Law, practice and convention in the constitution of the European Union
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Citation for published version (APA):

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Summary

Conventions play an important role in the constitution of the European Union. However, due to their falling between categories they suffer neglect by scholarship. On the one hand these political rules about the exercise of legal powers are not legally binding, which can help explain their disregard by legal scholarship. On the other hand they do have normative force, which explains why political science cannot well, or at least not fully, do them justice.

This study investigates the role of convention in the constitution of the European Union. No list of conventions is attempted. Instead, the role of convention in creating constitutional structure and in constitutional development is studied. To this end a number of necessary steps are made, relating to the identification and significance of convention.

The first chapters of this book focus on the identification of convention and fundamental issues related. One of these is methodology. In chapter 2 the approach needed to answer the question about the role of convention is illustrated and applied to the most important legislative procedure of the European Union (the ‘ordinary legislative procedure’). At the same time this approach is confronted with existing approaches in political science and legal scholarship in order to demonstrate the added benefits of an analysis in terms of law, practice and convention.

A second issue concerns the claim for a position in the analysis of the constitution for convention next to the categories of practice and law. Chapter 3 argues the necessity of a category of convention next to practice and customary law and demonstrates this necessity in an analysis of the practices and conventions that limit qualified majority voting in the Council. Chapter 4 distinguishes between written convention and legally binding agreement and shows that some Interinstitutional Agreements concluded between the institutions of the European Union are better understood as conventional agreements.

Chapter 5 shifts the attention to the fundamental significance of convention for the creation of constitutional structure and for constitutional development. The investiture procedure of the European Commission is central to this chapter, but also other elements are discussed in an illustration of this significance. Convention can be seen as an expression of the autonomy and primacy of the political constitution in relation to the legal constitution. Because of some of its particular characteristics, convention also reinforces the evolutionary nature of constitutional development of the European Union.