

## Introduction

by Antonia Baraggia, Claudio Martinelli, Arianna Vendaschi

The study of constitutional amendments has attracted growing interest from a comparative perspective.

Constitutional amendments are set at the crossroads of the most pressing and fascinating features of constitutionalism: constitutional change, the presence of eternity clauses, the role of the people in constitutional change, and the role of courts in scrutinizing constitutional amendments.

Indeed, constitutions contain a fundamental structural tension: on one side, they aspire to eternity,<sup>1</sup> to stability over time or, to borrow from German, *Erwigkeit*; on the other side, they continuously face contingencies and pressure from societal and historical developments.

In other words, modern constitutions are built on a constitutive tension, insomuch as they aspire to establish “a fixed and immutable order,” and at the same time, they are influenced by the ongoing evolution of history, society and economics. The fundamental issue of a constitution over time is the relationship between keeping its identity and adapting to changes.<sup>2</sup>

Modern constitutions respond to this tension by adopting formal procedural rules for constitutional amendments. Formal revision meets the need to maintain a certain degree of flexibility of the constitutional text, so as multiple societal and political changes can be dealt with. The recent Italian constitutional amendment introduced in article 9 of the Constitution is a clear example of a constitutional amendment that tries to cope with societal change, aiming to give stronger protection to the environment, biodiversity and ecosystems, also in the interests of future generations.

However, constitutional amendments can be used to pursue illiberal, anti-democratic aims.

This is the case of Hungary and Venezuela, where the constitutional procedure has been followed to introduce questionable changes.

Despite such widespread interest, the concept of constitutional amendment and its varieties still lacks a detailed, comprehensive definition.

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<sup>1</sup> M. Luciani, *Dottrina del moto delle Costituzioni e vicende della Costituzione Repubblicana*, in *Rivista AIC*, 2013, 1-18.

<sup>2</sup> A. Longo, *Tempo, interpretazione, costituzione. Premesse storiche*, volume I, Naples, 2013, 144.

This is precisely the starting point and one of the most significant contributions to the field of Prof. Richard Albert's book: "Constitutional Amendments. Making Breaking, and Changing Constitutions".

Indeed, Prof. Albert, moving from the premise that "no part of a constitution is more important than the procedures we use to change it", aims to "chart this uncharted terrain, both by mapping the intellectual topography of constitutional amendments rules and also by answering the many questions about amendments that have until now remained unanswered in existing studies of constitutional change".<sup>3</sup>

Albert's book offers us the most comprehensive study on formal constitutional amendments with a truly global perspective. This is a pathbreaking work, aiming to offer a categorization of different types of amendments and fostering a new understanding of phenomena that can hardly simply be defined as constitutional amendments.

One of the most innovative contributions of the book is the proposed theorization of the concept of constitutional dismemberment: "self-conscious effort to repudiate the essential characteristics of the constitution and destroy its foundation"<sup>4</sup>, as happened in Brazil with the 2016 amendment limiting the public spending and thus affecting the protection the rights to health and education. Although it is not always easy to distinguish between these two different features of constitutional change, Albert's volume paves the way for further elaboration, even in light of the most recent processes of constitutional change, like the Chilean constitutional convention.

This special Symposium aims to engage in a dialogue with Albert's work, addressing several pressing issues raised by the book.

More specifically, Claudio Martinelli's essay deals with one of the central themes of Albert's book: the relations between sovereignty, people, and constitutional change, through a comparison between constitutional referendum in Ireland and Italy.

Luigi Melica's contribution raises interesting questions about the nature of the constitutional amendments concerning the balanced budget reform prompted by the European Union in several Member State. In particular, building on Albert's classification, he inquires whether these reforms can be classified as amendments or dismemberments.

Benedetta Barbisan addresses the fascinating relationship between constitutional change and time. She highlights one of the most foundational, far-reaching aspiration of constitutions: to "master the time", to "own the time" so to be able to fulfill their pledges, to connect with the future and eventually last longer than the generation that drafted it". From this perspective, Barbisan discusses three different groups of constitutional

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<sup>3</sup> R. Albert, *Constitutional Amendments. Making Breaking, and Changing Constitutions*, Oxford, 2020, 30.

<sup>4</sup> *Ibidem*, 63.

amendments: pedagogical, transformative and those aimed at avoiding the ultimate failure of the constitution.

Mark Graber sharply depicts Albert's work as the expression of a new generation of scholars, witnessing the crisis of constitutional democracy, whose central concern is "the perceived collapse of the rule of law among new and old constitutional democracies". This generation "made constitutional change central to their research agenda. When doing so, they have returned to a certain kind of insistence on the rule of law as being at the heart of constitutional democracy". Albert's book offers this generation a guide to understanding the ongoing transformations of our constitutional democracy.

Finally, Richard Albert's essay elaborates on the distinction between constitutional amendments and dismemberments, arguing that constitutional designers should distinguish procedures for constitutional amendment from procedures for constitutional dismemberment. He analyzes the recent Chilean Constitution (not approved by the referendum), which introduced a clear distinction between amendment and dismemberment.

The field of constitutional change and its implications on constitutional law, especially in our complex society, will gain prominent relevance in comparative constitutional law, and still, it remains pretty undertheorized. Albert's seminal book contributes to filling the gap in the literature and opening a new path of research.

We hope that, through this edited Symposium and thanks to Richard Albert's pathbreaking work, we contributed to unveiling some of the most pressing and challenging issues for our constitutional democracies and paved the way for future comparative constitutional law research.

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