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# Introduction

## Introdução

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## Constitutional amendments under the lenses of Richard Albert

### *Emendas constitucionais sob as lentes de Richard Albert*

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Some legal scholars are dedicated to very different topics within their field of knowledge. Others, however, choose to specialize in a specific theme, delving very deeply into the study of that issue and becoming a reference in that matter. Richard Albert, William Stamps Farish Professor in Law at University of Texas at Austin, is an

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example of this second type of scholar: throughout his academic career, he dedicated himself more than any other scholar to the subject of constitutional change, researching the phenomenon of constitutional amendment in the democratic world, across many different countries and legal systems. The various controversial issues involving formal and informal constitutional change processes were explored in his studies, resulting in original and provocative articles published in several prestigious journals and edited volumes in different countries. This is why, in a short space of time, he has become a world reference on this topic.

To crown this successful trajectory in the field of constitutional changes and to definitively consolidate his position of absolute prominence and leadership in the scholarship of comparative constitutional law, Richard Albert has written *Constitutional Amendments: Making, Breaking, and Changing Constitutions*,<sup>1</sup> published in 2019 by the prestigious Oxford University Press. The book is a milestone in the study of the theme and represents, from the start, a seminal work and a must-read for all those who seek to deepen their knowledge of constitutional amendments and the various controversial issues raised by this subject in a comparative constitutional perspective.

It is with great pride that the **Revista de Investigações Constitucionais - Journal of Constitutional Research** has included Professor Richard Albert in its Editorial Team since its creation, first as a member of the Editorial Board in the first years and latterly as Associate Editor of the journal, always assisting the dissemination of the journal around the world and attracting excellent submissions and authors from the most diverse countries. As a sign of recognition for his valuable contributions to the journal and the singular quality of his scholarship in the field of constitutional amendments, we decided to organize this Special Dossier “*Constitutional Amendments: Making, Breaking, and Changing Constitutions* - a dialogue with Richard Albert”. Seven articles were selected by scholars from universities from seven countries (Brazil, Colombia, Japan, Italy, Israel, Turkey, and United Kingdom), in which the authors explored different aspects related to constitutional changes, dialoguing with Richard Albert’s new book and using some of the legal categories and systematizations he formulated in his work.

In a first block of articles, the authors used the systematizations created by Richard Albert on the phenomenon of the constitutional reform process as a tool to analyze related issues, such as the democratic system, supranational normative changes in the European Union and self-enforcing constitutional amendments rules. In the article “The inexorableness of constitutional amendments and its democratic potentiality”, Antoni Abat Ninet, Visiting Professor at the Faculty of Law at the Hebrew University of Jerusalem, dealt with the tense relationship between constitutional amendments

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<sup>1</sup> ALBERT, Richard. **Constitutional Amendments: Making, Breaking, and Changing Constitutions**. New York: Oxford University Press, 2019.

and democracy, based on the democratic input that Richard Albert proposes in his book. Cristina Fasone, Assistant Professor of Comparative Public Law at Libera Università Internazionale degli Studi Sociali Guido Carli - LUISS, in her article “Constitutional amendments’ theory and troubles at supranational level: Constitutional change in the EU from the perspective of Richard Albert’s analysis”, applies to the case of the European Union the systematizations proposed by Albert, using this analytical framework to understand the functioning of the EU “constitutional amendments”. In his contribution entitled “Self-enforcing constitutional amendments rules: a dialogue with Richard Albert’s Constitutional Amendments: Making, Breaking, and Changing Constitutions”, Juliano Zaiden Benvindo, Professor of Constitutional Law at Universidade de Brasília, highlights the importance of constitutional self-enforcing amendment rules for constitutional design from the categories formulated by Albert.

In the second block, the articles set out to dissect and explore in greater depth one of the main and most innovative contributions of Richard Albert’s work: the phenomenon of *constitutional dismemberment*. Luisa Fernanda García López, Principal Professor of Constitutional Law at the Universidad del Rosario, uses in her paper “Constitutional interpretation and Constitution substitution: oscillating between the juridical and the political” Albert’s lessons on the limits to the power of constitutional reform as a standard to examine what those limits are according to the Colombian Constitutional Court and to what extent that court has exceeded those restrictions by producing a constitutional dismemberment. In his work “Disaggregating dismemberment: nullity, natality, and the hollowing of constitutional renewal in designed written constitutionalism”, Ming-Sung Kuo, Associate Professor at the University of Warwick, proposes to rethink the notion of constitutional renewal from a critical and in-depth analysis of the concept of constitutional dismemberment elaborated by Richard Albert, in the light of Hannah Arendt’s idea of “natality” in political action. Valentina Rita Scotti, Post-doctoral fellow in Comparative Public Law at Koç University School of Law, explores the theme “Constitutional dismemberment via referendum: a comparative overview”, examining whether, in times of populism and democratic decay, the elaboration of constitutions should take into account the need to adopt mechanisms capable of protecting political opposition from alliances between the populist leader and the majority of the people. Finally, Yota Negishi, Associate Professor of the Department of Law at the Seinan Gakuin University, in his contribution entitled “The theory and phenomenology of constitutional dismemberment” questions whether an objectivist perspective of constitutional designers is adequate to assess the transformative potential of the idea of constitutional dismemberment.

We sincerely thank all authors who submitted valuable contributions to this Special Dossier, as well as the reviewers of the articles. We are sure that the contributions of this edition, promoting a dialogue with Richard Albert's already-seminal work, will contribute significantly to the evolution of studies on constitutional amendment in a comparative perspective, stimulating new research agendas in the field.