

Ensuring Constitutional Identity: Amendments, Judicial Review, and Public Participation in Constitutional Dynamics

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Abstract

Contemporary constitutional scholarship has extensively examined constitutional amendments and judicial review as mechanisms for preserving constitutional order, yet it remains predominantly court-centered and insufficiently attentive to the democratic dimensions of constitutional identity protection. Existing Scopus-indexed studies largely conceptualize constitutional identity as a judicially enforced constraint, leaving the role of public participation under-theorized as a substantive safeguard within amendment processes. This article addresses that gap by reconceptualizing constitutional identity as a dynamic construct shaped through the interaction between constitutional amendments, judicial review, and public participation. It employs a normative legal method with a conceptual and comparative approach, analyzing constitutional doctrines, judicial practices, and participatory mechanisms across selected constitutional systems. The analysis demonstrates that judicial review, while essential for enforcing substantive constitutional limits, operates primarily as an ex post safeguard and faces inherent legitimacy constraints. Public participation, by contrast, enhances democratic legitimacy but lacks institutional authority when detached from normative constitutional frameworks. This article argues that constitutional identity is most effectively preserved through an integrative model in which public participation functions as an ex ante democratic filter, complemented by judicial review as an ex post normative control. The novelty of this study lies in advancing a tripartite constitutional framework that moves beyond judicial-centric approaches by systematically integrating participatory constitutionalism into constitutional identity protection. By aligning democratic deliberation with institutional oversight, this framework contributes a normative reorientation to global debates on unconstitutional constitutional amendments and offers practical relevance for constitutional systems seeking to balance constitutional flexibility with democratic legitimacy.

KEYWORDS: *Constitutional Identity; Constitutional Amendments; Judicial Review; Public Participation; Participatory Constitutionalism*

Introduction

Constitutional amendments are an inherent feature of constitutional democracy, reflecting the need for constitutional texts to adapt to social, political, and economic transformations. However, the amendment process also poses a fundamental dilemma: how to reconcile constitutional flexibility with the preservation of core constitutional values. In recent decades, this tension has intensified as constitutional amendments have increasingly been used not only to update constitutional provisions, but also to reshape the fundamental identity of constitutional orders. This phenomenon has triggered global debates on constitutional durability, democratic legitimacy, and the limits of constituent power.¹

The concept of constitutional identity has emerged as a key analytical framework to address this dilemma. Constitutional identity refers to the foundational principles, values, and structural commitments that define the character of a constitutional system and distinguish it from ordinary political arrangements.² While constitutions may be amended, constitutional identity is often understood as setting substantive boundaries beyond which amendments risk undermining the democratic and normative foundations of the state.³ The increasing frequency of controversial constitutional amendments—particularly those affecting judicial independence, separation of powers, and fundamental rights—has raised concerns about the erosion of constitutional identity under the guise of formal legality.

In response to these challenges, judicial review of constitutional amendments has developed as a critical constitutional mechanism in several jurisdictions. Constitutional courts in countries such as India, Germany, and Colombia have asserted the authority to invalidate constitutional amendments that violate core constitutional principles.⁴ Through doctrines such as the basic structure doctrine and eternity clauses, courts have positioned themselves as guardians of constitutional identity.⁵ Nevertheless, this judicial role remains deeply contested, particularly in relation to democratic legitimacy and the risk of judicial overreach.

Despite its normative appeal, reliance on judicial review alone has revealed important limitations. Judicial intervention often occurs *ex post facto*, after political

¹ Marina Calamo Specchia, “Parliament and Constitutional Amending Process: Procedural Guarantees, Participation Rights and Majoritarian Trends,” *Diritto pubblico comparato ed europeo* (IT), no. Speciale (2019): 33–60, <https://doi.org/10.17394/93040>.

² Novendri M Nggilu et al., “Indonesia’s Constitutional Identity: A Comparative Study of Islamic Constitutionalism,” *De Jure: Jurnal Hukum Dan Syar’iah* 16, no. 2 (2024): 480–500.

³ Novendri Nggilu et al., “Judicial Review of Constitutional Amendments: Comparison Between India, Germany, Colombia, and the Relevancy with Indonesia,” *Lex Scientia Law Review* 8, no. 1 (2024), <https://doi.org/10.15294/lsr.v8i1.1901>.

⁴ Nggilu et al., “Judicial Review of Constitutional Amendments.”

⁵ Sabrina Ragone, “The ‘Basic Structure’ of the Constitution as an Enforceable Yardstick in Comparative Constitutional Adjudication,” *Revista de Estudos Constitucionais, Hermenêutica e Teoria Do Direito* 11, no. 3 (2020): 327–40, <https://doi.org/10.4013/rechtd.2019.113.02>.

processes have already reshaped constitutional norms. Moreover, excessive judicialization of constitutional identity risks detaching constitutional development from democratic participation, reinforcing elite-driven constitutionalism. These concerns highlight the need to explore complementary mechanisms that can enhance both constitutional legitimacy and democratic inclusiveness in the amendment process.

Existing scholarship indexed in Scopus has addressed these issues from different perspectives. First, Yaniv Roznai's extensive work on unconstitutional constitutional amendments emphasizes the normative limits of amendment power and the role of courts in enforcing constitutional identity.⁶ Second, Rosalind Dixon and David Landau have examined the democratic risks of amendment abuse and the institutional design of constitutional change, particularly in transitional and hybrid regimes.⁷ Third, Sujit Choudhry's comparative constitutional studies highlight how constitutional identity functions as a dialogical concept shaped by courts, political actors, and constitutional culture.⁸ While these studies provide robust theoretical and doctrinal insights, they predominantly focus on judicial mechanisms and elite constitutional actors.

What remains underexplored in the existing literature is the role of public participation as a constitutive element in safeguarding constitutional identity during amendment processes. Current Scopus-indexed scholarship largely treats public participation as ancillary or procedural, rather than as a substantive mechanism capable of shaping constitutional identity itself. As a result, the interaction between constitutional amendments, judicial review, and participatory constitutionalism has not been systematically theorized, leaving a significant gap in understanding how constitutional identity can be democratically protected beyond judicial control.

This article seeks to address that gap by examining constitutional identity as a dynamic construct shaped by the interplay of constitutional amendments, judicial review, and public participation. Rather than framing constitutional identity solely as a judicially enforced limitation, this study investigates how participatory mechanisms can function as an *ex ante* safeguard, reinforcing constitutional values before they are threatened by amendment practices. The analysis adopts a comparative and normative approach to assess how participatory constitutionalism can complement judicial review in maintaining constitutional integrity.

⁶ Joel Colón-Ríos Yaniv Roznai, "A Constitutional Theory of Territoriality: The Case of Puerto Rico," *Cleveland State Law Review* 70, no. 2 (2022): 279–333.

⁷ David E. Landau et al., "From an Unconstitutional Constitutional Amendment to an Unconstitutional Constitution? Lessons from Honduras," *Global Constitutionalism* 8, no. 1 (2019): 40–70, <https://doi.org/10.1017/S2045381718000151>; Rosalind Dixon, "Transnational Constitutionalism and Unconstitutional Constitutional Amendments," Public Law and Legal Theory Working Paper No. 349, University of Chicago, 2011.

⁸ Sujit Choudhry and Mark Tushnet, "Participatory Constitution-Making: Introduction," *International Journal of Constitutional Law* 18, no. 1 (2020): 173–78, <https://doi.org/10.1093/icon/moaa014>.

The novelty of this study lies in its integrative framework that reconceptualizes constitutional identity protection as a tripartite constitutional process involving amendment procedures, judicial oversight, and meaningful public participation. By bridging constitutional theory, comparative constitutional law, and participatory governance, the article contributes a democratic reorientation to the global debate on unconstitutional constitutional amendments. This approach not only enriches theoretical discourse on constitutional identity but also offers practical insights for constitutional systems—particularly in emerging democracies—seeking to balance constitutional change with democratic legitimacy and constitutional continuity.

Method

This study employs a normative legal research approach with a conceptual and comparative⁹ orientation to examine the relationship between constitutional amendments, judicial review, and public participation in safeguarding constitutional identity. The normative approach is used to analyze constitutional norms, doctrines, and principles governing constitutional change, while the conceptual approach draws on theories of constitutional identity, unconstitutional constitutional amendments, and participatory constitutionalism. A comparative method is applied to selected jurisdictions—such as India, Germany, and other constitutional systems—based on their established practices of judicial review of constitutional amendments and the articulation of substantive limits to amendment power.

The sources of legal materials consist of primary legal materials,¹⁰ including constitutional texts, constitutional court decisions, and formal amendment provisions, as well as secondary legal materials such as books, peer-reviewed journal articles indexed in Scopus, and scholarly commentaries on constitutional theory and comparative constitutional law. Legal materials are analyzed using qualitative normative analysis, involving systematic interpretation, doctrinal comparison, and evaluative reasoning. This technique allows the study to identify normative patterns, conceptual divergences, and institutional interactions between courts, political actors, and the public, thereby enabling a coherent assessment of how constitutional identity can be protected through an integrated constitutional framework.

Constitutional Amendments and the Challenge of Preserving Constitutional Identity

Constitutional amendments are an inherent feature of constitutional democracy, enabling constitutional texts to respond to evolving social, political, and institutional demands. Yet, the power to amend the constitution is not normatively neutral. While

⁹ Dian Ekawaty Ismail et al., *Metode Penelitian Hukum: Teori, Aplikasi, Dan Inovasi Dalam Penelitian Hukum*, ed. Tiara Oktaviana Namira Daud (Ruang Karya, 2025).

¹⁰ Mukti Fajar Nur Dewata and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Pustaka Pelajar, 2010).

amendments are often justified as expressions of popular sovereignty, they simultaneously carry the potential to destabilize the foundational commitments that give a constitution its distinctive character.¹¹ This duality situates constitutional amendment power at the center of a fundamental constitutional dilemma: how to reconcile adaptability with the preservation of constitutional identity.

The challenge becomes more acute when constitutional amendments are employed not merely to refine institutional arrangements but to recalibrate core principles such as the separation of powers, judicial independence, or fundamental rights protection. In such contexts, formal compliance with amendment procedures does not necessarily guarantee substantive constitutional legitimacy.¹² The increasing prevalence of amendment practices that reshape constitutional fundamentals illustrates that legality, understood in a purely procedural sense, is insufficient to safeguard the normative coherence of constitutional systems.

This phenomenon has generated what scholars describe as amendment abuse, whereby constitutional change is used strategically to entrench political power or neutralize constitutional constraints. Amendment abuse exposes the vulnerability of constitutional systems that rely exclusively on procedural rigidity as a safeguard.¹³ Even constitutions with complex amendment procedures may fail to prevent substantive erosion when political majorities are sufficiently dominant. Consequently, the problem of constitutional identity preservation cannot be reduced to questions of procedural design alone.

Constitutional identity emerges in this context as a conceptual response to the limits of procedural constitutionalism. Rather than treating the constitution as a fully malleable legal instrument, constitutional identity emphasizes the existence of core principles that define the normative essence of the constitutional order.¹⁴ These principles function as reference points against which the legitimacy of constitutional amendments can be assessed, shifting the analytical focus from how amendments are adopted to what they fundamentally alter.

However, conceptualizing constitutional identity as a constraint on amendment power raises complex normative questions. If constitutional identity is invoked too expansively, it risks freezing constitutional development and undermining democratic self-determination. Conversely, if it is defined too narrowly, it becomes incapable of

¹¹ Simone Chambers, “The Counter-Majoritarian Referendum: Popular Voting Processes and Constitutional Change,” *Critical Review* 36, no. 3 (2024): 338–51, <https://doi.org/10.1080/08913811.2024.2414601>.

¹² Anastasia Repetska and Vira Burdyak, “The Constitutional Basis for the Separation of Powers in Ukraine,” *Codrul Cosminului* 26, no. 1 (2020): 143–68, <https://doi.org/10.4316/CC.2020.01.009>.

¹³ Tom Ginsburg, “The Machinery of International Law and Democratic Backsliding: The Problem of Term Limits,” in *Constitutionalism*, 1st ed., ed. Alejandro Linares Cantillo et al. (Oxford University Press/Oxford, 2021), <https://doi.org/10.1093/oso/9780192896759.003.0007>.

¹⁴ Elena-Simina Tănăsescu, “The Constitutional Identity of Member States and of the European Union,” in *Judicial Review, Fundamental Rights and Rule of Law*, 1st ed., by Maria Grazia Rodomonte and Ludovica Durst (Routledge, 2024), <https://doi.org/10.4324/9781003493891-9>.

restraining transformative amendments that hollow out constitutional commitments from within.¹⁵ The challenge, therefore, lies in articulating constitutional identity in a manner that preserves normative continuity without denying constitutional evolution.

The difficulty of maintaining this balance is particularly evident in contemporary constitutional democracies facing democratic backsliding and institutional capture. In such settings, constitutional amendments may be formally valid yet substantively corrosive, targeting precisely those institutions responsible for constitutional accountability. This underscores that constitutional identity preservation is not merely a theoretical concern but a practical problem with significant implications for democratic resilience and the rule of law.

Constitutional amendments must be understood not only as mechanisms of constitutional change but also as potential sites of constitutional vulnerability. Preserving constitutional identity requires a normative framework capable of evaluating amendment practices beyond procedural legality. This insight sets the stage for examining the role of judicial review and public participation as complementary mechanisms in mediating the tension between constitutional flexibility and constitutional integrity.

Constitutional Identity as a Substantive Limit to Amendment Power

Constitutional identity has increasingly been invoked as a normative response to the limits of procedural constitutionalism. Rather than conceiving the constitution as a text exhaustively defined by formal amendment rules, constitutional identity directs attention to the foundational principles that give coherence and continuity to a constitutional order.¹⁶ These principles—such as the supremacy of the constitution, the separation of powers, judicial independence, and the protection of fundamental rights—are not merely institutional arrangements but normative commitments that structure the constitutional system as a whole.

As a substantive concept, constitutional identity operates independently of the textual rigidity of amendment procedures. Its function is not to prohibit constitutional change per se, but to distinguish between permissible constitutional evolution and transformative amendments that undermine the normative core of the constitution.¹⁷ In this sense, constitutional identity redefines the scope of amendment power by introducing qualitative criteria of legitimacy, thereby challenging the assumption that constitutional change is valid solely by virtue of procedural compliance.

This substantive understanding of constitutional identity fundamentally shifts the locus of constitutional evaluation. Instead of asking whether an amendment has

¹⁵ Manwendra Kumar Tiwari, “The Purposive Entrenchment of Constitutional Identity: Insights from Bangladesh,” *Constitutional Review* 11, no. 1 (2025): 166–96, <https://doi.org/10.31078/consrev1116>.

¹⁶ Laurianne Allezard, “Beyond Constitutional Identity: Thinking Identity in Constitutional Law,” *European Law Open*, October 28, 2025, 1–24, <https://doi.org/10.1017/elo.2025.10027>.

¹⁷ Tănăsescu, “The Constitutional Identity of Member States and of the European Union.”

been adopted through the correct procedural channels, the inquiry turns to whether the amendment preserves the constitutional system's normative coherence.¹⁸ Such an approach recognizes that procedural legality can coexist with substantive constitutional degradation, particularly in political contexts where dominant majorities can manipulate formal amendment rules to entrench power or weaken institutional constraints.

Nevertheless, the normative appeal of constitutional identity as a limit to amendment power is accompanied by conceptual indeterminacy. Constitutional identity is neither a fixed catalogue of principles nor a universally applicable doctrine. Its content is shaped by historical experience, constitutional culture, and the interpretive practices of constitutional institutions.¹⁹ This contextual nature renders constitutional identity both flexible and contested, raising concerns about subjectivity and the potential instrumentalization of identity claims for political or judicial agendas.

The challenge, therefore, lies in articulating constitutional identity as a constraint that is principled rather than discretionary. A substantive limit grounded in constitutional identity must be capable of providing reasoned justification, transparency, and consistency in its application. Without such normative discipline, constitutional identity risks devolving into an abstract rhetorical device that lacks analytical precision and democratic accountability.

Accordingly, constitutional identity should be understood not as an immutable barrier to constitutional change, but as a normative framework that mediates between continuity and transformation. By framing amendment power within substantive constitutional commitments, constitutional identity offers a means of preserving the integrity of constitutional orders while accommodating democratic change. This reconceptualization provides the theoretical foundation for examining how judicial review and participatory mechanisms can operationalize constitutional identity in practice.

Judicial Review of Constitutional Amendments: Protection and Its Limits

Judicial review of constitutional amendments has emerged as a central institutional response to the risk of constitutional erosion through formally valid amendment processes. By asserting the authority to assess the substantive compatibility of amendments with foundational constitutional principles, constitutional courts

¹⁸ Bosko Tripkovic, "Constitutional Identity Vs Fundamental Rights: A False Tension?," *European Law Open*, August 26, 2025, 1–15, <https://doi.org/10.1017/elo.2025.10028>.

¹⁹ Ran Hirschl and Yaniv Roznai, eds., *Deciphering the Genome of Constitutionalism: The Foundations and Future of Constitutional Identity*, 1st ed. (Cambridge University Press, 2024), <https://doi.org/10.1017/9781009473194>.

position themselves as guardians of constitutional identity.²⁰ This development reflects a shift from procedural constitutionalism toward a more substantive conception of constitutional legitimacy, in which amendment power is constrained by normative commitments rather than by formal rules alone.

Doctrinal models such as the basic structure doctrine in India and the entrenchment of eternity clauses in Germany illustrate how courts operationalize constitutional identity as a limit on amendment power. These doctrines enable courts to invalidate amendments that, while procedurally valid, threaten the core architecture of the constitutional order.²¹ Through this jurisprudence, judicial review functions as a corrective mechanism against amendment abuse, reinforcing the idea that constituent power is not absolute but constitutionally conditioned.

Despite its normative appeal, judicial review of constitutional amendments remains deeply contested. Critics argue that allowing courts to strike down constitutional amendments exacerbates the counter-majoritarian difficulty, empowering unelected judges to override decisions made through ostensibly democratic processes.²² From this perspective, judicial enforcement of constitutional identity risks substituting judicial preferences for democratic judgment, particularly where constitutional identity itself is conceptually indeterminate.

These concerns are amplified in contexts where courts lack strong democratic legitimacy or institutional independence. In such settings, judicial review of amendments may either be ineffective—due to political pressure and non-compliance—or selectively applied in ways that reinforce existing power structures.²³ As a result, judicial review alone may be insufficient to prevent constitutional backsliding, especially when amendment processes are controlled by dominant political actors.

Moreover, judicial review of constitutional amendments operates primarily as an *ex post* safeguard. Courts intervene only after amendments have been adopted, often when constitutional damage has already occurred. This reactive posture limits the capacity of judicial review to shape constitutional deliberation proactively or to engage broader democratic actors in the preservation of constitutional identity.²⁴

²⁰ Michele Di Bari, “Unconstitutional Constitutional Amendments. Comparative Considerations on the Recent Case Law,” *Diritto pubblico comparato ed europeo* (IT), no. 1 (2022): 1–18, <https://doi.org/10.17394/103574>.

²¹ Monika Polzin, “The Basic-Structure Doctrine and Its German and French Origins: A Tale of Migration, Integration, Invention and Forgetting,” *Indian Law Review* 5, no. 1 (2021): 45–61, <https://doi.org/10.1080/24730580.2020.1866882>.

²² Esteban Buriticá-Arango, “Democracy and Constitutional Change: The Legitimacy of the Unamendable Clauses and Judicial Review of Constitutional Amendments,” *Ius et Praxis* 28, no. 2 (2022): 222–42, <https://doi.org/10.4067/S0718-00122022000200222>.

²³ Yvonne Tew, “Strategic Judicial Empowerment,” *The American Journal of Comparative Law* 72, no. 1 (2024): 170–234, <https://doi.org/10.1093/ajcl/avad040>.

²⁴ Novendri M. Nggilu et al., “The Absence of Judicial Review on Constitutional Amendments in Indonesia: Urgency and Legal Reform for Constitutional Safeguards,” *Journal of Law and Legal Reform* 6, no. 2 (2025): 659–92, <https://doi.org/10.15294/jllr.v6i2.20888>.

Consequently, judicial review may correct constitutional violations without addressing the democratic deficits that enable amendment abuse in the first place.

The reliance on judicial mechanisms also risks fostering a form of elite constitutionalism in which constitutional meaning is constructed predominantly through judicial interpretation. While courts play a crucial role in articulating constitutional principles, excessive judicial centrality may marginalize public participation and weaken the democratic foundations of constitutional governance. This tension highlights the need to reconsider the institutional architecture of constitutional identity protection beyond judicial intervention.

Accordingly, while judicial review of constitutional amendments remains an indispensable component of constitutional safeguarding, it should not be treated as a self-sufficient solution. Its limitations underscore the necessity of complementary mechanisms capable of operating *ex ante* and engaging democratic actors more directly. This recognition provides the conceptual bridge toward examining public participation as a democratic safeguard of constitutional identity.

Public Participation in Constitutional Change: Democratic Safeguard of Constitutional Identity

Public participation has increasingly been recognized as a normative dimension of constitutional change, particularly in response to the limitations of elite-driven constitutionalism. In the context of constitutional amendments, public participation is not merely a procedural accessory but a democratic mechanism through which constitutional identity can be articulated, contested, and reaffirmed. By involving citizens directly in constitutional deliberation, participatory processes introduce a layer of democratic accountability that precedes formal amendment adoption.

From a normative perspective, participatory constitutionalism reframes constitutional identity as a collective democratic construct rather than an exclusively judicial or elite-defined concept. Constitutional identity, understood in this sense, derives legitimacy not only from historical continuity or judicial interpretation but also from sustained public engagement with constitutional values.²⁵ Public participation thus functions as an *ex ante* safeguard, enabling constitutional norms to be defended before they are destabilized by amendment practices that may comply procedurally but undermine substantive commitments.

Participatory mechanisms such as referenda, constitutional conventions, and structured public consultations vary in their institutional design, yet they share a common normative function: they embed constitutional change within deliberative democratic processes.²⁶ When effectively designed, these mechanisms facilitate

²⁵ Nggilu et al., “Indonesia’s Constitutional Identity: A Comparative Study of Islamic Constitutionalism.”

²⁶ Oran Doyle and Rachael Walsh, “Constitutional Amendment and Public Will Formation: Deliberative Mini-Publics as a Tool for Consensus Democracy,” *International Journal of Constitutional Law* 20, no. 1 (2022): 398–427, <https://doi.org/10.1093/icon/moac013>.

reasoned debate, pluralistic engagement, and the articulation of constitutional values that transcend transient political majorities. As a result, public participation can mitigate the risk of amendment abuse by exposing proposed changes to broader democratic scrutiny.

However, public participation does not automatically guarantee the protection of constitutional identity. Poorly designed participatory processes may devolve into symbolic exercises or become instruments of populist mobilization, reinforcing rather than restraining constitutional erosion. The effectiveness of public participation therefore depends on institutional conditions such as inclusivity, access to balanced information, and procedural transparency.²⁷ Without these conditions, participation risks legitimizing outcomes that lack substantive constitutional integrity.

Despite these challenges, public participation offers a critical corrective to the reactive nature of judicial review. Whereas courts intervene after constitutional harm has occurred, participatory mechanisms operate at the formative stage of constitutional change, shaping the normative horizon within which amendments are evaluated. This proactive function allows constitutional identity to be defended through democratic deliberation rather than judicial negation alone.

Accordingly, public participation should be understood as a complementary safeguard within a broader constitutional architecture. By integrating participatory mechanisms into amendment processes, constitutional systems can strengthen both democratic legitimacy and normative resilience. This perspective repositions public participation from a peripheral democratic ideal to a central component of constitutional identity preservation.

Integrating Judicial Review and Public Participation: A Normative–Comparative Framework

The preceding analysis demonstrates that neither judicial review nor public participation, when operating in isolation, is sufficient to safeguard constitutional identity in the context of constitutional amendments. Judicial review provides a crucial mechanism for enforcing substantive constitutional limits, yet its reactive and court-centered nature constrains its democratic reach. Public participation, by contrast, enhances democratic legitimacy but lacks institutional authority to invalidate constitutional changes. These structural asymmetries underscore the need for an integrated constitutional framework that aligns normative constraint with democratic deliberation.

An integrative approach reconceptualizes constitutional identity protection as a multi-stage process encompassing amendment procedures, participatory deliberation, and judicial oversight. Within this framework, public participation functions as an ex

²⁷ Novendri Nggilu et al., “Constitutional Amendment in the E-Democracy Era: Experience Constitutional ‘Crowdsourcing’ from Iceland and Challenges for Indonesia,” *Jurnal Suara Hukum* 7, no. 2 (2025): 298–327.

ante normative filter, shaping the constitutional discourse before amendments are formally adopted. Judicial review operates as an *ex post* safeguard, intervening when participatory and political processes fail to prevent constitutional degradation.²⁸ This division of institutional labor preserves the distinct functions of courts and citizens while preventing the overconcentration of constitutional authority in a single institutional actor.

From a comparative perspective, constitutional systems that embed participatory mechanisms within amendment procedures exhibit greater normative resilience. Jurisdictions that combine structured public deliberation with strong judicial oversight demonstrate a reduced susceptibility to amendment abuse, as constitutional change is subjected to both democratic scrutiny and normative adjudication. The comparative insight is not that a single institutional model is universally applicable, but that constitutional identity is best protected through layered safeguards responsive to different stages of constitutional change.

This integrated framework also addresses the legitimacy concerns associated with judicial review of constitutional amendments. By grounding constitutional identity in participatory processes, courts can anchor their review in publicly articulated constitutional values rather than abstract doctrinal constructions. Judicial intervention thus becomes a reinforcement of democratic constitutional commitments rather than a counter-majoritarian override. In this sense, integration mitigates the democratic tension inherent in judicial enforcement of substantive constitutional limits.

At the same time, the framework imposes normative discipline on participatory constitutionalism. Public participation is not treated as an unmediated expression of popular will but as a deliberative process structured by constitutional principles. This ensures that participatory outcomes are evaluated not only by their democratic inclusiveness but also by their compatibility with constitutional identity. Integration, therefore, prevents both judicial supremacy and populist constitutionalism from undermining constitutional coherence.

Accordingly, integrating judicial review and public participation offers a normative-comparative model capable of reconciling constitutional flexibility with constitutional continuity. By aligning democratic deliberation with institutional enforcement, this framework contributes to a more balanced constitutional architecture, particularly in contexts where constitutional amendments pose significant risks to democratic stability. This integrative perspective provides both theoretical advancement and practical guidance for constitutional systems seeking to preserve constitutional identity without sacrificing democratic legitimacy.

²⁸ Tímea Drinóczi, “Constitutional Identity in Europe: The Identity of the Constitution. A Regional Approach,” *German Law Journal* 21, no. 2 (2020): 105–30, <https://doi.org/10.1017/glj.2020.1>.

Conclusion

This study demonstrates that the preservation of constitutional identity cannot be adequately secured through constitutional amendment procedures or judicial review alone. While judicial review of constitutional amendments provides an essential mechanism for enforcing substantive constitutional limits, its reactive nature and legitimacy constraints render it insufficient as a singular safeguard. Conversely, public participation, although vital for democratic legitimacy, lacks the institutional authority to prevent constitutional erosion when participatory processes are poorly designed or politically instrumentalized. Accordingly, the central finding of this research is that constitutional identity is best understood as a dynamic normative construct that requires both institutional enforcement and democratic deliberation to remain resilient in the face of constitutional change.

In response to the research objective of identifying a more coherent framework for protecting constitutional identity, this article advances an integrative model that aligns public participation as an *ex ante* democratic safeguard with judicial review as an *ex post* normative control. This framework repositions constitutional identity protection as a shared constitutional responsibility, distributed across courts, political institutions, and the public. By reconciling constitutional flexibility with substantive continuity, the proposed model contributes theoretically to global debates on unconstitutional constitutional amendments and participatory constitutionalism, while offering a normative reference for constitutional systems—particularly emerging democracies—seeking to strengthen democratic legitimacy without compromising constitutional integrity.

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