

Contents

Introduction	1
PART I: The Unconstitutional Constitutional Amendment Doctrine and Its Normative Justification	5
1. The Idea of Amending a constitution	5
1.1. Conceptual and Normative Questions	12
1.2. Constitutional Amendment and Replacement	15
1.3. Constituent power and legitimate political authority	18
2. The Normative Arguments for Limiting Amendment Power	25
2.1. Constitutionalism Constraint	29
2.2. Human Rights Constraint	40
2.3. Constitutional Identity Constraint	52

PART II: The Interpretive Legitimacy of the Unconstitutional Constitutional Amendment Doctrine	67
3. Three Suggestions for the Legitimate Use of UCAD	67
3.1. UCAD as a Solution to Abusive Constitutionalism	67
3.2. Treating Amendment Power as a Spectrum to Link Unamendability to the Amendment Procedure	74
3.3. Using Transnational Constitutionalism as a Second Check	79
3.4. Constitutional Dismemberment as an Alternative to UCAD	83
4. Amendment Power and Its Judicial Review as Formal Principles	91
4.1. Rules and Principles	92
4.2. The Problem of Formal Principles	97
4.3. How can Formal Principles be balanced?	105
4.4. Transfer of Klatt's Five External Justification Criteria to the UCA Context	111
5. Colombian Re-Election Saga as an Example of Balancing Formal Principles	119
5.1. The First and Second Re-Election Cases	120
5.2. The Implementation of Formal Principles in the Re-Election Cases: Balancing Unconstitutional Constitutional Amendments	124

6. Conclusion	131
7. References	137
Acknowledgements	151