

More than Informal Institutions? A Typology-Based Analysis of Constitutional Conventions¹

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Abstract

This article focuses on a longstanding yet undertheorized concept in political science: constitutional conventions. Traditionally distinguished from laws by their lack of legal enforceability, recent scholarship has challenged this dichotomy, suggesting that conventions can acquire characteristics typical for formal legal rules. By integrating constitutional conventions into institutionalist theory, this article addresses two research questions: Are constitutional conventions only informal institutions? How are they related to constitutional texts? To answer these questions, the article proposes two original typologies. The first classifies conventions by their degree of formalization and sanctioning mechanisms, illustrating how they may evolve along a continuum from purely informal to increasingly formal institutions. The second typology reflects the relationship between constitutional conventions and constitutional texts, distinguishing between interpretative, gap-filling, modifying, and contradicting conventions. Using these typologies, the article argues that conventions are neither homogeneous nor purely informal institutions, but rather diverse and dynamic rules placed along the formal–informal continuum. In general, the article highlights political science's (through institutional theory) distinctive capacity to analyze conventions as evolving elements of constitutional governance.

Keywords: institutional theory; constitutional conventions; normative institutionalism

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1. Introduction

Despite their enduring presence in constitutional practice and legal discourse, constitutional conventions remain undertheorized within political science. This neglect can be traced to the concept's origins in legal scholarship, which traditionally conceptualized conventions negatively, as non-legal, 'mere conventions' unenforceable by courts (cf. Dicey, 1915, p. lxvi).¹ The longstanding dominance of this formalist legal perspective has marginalized constitutional conventions, treating them as supplementary practices relevant only insofar as they clarify or supplement codified provisions. This legalist bias results in a lack of conceptual frameworks for systematically analyzing conventions as operative rules in political life.²

The concept later migrated to political science, where institutionalist theories developed tools for analyzing both formal and informal institutions as factors shaping political life (Helmke & Levitsky, 2004; Peters, 2019). This analytical toolkit makes political science better equipped to theorize constitutional conventions not as marginal curiosities, but as integral components of constitutional governance with tangible effects on political behavior and institutional functioning.

This article builds on this premise, seeking to integrate constitutional conventions into the institutionalist theoretical framework, where they have so far received limited attention. To this end, the article addresses two interrelated research questions. First, are constitutional conventions solely informal institutions? The article challenges the prevailing assumption that conventions are inherently informal, arguing instead that many exhibit a level of institutional embeddedness exceeding their supposedly informal status. To do so, the article presents a typology of constitutional conventions based on their degree of informality. Second, how do constitutional conventions function in relation to constitutional texts? The article proposes a typology based on this functional relationship. This framework is then used to reassess their theoretical classification within institutional theory.

Rather than proposing new theories, the article argues that existing institutionalist tools (Peters, 2019) are sufficient for comprehending conventions, provided they are applied with greater nuance. The article proceeds as follows. The next section outlines the methodological approach and justifies the use of empirical examples. This is followed by a conceptual clarification of constitutional conventions. The subsequent section situates conventions within institutional theory, drawing on normative (March & Olsen, 1989) and informal institutionalist perspectives (Lauth, 2015; Helmke & Levitsky, 2004).

The core of the article presents two typologies addressing conventions' degree of formalization and their functional relationship to constitutional texts. The concluding section integrates these findings, reflects on their theoretical implications, and suggests directions for future research.

2. Methodological approach

The methodological approach of this article is based on conceptual analysis and theory development through a critical engagement with existing literature. The article employs a qualitative, interpretive methodology, systematically reviewing key works from both the constitutional theory tradition and various strands of institutionalism, benefiting mainly from normative institutionalism. The article is a theoretical one. At the same time, it is completed with several empirical examples. Rather than using these examples for systematic hypothesis testing, illustrative cases serve to clarify the conceptual distinctions within the typologies presented. In other words, in line with the article's conceptual-analytical approach, the empirical examples included in the analysis demonstrate the plausibility and practical relevance of the proposed typologies, and to concretize the diversity of constitutional conventions in different constitutional settings. These examples are not intended to generate generalizable empirical conclusions or to function as case studies in a strict comparative sense. Instead, they are selectively drawn from a range of constitutional systems to exemplify how conventions can occupy different positions along the spectrum of formality and informality, thereby supporting the argument that constitutional conventions should not be uniformly classified as informal institutions. In the same way, examples are used to illustrate a variety of ways constitutional conventions can be related to constitutional text. The inclusion of these examples reflects a common practice in theory-oriented literature, where illustrative instances help clarify abstract conceptual distinctions and their role in this article is thus integrative and explanatory, without claiming systematic empirical generalization.

3. Defining constitutional conventions

The concept of constitutional conventions has garnered significant scholarly interest since Albert Venn Dicey's seminal work, first published in 1885 (Dicey, 1915). While Dicey is often credited with conceptualizing constitutional conventions, the scholarly tradition of contemplating conventional rules predates his work (see Phillips, 1966). Given the distinctive nature of the English constitution, characterized by its non-codified and traditional attributes (e.g., Loughlin, 2016), it is unsurprising that constitutional conventions have played a central role in the English political system.

A long tradition of scholarly research on constitutional conventions can be observed in countries following the Westminster system (e.g., Wheare, 1966). Beyond the UK (e.g., Chand, 1938; Marshall, 2001), conventions have been addressed in Australia (e.g., Killey, 2014), Canada (e.g., Forsey, 1984; Heard, 1991; 2012), and the USA (Horwill, 1925; Vermeule, 2015). They have also been analyzed

in other Western countries: France (e.g., Avril & Gicquel, 1989; Bell, 1992), Germany (Taylor, 2014), and the Netherlands (e.g., Vetzo, 2018), as well as in recent years in post-communist democracies (Brunclík et al., 2023; Hájek, 2023; Káčer, 2022; Vincze, 2020; Antoš & Horák 2024).

The relevance of constitutional conventions varies across countries, depending on constitutional design and democratic experience. Still, this brief literature review shows that conventions play some role in many systems, underlining the need to frame them within a coherent theoretical framework.

Many scholars have made attempts to define constitutional conventions, often drawing inspiration from Dicey (1915) or Jennings (1959). While these definitions vary in detail and emphasis, there is a substantial degree of overlap in the core characteristics scholars attribute to constitutional conventions. This article adopts the following four characteristics as its analytical framework, as they represent the most commonly shared and analytically relevant features identified in the literature. At the same time, some occasionally suggested but contested characteristics (such as the requirement that conventions must always evolve over time or that they necessarily fill legal gaps) are deliberately excluded from the article, as they lack consistent endorsement across the comparative literature and are not essential to the institutional analysis pursued in this article.

Firstly, heavily influenced by Dicey's legalistic framing of the concept that laid the groundwork for the enduring assumption of conventions as informal, many scholars commonly treat explicitly or implicitly conventions as informal institutions (Lauth 2015, p. 62; cf. March & Olsen, 1984; Helmke & Levitsky 2004, p. 728). Indeed, conventions are usually treated as non-legal rules, i.e., typically not enforced by courts, nor do they emerge from the legislative process or judicial decisions (e.g., Dicey, 1915: cxl-cxli; Maley, 1985; Jaconelli, 2005). Instead, constitutional conventions have a political origin.

Secondly, they regulate powers and relations between constitutional institutions, excluding ceremonies within constitutional institutions and internal party procedures from the scope of constitutional conventions (e.g., Heard, 2005, 1989; Jaconelli, 1999).

Thirdly, they are based on normative justification (cf. Jennings, 1959, p. 136) and linked to constitutional principles and values (e.g. Heard 1989).³

Finally, they are accepted as generally binding rules (*opinio iuris*), with breaches leading to criticism and pressure to conform (e.g. Heard, 2005; Galligan & Brenton, 2015, p. 8).

Despite this substantial body of scholarly literature, political science has rarely attempted to integrate constitutional conventions into institutionalist theory in a systematic way. Typically, conventions have been treated as peripheral or idiosyncratic features of specific constitutional settings rather than as institutions with broader practical and theoretical significance. As said above, this article addresses that gap by examining constitutional conventions through

the conceptual lens of institutionalism, particularly by rethinking their assumed informality and theorizing their relationship with formal constitutional texts.

4. Constitutional conventions and institutionalism

Institutional theory, employed not only by political science, can effectively integrate the concept of constitutional conventions, commonly referred to as institutions (e.g., Sarigil, 2015; Pejovich, 1999; cf. Helmke & Levitsky, 2004). Institutionalism is a general approach to the study of political institutions as crucial (but not the only) elements of contemporary governance. Institutionalism offers a variety of perspectives encompassing alternative conceptualizations of what an institution is, how it functions, changes, and how it relates to individuals and the extent to which it shapes individual behavior (Peters 2016; 2019; Koelble, 1995). This article employs two strands of institutional theory that are particularly useful in grasping constitutional conventions. First, the article uses what Guy Peters labels as ‘normative institutionalism’ (Peters, 2019), also known as ‘sociological institutionalism’ (Peters, 2016), an approach largely formulated by the founders of ‘the new institutionalism’, James March and Johan Olsen (1984; 1989). Second, the concept of informal institutions (Peters, 2019; Helmke & Levitsky, 2004) is used, which provides useful lenses through which constitutional conventions can be examined.

Constitutional conventions are generally understood as institutions (e.g. North 1990; Lauth 2015). An institution can be defined as ‘a norm or set of norms that have a significant impact on the behavior of individuals’ (North, 1990, p.3). For contemporary scholars, an institution is not necessarily a formal structure. Instead, they understand institutions as ‘collections of interrelated rules and routines that define appropriate actions in terms of relations between roles and situations’ (March & Olsen, 1989, p. 160).⁴

For many authors, sanctions for not complying with the rules are important. For example, rational choice tends to explain following the rules because of the external sanctioning mechanisms (social discrimination or loss of status, arrest, etc.) (cf. Peters 2019, chapter 3). However, even if sanctions are a defining feature of institutions, they may not be the only reasons why individuals follow institutions. Normative institutionalism assigns a central role to norms and values within institutions. In contrast to rational-choice theories, normative institutionalism assumes that people are not atomistic individuals maximizing their personal utility within institutions that permit, prescribe, and proscribe specific types of actions but rather members of collectives complying with and responding to the values of the institutions to which they belong (cf. Peters, 2019, p. 31). They argue that political behavior is ‘constrained and dictated by cultural

dicta and social norms. Although self-interest undoubtedly permeates politics, action is often based more on discovering the normatively appropriate behavior than on calculating the return expected from alternative choices' (March & Olsen, 1984, p. 744). Institutions possess a significant degree of legitimacy that compels their members to behave in ways that may contradict their own self-interest.⁵

The idea of appropriate behavior is central to March and Olsen, who build their understanding of institutions on the 'logic of appropriateness' as opposed to the 'logic of consequentiality' (March & Olsen, 2011).⁶ In line with this perspective, political behavior is 'driven by rules of appropriate or exemplary behavior, organized into institutions' (March & Olsen, 2011, p. 478), and not by thinking about what consequences their behavior will bring to members of institutions (cf. Peters, 2019, p. 35; Sarigil, 2015). In other words, behaving appropriately means that individuals internalize specific norms of the institutions and proceed within institutionalized practices and routines that are – in their respective institutions – collectively seen as good, reasonable, legitimate, etc. (see also Lauth, 2015, p. 58).

The logic of appropriateness clearly bears overtones of morality, but appropriate behavior of an institution may not always be recognized as generally fair, just, and morally acceptable. Indeed, the logic of appropriateness may, in extreme cases, dictate corruption or violence, including ethnic cleansing and blood feuds (cf. Helmke & Levitsky, 2004; Rose & Peiffer, 2018; Lauth, 2015, pp. 62–63). Still, the morality aspect is relevant to constitutional conventions. After all, A. V. Dicey (1915) referred to constitutional conventions as 'constitutional morality' (Dicey, 1915, p. cxli and 270; see also Bell, 1992, p. 58). Indeed, societal norms are of key importance to constitutional conventions as they reflect important constitutional values and principles (Marshall, 2001, p. 9; for details, see also Heard, 1989). Again, the norms constrain the behavior of individual politicians and officeholders and compel them to act in a way that may not necessarily maximize their personal utility. As J. Jaconelli put it, '...the central idea behind constitutional conventions is the notion that they bind those who occupy for the time being the relevant offices of state, regardless of whether they have agreed to them or not' (Jaconelli, 1999, p. 41).

This institutionalist framing highlights constitutional conventions as institutions grounded in shared norms, social expectations, and the logic of appropriateness rather than in formal legal rules or external sanctions alone. Yet, while many scholars keep treating constitutional conventions as paradigmatic examples of informal institutions, this assumption warrants closer scrutiny. Therefore, the following section rethinks the informality of constitutional conventions by examining the mechanisms through which they are sanctioned, recognized, and, in certain circumstances, formalized.

5. Rethinking the informality of constitutional conventions

This section of the article discusses the formal-informal distinction in institutional theory, explains the importance and variety of informal institutions, and presents a typology based on the degree of formalization of constitutional conventions.

Politics and political behavior are fundamentally structured by the interplay of formal and informal institutions. Scholars have long debated how to distinguish between the former and the latter. While some remain skeptical about drawing a clear line between them (Hodgson, 2006, p. 18), others have attempted to clarify the distinction more precisely. For example, one may identify informal institutions with unwritten cultural traditions (Pejovich, 1999, p. 166), while another scholar differentiates the two based on their enforcement mechanisms: informal norms are self-enforcing, whereas formal rules rely on third-party enforcement, typically by the state (Knight, 1992).

This article subscribes to the state-centered approach. Here, formal institutions are rules codified in official documents such as constitutions, statutes, or regulations and are guaranteed and enforced by state institutions, notably courts, legislatures, and regulatory agencies (Lauth, 2015, p. 57; Helmke & Levitsky, 2004, p. 727).⁷ Informal institutions, by contrast, are mostly unwritten rules embedded in the beliefs, attitudes, and behaviors of individuals and groups. They are neither formally codified nor directly sanctioned by the state. Instead, they are maintained through societal mechanisms such as public criticism, peer pressure, or reputational consequences (Lauth, 2015, pp. 57–58).

As constitutional conventions are often regarded as informal rules, or informal institutions (cf. Lauth, 2015: 62; Kosař & Vince 2023), it is useful to further elaborate the broader concept of informal institutions in institutional theory before turning to conventions themselves. There is no doubt that informal institutions vary significantly across time and space. Notably, in terms of types, there is a wide range of informal institutions that stretch from clans (Murtazashvili, 2016) and clientelism (Stokes et al., 2013) across obstructions in the US Senate (Azari & Smith, 2012) to consociational democracy (Lijphart, 1969). Informal institutions are often ignored, as if political life is affected only by formal institutions. However, political actors tend to be exposed ‘to a mix of formal and informal incentives, and in some instances, informal incentives trump the formal ones’ (Helmke & Levitsky, 2004, p. 726; cf. Lauth, 2015, p. 66).

Several theorists argue that informal institutions complement formal institutions, and that the former cannot be studied without taking account of the latter (cf. Brie & Stölting, 2012). As North argued: ‘Formal rules are an important part of the institutional framework but only a part. To work effectively they must be complemented by informal constraints (conventions, norms or behavior) that supplement them and reduce enforcement costs’ (North, 1993, p. 20). Typically,

informal institutions fill in gaps by tackling contingencies not dealt with in the formal rules (cf. Azari & Smith, 2012).

Therefore, the relationship of informal institutions to formal ones is one of the central issues scholars deal with in theoretical and descriptive terms (cf. Peters, 2019, p. 206). This article adheres to Helmke and Levitsky's (widely recognized and cited) understanding of informal institutions. They define them as 'socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels' (Helmke & Levitsky, 2004, p. 725; see also Azari & Smith, 2012). This emphasis on the extralegal origins and enforcement of informal rules, alongside the formal-informal coexistence that structures political reality, provides a crucial conceptual foundation for the subsequent analysis.

From this state-centered perspective, it might seem intuitive to classify constitutional conventions as informal institutions. Indeed, scholarly literature has traditionally approached them as unwritten, politically enforced norms distinct from legally binding constitutional provisions (Dicey, 1915). However, this conventional dichotomy has been increasingly questioned by contemporary scholars. Some have even argued that conventions might, and even should, be enforced by courts (e.g. Barber, 2009; Heard, 1991; Sirota, 2011; for another view, see Vermeule, 2015). The conventions, though generally unenforceable by courts, can nonetheless acquire characteristics typically associated with formal legal rules. As Barber (2009, p. 294) observes, 'the difference between law and convention is one of degree', suggesting that the boundaries between the two are neither fixed nor absolute.

This debate over the informality of conventions is not merely theoretical. Even though courts rarely enforce conventions directly, their breach is seldom without consequence. As indicated above, sanctions, whether political or legal, are central not only to understanding institutions, but also (and in particular) to constitutional conventions because actors comply not only to avoid penalties but also because conventions are perceived as legitimate and appropriate (Lauth, 2015, pp. 57–58; March & Olsen, 2011). Typically, their breach is sanctioned in political terms (public criticism, pressure to conform or to resign from office).⁸

This article is built on this insight by arguing that constitutional conventions are not static, purely informal institutions but rather dynamic rules that can move along a continuum from informality to formality. This process of formalization occurs as sanctioning mechanisms evolve from purely political and societal enforcement toward more institutionalized and legal forms, including state and judicial intervention.

This argument about the gradual shift in the institutional status of constitutional conventions draws conceptually on H.L.A. Hart's (1994) theory of legal systems. Hart argues that legal systems do not emerge through a single transformative event, but rather through a gradual process in which certain

social rules progressively acquire the characteristics of law. This incremental formalization, which Hart (1994, pp. 95–97) describes as a ‘path to law’, offers a useful theoretical framework for understanding how constitutional conventions might evolve over time. According to Hart, there is no clear-cut moment when a rule definitively becomes law. Instead, rules may be formalized in stages, gaining attributes such as general acceptance, official recognition, and enforceability by state institutions. Barber (2009, pp. 302–307) extends this logic to constitutional conventions, suggesting that as their enforcement mechanisms shift from purely political to more institutional and legal forms, conventions can progressively ‘crystallize’ into formal constitutional norms. This perspective reinforces the claim that the distinction between law and convention is not absolute but rather one of degree, depending on the extent to which conventions are formalized through codification, judicial recognition, or other official mechanisms.

Hence, to address the first research question (whether constitutional conventions are only informal institutions), this section proposes a typology based on the degree of formalization of constitutional conventions. As argued above, conventions have been traditionally understood as informal rules enforced by political actors through political means, distinct from legally binding norms. However, this dichotomy risks oversimplifying the character of conventions and neglects the fact that conventions may acquire varying degrees of formalization over time. Crucially, the path of conventions from purely informal to increasingly formal rules can be traced through changes in their sanctioning mechanisms. As informal, politically enforced understandings become subject to explicit formulation, codification, and even recognition or application by state institutions, notably courts, they move along a scale from informal to formal rules.

Having this in mind and building on a large variety of constitutional conventions in several countries, this article proposes a typology (see table 1) based on the degree of formalization of constitutional conventions, specifically linked to the nature of their formulation and the character of their sanctioning mechanisms.

First, there are conventions based on a ‘general tacit consent’ (Horwill, 1925, p. 22), which I call *conventions of tacit consent*. These are unspoken, uncoded understandings among constitutional actors, grounded in customary political practice. Such conventions are entirely informal and their enforcement is exclusively political, relying on the willingness and capacity of political actors, parties, the media, or public opinion to sanction breaches.⁹

Second, many conventions that emerged beyond an explicit agreement, are later explicitly formulated by political actors, although the conventions are not put in writing. These *spoken, but unwritten conventions* are still essentially informal rules. However, when political actors explicitly formulate the rules, it lends them a touch of formality.¹⁰

Third, there are *document-supported conventions* which are not only explicitly formulated but are also accompanied by authoritative public documents

(such as governmental statements or parliamentary records) that formally acknowledge their existence and scope. Although enforcement remains political, this documentary backing enhances their institutional visibility and confers a more formalized status than purely unwritten conventions.¹¹ Also, constitutional conventions may emerge quite quickly, i.e., based on a political agreement (Wheare, 1966; Taylor, 2014). Hence, in addition to precedent-based conventions resting on a long-term period, there are ‘instant’ agreement-based conventions¹² that arise immediately if there is a shared belief that the rule is right and legitimate, reflecting an important constitutional principle.

Table 1:
Typology of conventions I

Type of conventions	Core Features	Degree of Formality	Example
Conventions of tacit consensus	Entirely unwritten; grounded in customary political practice; enforced solely by political actors, media, and public opinion	Completely informal	Early stages of constitutional conventions
Spoken but unwritten conventions	Still unwritten but explicitly formulated in political discourse; their articulation lends them some visibility, yet enforcement remains political	Informal with slight formalization through articulation	Czech cabinets obliged to submit their policy declaration prior to confidence vote in the cabinets
Document-supported conventions	Explicitly formulated and supported by authoritative public documents (e.g., official statements, parliamentary records), still enforced politically	Informal with enhanced formal visibility	Slovak presidents formally authorize the leader of the largest party to form a new cabinet
Officialized non-justiciable conventions	Stated in authoritative documents; sanctioned through formal political institutions	Blurring the line between informal and formal norms	Cabinet manuals in UK, New Zealand
Judicially relevant conventions	Employed by courts which rarely enforce the conventions, but recognize them in judicial reasoning	Partially formalized with legal relevance (at the edge of legal enforceability)	1981 Canadian Supreme Court decision (Patriation Reference)

Source: The author.

Fourth, at a higher level of formalization are *officialized non-justiciable conventions* that are supported by formal written documents produced by official institutions. These documents, including cabinet manuals such as the UK’s Ministerial Code, Canada’s Manual of Official Procedure, and New Zealand’s Cabinet

Manual (e.g., Barber, 2009; Russell, 2015; Galligan & Brenton, 2015, pp. 20–22; Bowden & McDonald, 2012), systematically set out constitutional conventions in writing. Up to this point, they resemble the previous type of conventions. However, while still generally enforced through political rather than judicial means, officialization of conventions blurs the line between their informal and formal character by embedding conventions in authoritative sources that resemble formal legal norms.

For example, the Ministerial Code in the UK formalizes key aspects of ministerial responsibility. Ministers are obligated to adhere to the rules outlined in the Code. The Code has been consistently acknowledged as the source of a constitutional obligation, resembling Hart's rule of recognition, and once in many controversies related to the breach of the Code, 'the Code was accepted as the source of the relevant constitutional obligation' (Barber, 2009, p. 305). The code and other conventions in several commonwealth countries are sanctioned by the prime minister, parliaments (and/or its privileges committee) through dismissals or no confidence motions. Thus, such conventions are non-justiciable but can be sanctioned even within formal institutions unlike the previous types of conventions mentioned above (Bowden & McDonald, 2012, p. 372).

Finally, there are *judicially relevant conventions*. The judicial involvement in the recognition or enforcement of constitutional conventions marks a significant step toward their formalization. While it is rare for courts to enforce conventions directly, the claim that courts categorically ignore them is equally untenable.

It is extremely difficult to generalize about the ways courts deal with constitutional conventions, as their approach varies from country to country depending on their jurisdiction and the way they handle constitutional conventions. Instead, building on Ahmed et al. (2019), a classification of how courts in general terms deal with constitutional conventions can be suggested. In some countries, courts simply ignore the conventions, which means no step towards formalization of conventions.¹³ However, in some other countries, courts take the conventions into account. First, courts recognize conventions, which means that courts simply recognize a convention's existence or its scope (e.g., Vermeule, 2015). Second, courts employ conventions, i.e., they use conventions in the act of legal reasoning (e.g., conventions as grounds for interpretation of legal provisions, or for application of laws). For example, in 1981 the Supreme Court of Canada issued a well-known decision regarding the dispute between the federal government and provinces over the amendment to the Canadian Constitution (Banfield 2015; Patriation Reference 1981 1 S.C.R. 753).

Finally, courts seek formal judicial enforcement of conventions (for more on this point, see also Ahmed et al. 2019; Barber, 2009; Heard, 2012).¹⁴ In other words, once conventions become enforced by courts, they lose their informal character and become almost fully formalized in line with the above distinction between formal and informal institutions (even though the constitutional con-

ventions did not originate in the same way as formal institutions but arise from a political practice).

This typology demonstrates that constitutional conventions do not exist exclusively as informal institutions but may occupy positions across a spectrum of formalization. Their institutional status depends both on how they are articulated and on the nature of the mechanisms through which compliance is sanctioned: whether by political actors, more formalized institutions, or courts. This approach moves beyond the binary distinction between formal and informal institutions and offers a more dynamic account of how conventions interact with formal constitutional frameworks.

Finally, it is important to note that the path of formalization can, in some cases, culminate in the complete transformation of a constitutional convention into a formal legal rule through legislative action. Thus, another mechanism of formalization occurs when a parliament endorses a convention through the ordinary legislative process, granting it statutory authority. Dicey (1915, p. 69) refers to such instances as ‘enacted conventions’, describing them as political understandings that, by Act of Parliament, have acquired the force of law. However, as Dicey emphasizes, this process essentially abolishes the original convention in its customary form, replacing it with a formal legal provision.¹⁵

Unlike the officialized conventions described above, codification implies ‘a rigorous, legal systemization that would remove conventions from the political realm and render their codified forms justiciable in courts of law. A “codified convention” thus becomes law, at which point it ceases to be a convention altogether’ (Bowden & McDonald, 2012, p. 372).

In terms of the typology proposed in this chapter, this represents the logical terminus of the formalization continuum: a point at which a convention ceases to be an informal or even semi-formal rule and instead becomes part of the codified constitutional or statutory framework. While this ultimate step lies formally outside the scope of conventions as typically conceived, it makes the central claim of this section even stronger: that conventions exist along a spectrum of formality, with varying degrees of political and legal sanctioning, and that their status may evolve incrementally over time.

6. Constitutional conventions and constitutional texts: a typology of functional relationships

Since A.V. Dicey’s influential account, constitutional conventions have been understood as rules that coexist with formal legal provisions, regulating the conduct of constitutional officeholders who feel bound by them (Dicey, 1915). As Ivor Jennings famously articulated, constitutional conventions ‘provide the flesh that

clothes the dry bones of the law' (Jennings, 1959, p. 117). Eugene Forsey offered a similar metaphor, describing conventions as 'the sinews and nerves of our body politic' (Forsey, 1984, p. 12). K. C. Wheare likewise emphasized that 'the law of a Constitution... is supplemented by a whole collection of rules which, though not part of the law, are accepted as binding, and which regulate political institutions in a country and clearly form a part of the system of government' (Wheare, 1966, p. 121). These characterizations underline a crucial feature of conventions: they are informal but authoritative rules that regulate constitutional practice, contributing to the overall functioning of constitutional systems and interacting closely with formal constitutional texts.

The relationship between formal and informal institutions, including constitutional conventions, has attracted increasing scholarly attention. One of the most influential conceptual frameworks is Helmke and Levitsky's typology of informal-formal institutional interactions (Helmke & Levitsky, 2004). Their typology is based on two dimensions. The first is concerned with 'the degree to which formal and informal institutional outcomes converge' (Helmke & Levitsky, 2004). They study whether informal rules yield significantly different results than adherence to formal rules. The second dimension is based on the effectiveness of formal institutions, that is the extent to which formal rules are enforced and complied with in practice. As a result, there are four types of informal institutions. Firstly, complementary informal institutions coexist with effective formal institutions by filling in gaps in the mosaic of formal rules. Secondly, accommodating informal institutions contradicts the spirit (not the letter) of effective formal institutions to generate broadly beneficial outcomes. Thirdly, competing informal institutions diverge from ineffective formal institutions as following one of these results in violating another.¹⁶ Finally, substitutive informal institutions achieve the goals of ineffective formal institutions that failed to do it. Having criticized the above typology, Lauth offered three major modes of interactions between formal and informal institutions: they 1) compete with each other, which means that formal institutions are weakened, 2) reinforce each other, and 3) maintain a neutral relationship (Lauth, 2015, p. 60).¹⁷

Although Helmke and Levitsky's typology remains highly valuable for analyzing the interaction between formal and informal institutions in general political systems, it is too general to address the distinctive challenges of constitutional analysis. Their framework focuses on the outcomes produced by informal institutions relative to formal rules, whereas constitutional conventions occupy a unique position at the intersection of law and politics, i.e. not merely generating outcomes but also shaping the interpretation, application, and contestation of constitutional texts themselves.

Therefore, they require a typology that captures the constitutional function these conventions perform vis-à-vis constitutional provisions. Existing typologies have not been systematically applied to this problem. Building on the conceptual

groundwork laid by Helmke and Levitsky, this article proposes a typology designed to classify constitutional conventions not by their outcomes, but by the specific nature of their relationship to constitutional texts (see table 2).

First, there are interpretative conventions whose role is simply to forestall conflicts over constitutional provisions in cases where the constitution does not provide an unambiguous way of interpreting constitutional texts. The purpose of these rules is to provide constitutional actors with clear rules and make their decision-making much more predictable, decreasing the risk of constitutional conflicts and frictions.¹⁸

Second, gap-filling conventions fill in blank spaces in the constitutional texts, especially where constitutional provisions are too general or vague. They help constitutional actors handle issues not directly addressed by the constitution. Typically, they formulate additional rules of behavior.¹⁹

Third, modifying conventions make constitutional actors perform their competences in a different way than the constitution dictates, but they are not necessarily contradicting the constitutional text. Typically, the conventions make actors refrain from using their specific powers.²⁰ Finally, contradicting conventions clash with constitutional provisions, which leads to a practice that contradicts the letter of the constitution.²¹

Table 2:
Typology of constitutional conventions II

Type of Convention	Core Features	Example
Interpretative conventions	Provide agreed interpretations in cases where constitutional provisions are ambiguous	In Poland, presidents appoint the leader of the largest party as Prime Minister
Gap-filling conventions	Supplement constitutional texts by providing rules or procedures where the constitution is silent, vague, or too general	Formateur (designated prime minister) in Slovakia
Modifying conventions	Change how constitutional powers are exercised without necessarily contradicting the text; often involve actors voluntarily refraining from using certain powers	Hungarian presidents do not make use of their power to initiate bills
Contradicting conventions	Establish practices that directly conflict with the constitutional text; practice prevails over the letter of the constitution	Hungarian presidents use two types of legislative veto at the same time

Source: The author.

The above typology enables a more precise, context-sensitive, and analytically useful tool for both constitutional and institutional theory, as it captures crucial nuances in how conventions operate in the shadow of formal constitutional norms and within constitutional practice. To be more specific, the significance of this typology lies in its capacity to capture constitutional-specific interactions between formal and informal rules, a dimension largely overlooked in broader institutional typologies. Whereas Helmke and Levitsky's (as well as Lauth's) framework classifies informal institutions based on policy outcomes and institutional effectiveness, it does not attend to how informal institutions like conventions interact with constitutional meaning, interpretation, and legitimacy, issues at the core of constitutional systems. This typology offers a more constitutionally sensitive framework for assessing how unwritten norms shape, complement, or contest formal constitutional orders.

Furthermore, it responds to calls within constitutional theory for more nuanced accounts to study ways constitutions are amended, especially in systems where formal amendment rules are inflexible or rarely used (Albert, 2019). In particular, this typology contributes to the growing literature on informal constitutional change (e.g., Lim 2017; Dixon & Landau, 2021). In addition, the typology enriches the literature on constitutional adaptation in systems threatened by democratic decay (Huq & Ginsburg, 2018) by providing a tool to systematically identify and classify informal practices that operate alongside (and sometimes against) codified constitutional provisions.

7. Conclusion

The aim of this article was to integrate the study of conventions more systematically into political science and institutional theory, addressing two interconnected research questions: first, whether the conventions should be theorized solely as informal institutions, and second, how they function in relation to constitutional texts. This article argues constitutional conventions cannot be considered exclusively as informal institutions and that they are located on the intersection of formal and informal institutions. Furthermore, this article has shown that political science, with its well-developed interest in informal institutions, is especially well equipped to address the above complexity, which is often overlooked in legal scholarship. By refining our conceptual tools, we can better capture the institutional realities of constitutional politics and advance the theoretical integration of conventions within the study of political institutions.

To address the research questions, the article proposed two typologies. The first typology is based on the degree of formalization and sanctioning mechanisms of constitutional conventions showing a variety of conventions that can be placed on the continuum from informal to formal institutions.

The theoretical significance of the first typology lies in its capacity to conceptualize constitutional conventions not as a homogeneous category of informal institutions, but as a spectrum of practices with varying degrees of formalization, and enforceability. While much of the literature on informal institutions treats them as structurally similar in terms of their informality, this typology offers a finer-grained tool for differentiating between loosely observed, informal understandings and conventions that have acquired a near-formal status through consistent observance and institutional embedding. This has important implications for institutional and constitutional theory, particularly in demonstrating that the boundary between formal and informal rules is often more fluid than conventionally assumed. Future research could apply this typology to trace how certain conventions evolve over time - becoming more formalized or, conversely, falling into disuse - and how this dynamic affects constitutional stability and adaptability.

The second typology is based on the functional relationship between conventions and formal constitutional provisions. This typology enables a more precise, context-sensitive, and analytically useful tool for both constitutional and institutional theory, as it captures crucial nuances in how conventions operate in the shadow of formal constitutional norms and within constitutional practice. While frameworks such as those by Helmke and Levitsky or Lauth classify informal institutions based on policy outcomes and institutional effectiveness, they do not attend to how informal institutions like conventions interact with constitutional meaning, interpretation, and legitimacy, i.e. issues at the core of constitutional systems. By foregrounding these dynamics, the typology offers a constitutionally sensitive framework for assessing how unwritten norms shape, complement, or contest formal constitutional orders.

Furthermore, this typology responds to calls within constitutional theory for more nuanced tools to study informal constitutional adaptation, particularly in systems with rigid or underused amendment procedures (Albert, 2019). It contributes to the literature on informal constitutional change (Lim, 2017; Dixon & Landau, 2021) by offering a framework to systematically identify and classify informal practices shaping constitutional development. It also provides a useful resource for examining how such practices affect constitutional resilience in democracies under pressure (Huq & Ginsburg, 2018).

Future research could usefully apply these typologies to comparative studies of constitutional systems, particularly in contexts with weak or contested formal amendment procedures or undergoing democratic backsliding. Systematic comparative inquiry might test their explanatory utility, examining whether certain types of conventions or functional relationships between conventions and constitutional texts are more prevalent in specific constitutional cultures or institutional settings. It would also be valuable to explore how different types of conventions interact with each other and how their position shifts over time in

response to constitutional amendments, judicial rulings, or political crises. In particular, future studies could investigate the conditions under which conventions evolve from informal understandings into formalized institutions, enhancing their practical relevance for constitutional design and reform in both established and emerging democracies.

References:

- Ahmed, F., Albert, R., & Perry, A., (2019). Judging Constitutional Conventions. *International Journal of Constitutional Law*, 17(3), 787–806.
- Albert, R. (2019). *Constitutional amendments: making, breaking, and changing constitutions*. Oxford: Oxford University Press.
- Andeweg, R., van der Tak, R., & Dittrich, K. (1980). Government Formation in the Netherlands. In R. Griffiths (Eds.), *The Economy and Politics of the Netherlands Since 1945* (pp. 223–249). Springer.
- Anson, W. R. (1914). The cabinet in the seventeenth and eighteenth centuries. *The English Historical Review*, 29(113), 56–78.
- Antoš, M., & Horák, F. (2024). Nepsaná pravidla v ústavním systéme: Ústavní obyčej, ustálená ústavní praxe a ústavní zvyklost. *Právnik* 2, 120–136.
- Avril, P., & Gicquel, J. (1989). *Droit parlementaire*. Montchrestien.
- Azari, J. S., & Smith, J. (2012). Unwritten Rules: Informal Institutions in Established Democracies. *Perspectives on Politics*, 10(1), 37–55.
- Banfield, A. (2015). Canada. In B. Galligan & S. Brenton (Eds.), *Constitutional Conventions in Westminster Systems: Controversies, Changes and Challenges* (pp. 189–203). Cambridge: Cambridge University Press.
- Barber, N. (2009). Laws and constitutional conventions. *Law Quarterly Review*, 125, 294–309.
- Bell, J. (1992). *French Constitutional Law*. Oxford: Oxford University Press.
- Brie, M., & Stölting, E. (2012). Formal institutions and informal institutional arrangements. In T. Christiansen & C. Neuhold (Eds.), *International handbook on informal governance* (pp. 19–39). Cheltenham: Edward Elgar.
- Bowden, J. W., & MacDonald, N. (2012). Writing the Unwritten: The Officialization of Constitutional Convention in Canada, the United Kingdom, New Zealand, and Australia. *Journal of Parliamentary and Political Law*, 6(2), 365–400.
- Bowers, P. (2005). *The Sewel Convention*. London: House of Commons Library.
- Brunclík, M., Kubát, M., Vincze, A., Kindlová, M., Antoš, M., Horák, F., & Hájek, L. (2023). *Power Beyond Constitutions: Presidential Constitutional Conventions in Central Europe*. Springer Nature.
- Buckley, F. H., & Metzger, G. (n.d.). *Twenty-second amendment*. National Constitution Center. Retrieved from <https://constitutioncenter.org/the-constitution/amendments/amendment-xxii/interpretations/149>
- Chand, B. (1938). Conventions of the Constitution. *Journal of Legislation and International Law*, 20(4), 222–229.
- Cohen, M. D., March, J. G., & Olsen, J. P. (1972). A garbage can model of organizational choice. *Administrative Science Quarterly* 17(1), 1–25.
- Dicey, A. V. (1915). *Lectures Introductory to the Study of the Law of the Constitution*. London: Macmillan.
- Dixon, R., & Landau, D. E. (2021). Democracy and Abusive Constitutional Change. In R. Dixon & D.E. Landau (Eds.) *Abusive Constitutional Borrowing: legal globalization and the subversion of liberal democracy* (pp. 23–35). Oxford: Oxford University Press.
- Dowling, T. (2023, September 14). Slovakia's president sues ex-prime minister for defamation as election tensions rise. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2023/sep/14/slovakias-president-sues-ex-prime-minister-for-defamation-as-election-tensions-rise>
- Fassone, M. (2023, October 9). Who and what are the “informateur” and “formateur”? *Delano*. Retrieved from <https://delano.lu/article/who-and-what-are-the-informateur>

- Forsey, E. A. (1984). The Courts and the Conventions of the Constitution. *University of New Brunswick Law Journal*, 33, 11–42.
- Galligan, B., & Brenton, S. (2015). *Constitutional conventions in Westminster systems*. Cambridge: Cambridge University Press.
- Hájek, L. (2023). Idiotic or Columbo's Wife? Constitutional Conventions in the Czech Republic. *East European Politics and Societies*, 37(4), 1425–1447.
- Hart, H. L. A. (1994). *The Concept of Law*. Oxford: Clarendon Press.
- Heard, A. (1989). Recognizing the Variety Among Constitutional Conventions. *Canadian Journal of Political Science*, 22(1), 63–81.
- Heard, A. (1991). *Canadian Constitutional Conventions: The Marriage of Law and Politics*. Oxford University Press.
- Heard, A. (2005). Constitutional Conventions and Parliament. *Canadian Parliamentary Review*, 28(2), 19–22.
- Heard, A. (2012). Constitutional Conventions: The Heart of the Living Constitution. *Journal of Parliamentary and Political Law*, 6, 319–338.
- Helmke, G., & Levitsky, S. (2004). Informal Institutions and Comparative Politics: A Research Agenda. *Perspectives on Politics*, 2(4), 725–40.
- Hodgson, G. M. (2006). What Are Institutions? *Journal of Economic Issues*, 40(1), 1–25.
- Horwill, H. (1925). *Usages of the American Constitutions*. London: Oxford University Press.
- Huq, A., & Ginsburg, T. (2018). How to lose a constitutional democracy. *University of Chicago Law School Review*, 65, 78–169.
- Jennings, I. (1959). *The Law and the Constitution*. London: University of London Press.
- Jaconelli, J. (1999). The Nature of Constitutional Convention. *Legal Studies*, 19(1), 24–46.
- Jaconelli, J. (2005). Do Constitutional Conventions Bind? *The Cambridge Law Journal*, 64(1), 149–176.
- Káčer, M. (2022). Shaping the Appointment Powers of the Slovak President Under Constitutional Conventions. *Acta Politologica*, 14(1), 1–16.
- Killey, I. (2014). *Constitutional Conventions in Australia: An Introduction to the Unwritten Rules of Australia's Constitutions*. Anthem Press.
- Knight, J. (1992). *Institutions and social conflict*. New York: Cambridge University Press.
- Koelble, T. A. (1995). Review: The New Institutionalism in Political Science and Sociology. *Comparative Politics* 27(2), 231–243.
- Kosař, D., & Vincze, A. (2023). Constitutional Conventions Concerning the Judiciary beyond the Common Law. *German Law Journal*, 24(8), 1503–1519.
- Lauth, H. J. (2015). Formal and Informal Institutions. In: J. Gandhi & R. Ruiz-Rufino (Eds.). *Routledge Handbook of Comparative Political Institutions*, (pp. 57–69). New York: Routledge.
- Lijphart, A. (1969). Consociational Democracy. *World Politics* 21(2), 207–225.
- Lim, B. (2017). *Australia's Constitution After Whitlam*. Cambridge: Cambridge University Press.
- Los Angeles Times (1991). Sir John Kerr: Overturned Government of Australia. *Los Angeles Times Archives*. Retrieved from <https://www.latimes.com/archives/la-xpm-1991-03-30-mn-879-story.html>
- Loughlin, M. (2016). *The British Constitution: A Very Short Introduction*. Oxford: Oxford University Press.
- Maley, W. (1985). Laws and Conventions Revisited. *Modern Law Review*, 48(2), 121–138.
- March, J. G., & Olsen, J. P. (1984). The New Institutionalism: Organizational Factors in Political Life. *American Political Science Review*, 78(3), 734–749.
- March, J. G., & Olsen, J. P. (1989). *Rediscovering Institutions*. New York: Free Press.
- March, J. G., & Olsen, J. P. (2005). Elaborating the “New Institutionalism” (ARENA Working Paper No. 11). Oslo, Norway: Arena – Center for European Studies, University of Oslo.
- March, J. G., & Olsen, J. P. (2011). The Logic of Appropriateness. In R. E. Goodin (Ed.), *The Oxford Handbook of Political Science* (pp. 478–497). Oxford: Oxford University Press.
- Marshall, G. (2001). *Constitutional Conventions: The Rules and Forms of Political Accountability*. Clarendon Press.
- Munro, C. R. (1975). Laws and conventions distinguished. *Law Quarterly Review*, 91(362), 218–235.
- Murtazashvili, J. B. (2016). *Informal Order and the State in Afghanistan*. Cambridge: Cambridge University Press.

- North, D. C. (1990). *Institutions, Institutional Change and Economic Performance*. Cambridge: Cambridge University Press.
- North, D. C. (1993). Institutions and credible commitment. *Journal of Institutional and Theoretical Economics (JITE)/Zeitschrift für die gesamte Staatswissenschaft*, 149(1), 11–23.
- Patriation Reference. 1981. *Resolution to amend the Constitution*, [1981] 1 S.C.R. 753.
- Pejovich, S. (1999). The effects of the interaction of formal and informal institutions on social stability and economic development. *Journal of Markets and Morality*, 2(2), 164–181.
- Peters, G. (2016). Institutional theory. In C. Ansell & J. Torfing (Eds.), *Handbook on Theories of Governance* (pp. 308–321). Cheltenham: EE Elgar.
- Peters, G. (2019). *Institutional theory in political science: The new institutionalism*. Cheltenham: EE Elgar.
- Phillips, O. H. (1966). Constitutional Conventions: Dicey's Predecessors. *The Modern Law Review*, 29(2), 137–148.
- Rose, R. & Peiffer, C. (2018). *Bad Governance and Corruption*. Basingstoke: Palgrave Macmillan.
- Russell, P. (2015). Codifying conventions. In B. Galligan & S. Brenton (Eds.), *Constitutional conventions in Westminster systems* (pp. 233–248). Cambridge: Cambridge University Press.
- Sarigil, Z. (2015). Showing the path to path dependence: The habitual path. *European Political Science Review*, 7(2), 221–242.
- Sirota, L. (2011). Towards a jurisprudence of constitutional conventions. *Oxford University Commonwealth Law Journal*, 11(1), 29–51.
- Stokes, S. C., Dunning, T., Nazareno, M., & Brusco, V. (2013). *Brokers, Voters and Clientelism: The Puzzle of Distributive Politics*. Cambridge: Cambridge University Press.
- Taylor, G. (2014). Convention by Consensus: Constitutional Conventions in Germany. *International Journal of Constitutional Law*, 12(2), 303–329.
- Vermeule, A. (2015). Conventions in Court. *Dublin University Law Journal*, 38, 283–310.
- Vetzo, M. (2018). The Legal Relevance of Constitutional Conventions in the United Kingdom and the Netherlands. *Utrecht Law Review*, 14(1), 143–156.
- Vincze, A. (2020). Die Interpretationsregeln des ungarischen Grundgesetzes: zwischen Konvention, Tradition und Voluntarismus. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 80(4), 973–988.
- Wheare, K. (1966). *Modern Constitutions*. Oxford: Oxford University Press.

Endnotes:

- 1 In contrast, Galligan and Brenton (in the context of the Commonwealth countries) assert that 'conventions are more fundamental than laws; they govern the formation and basic functioning of government overall...' (Galligan & Brenton, 2015, p. 8).
- 2 Another reason for the lack of theoretical account of conventions may be simple that the relevance of constitutional conventions varies across countries' constitutional systems, from some polities where constitutional conventions play a crucial role, across countries where they are of lower importance (e.g. France and Germany) to other countries where constitutional conventions are of low interest due to their limited impact. However, even in relatively young democracies, constitutional conventions play a not negligible role in regulating the conduct of key institutional figures and shaping relationships within executive and legislative bodies (e.g. Brunclík et al., 2023).
- 3 For example, the Westminster Parliament is obliged not to use its legislative power in a tyrannical and/or oppressive way (Marshall, 2001, p. 9; for details, see also Heard, 1989).
- 4 Similarly, Douglass North (1990, p. 3), defines an institution 'as a norm or set of norms that have a significant impact on the behavior of individuals' (North, 1990, p. 3; see also Lauth, 2015, p. 57).
- 5 For example, in Slovakia there is a constitutional convention regulating the steps of the president in the government formation process since the provisions of the Slovak constitution do not provide clear guidelines on how the president should proceed. The convention obliges the president to authorize the representative of the largest parliamentary party to form a cabinet prior

to the president appointing a prime minister. Only if persons authorized to form the cabinet succeed are they appointed as prime ministers (Brunclík et al., 2023, pp. 183–190). In the 2023 election campaign, former prime minister and SMER party leader Robert Fico unscrupulously verbally attacked the Slovak President, Zuzana Čaputová, who was frequently denigrated by SMER representatives who used rude words to criticize her. Čaputová sued Fico for spreading lies about her (Dowling, 2023). Fico's SMER won the election. Had she been offended by the wave of vulgarism and stuck to the constitutional provisions only (that do not oblige the president to appoint as prime minister the leader of the largest party), she might have ignored Fico in the government formation process. Still, she felt obliged to stick to the constitutional convention she explicitly mentioned in her speech in which she authorized Fico to form a new cabinet that she did not wish to see.

- 6 Galligan and Brenton were probably the first to explicitly link the constitutional conventions and the 'logic of appropriateness' (Galligan & Brenton, 2015, p. 10).
- 7 This line of reasoning can be extended to international organizations (institutions) whose origins, legitimacy and legality are derived from states.
- 8 One of the most severe consequences applied to John Kerr, the Australian Governor-General, whose move was central to the 1975 Australian constitutional crisis. Contrary to existing conventions, Kerr dismissed the prime minister. Following this, Kerr faced a wave of criticism. He eventually left Australia. He became so unpopular that his portrait in the Australian parliament was hidden away to prevent it being defaced (Los Angeles Times 1991).
- 9 For example, in the 18th century, one can identify the origins of the convention according to which the British monarch does not attend cabinet meetings (Anson, 1914, p. 67–68).
- 10 For example, a newly appointed cabinet in Czechia is obliged to submit its policy declaration to the Chamber of Deputies (cf. Brunclík et al. 2023, p. 33).
- 11 For example, Slovak presidents officially announce the name of the person to whom they hand in a document in which the person is officially authorized to set up a new cabinet (Brunclík et al., 2023, pp. 183–190).
- 12 Such agreements can be found in the UK, such as the Sewel convention (Bowers, 2005, p. 2) or Germany where an agreement-based convention regulates the regular turnover of the Bundesrat presidency (Taylor, 2014) and some other areas of constitutional politics.
- 13 In Poland and Hungary, for example, constitutional courts have never used constitutional conventions in their case law. The constitutions of the two countries narrow down the pool of the source of law. Both their constitutions contain closed enumerations of these sources that do not include conventions in their enumerations, which subsequently prevents the courts from taking them into account when deciding individual cases (Brunclík et al., 2023, p. 268).
- 14 For example, the Indian Supreme Court enforced conventions in several cases (Ahmed et al., 2019, pp. 21–23).
- 15 A good example can be taken from the USA. The US president may be elected only twice. Although this rule was in place from the very beginning of the US political system following the 1787 constitution, the status of the rule was changed. Whereas in the beginning, it was dedicated by a constitutional convention, following four terms of office by F.D. Roosevelt, the rule was enshrined in the US constitution by the XXII amendment in 1951 (Buckley and Metzger, n.d.).
- 16 For example, the British monarch possesses a traditional royal prerogative, royal assent, but by convention the monarch is not allowed to veto bills passed by the parliament, and indeed the last time when the monarch refused to provide royal assent occurred in 1708.
- 17 Also, Avril and Gicquel distinguished three types of constitutional conventions: 1) interpretative (interpreting the constitutional text), 2) creative (adding new rules) and 3) *contra legem* (i.e., *contra constitutionem*) conventions that contradict the constitutional text (cited in Bell, 1992, p. 58).
- 18 In many countries, the head of state is supposed to appoint a new prime minister following elections. However, constitutional text often does not provide clear guidance as to whom should be appointed. Hence, constitutional conventions usually urge the head of state to first address the representative of the largest party to set up a new cabinet, which is the case both in Poland and Slovakia (Brunclík et al., 2023, pp. 210–211, 244).
- 19 Many countries (e.g., Luxembourg, Slovakia, Czechia) use what is generally called as 'informateur' and/or 'formateur'. The terms are taken from Belgium and the Netherlands, where these informal figures have had tradition since the 1950s. These persons are appointed to tackle ex-

- tremely complicated post-election situations (or after the fall of the previous cabinet) with the aim of setting up a new ruling coalition. The formateur is appointed to lead the formation of a new cabinet. Sometimes, appointing the formateur is preceded by appointing one or more informateurs, who are not expected to set up a ruling coalition but to identify a likely coalition, from which a formateur is then selected (see Andeweg et al., 1980, p. 224; Fassone, 2023).
- 20 For example, since 1949, Hungarian presidents possess the power to initiate bills. This power survived the 1989 transition into democracy as well as the adoption of the new Basic Law of 2012. Only between 1990 and 1995 did the president exercise this power and submit a couple of bills. However, since then it has become the usual practice that the president does not use this power, which might be labeled as constitutional *desuetude* or atrophy (cf. Brunclík et al., 2023, pp. 220–221).
- 21 For example, the Hungarian president may exercise his veto power over bills passed by the parliament. He may veto bills for two reasons: because of alleged unconstitutionality of the bill or because of policy disagreement. However, the president is obliged to choose only one veto type, which was also endorsed by the Constitutional Court. Still, the president sometimes opted for both types of veto, which contradicts the constitution and the decision of the Constitutional Court. On the other hand, this practice has been tolerated (see Brunclík et al., 2023, pp. 221–222).