic groups and religious sects. Pancasila supports pluralism and recognizes Islam as one of the state ideologies among others, that represents Indonesia's postcolonial identity. According to Saputra et al., the state's utilization of Islam as part of its foundation sets it apart from other countries in Southeast Asia, such as Malaysia where Islam plays a more central role within the national identity (Saputra et al., 2022, p.110). The incorporation of Pancasila into the state philosophy is intended to inspire national unity as well as respect for democratic practices. But how these ideals can be translated into practical governance and inclusivity is still a challenge" (Muhtamar & Bachmid, 2022, p.204). Likewise, Malagasy postcolonial constitutionalism has been defined by its effort to blend multiple indigenous political traditions with vestiges of colonial legal orders. This constitution-building process in Madagascar represents a quest to pry for identity that incorporates the pre-colonial patterns of governance alongside vestiges from those passed on during French colonial administration. This paradox is reflected in the institutional arrangements that attempt to bolster democratic government while recognizing the complexities of history. The issue of inherited legal structures, however, typifies wider postcolonial critiques considering colonial legacies in the context of contemporary governance imperatives and indigenous rights (Klug 2022). Madagascar and Indonesia are both exemplars of the complicities that attend postcolonial constitution making, in which historical narratives play heavily in shaping current legal and political structures. In Indonesia, attempts to construct a more inclusive, democratic governance have been contingent on efforts to come to terms with the colonial past (Fauzan et al., 2019, p.27). In contrast, Madagascar's constitutional struggles tend to involve a struggle between many competing ethnic identities and a colonial past that makes national unity illusory. The examples illustrate how postcolonial contexts are contributing to debates about constitutionalism and democracy, with negotiations of past legacies shaping future governance. Identified mechanisms in accounting for these differences are: (a) the extent to which inclusiveness is enshrined in legal structures and (b) whether or not this reflects a political consensus characterised by multiethnic complexity. Indonesia tends to actively promote generation of all contributions rather than Madagascar less so because it's one ethnicity classical basis government system. Such dynamics highlight the significance of local contexts to more general themes of postcolonial constitutionalism, where cultural specificity articulates different opportunities and challenges for democratic governance. Bodies of advisers are critical to the quality and effectiveness of presidential or executive decision-making. The advice of these institutions guides the formation of policies and strategy, leading to more consistent government performance. Squevin and Aubin site the relevance of insider and outsider advising bodies to ministerial cabinets in a Belgian framework, through which consensual politics is propagated (Squevin & Aubin, 2022, p. 1024). Pattyn et al. advises also that in consensus-driven countries like Belgium academic policy neutrality is considered important, which implies an importance of academic expertise for shaping policy (Pattyn et al., 2019, p.37).

The tension between inherited models of institutions and local constitutional requirements is manifest in many contexts throughout governance systems. As Marciano and Craft have observed, legacy effects and institutional culture play a major role in shaping the design of policy advisory systems, limiting current structures to practices that echo

administrative norms left over from years past rather than emerging from local contexts (Marciano & Craft, 2023, p.494). Rigby and Seguin elaborate on this by noting how institutional habits brought about by past wrongs (e.g., slavery) shape current decisions in the modern legal climate, reducing responsiveness to new social contexts (Rigby & Seguin, 2021, p.207). Further, while local implementation is the “site for its verification, and potential transformation,” implementing generic governance structures at the local level in decentralized governance models like Bangladesh or Mexico City often come up against disjuncture when governing arrangements dictated by central government actor does not square with subnational realities (Ojha et al. Schimşek et al. emphasize that local governance traditions, in the absence of a strong constitutional basis, may obstruct the successful evolution of direct democratic mechanisms to meet local constitutional needs (Şimşek et al., 2025). This layered complexity reflects the continued tensions between formal institutional structures and the changing constitutional requirements at sub-national levels, for scholars and policy-makers to unpick. The Conseil d'État of Madagascar and the Wantimpres of Indonesia serve important advisory roles within their respective legal frameworks, although both have been relatively understudied. In Madagascar, the Conseil d'État evaluates the legality and fairness of legislative proposals and has a significant influence on government policy through its advisory capacity on administrative law (Kenyon, 2021, p.148). Similarly, the Wantimpres, established in Indonesia, serves as an advisory council to the president. It integrates expert opinions on policy matters, particularly within a postcolonial context (Sofian et al., 2023). Both entities exemplify the lingering impacts of colonial legacies on contemporary governance, with postcolonial nations utilizing advisory bodies to navigate societal issues arising from their historical contexts (Sofian et al., 2023, p.211). In addition, genetic and cultural links exist between Madagascar and Indonesia. Migrations from Southeast Asia, including Indonesia have contributed to the demographic and institutional architecture of Madagascar (Cox et al. 2012). The paucity of academic research on these consultative organs therefore brings into relief the urgency to improve our understanding of post-colonial governmentality in Southeast Asia and the Indian Ocean world.

Here are the research questions to be answered in this paper:

- 1- How are the Conseil d'État in Madagascar and Wantimpres in Indonesia established and constitutionally positioned as consultative organs within their postcolonial legal orders?
- 2 -To what extent do colonial legacies and postcolonial trajectories – such as legal transplantation and institutional isomorphism contribute to the current design and constitutional function of these advisory institutions?

Postcolonial constitutionalism stands as a powerful tool to question the legacies of colonial rule in contemporary legal and constitutional orders. This model maintains that postcolonial polities seek to transform their relationship with colonial pasts even as they often inscribe similar inequalities in their legal systems. Later, Brown (2016: 189) highlights how the making of postcolonial constitutions is indicative of striving to overtly break away from colonial structures, even where these fledgling economies re-enact similar aspects of dependency. In addition, Kumalo problematizes liberal constitutionalism for its failure to grapple with epistemic injustices that derive from the fact that constitutional systems are often captured or co-opted by extant power structures so as to limit their capacity to serve marginalized communities (Kumalo 2018). The discussion briefly engages with legal

transplant and institutional isomorphism as complementary ideas (as opposed to dominant theories) in order to understand how advisory models circulate and are emulated across systems. In this regard, the Conseil d'État and Wantimpres can be seen as locations of ongoing colonial institutional replications and local-level political-constitutional negotiations over adaptation and recoding.

The review of institutions like those at the Conseil d'État and advisory councils paints a rich mosaic of governance that is influenced through historical, political and social factors. The French Conseil d'État is an important reference point for such other bodies operating in some of the different legal systems. The effect of the Council on legislation, governance and legal interpretation illustrates how these institutions attempt to strike a balance between administrative expertise and political accountability. For instance, Dressel and Mietzner demonstrate the impact of France's Conseil d'État coupled with Germany's Federal Constitutional Court on the creation of judicial organs in Thailand that were designed to support electoral stability and democratic governance during moments of political instability (Dressel & Mietzner, 2012). Here, the borrowing of these models is itself a postcolonial restructuring for local purposes that exemplifies not only the universality but also the variability of constitutional government. Meanwhile, advisory bodies in various settings respond to and shape the political context in which they operate. In Luxembourg, changes in the composition of the Council of State analysed by Dumont and Kies constitute an attempt at representation reform that reflects changing political attitudes while also solidifying the role of consultative bodies as instruments of democratic responsiveness (Dumont & Kies, 2016). Similarly, variations of these institutions in Indonesia, such as the Wantimpres or Dewan Pertimbangan Presiden, illustrate how culturally and politically distinct frameworks can adapt the principles set by historical models like the Conseil d'État, responding to local constitutional aspirations and challenges. However, there is a lack of relevant literature specifically comparing these institutional frameworks across postcolonial contexts. Although there is a wealth of studies about the institutional role played by both the Conseil d'État and other advisory councils in their respective national context, there is an apparent void in comparative postcolonial study on these institutions, especially involving Madagascar and Indonesia. Through this lens, the literature has been criticized for highlighting the philosophical and theoretical underpinnings of these councils without exploring more descriptive comparative work that may explain how they are both realizing different trajectories influenced by colonial heritages. In doing so, this analysis might generate information on how various postcolonial contexts have moulded similar institutions whose purpose had earlier been the fulfilment of advisory and oversight responsibilities that had previously functioned within colonial governance formats. Furthermore, a comparison of the constitutional reforms (and applications) in Indonesia and Madagascar reveals that such governance models need to be tailored to local specificities on the one hand. Indonesia (1998) has been through a process of “constructive intervention...between Western-‘universal’ and indigenous-‘particular’” that consists in major legislative change aimed at democratization through the adaptation of Western legal principle. Content and operation of legal systems. The first-order differences between societies contrast with other variables like the relationship to the state, regulation or mediation. Madagascar also struggled with the complications of postcolonial rule, attempting to manage traditional authority in terms more suitable for a modern constitution. However, additional research on the specific governance challenges in these countries is still important to have a better grasp of their institutional paths. Given such findings the comparison between Conseil d'État and

Wantimpres is significant as it establishes basic features of the advisory institutions' roles under varying political constellations. Yet, the existing blank spot in comparative postcolonial research might not only nourish academic discussions but also offer practical angles to deal with governance challenges following decolonization.

This study aims to clarify how the Conseil d'État in Madagascar and Wantimpres in Indonesia are structured and positioned as advisory bodies within their respective postcolonial constitutional orders, and to interpret these designs through a postcolonial lens. The primary purpose is descriptive and analytical: to map the constitutional bases, institutional configurations, and advisory functions of the two bodies, and to situate them within broader trajectories of colonial continuity and local adaptation. Academically, the paper contributes to comparative public law and postcolonial legal studies by bringing together two rarely juxtaposed case studies and showing how advisory institutions can simultaneously reproduce elements of colonial models and embody context-specific transformations. It also enriches debates on postcolonial constitutionalism by linking abstract discussions of colonial legacies to concrete questions of institutional design, rather than treating them only at the level of general principles. Practically, the findings are intended to provide a clearer conceptual and doctrinal map for actors engaged in debates about advisory institutions in postcolonial states. By highlighting the main structural similarities and differences, and by tracing how each body reflects particular postcolonial trajectories, the study offers a framework and vocabulary that can be used in subsequent, more normative discussions on whether and how such institutions should be maintained, strengthened, or rethought. The present paper thus lays analytical groundwork rather than proposing specific reform models.

B. MATERIALS AND METHODS

1. Research Design

This research uses a normative–juridical and comparative approach. The emphasis is on the formal legal frameworks governing of Conseil d'État in Madagascar and Wantimpres in Indonesia including constitutional provisions, statutes and institutional regulations which establish their status, powers and mode of operations. The principal framework for these inquiries is postcolonial constitutionalism, asking how the inheritance of colonial legacies conditions institutional design and how they are negotiated, preserved or transcended within contemporary constitutional orders. Keywords such as legal transplant and institutional isomorphism are drawn upon only as supporting terms to capture the circulation and mimicry of advisory models across boundaries, without dislodging the view from a central postcolonial perspective.

2. Sources of Legal Material

The research drive is predominantly constructed on legal documentary documents. Original materials used are the Constitution of Madagascar, pertinent organic laws that apply to the Conseil d'État. For Indonesia, those preliminary documents encompass the UUD 1945, statutes and rules that form and organize Wantimpres as well as presidential decisions and other official instruments which detail its composition and functionaries.

These primary documents are supplemented with secondary literature, including academic books and journal articles about the Conseil d'État and its spin-offs, about Indonesia's presidential advisory councils, and about advising more broadly in systems of executive

government. Additionally, the study builds on postcolonial legal theory, comparative constitutional law and legal transplant, in addition to official reports, institutional websites that shed light on practice and self- understanding of these bodies in both states.

3. Comparative Approach

This comparison is framed by a number of explicit criteria which enable the two advisory bodies to be systematically compared. First, the constitutional foundation and legal position of Conseil d'État and Wantimpres are analysed – which part is reserved for them in the constitutional scheme, what their level of legal autonomy is. Second, the Article examines selection and appointment. Who, it inquires, can join? And how should they be selected? It further assesses whether these membership processes threaten independence and representativeness. Third, the legitimacy, powers and procedures of advice are studied: whether it is mandatory or non-mandatory; whether binding or non-binding; how requests for advice are entered and processed. Fourth, the manner in which each body relates to the executive, judiciary and general public are discussed, with focus on transparency and accountability. I will focus on Madagascar and Indonesia as two cases: They are both postcolonial states which have, in divergent ways, chosen to embrace (or emulate) advisory but they come from different legal political traditions. This pairing makes it possible to compare in a substantive way how comparable advisory ideas are forged a new along different postcolonial path.

4. Analytic Technique

The central mode of analysis is doctrinal. Relatively often, regulations are analysed in minute detail for the purpose of noting what composition, tasks and competencies there are to each advisory body. These results are then categorized (and compared) by the action-field fits mentioned above, in order to draw attention to similarities and differences between both institutions. Over and above this descriptive comparison a postcolonial interpretative reading is conducted of the findings as reported hereby. Cutting across these ordering processes, the legal features are interrogated through their colonial lineage and subsequent constitutional transformations: How do colonial patterns of government persist? How have they been re-signified in post-independence architecture? And to what extent, if any, has local political and constitutional mobilization given rise to adaptation or divergence? This doctrinal, comparative, postcolonial studying is to generate not just a technical map of the landscape of advisory design, but also an actor's critical comprehension of its significance for constitutional practice in Madagascar and Indonesia.

C. RESULT AND DISCUSSION

1. Constitutional and Historical Position of the Conseil d'État in Madagascar

Origin and colonial influence of the institution.

The origin of the Conseil d'État Madagascar is closely related to French colonial administration that was promulgated in 1896 until 1960. The Conseil d'État was created in France by Napoleon Bonaparte in 1799, and it was intended to adjudicate administrative law and control the exercise of public authority (executive power). This model was later adopted in several other colonial settings, such as Madagascar, where it crystallized to bolster colonial

administration, organizing and stability within the French administrative order (Rose-Ackerman & Lindseth, 2010 p.444)

In colonial Madagascar, the French administration sought to control with local forms of governance and the law. The institution of the Conseil d'État made sure that the French principles of administration and law were implanted as well, similar to what happens with the French one (it acts on one side as a legal advisor, and on another does it as legality reviewer for administrative activities). This establishment had the double effect of encouraging a French predilection for centralized authority and restricting the power of justice usually in the hands of local entities.

The colonial history of Madagascar during the period of French settlement also demonstrates how colonisation influenced the establishment of leaders within Conseil d'État. The French focused on removing economic/extracted valuables, even sectors of the economy such as vanilla production that were controlled by colonial legislations (Osterhoudt 2020, p.252). This command ensured that local governance was not removed from the service of the French state, indicating that the Conseil d'État operated both as a legal power and encourage to colonial exploitation.

The legacy of the Conseil d'État still informs today's legal and administrative environment in Madagascar. The constructs of colonial governance shaped the growth of governance and law in post-independence, independent Zambia. Like any former colony elsewhere, the law of administration in Madagascar also bears the influence of French legal culture including that of the Conseil d'État as well (Chatriot, 2008, p.10). In doing so, the Conseil d'État not only upheld French colonial authority; it established a framework for the post-colonial legal regime still important in Madagascar at present.

Furthermore, the Conseil d'État is both advisor and judge in administrative issues, making it significant in the supervision of governance concerning local circumstances. This coexistence of the two roles provided a stable structure for both legal controversies and administrative petitions to be discussed, which maintained the same law in spite of its colonial origins (Alter, 2009. Pg 12). In the discussions of how (in)effective and (il)legitimate public administration is in today's Malagasy state, the encounter with legal and administrative governmentality still persists.

b. Current constitutional and statutory role.

The Constitution of the Fourth Republic (2010) - describes the Supreme Court as Madagascar's highest authority in judicial corporatocracy, and structures it into three courts: namely the Court Of Cassation, Conseil d'État or Supreme court and also The Court of Accounts. The organic law No 2004-036 relative to the organization, competences, functioning and proceedings of the Supreme Court and the courts that depend on it establishes in detail organization and powers of these three entities. In that context, the Conseil d'État acts as the highest administrative court and also as the principal advisory body of some executive elements.

On the less controversial side, the Conseil d'État is a civil court of first instance for administrative litigation. It hears applications for the annulment of actions by central and provincial administrative authorities, makes judgements on treasury cases as well as disputes between public entities or against them over damage inflicted through administrative acts. It also supervises the lawfulness and regularity of general acts issued by bodies of the (former)

Autonomous Regions. It also hears, in an appeal or cassation capacity, decisions of the administrative tribunals and serves as the judge over certain types of electoral disputes established by law – mostly for territorial elections where it reviews decisions made by administrative courts. In this capacity, the Conseil d'État sits at the apex of the administrative court system ensuring that uniform application of law is upheld throughout territory.

Besides its controversial jurisdiction, the Conseil d'État fulfills an institutional consultative function. The Prime Minister (and other public authorities: according to some formulations, the President and provincial governors) may ask for its opinions on draft legislative or regulatory texts; it may be given research assignments concerning the organization, functioning or missions of public services. This consultative function makes the Conseil d'État a guardian of public decision-making legality and also a councilor to the executive power on normative and institutional changes. In practice, therefore, their actual function is a combination of supreme administrative decision-making and technical supervision for sub-administrative courts as well as high-level personnel assisting in the formulation of norms.

c. Dual functions: advisory body and supreme administrative court

Consistent with the model of continental councils of state, the Conseil d'État in Madagascar has both contested and consultative functions. Organically, it occupies the summit of the administrative hierarchy and is the final court for *droit commun administratif* (administrative law): it hears appeals from orders of central or local administrative authorities such as orders from regional councils, regulates economic and fiscal litigation in both general competence attributes and full jurisdictional claims based on its authority; it serves as supreme appellate court for those who have directed justice to ordinary administrative courts (*tribunaux administratifs*) and several other types including some that fall within magistracy-contestation. Simultaneously, doctrinal assertions and official communications underline that the Conseil d'État has a consultative role as well; it is entitled to deliver opinions about draft legislative or regulatory texts or on questions concerning the organization and internal operations of public administration. This dual paternity, adjudicative and advisory, brings the institution at the cross-road of judicial review and technical counselling of the State.

d. Relationship with executive decision-making

The Conseil d'État's attitude relation the executive is therefore spread across two temporal dimensions. To this end, ex post and by way of its contentious jurisdiction, it has the power to control the legality of the administrative activity carried out by the President, Government or decentralized authorities: illegal regulations, decisions or operations concerning elections can be annulled or censured; responsibility may be demanded from administration who cause damage for which they are liable. Thus, the Conseil d'État acts as a judicial control of the executive power in the administrative realm. Advisory Ex ante, the institution may be consulted by the executive on draft laws, decrees and other general measures and reforms of administrative structures. While they are, in principle, 'merely advisory' in nature, the Committee opinion is specialized public-law advice which can have significant impact on the manner in which executive policies are framed and interpreted. Taken together, these two dimensions render the Conseil d'État an important interface between the executive and the legal

order that both influences (forms) and reviews (controls) executive decision-making in Madagascar.

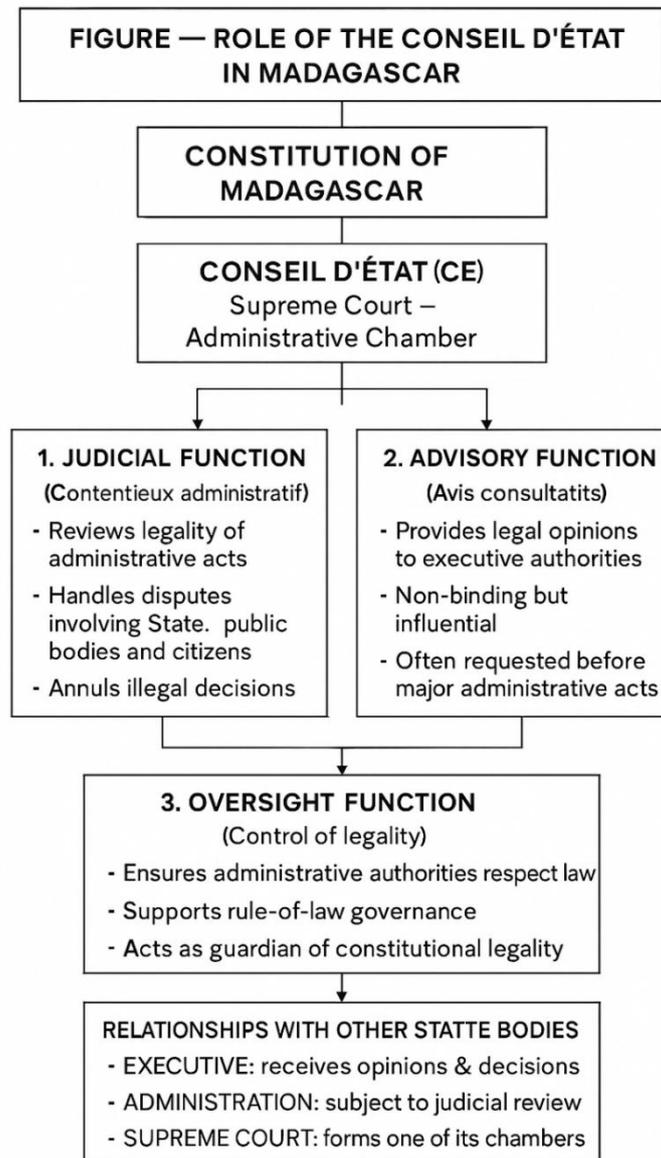


Figure 1. Role of the Conseil d'Etat in Madagascar

Source: Author

2. Constitutional and Historical Position of Wantimpres in Indonesia

. *Historical evolution of presidential advisory councils (pre- and post-Reformasi).*

The development of presidential advisory councils (or wantimpres) in Indonesia can be described by remarkable contrasts in pre-third wave, the Indonesian political system suffered from authoritarian Suharto rule and the presidential advisory boards were weak and over-regulated. The Soeharto version of the wantimpres was a power consolidation tool where

advisory roles were largely secondary to presidential decision making. Therefore, their products were distorted by the absence of real input from civil society in general as a result of the centralized nature of the regime. Under this, the advisory council was more of a cover for consultations than anything else - certainly there was no friendly chat, and little policy influence. Presidential advisory councils came to function and be felt quite differently after the Reformasi. The reforms of the period not only allowed for more participation in governance, council of advisers with a wide representation was made place that catered to involve diverse stakeholders' opinion. The rise of civil society groups, liberation of the press and increase in democratic values created a suitable ecosystem where wantimpres could contribute significantly toward shaping policy. For example, in the early stages of Reformasi, President Abdurrahman Wahid's wantimpres members came from all walks of society, increasing the legitimacy of the council and input it channeled. The process...continued with successive regimes, and further changes were introduced to bring wider aspects of the citizen expertise into policy. This attitude is characteristic of the larger democratization process of Indonesia looking to be inclusive, transparent and participative in engaging existing social-economic problems. The councils have focused on areas such as economic policy and environmental sustainability in an effort to meet the diverse needs of a society undergoing rapid transformation (Hendrawaty et al., p. 275). Post-Reformasi terrain had shown that advisory councils were not Mr and Mrs always Right manifestations of the state, but could be proactive in coming up with creative solutions for pressing national problems (Musafa'ah et al., 2023: 150).

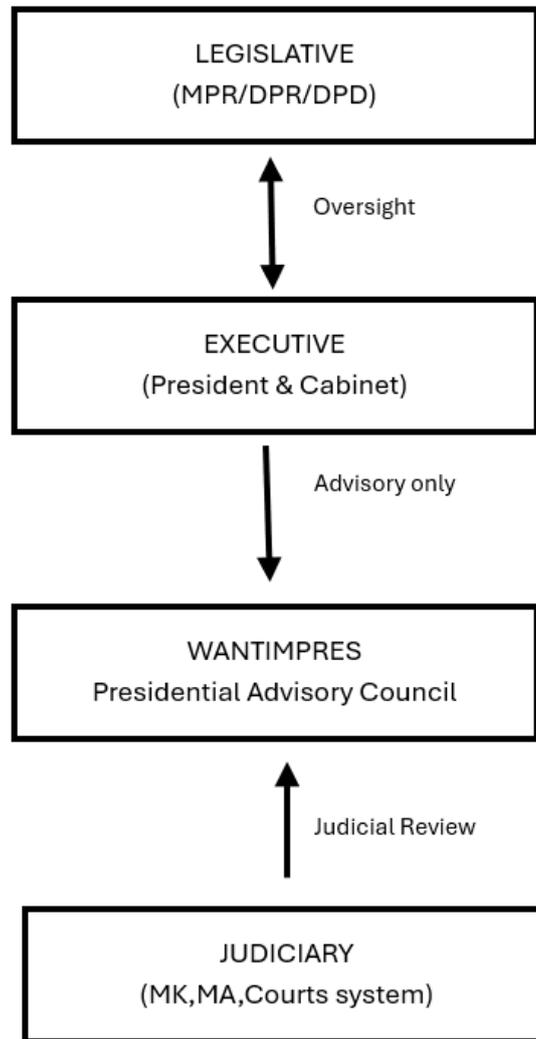


Figure 2. Separation of power in Indonesia and Wantimpres

Source: Author

b. Current constitutional and statutory role of Wantimpres.

The constitutionally-recognised mandate of the Presidential Advisory Council (Dewan Pertimbangan Presiden, Wantimpres) is stipulated in Article 16 of the 1945 Constitution, which allows the President to establish an advisory council for him/her to consult with and consider when making decisions on government policy. This broad mandate is given effect in Law No. 19 of 2006 Concerning the Presidential Advisory Council, which describes Wantimpres as a state institution that provides advice and considerations to the President “to execute the powers of state government”. Wantimpres is conceptually attached to and directly responsible to the President; it is not a state structure institution such as a ministry or a new state institution so Wantimpres cannot make decisions towards other organs of the state.

Pursuant to Law No 19 of 2006 and its implementing regulations, Wantimpres is required to advise the President based on a request or otherwise; there is no requirement for the

President to ask an opinion. Advice may be offered individual by member or collectively as a body of the Council. Members may be called to cabinet meetings, to working and state visits, and when carrying out their duties - they are entitled to obtain information from the ministries and other state authorities. But the substance of the advice and factors considered by the President is protected under law as confidential: members are specifically forbidden from making public their reasoning or recommendations to any party. In practice, therefore, Wantimpres has no formal adjudicative or controlling power over other government branches and the current constitutional and statutory status of Wantimpres is merely for internal advisory function within presidential environment and its influences are largely depended on the President's willingness to be guided by their confidential advice.

c. Composition, mandate, and practical influence on presidential decisions.

Wantimpres According to Law No. 19 of 2006, Wantimpres is composed of a maximum nine members appointed directly and relieved personally by the President. The members are civilians from a variety of professional, social or political backgrounds and serve for the same membership term as the President but have no constitutional safeguards of independence or tenure that the judges or commissioners of independent bodies may hold. The law does not set inexorable quotas for representation, so it is up to the president to decide how members are formed — and every president has made those councils in his own political or personal images.

Presidents may consult the council on a broadly expressed agenda: Wantimpres is to give advice and counsel to the President in “exercising the powers of government of state. This includes domestic and foreign policy, economic issues, social and cultural concerns of the country as well as anything else that the President considers an issue. The council may provide advice on it's own initiative or at the request of the President, advice can be provided by individual members or within a meeting of the council. They can be called upon to attend cabinet sessions, working meetings or state visits and are authorized to seek information from ministries and other organs of State in order that their recommendations may be prepared.

In practice, the influence of Wantimpres on presidential decisions could be limited by at least three considerations. For one, its advice is strictly consultative and carries no legal weight — the President can accept, alter or ignore the council's recommendations at will. Second, the veil of legal secrecy surrounding its advice means that the public and other parts of government are generally unaware of what it does (and so cannot bring pressure to bear on the President to follow its advice), while empirical assessment of its utility is correspondingly challenging. Third, the lack of institutionalized procedures that oblige the President to consult Wantimpres or respond to its opinions, together with the proliferation of other advisory and expert bodies around the presidency, leaves Wantimpres as one source of advice among several others rather than a lynchpin in presidential policy-making. Consequently, although the council is formally institutionalized as a presidential advisory institution, its influence on concrete decisions varies dramatically across administrations and tends to have less of an effect than that of informal political networks or intra-executive politics.

3. Comparative Analysis of Advisory Structure and Function

Table 1. Comparative table of Conseil d'Etat and Wantimpres

Dimension	Conseil d'État – Madagascar	Wantimpres – Indonesia
Legal status	Supreme administrative court within Supreme Court	Non-structural presidential advisory body
Independence	Judicial status, stronger structural autonomy	Directly under President, politically dependent
Appointment	Career judges / public-law experts	Civilians chosen and dismissed by President
Composition	Professional, legal–bureaucratic profile	Mixed backgrounds, shaped by presidential preferences
Output effect	/ Binding judicial decisions + non-binding legal opinions	Non-binding advice only
Transparency	Public, reasoned judgments	Advice confidential by law

Source: Author's compilation based on the Constitution of Madagascar; Organic Law No. 2004-036 on the Supreme Court; the Constitution of the Republic of Indonesia (UUD 1945); and Law No. 19 of 2006 on the Presidential Advisory Council (Wantimpres)

Shows that Madagascar embeds advising functions into an advisory body with a mandate to also deliver binding decisions, and that Indonesia places advice within a politically obedient Presidential council. Both institutions “advise” the executive, but only the Conseil d'État exercises control over it via public and binding decisions. This difference is key to understanding how each country has appropriated the advisory model within its postcolonial constitutional context.

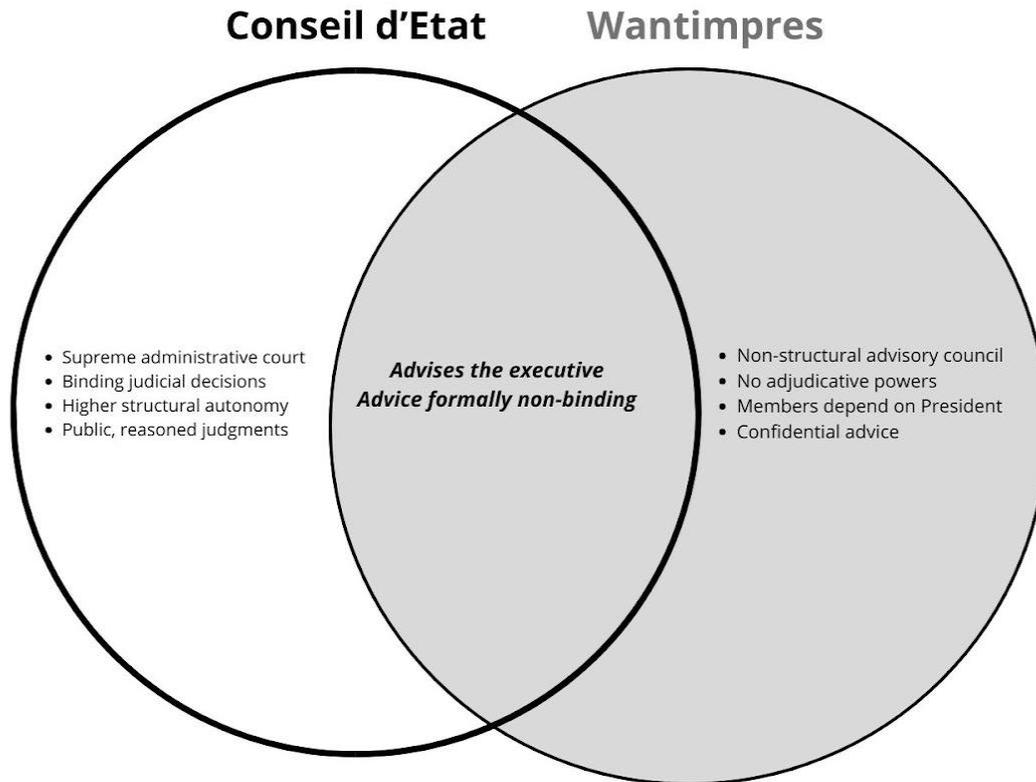


Figure 3. Convergence and divergence between Conseil d'Etat in Madagascar and Presidential Advisory in Indonesia

Source: Author

Figure 3 encapsulates the principal convergence and divergence between both institutions. The Conseil d'État and Wantimpres have a common advisory mission at its basic form, that is to provide an opinion (affectedly non-binding) with regard to the executive. But beyond this commonality, their institutional logics could not be more divergent. The Conseil d'État is a supreme administrative court that has the power of compulsory control over administrative acts, a relatively high degree of institutional autonomy; and public, motivated decisions that make Executive's subjection visible. By contrast, Wantimpres is a non-structural presidential council without adjudicative authority; its members work under the President directly and their advice is secret. These contrasts are illustrative of two very different adaptations of the advisory model in postcolonial contexts: a judicialized protector of legality in Madagascar on the one hand, and a politically dependent, relatively invisible advisor in Indonesia, on the other.

From the point of view of comparative public law, identifying both convergence and divergence is a crucial prerequisite not to commit two symmetrical mistakes: taking for granted that institutions bearing similar names play the same function or, on the contrary, accepting diversity in institutional labels entails diversity in realities involved are always non commensurable. By juxtaposing the Conseil d'État and Wantimpres against a few shared nucleus dimensions (legal status, independence, appointment formula, type of output and transparency), the table condenses an intricate set of legal materials into a matrix view which

instantiates patterns of similarity and divergence. The diagram then rearranges these results more conceptually, distinguishing between what is shared – the fact that they both advise the executive (formally unbound)—and what structurally divides them (judicialized location versus preinitialised location, binding jurisdiction versus purely consultative position, public case law versus confidential advice). Such optic oppositions can aid in the development of a more speculative institutional design discourse. It serves to demonstrate that “advisory bodies” are not a neutral or technical category but represent different ideas of how power ought to be disciplined and legitimate: in Madagascar, the advisory function is centred on a court which speaks the language of legality and public reasons; in Indonesia it accrues to a council located within politics and acting mostly behind the scenes.

The table and diagram are, then, a link between doctrinal description to normative analysis. They show that the two institutions are similar enough to be in the same analytical frame, and different enough to uncover specific postcolonial trajectories of adaptation of the advisory model. It is in this dialectical affirmation of similarity and difference that the “justification” emerges as a promising fulcrum for a postcolonial critique of legal transplant; for instead asking how each legal order has re-interpreted the notion of advisory control over the executive in light of its experience, concrete political practice and constitutional ethos.

4. Postcolonial Reading of Advisory Bodies: From Colonial Continuities to Local Adaptations

The comparison of the Conseil d'État in Madagascar and its Wantimpres counterpart in Indonesia can be further entrenched by viewing both institutions through a postcolonial framework. From this perspective, advisory bodies are not just neutral technical instruments, but the product of complex historical encounters between pre-colonial normative orders, colonial legal grafts and post-independence nation-building projects. Formalities, languages and “logics” in existing institutions bear the imprint of French and Dutch models of administration, yet they are also reinterpreted by local elites, legal professionals and political actors embedded in entirely different social and constitutional surroundings. Accordingly, a postcolonial reading poses two questions: to what extent are colonial legality and administrative rationality still present in the formation of these advisory bodies and how have such ideas been adapted, hybridised or opposed in constitutional practice in Madagascar and Indonesia?

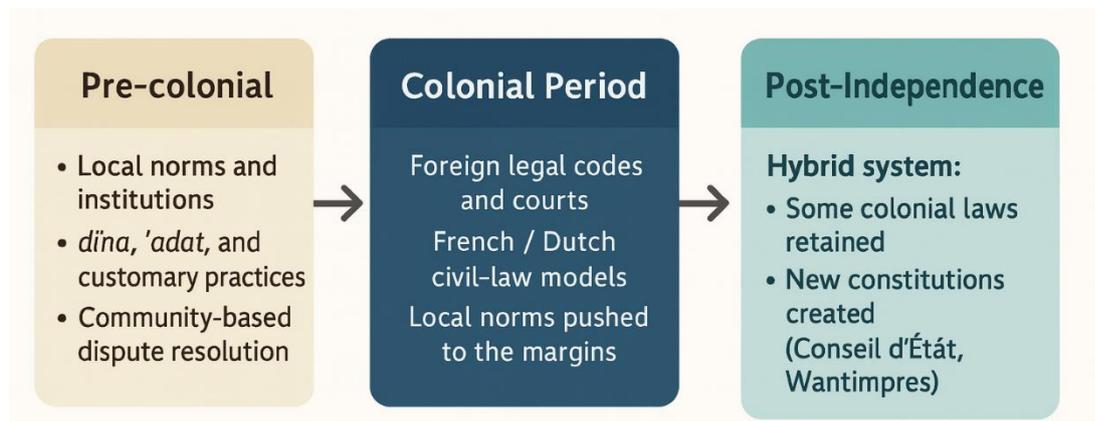


Figure 4. Historical evolution of Legal norms and advisory institutions

Source: Author

The institutional paths of Madagascar and Indonesia can be read in three large phases. Governance and conflict resolution in the pre-colonial era were predominantly organized around local norms and institutions—*dina*, *adat*, customary practices – inscribed within community-based mechanisms rather than with special systems of organs. During the colonial era foreign rules of law, courts and councils of administration following French and Dutch civil-law models were established. These transferred organisational forms marginalised local normative orders and naturalised the belief that legality was, and that 'good government' was best ensured by, centralised bureaucratic institutions including executive-leg councils. This grammar of legality and administration was inherited by both states in the post-independence period, where it was re-assembled into constitutional orders. Madagascar kept the logic of a Conseil d'État within a supreme court for the administrative order, and Indonesia eventually built Wantimpres as an advisory council to presidents, rather than a judicial body. These advisory institutions are thus not neutral in their design: they respond to the layered history of colonial rule and its entwinement with pre-colonial normative practices.

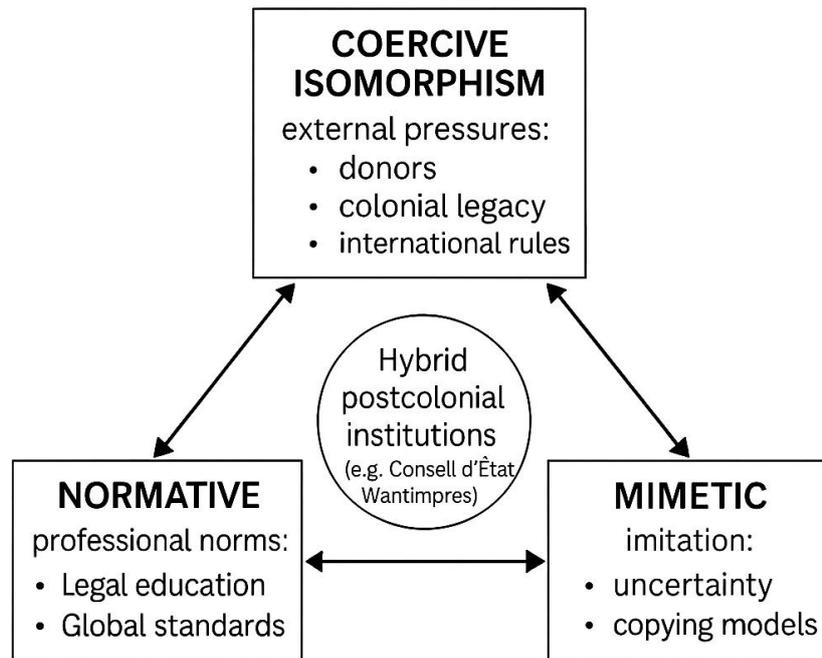


Figure 5. Types of isomorphism and hybridization process of Advisory institutions

Source: Author

Figure 5 extends the concept of institutional isomorphism to the postcolonial development of advisory bodies such as the Conseil d'État and Wantimpres. Coercive isomorphism involves external forces (such as colonial inheritance, conditionalities attached to donors or international rules that are binding or soft) which ensure that new constitutions in the postcolonial state conform to specific institutional designs; they apparently face imperial-like councils' replicas. Normative isomorphism works then through professional communities, particularly magistrates and judges as well as lawyers and civil servants trained to French or Dutch-style legal education and socialised inside a global ambiance into standards of good administration' and 'rule of law'. These actors generally reproduce previously known models

— for instance, a Conseil d'État or a presidential advisory council — because they perceive them as professionally legitimate. Mimetic isomorphism occurs when political elites have uncertainty about how best to structure executive advice and so mimic institutional configurations that are successful or prestigious in other settings. The result is mainly a long-term hybridisation of postcolonial institutions, like the Malagasy Conseil d'État or Indonesian Wantimpres that resemble formally imported models but are re-meaning and re-embedded in local constitutional and political worlds.

In Indonesia, the juxtaposition of three isomorphic types -coercive, normative, and mimetic- engendered specific political setups which were different from other countries. The way coercive pressures in Indonesia have been moulded along the Reformasi trajectory that seeks to remake state institutions more harmoniously around democracy after the disarray created by Suharto's New Order. and furthermore, that the pressures comes from compliance with international norms of governance and constitutionally mandated institutions, like for example the advisory bodies to the President (Slater 2018, p.37). That represents a dramatic break from former authoritarian practice, and underscores the turn which has taken place to democratic governance with its formal mechanisms of accountability and representation. Besides, the normative isomorphic in Indonesia can also be traced back to the historical legal and administrative systems brought by the Dutch into civil -law-style, as well as modern global doctrines of public administration. International legal education's impact has permeated contemporary bureaucratic practices, that is, by encouraging the formalization of advisory processes in the executive branch. Lawyer elites educated at home and abroad have facilitated the legitimation of advisory functions, developed state systems that conform to international prototypes for democratic-style advice-giving councils. Amid uncertainty within Indonesia's political landscape in the aftermath of Reformasi, mimesis isomorphism led to Indonesian presidential whereas judicentric models exist elsewhere in countries like Madagascar and France. The creation of Wantimpres (Presidential Advisory Council) illustrates this pattern, functioning as an advisory institution that is adapted to local needs but also highly politicized and also different from its international equivalent. It is an institutional response that according to the special logic of Indonesian politics advisory councils should play under conditions of democratic transition (Fox, 2020, p.76).

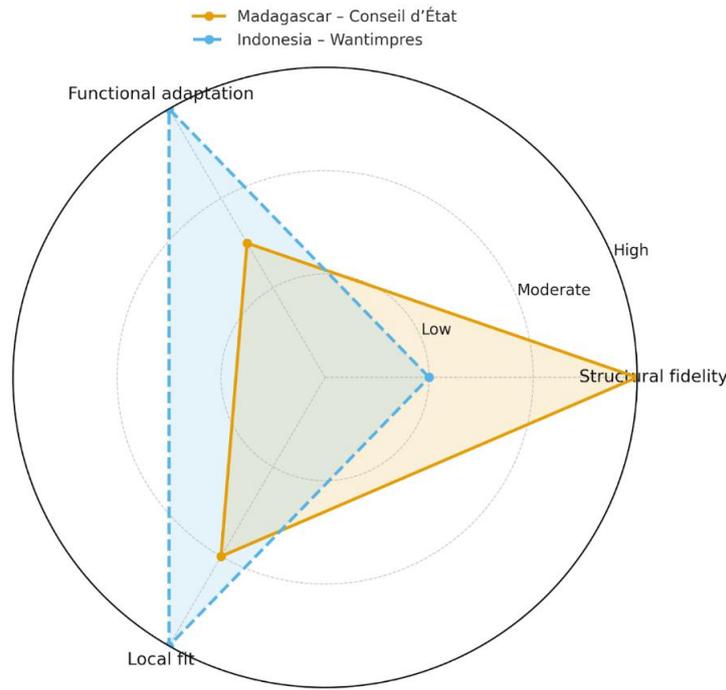


Figure 6. Structural-functional profile of advisory institutions of Madagascar and Indonesia

Source: Author illustration

The radar chart provided below presents a much simplified summary of the structural–functional profile of both advisory institutions on these three dimensions: structural fidelity towards external models, functional adaptation to contemporary governance challenges and local fit within the political–constitutional environment. If you rate the Conseil d’État in Madagascar high on structural fidelity — it’s very similar to France’s council of state, you might conclude that it has moderate, but not high levels of functional adaptation or local fit: its judicial side is robust yet a more prominent advisory element ... must still be somewhat detached from current executive practice. Wantimpres (in contrast) has low structural fidelity, but higher functional form of fit and local fit. It is not copied directly from any foreign model but it has been fashioned as an adaptable political advisory circle, more suited to Indonesia’s post-Reformasi presidential politics than a judicial council. Taken together, the comparisons help us understand that postcolonial advisory institutions may share concepts but be located some distance apart along a continuum of structural persistence to place-specific political practice.

D. CONCLUSION

This comparative exercise has demonstrated that, despite being formally designated as advisory bodies to the executive, both the Conseil d’État in Madagascar and Wantimpres in Indonesia are grounded in very different constitutional logics. In Madagascar, the advisory capability is integrated in a supreme administrative court which also has jurisdiction on administrative litigation. Accordingly, the Conseil d’État marries the non-binding consultative opinions with public and reasoned judicial decisions that may nullify illegal executive action. In Indonesia, however, advisory services are assumed by Wantimpres, an a-structural presidential body directly subjugated to the Head of State whose members serve at the pleasure of the president and advice is secretive and non-justiciable. The postcolonial reading proposed

in this paper draws attention to the fact that these differing designs and designs-to-come are based on different colonial continuities as well as adaptations. Madagascar is a close mimic of the French Conseil d'État system, maintaining a judicialized council of state at the top of the administrative order, while Indonesia has selected a politically embedded advisory circle not to be equated with any foreign model, but inspired from the Dutch colonial too. The coercive, normative and mimetic isomorphic pressures have worked out differently in each case creating hybrid institutions which bear impressions of French and Dutch administrative rationality but are re-signified within Malagasy and Indonesian constitutional politics. The overarching lesson is that “advisory bodies” are not neutral technical devices but historically contingent expressions of how postcolonial states imagine the relationship between executive power, legality and expertise.

As such, the paper makes a theoretical contribution to debates in postcolonial constitutionalism by bridging abstract discourse on colonial legacies with the intricate configuration of advisory institutions. Rebutting the tendency to treat postcolonialization as a simply discursive or symbolic frame, it situates the Conseil d'État and Wantimpres as sites where inherited legal forms are ratified, contested and re-worked. Through theorizing legal transplantation and institutional isomorphism as theoretical underpinning, the research demonstrates how comparable advice travels across jurisdictions, filtered through a range of professional and political communities to become crystallized as institutions that end up located somewhere on the continuum between structure continuity and local variation. This helps complicate the tendency to either valorise institutional borrowing as ‘modernisation’ or hibe it off entirely as mere copy. In practical terms, the results provide a clearer cartography of where and how advisory bodies are located in constitutional frameworks of Madagascar and Indonesia. For policy makers, constitution framers and reform advocates, this mapping exercise is an essential context setting step before arriving at any normative conclusion on whether or not these institutions should be maintained, strengthened or rationalized. In pointing to the fact that Madagascar has a judicialised advisory institution with significant contentious powers (and marginal consultative ones), and Indonesia a politically subservient, closed-door council without adjudicative power, The paper offers a terminology and an outline which may help establish such debates. Instead, it proposes that postcolonial states should not start their deliberations of reform from abstract archetypes but from a thorough knowledge accounting of what their advisory bodies really are, how they were formed and which constitutional roles or functions they can meaningfully exercise.

The study is purposefully narrow in focus. It is based on two historical cases and draws mainly from the doctrinal and historical analysis of legal texts, including secondary literature. It does not try to quantify empirically the impact of the Conseil d'État or Wantimpres on actual policy, nor present elaborate reform suggestions. Interviews with judges, advisors, and civil servants, in-depth case studies of particular advisory interventions as well as surveys involving the public or elites about the legitimacy of such institutions would help evaluate them on their merits or perceived foundation.

Future research might widen the comparative frame by incorporating empiricism to assess the real ‘value-added’ of institutions of advice on executive decision-making and constitutional practice.

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