TRILCE VALDIVIA AGUILAR*
VALERY FLORES ELÍAS**

The new constitutional amendment clause after the reinstatement of bicameralism in Peru: The case of an unconstitutional constitutional amendment?

La nueva cláusula de cambio constitucional tras el retorno a la bicameralidad en el Perú: ¿el caso de una reforma constitucional inconstitucional?

ABSTRACT

This research assesses the amendment introduced by Law No. 31988, which reinstates the bicameral model in Peru and amends Article 206 of the Constitution. From a dogmatic approach and an analysis of relevant jurisprudence from the Peruvian Constitutional Tribunal, this work questions whether the amendment can be considered unconstitutional, due to its impacts on the formal and material limits to the Derived Constituent Power. It is argued that while the amendment was approved according to the procedure established in current article 206°, its legitimacy is challenged by the lack of a referendum for its approval and, substantively, by the shift from a reasonably flexible procedure for constitutional reform to a rigid one.

KEYWORDS

Constitutional amendment clause, constitutional reform, bicameralism, constituent power and constitutional identity.

* Assistant professor of Law, Department of Law and Political Science, Universidad Católica San Pablo, Arequipa, Perú. L.L.M. International Human Rights Law, Northwestern University, United States of America. Email: tvaldivia@ucsp.edu.pe. ORCID: https://orcid.org/0000-0002-6842-1632

** Bachelor of Laws, Universidad Católica San Pablo, Arequipa, Perú. Email: vaflores@ucsp.edu.pe. ORCID: https://orcid.org/0000-0002-1243-0580

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RESUMEN

La presente investigación analiza la reforma introducida por la Ley N° 31988, que reinstaura el modelo bicameral en el Perú y modifica el procedimiento de reforma constitucional. A partir de un enfoque dogmático y el análisis de la jurisprudencia relevante del Tribunal Constitucional peruano, el texto se pregunta si la misma puede reputarse como inconstitucional al afectar los límites formales y materiales al Poder Constituyente Derivado. Se plantea que si bien, la reforma fue aprobada según el procedimiento indicado en el actual artículo 206°, su legitimidad se ve cuestionada por la ausencia de referéndum para su aprobación y en lo sustantivo, por el cambio de un modelo flexibilidad razonable para la reforma constitucional hacia un modelo rígido.

PALABRAS CLAVE

Cláusula de cambio constitucional, reforma constitucional, bicameralidad, poder constituyente e identidad constitucional.

INTRODUCTION

Constitutional amendments are mechanisms that allow legal systems to adapt to new social and political circumstances. They are instruments provided for in the Constitution itself to enable its partial or total revision. However, when such reforms alter the very clauses that regulate constitutional change, we enter a complex and understudied terrain: the role of constitutional amendment clauses as components of constitutional identity.

The enactment of Law No. 31988, which reintroduces a bicameral legislature and modifies Article 206 of the Constitution—the clause governing constitutional amendment procedures— launches this debate in the Peruvian constitutional arena. This reform has not only modified the structure of the Peruvian Congress by establishing a Senate and a Chamber of Deputies but has also tightened the amendment procedure, which now requires the approval of two ordinary legislative terms in both chambers, each with a qualified majority. This paper examines whether such a reform respects the formal and material limits applicable to constitutional amendments according to the case-law of the Peruvian Constitutional Tribunal (hereinafter, PCT). This question emerges from the reform, which was enacted without ratification by referendum and which contravened the outcome of the 2018 referendum in which voters rejected the return to bicameralism and immediate parliamentary reelection. Special attention will be given to the modification of the amendment clause itself, which reflects a transition from a semi-rigid constitutional model to a more rigid one—offering advantages in institutional stability but also presenting risks in a political context marked by a lack of consensus.

This study is grounded in the doctrine concerning formal and material limits to the amending power and the PCT's evolving jurisprudence on "unconstitutional constitutional amendments." It evaluates whether the modification of Article 206 may have undermined a component of Peru's constitutional identity in the absence of a sufficiently deliberative process.

The paper is structured in five sections. The first provides a historical overview of the debates concerning the reinstatement of bicameralism in Peru. The second analyzes the modifications introduced by Law No. 31988, focusing on its impact on the amendment clause. The third explores the nature and functions of constitutional amendment clauses. The fourth discusses the PCT's jurisprudence on unconstitutional constitutional amendments, and the final section evaluates the 2024 amendment under the parameters proposed by the PCT.

I. THE RETURN TO BICAMERALISM IN PERU

Since the dissolution of Peru's bicameral system, numerous efforts have been made to reinstate it within the national political framework. In 2001, Supreme Decree No. 018-2001-JUS created the Commission for the Study of the Bases of Constitutional Reform, tasked with laying the legal foundations for a potential constitutional reform process[1].That same year, Law No. 27600 assigned to the Congressional Committee on the Constitution, the responsibility of proposing a comprehensive constitutional reform, drawing on the Peruvian constitutional tradition and the principles of the 1979 Constitution. Upon approval by Congress, the draft would have been submitted to a referendum; if approved by voters, it would have abrogated the 1993 Constitution[2]. The draft was presented to Congress in April 2002 and in the first round of votes, it received the approval of the majority of members of Congress. However, due to lack of consensus in the next rounds, the reform was permanently suspended in April 2003[3].

In 2004, President Alejandro Toledo reintroduced the debate over the need for a comprehensive constitutional reform. The Congressional Committee on the Constitution supported this initiative and issued a favorable opinion

1 Supreme Decree N° 018-2021-JUS. Crean la Comisión de Estudio de las Bases de Reforma Constitucional del Perú. 25 May 2001.

2 Article 2. "La Comisión de Constitución, Reglamento y Acusaciones Constitucionales, propondrá un proyecto de reforma constitucional total de la constitución, tomando en cuenta la constitución histórica del Perú y en particular el texto de la constitución de 1979. Tras su aprobación por el Congreso será sometido a referéndum. De ser aprobada quedará abrogada la Constitución de 1993". Ley N° 27600, Ley que suprime firma y establece proceso de reforma constitucional. 16 December 2001.

3 Abad Yupanqui, S. "Reforma Constitucional o nueva constitución. La experiencia peruana". En *Revista Mexicana de Derecho Constitucional Cuestiones Constitucionales*, N° 37, julio - diciembre 2017.

on nine bills advocating for the reinstatement of bicameralism[4]. The Plenary of Congress debated the opinion, which received 72 votes in favor, 36 against, and 3 abstentions. However, under Article 206 of the then standing Constitution, a constitutional amendment required the favorable vote of a two-thirds majority of the total number of congressmen—80 votes—in two consecutive legislative sessions, which was not achieved. Although Article 206 foresaw the possibility of calling a referendum, such popular consultation was never held.

During the 2006–2007 legislative term, new efforts to reinstate bicameralism arose. In 2007, the Congressional Committee on the Constitution approved a report in support of the amendment[5]. The Plenary of Congress ended up backing the proposal with 69 votes in favor. However it was not enough since 80 votes were needed to achieve the qualified majority required for a constitutional amendment. Like other initiatives, despite the possibility to call for a referendum, it was not pursued. More recently, in 2012, the Congressional Committee on the Constitution issued a favorable report on Bill No. 1457/2012-CR, proposing the reinstatement of bicameralism. Unfortunately, this proposal was not debated in Congress' plenary.

Between 2016 and 2018, new bills advocating for the return to bicameralism were introduced. By 2018, the Peruvian Congress faced a severe legitimacy crisis fueled by corruption scandals, questionable political practices, and continuous conflicts between the Executive and Legislative branches[6]. Amid this context, President Martín Vizcarra, who took office after Pedro Pablo Kuczynski's resignation due to corruption allegations, created the "Comisión para la Reforma Política" (Presidential Commission on political reforms in English) that submitted three constitutional amendment bills in August 2018, one of which proposed the reinstatement of the bicameral system. The Congressional Committee on the Constitution approved these initiatives on October 4, 2018[7].

In his annual address to the Nation, President Vizcarra had requested that the complete amendment bill be subject to a referendum, regardless of the number of votes they obtained in Congress. The proposals obtained a total of 91 votes in favor. On October 4, 2018, the President of Congress sent the

4 The bills were the following: 09955-2003/CR, 11192-2004/CR, 11313-2004/CR, 11314-2004/CR, 11331-2004/CR, 11456-2004/CR, 11616-2004/CR, 11672-2004/CR y 11830-2004/CR.

5 Bills N° 094/2006-CR, 589/2006-CR, 784/2006-CR y 1064/2006-CR, which proposed the modification of Titles IV and VI of the Peruvian Constitution to reinstate bicameralism.

6 Azcona, J. y Del Prado, C. "Crisis institucional en el Perú del posconflicto: 1992-2018". *Araucaria. Revista Iberoamericana de Filosofía, Política y Humanidades,* vol. 22, N° 43, pp. 513-535, 2020

7 Bills N°1325/2016-PE, 1740/2017-CR, 2447/2017-CR, 2631/2017-CR, 2856/2017-CR, 3461/2017-CR, 3185/2018-PE y 3259/2018-CR.

four bills to the President of the Republic, which concerned the creation of the Junta Nacional de Justicia (National Board of Justice) [8], the regulation of the private funding of political parties[9], the reinstating of bicameralism[10], and a ban on immediate congressional reelection[11]. The Executive convened a referendum[12], arguing that the preferred method for the approval of any constitutional reform was congressional approval and ratification via referendum. The referendum took place on December 9, 2018. On January 7, 2019, the National Jury of Elections published the results[13]: the question on bicameralism was rejected by a large majority, with only 9.49% (1,462,516 votes) in favor and 90.51% (13,949,831 votes) against. The debate concerning bicameralism arose once again between 2022 and 2023 with new amendment bills' proposals[14]. In 2023, a consolidated bill was approved by 93 votes in favor and 28 against. In the following legislative term, the Plenary of Congress approved the amendment with 91 votes in favor, 31 against, and three abstentions. As a result, Law No. 31988 was enacted, being published on March 20, 2024. This constitutional change sparked divided opinions, especially because it openly contradicted the results of the 2018 referendum[15]. However, some upheld the reform based on the PCT's rulings, arguing that referenda-based constitutional modifications are not immutable. For example, on the topic of immediate parliamentary reelection, the PCT has asserted: "Although ideally the Constitution should not be reformed frequently, that does not preclude revisions of previous reforms, as the law has always been both instrumental and mutable." [16] The Court clarified that an amendment adopted by referendum does not necessarily require to be reversed through the same mechanism, thus enabling its modification supported solely by congressional vote. Accordingly, the 2018 popular will did not preclude Congress from resuming the amendment in 2024, as part of its constitutional authority.

Law N° 31988 amended 51 articles of the Peruvian Constitution, restructuring the functions, powers, and institutional organization of the Legislative

8 Oficio Nº 084-2018-2019-ADP /PCR

9 Oficio Nº 085-2018-2019-ADP /PCR

10 Oficio Nº 086-2018-2019-ADP /PCR

11 Oficio Nº 087 - 2018-2019-ADP /PCR

12 Supreme Decree Nº 101-2018-PCM. Convocatoria a Referéndum Nacional. 10 de octubre de 2018.

13 Resolution N° 0002-2019-JNE. Proclaman los resultados del Referéndum Nacional 2018, convocado mediante Decreto Supremo N° 101-2018-PCM. 07 de enero de 2019.

14 Bills N°660, 724, 792,1044,1091,1334,1655,1708,1746,1750,1959,2004, 2025, 2053, 2085, 2231, 2314 y 3744/2022-CR.

15 De Belaunde, J. (12 de marzo de 2024). *Bicameralidad y reelección parlamentaria: tan impopulares como necesarias.* Boletín del IDEHPUCP y, Lovatón, D. (12 de marzo de 2024). *Retorno a la bicameralidad y otras reformas constitucionales: la voz del pueblo ya no es la voz de Dios*. Ventana Jurídica.

16 Peruvian Constitutional Tribunal Exp. 00001-2023-PI/TC, F.J. 69. Caso de la reforma constitucional sobre la prohibición de reelección inmediata de congresistas.

Branch. New Article 90° mandates that Congress shall be composed of two chambers, a Senate and a Chamber of Deputies[17], thereby creating a more complex legislative process requiring Bill approval by both chambers. For its part, article 101[18] reorganizes the Permanent Congressional Commission, guaranteeing that it is integrated by representatives from both chambers.

Regarding Executive–Legislative relations and functions of political control, major changes were also enacted. Under the new Article 132[19], the Chamber of Deputies alone now decides whether to hold the Council of Ministers accountable and is the only responsible body for assessing its political responsibility. Only members of the Chamber of Deputies may introduce motions of censure, while motions of confidence may only be initiated by ministers, with both being assessed exclusively by the lower chamber. In the case of political pre-trial and impeachment proceedings, both chambers are involved, though final decisions rest within the Senate. The Chamber of Deputies is responsible for approving constitutional complaints and submitting them to the Senate, which determines whether to proceed with criminal prosecution or impose political sanctions such as suspension, dismissal, or

17 Previous article: Article 90 "El Poder Legislativo reside en el Congreso de la República, el cual consta de cámara única. El número de congresistas es de ciento treinta (...)"

New article: Article 90 "El Poder Legislativo reside en el Congreso de la República, el cual está conformado por el Senado y la Cámara de Diputados. El Senado está conformado por un número mínimo de sesenta senadores (...) La Cámara de Diputados cuenta con un número mínimo de ciento treinta diputados (...)"

18 Previous article: Atribuciones de la Comisión Permanente. Article 101 "Los miembros de la Comisión Permanente del Congreso son elegidos por éste. Su número tiende a ser proporcional al de los representantes de cada grupo parlamentario y no excede del veinticinco por ciento del número total de congresistas (...)".

New article: Atribuciones de la Comisión Permanente. Article 101 "La Comisión Permanente está conformada por igual número de senadores y diputados elegidos por sus respectivas cámaras. Funciona durante el receso del Senado y de la Cámara de Diputados. Es presidida por el presidente del Congreso. Su número tiende a ser proporcional al de los representantes de cada grupo parlamentario y no excede del veinte por ciento del número total de miembros del Congreso. (...)"

19 Previous article: Article 132. "El Congreso hace efectiva la responsabilidad política del Consejo de Ministros, o de los ministros por separado, mediante el voto de censura o el rechazo de la cuestión de confianza. Esta última sólo se plantea por iniciativa ministerial.

Toda moción de censura contra el Consejo de Ministros, o contra cualquiera de los ministros, debe ser presentada por no menos del veinticinco por ciento del número legal de congresistas. Se debate y vota entre el cuarto y el décimo día natural después de su presentación. Su aprobación requiere del voto de más de la mitad del número legal de miembros del Congreso (...)"

New article: Article 132. "La Cámara de Diputados hace efectiva la responsabilidad política del Consejo de Ministros, o de los ministros por separado, mediante el voto de censura o el rechazo de la cuestión de confianza. Esta última sólo se plantea por iniciativa ministerial.

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disqualification[20]. Finally, with respect to presidential vacancy, Article 113 remains unchanged, meaning further clarification on the distribution of powers between the two chambers awaits the adoption of Congress's internal rules.

II. THE RETURN TO BICAMERALISM AND THE MODIFICATION OF THE CONSTITUTIONAL AMENDMENT CLAUSE: TOWARDS A RIGID CONSTITUTION

The constitutional amendment introduced by Law No. 31988 also amended Article 206 of the Peruvian Constitution, which governs the constitutional amendment procedure, thereby redefining the mechanism for revising the Constitution. Prior to this reform, Article 206 prescribed two paths: first, approval by an absolute majority in Congress (more than 66 votes) followed by ratification through a referendum, or alternatively, approval by a qualified two-thirds majority (87 votes) in two successive ordinary legislative sessions, thereby waiving the need for popular ratification. This framework allowed a certain degree of procedural flexibility, concentrating the reform process in a single legislative body and facilitating its implementation where broad political consensus existed.[21] The new version of Article 206 now requires any constitutional amendment to be approved in two ordinary legislative sessions by two thirds of the votes of members of each chamber, and in case it obtains less than two thirds of the votes but more than half of the votes in each chamber, to be ratified via referendum. At first sight, this modification appears to signal a shift toward a more rigid constitutional model, by elevating the formal requirements for amendment and enhancing institutional deliberation. From a theoretical standpoint, one might ask whether Peru

20 Previous article: Article 100: "Corresponde al Senado, de acuerdo con su reglamento, suspender o no al funcionario acusado o inhabilitarlo para el ejercicio de la función pública hasta por diez años, o destituirlo de su función, sin perjuicio de cualquiera otra responsabilidad. El acusado tiene derecho, en este trámite, a la defensa por sí mismo y con asistencia de abogado ante la Cámara de Diputados y el Senado. En caso de resolución acusatoria de contenido penal, el Fiscal de la Nación evalúa, conforme a sus atribuciones, el ejercicio de la acción penal correspondiente ante la Corte Suprema. La sentencia absolutoria de la Corte Suprema devuelve al acusado sus derechos políticos. Los términos de la denuncia fiscal y del auto apertorio de instrucción no pueden exceder ni reducir los términos de la acusación del Congreso.

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21 From 32 approved constitutional amendment laws, only 3 have been ratified by referendum.

has transitioned from a relatively flexible Constitution—characterized by lenient amendment procedures and higher political permeability—toward a more rigid model. According to Karl Loewenstein's classical distinction, a flexible Constitution may be amended through ordinary legislative processes or minimally demanding procedures, whereas a rigid Constitution imposes special, often stringent, requirements that make change more difficult[22]. Constitutional flexibility corresponds to a normative design where the Constitution is not perceived as a static document but as a dynamic structure responsive to political and social change. As Bryce notes, flexible constitutions emerge in historical contexts where legal adaptability is considered essential for addressing society's evolving needs[23]. By contrast, rigid constitutions respond to a normative design characterized by more demanding amendment procedures, such as supermajorities, the involvement of multiple institutions, or popular ratification.

This dichotomy reveals the different priorities that states concede to institutional stability and normative adaptability. Whilst rigid constitutions prioritize the preservation of foundational principles against transitory political forces; flexible constitutions emphasize institutional responsiveness to changing societal demands. How constitutional design copes with these extremes is of utmost importance to ensure institutional continuity and meaningful adaptability, avoiding both paralyzing rigidity and unchecked malleability[24]. That is the reason why the amendment of amendment clauses shall not be automatically presumed as constitutional. Moreover, as remarked by Colón-Ríos, the modification of amendment rules turns out to be problematic when it shifts the distribution of power between the sovereign people and their representatives, undermining the substantive dimension of popular sovereignty[25].

On this basis, it can be argued that the reform of Article 206 by Law No. 31988 marks a turning point. Peru appears to have transitioned toward a more rigid constitutional model. In the opinion of Roca Fernández, constitutional rigidity is determined not only by voting thresholds but also by the structural complexity of the amendment procedure itself[26]. This is precisely the Peruvian case, where currently a constitutional amendment requires the

22 Loewenstein, K., *Teoría de la Constitución*, 2.ª ed., Barcelona: Ariel, 1976. Página. 150.

23 Bryce, J. *Constituciones flexibles y constituciones rígidas*, 2.ª ed., trad. P. Lucas Murillo de la Cueva. Madrid: Centro de Estudios Políticos y Constitucionales, 2015.

24 María Sauca, J. "La liquidez constitucional entre rigidez y flexibilidad: las cláusulas de liquidez constitucional". *Problema. Anuario De Filosofía Y Teoría Del Derecho*, 18, pp. 11-42, 2024. https://doi.org/10.22201/iij.24487937e.2024.18.18712.

25 Colón-Ríos, J. "Introduction: Seven Theses on the Constituent Power". *Journal of Legal Philosophy*, 48(1), 2022, pp. 38-43, p. 42. https://doi.org/10.2139/ssrn.4560513

26 Roca Fernández, M. J., La identidad constitucional de los Estados miembros y la integración europea.

approval of the absolute majority of votes of both chambers in two consecutive legislative sessions, thereby adding institutional filters and multiplying potential veto points.

This shift raises a critical concern: the possibility that the revised Article 206 could hinder future constitutional reforms needed to correct the imbalances caused by unilateral legislative decisions taken in the last ten years of Peruvian politics. For example, the modification of the regulation of the motion of confidence, a pivotal mechanism for the balance of powers that has sparked significant legal and political controversy over the last five years. Law N° 31355[27], enacted in 2021, limited the use of motions of confidence to matters of general government policy, excluding constitutional reforms and other exclusive congressional competences. According to Article 134 of the Constitution, two successive denials of motions of confidence by Congress enabled the President to dissolve Congress. However, this law authorized Congress to utterly reject motions of confidence without any consequence. Currently, with the reinstatement of Bicameralism, only the lower chamber will be dissolved. Under the new Article 206, any attempt to reinstate the effectiveness of the motion of confidence for the Executive would now require approval in two consecutive legislative sessions by both chambers and, potentially, popular ratification. This heightened rigidity implies the risk of consolidating controversial legislative decisions that may lack substantive constitutional legitimacy by rendering their revision unduly difficult.

This scenario presents a risk of constitutional deadlock, where the Derived Constituent Power amends the rules of amendment not to reinforce democratic principles but to entrench its own short-term political settlements. Scholars have warned[28] that such reforms may amount to constitutional fraud when the amendment process is distorted to shield transient political decisions under the guise of normative stability.

Moreover, the absence of a referendum in a reform of such magnitude —especially in light of the popular rejection of a similar proposal in 2018— intensifies criticisms regarding its democratic deficit. In this sense, the new Article 206 may engender a constitutional paradox: a more rigid yet less legitimate amendment procedure, enacted without popular consensus and

En XXVI Jornadas de la Asociación Española de Letrados del Tribunal Constitucional (pp. 115–178). Centro de Estudios Políticos y Constitucionales, 2021. https://docta.ucm.es/rest/api/core/bitstreams/0028cb5f-f311-48b2-9f97-88661b579691/content

27 Law N° 31355: Ley que desarrolla el ejercicio de la cuestión de confianza regulada en el último párrafo del artículo 132 y en el artículo 133 de la Constitución Política del Perú. 21 October 2021. Despite its substantive impact on the balance of powers between the Executive and Legislative branches, the law was ratified by the PCT on procedural grounds. In order to declare its unconstitutionality five votes were needed. The verdict was non-unanimous.

28 Galvis Arenas, G., & Rodríguez Delgado, M. (2009). *Fraude constitucional*. Ponencia presentada en el V Encuentro de la Jurisdicción Constitucional, Barrancabermeja, Colombia, 11–14 de agosto de 2009. https://revistas.unab.edu.co/index.php/sociojuridico/article/view/1314/1280

in defiance of a prior democratic decision, which could unduly constrain both public authorities and citizens in revisiting contentious legislative decisions. Far from reinforcing constitutional supremacy, this reform may lay the groundwork for a closed constitutional order favoring the legislator while weakening institutional safeguards and plural deliberation channels.

III. THE RELEVANCE OF CONSTITUTIONAL AMENDMENT CLAUSES

The debate over constitutional rigidity and flexibility has been central to comparative constitutional theory since its inception. It reveals the tension between institutional stability and normative adaptability. This dilemma was already present in the early American constitutional tradition. In a famous 1789 letter to Madison, Jefferson argued that no society can impose a perpetual Constitution or law, proposing that each generation—approximately every 19 years—should have the opportunity to revise its Constitution[29]. Although this view was never fully embraced in subsequent American constitutional practice, it reflected a deep skepticism toward excessive rigidity. Contrarily, Madison in Federalist N° 49 warned of the dangers of frequent constitutional reform, affirming that it would erode governmental authority and undermine institutional stability[30]. He advocated for a durable Constitution with demanding yet not insurmountable amendment procedures that would protect the permanence of the constitutional order while preserving its capacity to adapt.

In contemporary constitutional theory, the difficulty of amending procedures is an important criterion for the classification of Constitutions. Hence, Constitutions can be classified into "rigid", when they impose reinforced procedures for amendment, harder than those required for the passing of ordinary legislation; "semi-rigid", when they allow amendments but impose certain restrictions; and "flexible" when constitutional amendment procedures are akin to those for the passing of ordinary laws. Diaz Ricci considers that constitutional rigidity serves as a guarantor of institutional stability, preventing fleeting majorities from altering fundamental aspects of the constitutional text without a qualified consensus[31]. Rigidity is manifested in requirements such as qualified majorities, referenda, repeated legislative

29 Jefferson, T. "Letter to Madison, 6 September 1789", *Founders Online, National Archives*, available at: https://founders.archives.gov/documents/Jefferson/01-15-02-0057.

30 "...as every appeal to the people would carry an implication of some defect in the government, frequent appeals would, in a great measure, deprive the government of that veneration which time bestows on everything, and without which perhaps the wisest and freest governments would not possess the requisite stability" Hamilton, A., Madison, J., & Jay, J., *The Federalist Papers*, available at: https://avalon.law.yale.edu/18th_century/fed49.asp.

31 Díaz Ricci, S. "Rigidez constitucional. Un concepto toral". En: *Estado constitucional, derechos humanos, justicia y vida universitaria: estudios en homenaje a Jorge Carpizo*, editado por Miguel Carbonell Sánchez, Héctor Fix-Zamudio, Luis Raúl González Pérez y Diego Valadés Ríos; pp. 551-587, México D.F.: UNAM, 2015.

approvals, or the involvement of specialized bodies. On the contrary, flexible constitutions are more vulnerable to political instrumentalization, despite offering greater levels of institutional adaptation[32]. A paradigmatic example of a rigid constitution is that of the United States, which has been amended only 27 times since 1787. Article V[33] establishes a particularly burdensome process requiring a proposal that has obtained the favorable votes of two-thirds of the members of both houses of Congress, or has been approved by a Constitutional Convention (called by two-thirds of the members of both chambers), followed by ratification by three-fourths of state legislatures. By contrast, the Constitution of New Zealand allows amendments through ordinary legislative procedures, requiring only a simple majority vote. Peru's pre-reform Article 206 exemplified a semi-rigid model[34]. It required either two-thirds approval in two successive ordinary sessions or an absolute majority followed by a referendum. This framework ensured a degree of flexibility while preserving institutional safeguards through a supermajority or popular approval mechanisms.

Recent developments in comparative constitutional law have focused on the role and function of amendment clauses. As Richard Albert notes, "No part of a constitution is more important than the rules that govern its amendment and its entrenchment against it."[35] As it is known, amendment clauses define who can amend the Constitution, how amendments are to be carried out, and the substantive limits to the amending power. They serve key purposes: they distinguish constitutions from ordinary laws, structure the reform process, commit future political actors to foundational design choices, and provide channels for peaceful political evolution. They also facilitate public deliberation and democratic dialogue, reducing the risk of violent transformations and channeling the "right to revolution" through lawful procedures[36]. Perhaps most importantly, amendment clauses reflect constitutional axiology. One can learn a great deal about a constitution's values by analyzing its amendment procedures. Some constitutions encode a hierarchy of consti-

32 García Toma, V. (2010). *Teoría del Estado y Derecho Constitucional* (3.ª ed.). Editorial Adrus, pág. 487. https://www.web.onpe.gob.pe/modEducacion/Seminarios/Dialogo-Electoral/dialogo-electoral-25-04-2018.pdf

33 U.S. Constitution (1787). Article V. https://www.state.gov/wp-content/uploads/2020/05/SPA-Constiution.pdf

34 García Belaúnde, D. "Sobre el control de la reforma constitucional (con especial referencia a la experiencia jurídica peruana)", *Revista de Derecho Político*, N° 66, 2006, pp. 477-500, página 483. Also, García Toma, V. "La reforma constitucional en el Perú: implicaciones y retos", *Athina*, N° 10, 2013, pp. 15-52, p.23.

35 Albert, R. "Amending constitutional amendment rules", *International Journal of Constitutional Law I•CON*, vol. 13, N° 3, 2015, pp. 655-685, p. 655.

36 Albert, R. "Formal amendment rules. Functions and design", en Xenophon Contiades y Alkmene Fotiadou (eds.), *Routledge Handbook of Comparative Constitutional Change*, pp. 119-121, Routledge, 2021.

tutional principles within their amendment clauses, making certain provisions—especially those related to constitutional identity—harder to amend. For instance, clauses protecting human dignity, separation of powers, or the democratic form of government often require more demanding procedures or may even be deemed unamendable. However, scholars like Ginsburg and Melton argue that amendment clauses' design matter less than the underlying constitutional culture[37]. Two countries may share identical amendment rules, yet the frequency and content of their amendments may differ significantly. Contiades and Fotiadou dispute this view, and reaffirm that constitutional amendment clauses are not culturally neutral. Their design not only reflects but also shapes the degree of constitutional flexibility and the possibility of entrenching fundamental principles[38]. Thus, amendment clauses aim to safeguard certain core constitutional values while allowing for the adaptation of peripheral norms in light of historical and social transformations.

In our view, the amendment clause is an essential element of a State's constitutional identity. Although there is no single definition of constitutional identity in comparative doctrine, two main approaches can be noted. The first values identity mainly from the uniqueness of a Constitution, based on historical, systemic, or cultural distinctiveness[39]. The second conceives identity in terms of essentiality, understood as the set of minimal principles that form the foundation of any constitution[40]. Accordingly, amendment clauses safeguard both aspects of constitutional identity. They protect not only the essential principles of every Constitution, but also those that ensure the distinctiveness of a specific national constitutional order. For this reason, Albert argues that the amendment clause should be subject to a special procedure, distinct from that applicable to ordinary constitutional reforms[41].

In the Peruvian case, Article 206 performs this role by imposing qualified majorities and deliberative procedures, functioning as a structural limitation on political power. Then we wonder, if this mechanism were weakened to

37 Ginsburg, T. y Melton, J. "Does the Constitutional Amendment Rule Matter at All? Amendment Cultures and the Challenges of Measuring Amendment Difficulty", *International Journal of Constitutional Law I•CON*, vol. 13, N° 3, 2015, pp. 686-713.

38 Contiades, X. y Fotiadou, A. "The Determinants of Constitutional Amendability: Amendment Models or Amendment Culture?", *European Constitutional Law Review*, vol. 12, N° 1, 2016, pp. 192–211.

39 Valdivia, T. y & Chávez-Fernández J. "Poder y Constitución: la argumentación de la doctrina de las reformas constitucionales inconstitucionales en la jurisprudencia del Tribunal Constitucional peruano y sus problemas", *Derecho PUCP*, núm. 93, 2024, pp. 9–53, p. 41. https://doi.org/10.18800/derechopucp.202402.001

40 Rosenfeld, M. (2006). *Constitutional adjudication in Europe and the United States: Paradoxes and contrasts.* International Journal of Constitutional Law, 4(4), 633–668, p. 664. https://www.mpil.de/files/pdf4/Constitutional_Adjudication_in_Europe_and_the_United_States_paradoxes_and_contrasts_Rosenfeld.pdf

41 Albert, R. "Amending constitutional amendment rules", *International Journal of Constitutional Law I•CON*, vol. 13, N° 3, 2015, pp. 655–685.

facilitate amendments that have not reached a broad institutional or social consensus, would it infringe on the identity of the 1993 constitutional order? Conversely, what if the procedure were hardened and difficult the approval of constitutional amendments? This question will be addressed in the final section of this article.

IV. THE DOCTRINE OF UNCONSTITUTIONAL CONSTITUTIONAL AMENDMENTS IN THE CASE LAW OF THE PCT

Having analyzed the reconfiguration of the constitutional amendment regime introduced by Law N° 31988 and the theoretical importance of amendment clauses, this section focuses on the evolving case law of the Peruvian Constitutional Tribunal (PTC) concerning the so-called "unconstitutional constitutional amendments" doctrine.

This doctrine follows two key premises: first, the idea that the constitutional amending power is a derived constituent power; and second, the existence of both formal and material limits to this amending power. These limits may be explicit, thus enumerated in the constitutional text or implicit, in which case they are interpreted from different constitutional provisions as pertaining to the constitutional identity or basic structural features of the Constitution[42]. If an amendment infringes such core features, it ceases to be a proper constitutional amendment and instead amounts to a constitutional dismemberment[43].

This jurisprudential development runs parallel to broader trends in comparative constitutional law, notably, to jurisdictions like Germany, India, and Colombia. In Colombia, the Constitutional Court has articulated the "constitutional replacement doctrine" as a substantive limit to the amendment power[44]. In Peru, the Constitutional Court has applied this doctrine through concentrated judicial review, admitting challenges to constitutional

42 Roznai, Y., *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. Oxford: Oxford University Press, 2017, p. 46. As concluded from Albert's work, the Constitutional Courts of Georgia y Turkey find themselves competent to asses the constitutionality of constitutional amendments only in formal aspects, but not material ones. In France, the Conseil Constitutionel follows the same line of reasoning, and applies a stricter self-restrain in the case of amendments ratified by referendum, which in its opinion cannot be subject of judicial review. See: Albert, R., Nakashidze, M. y Olcay, T. "La resistencia formalista a las reformas constitucionales inconstitucionales", *Díkaion*, vol. 31, Nº 1, 2022, pp. 5–49.

43 Albert, R. *Constitutional Amendments: Making, Breaking, and Changing Constitutions*. Oxford: Oxford University Press, 2019, p. 79.

44 Bernal Pulido, C. "Unconstitutional constitutional amendments in the case study of Colombia: An Analysis of the justification and meaning of the constitutional replacement doctrine*", International Journal of Constitutional Law I•CON*, vol. 11, N° 2, pp. 339-357.

amendments enacted by Congress and even ratified via referendum[45]. In Benítez's opinion[46], this doctrine raises several concerns. First, it empowers constitutional courts to define on ad hoc parameters the implicit content of constitutional identity, thereby expanding judicial discretion and raising questions about its legitimacy, given that the Judiciary is responsible for interpreting and applying the laws created by the Legislature and not for creating them on its own. Second, its democratic deficit raises special concern. It is worth mentioning that constitutional amendments are usually the last resort available to modify the Constitution through peaceful means; therefore, invalidating a constitutional amendment that has been approved by elected representatives or by popular vote could be considered an undue intrusion by the Judiciary into the powers of people's representatives. Third, its inconsistent or opportunistic application could either validate authoritarian reforms or unjustifiably strike down legitimate amendments[47], undermining the doctrine's own credibility.

In a recent study, Valdivia and Chávez-Fernández reviewed eight cases in which the Peruvian Constitutional Court evaluated the constitutionality of constitutional amendments. They identify several defining features of this emerging jurisprudence[48]: First, the Court exercises a *praeter legem* review. In other words, no constitutional provision explicitly authorizes the Court to review constitutional amendments—only ordinary legislation. Furthermore, Peruvian Constitution lacks an eternity clause that would establish non-amendable substantive content. The closest analogue is Article 32, which prohibits referenda aimed at diminishing fundamental rights. Second, it is a vindicated review power. The PCT claims this power based on its self-identification as a guardian of the Original Constituent power. It interprets the amending power as a Derived Constituent Power and, therefore, subject to constitutional limits.

Third, it is a posteriori kind of judicial review, meaning that it examines amendments after their adoption by the Derived constituent power. Fourth,

45 Peruvian Constitutional Tribunal. *Exp. 00001-2023-PI/TC. Caso de la reforma constitucional sobre la prohibición de reelección inmediata de congresistas*, Sentencia 443/2023, 20 October 2023. See also: Peruvian Constitutional Tribunal. *Exp. 00013-2020-PI/TC. Colegio de Abogados de Sullana c. la Ley 30904, Ley de Reforma Constitucional, y la Ley 30916, Ley Orgánica de la Junta Nacional de Justicia*, Sentencia 890/2021, 7 January 2021.

46 Benítez-Rojas, V. "Beyond Invalidation: Unorthodox Forms of Judicial Review of Constitutional Amendments and Constitution-amending Case Law in Colombia", *Revista de Investigações Constitucionais*, vol. 9, Nº 2, Mau-August 2022, pp. 269–300, pp. 273-275.

47 Landau, D. y Dixon, R. "Transnational Constitutionalism and a Limited Doctrine of Unconstitutional Constitutional Amendment", *International Journal of Constitutional Law I•CON*, vol. 13, Nº 3, 2015, pp. 606–638.

48 Valdivia Aguilar, T. y Chávez-Fernández, J. "Poder y Constitución: la argumentación de la doctrina de las reformas constitucionales inconstitucionales en la jurisprudencia del Tribunal Constitucional peruano y sus problemas", *Derecho PUCP*, N° 93, 2024, pp. 9–53, p. 17-32.

the Court distinguishes between partial and total constitutional reforms. According to the Court, total reforms are not reviewable by the same parameters as partial ones, since they are characterized not only by the number of constitutional dispositions that are modified, but involve the replacement of the constitutional order itself[49]. An amendment that alters the foundational principles of the constitutional order, distorts constitutional organs, or replaces the political, economic, or social model enshrined in the Constitution constitutes a total reform and, therefore, may only be initiated by the Original Constituent Power[50]. Partial reforms, by contrast, must respect constitutional identity and are subject to judicial scrutiny; accordingly, they can be initiated by Congress in the exercise of the Derived Constituent Power[51]. In this regard, for the PCT, there would be no suitable parameter for assessing the substantive validity of a total constitutional reform, since the applicable parameter would be the very "new" Constitution being adopted[52]. In recent case law, the Constitutional Court has described the distinction between total and partial reform as Byzantine, acknowledging that in comparative practice, total reform by the Derived Constituent Power is indeed admissible[53].

Fifth, the Court has asserted its competence to review even original constitutional provisions. However, this review is weak in nature, where the Constitutional Court rather than acting as a negative legislator, presents itself as an interpreter of said provisions, encouraging the *desuetudo* of certain hermeneutical avenues. Sixth, the review assesses both formal and material limits to the amending power. Formal limits refer to requirements such as: (i) which entity can carry out the amending procedure, (ii) what procedure must be followed, (iii) what voting threshold is required, and, (iv) whether a referendum must be held to confirm the reform or whether it must be voted again in Congress[54]. The Court has emphasized that referendum ratification is the rule, and double legislative approval with supermajorities is the exception[55]. Furthermore, public deliberation and adequate time for debate are considered

49 Peruvian Constitutional Tribunal. *Exp. 014-2002-AI/TC. Colegio de Abogados del Cusco c. Congreso de la República del Perú,* para. 30-36.

50 Peruvian Constitutional Tribunal. *Exp. 00001-2022-AI/TC. Caso de la regulación del referéndum,* para. 31-37.

51 Ibidem, para. 44-68.

52 Peruvian Constitutional Tribunal. *Exp. 0014-2003-AI/TC. Alberto Borea Odría y más de 5,000 ciudadanos c. Constitución Política del Perú de 1993,* para. 22-23.

53 Peruvian Constitutional Tribunal. *Exp. 00001-2022-AI/TC. Caso de la regulación del referéndum,* para. 51.

54 Peruvian Constitutional Tribunal. *Exp. 00001-2023-PI/TC. Caso de la reforma constitucional sobre la prohibición de reelección inmediata de congresistas*, Sentencia 443/2023, 20 de octubre de 2023. F.J. 27.

55 Peruvian Constitutional Tribunal. *Exp. 00001-2022-AI/TC. Caso de la regulación del referéndum,* para. 100.

essential to constitutional legitimacy[56]. Material limits, by contrast, refer to principles that are either explicitly or implicitly unamendable, so-called "constitutional identity parameters". These include democracy, the rule of law, representative government, economic principles, and fundamental rights[57]. The Court derives these limits from both Peru's historical constitutional tradition and comparative or international constitutional standards. As seen, the elements that comprise what is known as constitutional identity are numerous; indeed, one could even argue that its content is not clearly defined, and that the delineation of its precise contours is left to the discretion of the PCT. This raises the question: how are those contours defined? In some instances, the Court's case law gives substance to these principles by drawing on elements of Peru's historical constitutional tradition[58]; in others, it relies on sources from international human rights law and comparative constitutionalism[59]. Seventh, the Court has declared that it may review constitutional reforms even when they had been ratified by referendum[60]. In two cases involving the 2018 referendum, the Court evaluated whether certain amendments infringed material limits to constitutional change. The first case concerned the partial evaluation of judges by the Junta Nacional de Justicia (National Board on Justice), and the second referred to the prohibition of immediate congressional reelection. According to the PCT, every democratic decision must respect certain material limits, as the use of direct democracy mechanisms does not guarantee that the outcome will remain within constitutional bounds; on the contrary, such mechanisms have historically been used to justify authoritarian regimes and to suppress political parties[61]. The Court has clarified that when assessing the constitutionality of a reform approved by referendum, formal limits must be adapted to the specific case and additional factors must be evaluated—for instance, the very formulation of the referendum question,

56 Peruvian Constitutional Tribunal. *Exp.s 00019-2021-PI/TC, 00021-2021-PI/TC y 00022-2021-PI/TC. Colegios de Abogados de Ayacucho, El Santa y Lambayeque c. Congreso de la República del Perú.*

57 Peruvian Constitutional Tribunal. *Exp. 050-2004-AI/TC, 051-2004-AI/TC, STC 004-2005-PI/TC, 007-2005-PI/TC y 009-2005-PI/TC. Colegios de Abogados de Cusco y Callao y más de 5,000 ciudadanos c. Congreso de la República del Perú*, para. 16-18

58 Peruvian Constitutional Tribunal. *Exp. 00024-2005-AI/TC. Miguel Ángel Mufarech Nemy c. Ley N.º 28607 que modifica los artículos 91°, 191° y 194° de la Constitución de 1993.*

59 Peruvian Constitutional Tribunal. *Exp. 0008-2018-PI/TC. Más de 5,000 ciudadanos c. Congreso de la República del Perú.*

60 Peruvian Constitutional Tribunal. *Exp. 00013-2020-PI/TC. Colegio de Abogados de Sullana c. la Ley 30904, Ley de Reforma Constitucional, y la Ley 30916, Ley Orgánica de la Junta Nacional de Justicia*, Sentencia 890/2021, 7 January 2021.

61 Peruvian Constitutional Tribunal. *Exp. 00001-2023-PI/TC. Caso de la reforma constitucional sobre la prohibición de reelección inmediata de congresistas*, Sentencia 443/2023, 20 October 2023, para. 52.

which must meet requirements of neutrality and bear a direct relationship to the subject matter submitted to popular vote[62].

Finally, the review exercised by the PCT can be described as strong in theory but weak in practice. First, because it has never declared a constitutional amendment unconstitutional; it has always upheld the decision of the Derived Constituent Power. Second, it lacks a precise and sophisticated logical framework for examining the constitutionality of amendments. In some cases, constitutional identity is not the parameter guiding review; instead, it appears that the parameter could be extended to the entirety of constitutional provisions, as if the review concerned ordinary legislation rather than a constitutional amendment.

Nonetheless, more recent jurisprudence reveals an attempt by the Court to outline a reform test consisting of: a. Determining whether the constitutional amendment law infringed established formal limits (which will vary depending on whether the reform was approved solely through a legislative process or involved a referendum); b. Determining whether the amendment distorted elements of constitutional identity (which are, in most cases, defined at the discretion of the Court without requiring a particularly high threshold of argumentation); and, c. Determining whether the reform infringes upon the essential content of such an identity element, and whether that infringement amounts to the replacement or not of a constitutional identity element.

As noted at the beginning of this section, constitutional review of amendments is by nature exceptional, and its standard of evaluation consists of those essential features of the Constitution. It is not, nor should it be reduced to, an ordinary constitutionality review. Were that to happen, the role of the judiciary could be delegitimized due to the democratic deficit that would result from declaring unconstitutional those reforms that pose no threat to the democratic order and do not infringe upon elements of constitutional identity. In this regard, it is recommended that the PCT strengthen its test for evaluating the constitutionality of constitutional amendments. Such a test should require robust reasoning for identifying elements of constitutional identity, rather than relying on merely declarative or discretionary assertions. Likewise, the determination of the protected content of certain fundamental rights deemed to be part of constitutional identity must be carefully calibrated so as not to unduly restrict the power of the derived constituent authority to regulate their scope.

V. BICAMERALISM AND THE SHIFT TOWARDS CONSTITUTIONAL RIGIDITY: IS THIS A CASE OF AN UNCONSTITUTIONAL CONSTITUTIONAL AMENDMENT?

62 Peruvian Constitutional Tribunal. *Exp. 00013-2020-PI/TC. Colegio de Abogados de Sullana c. la Ley 30904, Ley de Reforma Constitucional, y la Ley 30916, Ley Orgánica de la Junta Nacional de Justicia*, Sentencia 890/2021, 7 January 2021.

Article 206, in its version prior to Law No. 31988, was broadly interpreted by legal scholarship as reflecting a semi-rigid Constitution, insofar as it established a constitutional amendment procedure more demanding than ordinary legislation, yet not as stringent as those found in constitutions with entrenched clauses or strong institutional veto mechanisms. The provision offered two alternatives: approval by a qualified majority in two successive ordinary legislative sessions, or approval by an absolute majority followed by ratification in a referendum. This relative flexibility positioned the Peruvian Constitution within an intermediate zone between the extremes of comparative constitutionalism.

Authors such as Víctor García Toma[63] and García Belaúnde[64] characterized Peru's amendment regime as one that balanced stability with the possibility of change, acknowledging that, while a certain level of parliamentary consensus was required, it did not amount to a rigid model like the German system, which includes eternity clauses under Article 79.3, nor was it as permissive as the British model, where the principle of parliamentary sovereignty allows for constitutional changes through ordinary legislation. For this reason, it was understood that Peru had not adopted a model of absolute rigidity, but rather a semi-rigid one.

In our view, the former version of Article 206 endowed the Constitution with what might be termed responsible flexibility—understood as the capacity to adapt to new political and social realities through enhanced institutional mechanisms, without entirely obstructing reform. This flexibility also functioned as a safeguard against a potential authoritarian drift, as it preserved avenues for citizen participation through referenda, reflecting a democratic vocation in the constitutional design. In contrast, the 2024 reform—by requiring approval by both chambers in two ordinary legislative sessions—raises the threshold for constitutional amendment and brings Peru closer to a rigid constitutional model, even if it does not formally declare any provisions to be unamendable.

This modification is precisely the central focus of the present article. In the hypothetical event that a constitutional challenge were brought against Law No. 31988, the PCT would have to assess, among other issues, several significant changes to the constitutional text resulting from the reinstatement of the bicameral system. First, whether the transition from a unicameral to a bicameral legislature entails an alteration of a component of constitutional identity; second, whether the introduction of immediate reelection for senators and deputies constitutes an unconstitutional constitutional amendment;

63 García Toma, V. "La reforma constitucional en el Perú: implicaciones y retos", *Revista Athina*, N° 10, 2013, pp. 15-52.

64 García Belaúnde, D. "Sobre el control de la reforma constitucional (con especial referencia a la experiencia jurídica peruana)", *Revista de Derecho Político*, N° 66, 2006, pp. 477-500

and third, whether the shift from a model of responsible flexibility in constitutional change to a rigid one amounts to a violation of a component of constitutional identity. This article will focus on the third question, although some of the arguments developed may also prove relevant to the analysis of the first two issues.

According to the PCT's case law, when analyzing the constitutionality of a constitutional amendment law, the first step is to verify whether the law complies with the formal limits established. These formal limits refer to strict adherence to the procedures set forth in Article 206 of the Constitution, which require either approval by a qualified majority (87 votes) in two consecutive ordinary legislative sessions or, alternatively, initial approval by an absolute majority (66 votes) followed by ratification via referendum.

In this regard, it can be affirmed that Law No. 31988 followed the first procedural route established in the Constitution, achieving qualified majority approval in two successive ordinary sessions. The reform entailed the modification of 51 constitutional articles. Some argue that the sheer number of articles modified brings the reform closer to a total constitutional revision, which would necessarily require ratification by referendum. However, it should be recalled that, as clarified by the Constitutional Court, the defining feature of a total reform is not the number of articles amended but their content—specifically, whether the reform affects elements of constitutional identity[65].

It is also worth noting that the process for a total constitutional reform is not expressly regulated in the current constitutional framework. Nevertheless, the Court has indicated in its jurisprudence that a total reform does not necessarily require the convening of a Constituent Assembly[66]. Rather, Congress could present a comprehensive reform proposal. However, such a reform would unquestionably need to be ratified by referendum[67].

Furthering our analysis, it can be noted that Law N° 31988 was approved through the alternative mechanism set out in Article 206—that is, ratification in two ordinary legislative sessions by a qualified majority of the Legislative

65 Peruvian Constitutional Tribunal. *Exp. 014-2002-AI/TC. Colegio de Abogados del Cusco c. Congreso de la República del Perú*, para. 122-123.

66 "se puede advertir que el Congreso podría constitucionalizar la Asamblea Constituyente como una alternativa para la legitimación de los procesos de reforma. Sin embargo, en tanto no exista dispositivo expreso en la Constitución, es una alternativa antijurídica y solo posible mediante un acto contrario al derecho." Peruvian Constitutional Tribunal. *Exp. 00001-2022-AI/TC. Caso de la regulación del referéndum,* para. 80.

67 "Se debe poner énfasis en que, en una reforma total, el referéndum se convierte en una condición casi ineludible, por lo que el reformista debe admitir en todo el proceso una permanente actuación inclusiva que permita legitimar dicho proceso; es precisamente ello lo que propiciará el asentimiento de las reformas a la Carta Magna, y la necesidad del alto consenso o del respaldo vía referéndum." Peruvian Constitutional Tribunal. *Exp. 00001-2022-AI/TC. Caso de la regulación del referéndum,* para. 84.

Branch. At first glance, this appears to have been a legitimate procedure that allowed for proper deliberation, as the first vote took place in November 2023 and the second ratifying vote occurred in March 2024. Nevertheless, one aspect that the Derived Constituent Power seems not to have adequately considered is the fact that, in the 2018 referendum, the population explicitly voted against the return to bicameralism and against the immediate reelection of members of Congress[68]. According to the standards developed in constitutional jurisprudence, it would have been preferable for this reform to be ratified through a referendum, as this is the mechanism favored by the Original Constituent Power. In our view, the attempt to instrumentalize the procedure in order to circumvent popular oversight or override a previously expressed democratic will constitutes a violation of the formal limits on constitutional reform—even if, on the surface, the literal requirements of Article 206 appear to have been "strictly" fulfilled.

The fact that the bicameralism reform was approved without being submitted once again to a referendum—despite having been explicitly rejected by the citizenry in a previous vote—raises a legitimate concern regarding the democratic validity of the process. The deliberative and dialogic nature of constitutional reform requires the inclusion of mechanisms for democratic oversight and direct participation, particularly in matters that alter the institutional design of the State[69]. Even if the formal procedure was respected in terms of parliamentary voting, the omission of a referendum weakens the democratic legitimacy of the process—especially in the case of a reform that affects the structural foundations of the Constitution's political design.

We now turn to assess whether the reform in question constitutes an infringement of elements of constitutional identity or material limits—whether explicit or implicit—on the power of constitutional amendment. As for explicit material limits, Article 32 prohibits "the suppression or reduction of the protected content of fundamental rights."[70] In the view of the Constitutional Court, "fundamental rights may only be reformed to improve their preexisting status." [71]

68 This amendment was ratified in its constitutionality by the PCT. See: Resolution N° 0002-2019-JNE. Proclaman los resultados del Referéndum Nacional 2018, convocado mediante Decreto Supremo N° 101-2018-PCM. 07 de enero de 2019.

69 Galvis Arenas, G., & Rodríguez Delgado, M. (2009). *Fraude constitucional*. Ponencia presentada en el V Encuentro de la Jurisdicción Constitucional, Barrancabermeja, Colombia, 11–14 August de 2009. Pág. 139. https://revistas.unab.edu.co/index.php/sociojuridico/article/view/1314/1280

70 Peruvian Constitutional Tribunal. *Exp. 00001-2023-PI/TC. Caso de la reforma constitucional sobre la prohibición de reelección inmediata de congresistas*, Sentencia 443/2023, 20 October 2023, para. 32.

71 Peruvian Constitutional Tribunal. *Exp. 050-2004-AI/TC, 051-2004-AI/TC, STC 004-2005-PI/TC, 007-2005-PI/TC y 009-2005-PI/TC. Colegios de Abogados de Cusco y Callao y más de 5,000 ciudadanos c. Congreso de la República del Perú*, para. 17

The Court has also identified several implicit material limits, including: "the dignity of the human person, fundamental rights, the sovereignty of the people or popular sovereignty, the democratic rule of law, the democratic system of government, the republican form of government, the representative regime, the principle of alternation in government, the separation of powers, and, in general, the political regime and the form of the State." [72] Most notably, the Court has asserted that "the identity of the Constitution lies in democracy, in the democratic system and its core content—call it constitutional—which serves as an unbreakable, irreplaceable, and intangible starting point for any reform procedure or reforming power." [73] Beyond this enumeration, the Court has indicated that the content of these elements of constitutional identity can be discerned both from the understanding of these principles within Peru's historical constitutional tradition (constitutional identity as singularity) and from their interpretation in global and comparative constitutionalism (constitutional identity as essentiality).

In the case at hand, the transition from a unicameral to a bicameral system entails a modification of the structure of one of the branches of government, which has a significant impact on the system of checks and balances in the relationship between the Legislative Branch and the other branches of the State, directly affecting the guarantee of the separation of powers[74]. Although the introduction of a bicameral system does not, in itself, constitute a democratic regression, its approval without a referendum, its direct effect on institutional equilibrium, and the amendment of 51 articles of the Constitution collectively reveal a structural mutation in the relationship between the Legislative Branch, the other branches of the State, and autonomous constitutional bodies.

The reform did not merely adjust a legislative procedure; it redefined the way in which the functions of political representation, lawmaking, constitutional amendment, and political oversight of the Executive are exercised—for instance, by assigning the Chamber of Deputies exclusive authority over matters such as the vote of confidence and motions of censure.

From this perspective, the reform *prima facie* affects the content of the principle of separation of powers, particularly the subprinciple related to

72 Peruvian Constitutional Tribunal. *Exp. 00001-2023-PI/TC. Caso de la reforma constitucional sobre la prohibición de reelección inmediata de congresistas*, Sentencia 443/2023, 20 October 2023, para. 34

73 Peruvian Constitutional Tribunal. *Exp. 00001-2023-PI/TC. Caso de la reforma constitucional sobre la prohibición de reelección inmediata de congresistas*, Sentencia 443/2023, 20 October 2023, para. 36

74 According to the PCT, the principle of separation of powers is integrated by four sub-principles: the principle of separation of powers in the strict sense, the balance of powers, inter-branch cooperation, and democratic resolution of conflicts. See: Peruvian Constitutional Tribunal. *Exp. 006-2018-PI/TC. Caso cuestión de confianza y crisis total del gabinete*, 06 November 2018, para. 60

the balance of powers. However, we do not consider that this principle has been violated or replaced. Within Peru's historical constitutional tradition, the bicameral model has been predominant, with a unicameral legislature appearing in only three of the country's twelve historical constitutions. Similarly, on the global stage, numerous states have adopted bicameral structures for their legislatures. Therefore, it cannot be reasonably asserted that the return to bicameralism, in and of itself, constitutes a breach of an element of constitutional identity.

Another controversial aspect of the reform is the reinstatement of immediate reelection for congressmen (senators and deputies), which had been expressly prohibited in the 2019 referendum. However, we believe that the Constitutional Court would not consider this change to constitute a violation of a singular (or historical) element of constitutional identity. In its view, "the fact that none of the previous Constitutions restricted parliamentary reelection does not mean that such a model cannot be revised, as has objectively occurred; nor does it necessarily imply that it forms part of the so-called Historical Constitution."[75] Nor is the prohibition of immediate reelection a feature of global constitutionalism. Citing the Venice Commission, the Court has stated that "it is for each constitutional or legal system to decide on its advisability in light of prevailing circumstances and the will of the people." [76] Accordingly, "just as there were reasons to justify the elimination of immediate parliamentary reelection by a significant sector of the citizenry, valid reasons may also arise to restore or reintroduce immediate—or even indefinite—congressional reelection within our democratic constitutional framework; a normative choice that will depend on the decision of the parliamentary power, or the approval of the people or the constituent power, as appropriate." [77]

Finally, with regard to the central issue addressed in this article, we argue that the shift from a semi-rigid Constitution to a rigid model does indeed constitute a violation of a component of constitutional identity or an implicit material limit on the power of amendment. Although the Constitutional Court has not explicitly listed this as such, we have provided sufficient reasons to support the expressive character of constitutional amendment clauses and their significance in comparative constitutional law, particularly given their essential function in preserving the identity and continuity of the constitutional text.

However, a historical analysis of Peruvian constitutionalism reveals that amendment clauses have oscillated between more flexible models and those

75 Peruvian Constitutional Tribunal. *Exp. 00001-2023-PI/TC. Caso de la reforma constitucional sobre la prohibición de reelección inmediata de congresistas*, Sentencia 443/2023, 20 de octubre de 2023, para. 66

76 Ibid., para. 64

77 Ibid., para. 68

exhibiting greater rigidity, with a pragmatic rather than dogmatic approach predominating. Since the Constitution of 1823—the first political charter of independent Peru—the possibility of constitutional amendment was recognized, although it did not establish a clear or reinforced procedure compared to the approval of ordinary laws. This left Congress with broad discretion to alter the constitutional text, thus creating a flexible model in which the distinction between constitutional reform and ordinary legislation was not clearly defined. The Constitution of 1860, one of the most stable of the nineteenth century, introduced a more elaborate amendment procedure. It required approval in two successive legislative sessions by a qualified majority in each legislative chamber, marking a shift toward a moderately rigid Constitution. This formula would later be replicated with slight variations, in the Constitutions of 1920 and 1933. The 1979 Constitution established a rigid model of constitutional amendment, even explicitly affirming that the Constitution would not lose its validity if repealed by means other than those it prescribed. Article 306 stipulated that any reform had to be approved in two successive ordinary legislative sessions, securing a majority vote in each chamber.

As seen, Peruvian constitutions have displayed a historical tendency toward models leaning more closely toward rigidity—requiring certain procedural filters for constitutional reform—yet without reaching the threshold of entrenching unamendable or "eternity" clauses. Why, then, do we argue that the shift from a semi-rigid to a rigid amendment clause constitutes a violation of a component of constitutional identity?

Our position lies on at least two arguments. First, it must be acknowledged that, in Peru's historical constitutional experience, none of our past Constitutions have been amended strictly in accordance with the procedures they themselves established. Constitutional change has been abrupt, often resulting from scenarios of civil conflict. This historical pattern underscores the value of what we might call responsible constitutional flexibility. While rigidity does provide greater legal stability and shields the Constitution from political volatility—thus ensuring the continuity of the institutional order—it can also become a vehicle for petrifying the entire Constitution, preventing the fundamental norm from adapting to evolving social, economic, and political conditions.

Excessive rigidity may lead to illegitimacy, just as unchecked flexibility may breed instability. The true constitutional challenge lies not in eliminating change but in regulating, channeling, and legitimizing it within a foreseeable and participatory legal framework. It is precisely at this juncture that amendment clauses play an identity-defining role: they ensure that change is constitutional—not an act of arbitrary power.

Second, the number of provisions that constitute essential features of constitutional identity is relatively limited. Most of the constitutional text may, in fact, be subject to change. It is precisely because the vast majority

of constitutional clauses can be amended under certain conditions that the Constitution must include formal mechanisms for responsible flexibility, ensuring that change does not occur through informal, violent, or de-institutionalized means.

Third, we believe it is critical to examine the broader context that has characterized constitutional change in Peru over the past decade, beginning in 2015. At least nineteen of the thirty-two constitutional amendment laws passed by Congress were enacted during this period, which unfortunately has coincided with a time of persistent political crisis and high polarization. Several of these amendments have directly affected autonomous constitutional bodies and altered the distribution of powers among the branches of government.

To name a few examples: immediate parliamentary reelection has been eliminated by constitutional amendment and later reinstated through another constitutional amendment; the immediate reelection of mayors and regional governors has also been eliminated and subsequently reattempted by way of amendment. Parliamentary immunity was replaced with a special jurisdiction, with later efforts to restore it again through constitutional amendment. Additionally, some constitutional mutations have been introduced via ordinary legislation and later ratified by the Constitutional Court—such as Law No. 31355 regulating the vote of confidence, and Law No. 31399 on referendum regulation. Consequently, Peru does not appear to be in the best political position to adopt a rigid model of constitutional reform, especially considering the recurring gridlock and lack of consensus that has marked political debate over the past five years.

Protection against abuse does not require extreme rigidity, but rather institutional designs that distribute amendment powers, involve multiple actors—including the People—and uphold fundamental principles. The shift toward a rigid constitutional model in contexts of high political polarization carries the risk of recourse to violent means to break political deadlock. Nothing could be further from the expressive and axiological function of constitutional amendment clauses.

VI. CONCLUDING REMARKS

The constitutional reform introduced by Law No. 31988, which reinstates bicameralism in Peru, marks a shift toward a more rigid constitutional model. This change, by requiring the approval of future amendments in two successive ordinary legislative sessions by both chambers of Congress, hardens the formal requirements for constitutional change, thereby enhancing institutional stability. However, such rigidity may also restrict the Constitution's capacity to adapt to social and political changes, raising important questions about its effectiveness in a context of heightened political polarization.

Prior to its amendment, Article 206 was understood as a clause that balanced flexibility and stability—a model of reasonable flexibility. The reform that modifies this article and establishes a more rigid procedure could hinder future amendments that are necessary to adapt the Constitution to new political and social realities.

The fact that the reform reinstating bicameralism did not undergo a new referendum—despite popular rejection by referendum in 2018 — raises significant democratic concern. The omission of a popular consultation mechanism in such a momentous reform undermines the formal legitimacy of the amendment. The process should have involved greater citizen consensus, given that the reform affected the structural design of the distribution and separation of powers.

In a context of high levels of political polarization, moving toward a more rigid Constitution could contribute to political stagnation, thus constraining institutional adaptability. Institutional designs must strike a balance between rigidity and flexibility, distributing the power of amendment among various actors, including the citizenry. An excessively rigid model in a setting of political crisis risks prompting violent or de-institutionalized responses—thereby undermining the very purpose of constitutional amendment clauses and infringing a material limit on the power of constitutional reform.

BIBLIOGRAPHY

Doctrine

Abad Yupanqui, S. "Reforma Constitucional o nueva constitución. La experiencia peruana". En *Revista Mexicana de Derecho Constitucional Cuestiones Constitucionales*, N° 37, julio - diciembre 2017.

Albert, R. "Amending constitutional amendment rules", *International Journal of Constitutional Law I•CON*, vol. 13, Nº 3, 2015, pp. 655-685.

Albert, R. "Formal amendment rules. Functions and design", en Xenophon Contiades y Alkmene Fotiadou (eds.), *Routledge Handbook of Comparative Constitutional Change*, pp. 119-121, Routledge, 2021.

Albert, R. *Constitutional Amendments: Making, Breaking, and Changing Constitutions*. Oxford: Oxford University Press, 2019, p. 79.

Albert, R., Nakashidze, M. y Olcay, T. "La resistencia formalista a las reformas constitucionales inconstitucionales", *Díkaion*, vol. 31, n.º 1, 2022, pp. 5–49.

Azcona, J. y Del Prado, C. "Crisis institucional en el Perú del posconflicto: 1992-2018". *Araucaria. Revista Iberoamericana de Filosofía, Política y Humanidades,* vol. 22, N° 43, pp. 513-535, 2020

Benítez-Rojas, V. "Beyond Invalidation: Unorthodox Forms of Judicial Review of Constitutional Amendments and Constitution-amending Case Law in Colombia", *Revista de Investigações Constitucionais*, vol. 9, Nº 2, mayo-agosto de 2022, pp. 269–300.

Bernal Pulido, C. "Unconstitutional constitutional amendments in the case study of Colombia: An Analysis of the justification and meaning of the constitutional replacement doctrine*", International Journal of Constitutional Law I•CON*, vol. 11, N° 2, pp. 339-357.

Bryce, J. *Constituciones flexibles y constituciones rígidas*, 2.ª ed., trad. P. Lucas Murillo de la Cueva. Madrid: Centro de Estudios Políticos y Constitucionales, 2015.

Colón-Ríos, J. *"*Introduction: Seven Theses on the Constituent Power". *Journal of Legal Philosophy*, 48(1), 2022, pp. 38-43. https://doi.org/10.2139/ssrn.4560513

Contiades, X. y Fotiadou, A. "The Determinants of Constitutional Amendability: Amendment Models or Amendment Culture?", *European Constitutional Law Review*, vol. 12, N° 1, 2016, pp. 192–211.

De Belaunde, J. "Bicameralidad y reelección parlamentaria: tan impopulares como necesarias". *Boletín del IDEHPUCP*, 12 de marzo de 2024. https://idehpucp.pucp.edu.pe/boletin-eventos/bicameralidad-y-reeleccion-parlamentaria-tan-impopulares-como-necesarias/.

Díaz Ricci, S. "Rigidez constitucional. Un concepto toral". En: *Estado constitucional, derechos humanos, justicia y vida universitaria: estudios en homenaje a Jorge Carpizo*, editado por Miguel Carbonell Sánchez, Héctor Fix-Zamudio, Luis Raúl González Pérez y Diego Valadés Ríos; pp. 551-587, México D.F.: UNAM, 2015.

Galvis Arenas, G., & Rodríguez Delgado, M. (2009). *Fraude constitucional*. Ponencia presentada en el V Encuentro de la Jurisdicción Constitucional, Barrancabermeja, Colombia, 11–14 de agosto de 2009. https://revistas.unab.edu.co/index.php/sociojuridico/article/view/1314/1280

García Belaúnde, D. "Sobre el control de la reforma constitucional (con especial referencia a la experiencia jurídica peruana)", *Revista de Derecho Político*, N° 66, 2006, pp. 477-500

García Toma, V. (2010). *Teoría del Estado y Derecho Constitucional* (3.ª ed.). Editorial Adrus https://www.web.onpe.gob.pe/modEducacion/Seminarios/Dialogo-Electoral/dialogo-electoral-25-04-2018.pdf

García Toma, V. "La reforma constitucional en el Perú: implicaciones y retos", *Revista Athina*, N° 10, 2013, pp. 15-52, p.23.

Ginsburg, T. y Melton, J. "Does the Constitutional Amendment Rule Matter at All? Amendment Cultures and the Challenges of Measuring Amendment Difficulty", *International Journal of Constitutional Law I•CON*, vol. 13, Nº 3, 2015, pp. 686-713.

Jefferson, T. "Carta a Madison, 6 de septiembre de 1789", *Founders Online, National Archives*, disponible en: https://founders.archives.gov/documents/Jefferson/01-15-02-0057

Landau, D. y Dixon, R. "Transnational Constitutionalism and a Limited Doctrine of Unconstitutional Constitutional Amendment", *International Journal of Constitutional Law*, vol. 13, Nº 3, 2015, pp. 606–638.

Loewenstein, K., Teoría de la Constitución, 2.ª ed., Barcelona: Ariel, 1976.

López, Luciano. "Reforma constitucional y control de límites al poder constituyente derivado: apuntes para una discusión necesaria en el Perú", en *Estudios sobre la reforma constitucional*, editado por Domingo

Lovatón, D. "Retorno a la bicameralidad y otras reformas constitucionales: la voz del pueblo ya no es la voz de Dios". *Ventana Jurídica*, 12 de marzo de 2024. Disponible en: https://facultad-derecho.pucp.edu.pe/ventana-juridica/retorno-a-la-bicameralidad-y-otras-reformas-constitucionales-la-voz-del-pueblo-ya-no-es-la-voz-de-dios/

Madison, J. **"**The Federalist No. 49: Method of guarding against the encroachments of any one department of government by appealing to the people through a convention", en Hamilton, A., Madison, J., & Jay, J., *The Federalist Papers*, disponible en: https://avalon.law.yale.edu/18th_century/fed49.asp

María Sauca, J. "La liquidez constitucional entre rigidez y flexibilidad: las cláusulas de liquidez constitucional". *Problema. Anuario De Filosofía Y Teoría Del Derecho*, 18, pp. 11-42, 2024. https://doi.org/10.22201/iij.24487937e.2024.18.18712.

Roca Fernández, M. J., *La identidad constitucional de los Estados miembros y la integración europea*. En XXVI Jornadas de la Asociación Española de Letrados del Tribunal Constitucional (pp. 115–178). Centro de Estudios Políticos y Constitucionales, 2021. https://docta.ucm.es/rest/api/core/bitstreams/0028cb5f-f311-48b2-9f97-88661b579691/content

Rosenfeld, M. (2006). *Constitutional adjudication in Europe and the United States: Paradoxes and contrasts.* International Journal of Constitutional Law, 4(4), 633–668. https://www.mpil.de/files/pdf4/Constitutional_Adjudication_in_Europe_and_the_United_States_paradoxes_and_contrasts_Rosenfeld.pdf

Roznai, Y**.,** *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*. Oxford: Oxford University Press, 2017.

Valdivia, T. y & Chávez-Fernández J. "Poder y Constitución: la argumentación de la doctrina de las reformas constitucionales inconstitucionales en la jurisprudencia del Tribunal Constitucional peruano y sus problemas", *Derecho PUCP*, núm. 93, 2024, pp. 9–53, p. 41. https://doi.org/10.18800/derechopucp.202402.001

Case-Law

Peruvian Constitutional Tribunal**.** *Exp. 00001-2022-AI/TC. Caso de la regulación del referéndum.*

Peruvian Constitutional Tribunal. *Exp. 00001-2023-PI/TC. Caso de la reforma constitucional sobre la prohibición de reelección inmediata de congresistas*, Sentencia 443/2023, 20 de octubre de 2023.

Peruvian Constitutional Tribunal. *Exp. 00013-2020-PI/TC. Colegio de Abogados de Sullana c. la Ley 30904, Ley de Reforma Constitucional, y la Ley 30916, Ley Orgánica de la Junta Nacional de Justicia*, Sentencia 890/2021, 7 de enero de 2021.

Peruvian Constitutional Tribunal. *Exp. 00024-2005-AI/TC. Miguel Ángel Mufarech Nemy c. Ley N.º 28607 que modifica los artículos 91°, 191° y 194° de la Constitución de 1993.*

Peruvian Constitutional Tribunal. *Exp. 0008-2018-PI/TC. Más de 5,000 ciudadanos c. Congreso de la República del Perú.*

Peruvian Constitutional Tribunal**.** *Exp. 0014-2003-AI/TC. Alberto Borea Odría y más de 5,000 ciudadanos c. Constitución Política del Perú de 1993.*

Peruvian Constitutional Tribunal. *Exp. 006-2018-PI/TC. Caso cuestión de confianza y crisis total del gabinete*, 06 de noviembre de 2018.

Peruvian Constitutional Tribunal. *Exp. 014-2002-AI/TC. Colegio de Abogados del Cusco c. Congreso de la República del Perú*.

Peruvian Constitutional Tribunal. *Exp.s 00019-2021-PI/TC, 00021-2021-PI/TC y 00022-2021-PI/TC. Colegios de Abogados de Ayacucho, El Santa y Lambayeque c. Congreso de la República del Perú.*

Peruvian Constitutional Tribunal. *Exp. 050-2004-AI/TC, 051-2004-AI/TC, STC 004-2005-PI/TC, 007-2005-PI/TC y 009-2005-PI/TC. Colegios de Abogados de Cusco y Callao y más de 5,000 ciudadanos c. Congreso de la República del Perú*.

Legislation

Supreme Decree Nº 101-2018-PCM. Decreto Supremo de Convocatoria a Referéndum Nacional. 10 de octubre de 2018.

Law N° 31355: Ley que desarrolla el ejercicio de la cuestión de confianza regulada en el último párrafo del artículo 132 y en el artículo 133 de la Constitución Política del Perú. 21 de octubre de 2021.

Bills nº 660, 724, 792,1044,1091,1334,1655,1708,1746,1750,1959,2004, 2025, 2053, 2085, 2231, 2314 y 3744/2022-CR.

Bills N.° 1325/2016-PE, 1740/2017-CR, 2447/2017-CR, 2631/2017-CR, 2856/2017-CR, 3461/2017-CR, 3185/2018-PE y 3259/2018-CR.

Bills N° 094/2006-CR, 589/2006-CR, 784/2006-CR y 1064/2006-CR, que planteaban la modificación de los Títulos IV y VI de la Constitución Política del Perú para restablecer el sistema bicameral.

Bills N° 09955-2003/CR, 11192-2004/CR, 11313-2004/CR, 11314-2004/CR, 11331-2004/CR, 11456-2004/CR, 11616-2004/CR, 11672-2004/CR y 11830-2004/CR.

Resolution N° 0002-2019-JNE. Proclaman los resultados del Referéndum Nacional 2018, convocado mediante Decreto Supremo N° 101-2018-PCM. 07 de enero de 2019.