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Informal constitutional change: constitutional change without formal constitutional amendment in comparative perspective

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Today, virtually every country in the world has a written constitution that contains a special amendment procedure. These procedures are designed to regulate constitutional change. However, formal constitutional amendment is not the only way in which constitutional norms change, and in some systems not even the most important. To the contrary, it appears to be more common for constitutional norms to adjust to changing circumstances and demands through alternative, ‘informal’ processes of change.

Key questions, central to this dissertation, are: how should we understand and identify constitutional change that takes place without prior formal constitutional amendment? Why do significant constitutional developments sometimes occur without new constitutional writing? And are alternative mechanisms of constitutional change capable of functionally substituting formal constitutional amendment mechanisms?

Examining and comparing topical cases from Japan, the United States and Germany, this dissertation not only sheds new light on questions regarding the phenomenon of informal constitutional change itself, it also compels us to rethink our ideas about how the realms of law and politics relate to one another across time. Exploring the important – yet understudied – phenomenon of informal constitutional change is particularly relevant at a time when the context in which constitutional norms are embedded is changing more rapidly than ever.

This is a volume in the series of the Meijers Research Institute and Graduate School of the Leiden Law School of Leiden University. This study is part of the Law School's research programme 'The Legitimacy and Effectiveness of Law & Governance in a World of Multilevel Jurisdictions'.

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formal constitutional amendment
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