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**Potere costituente e limiti alla revisione
costituzionale visti dalla Spagna**

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POTERE COSTITUENTE E LIMITI ALLA REVISIONE COSTITUZIONALE VISTI DALLA SPAGNA

di Francisco Balaguer Callejón

This paper begins by framing the issue of constituent power and the limits to the constitutional revision in Spain in the context of the plurality of constitutional spaces in a State decentralized and integrated into the European Union. Although the Spanish Constitution of 1978 contains no material limits to constitutional amendments through eternity clauses, the fact is that there are limitations, not only for constitutional reform but also for the constituent power, derived from the European integration process (notwithstanding that such limitations may cease to exist in the case of voluntary withdrawal from the European Union under article 50 TEU).

The normative Constitution produces the rupture of popular sovereignty as unity of power of the state. Both the subjective and objective components of popular sovereignty are put into question through the idea of a pluralist democracy and a normative Constitution. The subjective component, the idea of a people as a homogeneous group with identity of interests and values is incompatible with pluralistic democracy. The objective component, the idea of unlimited political power, is incompatible with normativity of Constitution. In the nation-state, therefore, the

normative Constitution leads to limit the idea of popular sovereignty exclusively to the exercise of the constituent power.

In the State integrated into the European Union even this aspect of popular sovereignty weakens, so you cannot even speak of sovereignty as unity of power exercised through the constituent power. In effect, the supranational integration generates a fragmentation of the *pouvoir constituant* in the various constitutional spaces that is exercisable only in accordance with the competencies that correspond to each of them. A constituent power that is not unlimited, subject as it is to the conditions resulting from the process of supranational integration.

In the context of the European integration process, a fragmentation of constitutional matters occurs and therefore, these matters not only lay in national constitutions. This means that constitutional reform cannot be analysed solely from a national viewpoint. The fragmentation of constitutional matters is also the fragmentation of constituent power and implies specific limits on reform.

In conclusion, Spain has no internal limits to constitutional reforms but as in the other Member States there are external limits derived to the European integration process. At the same time, there is an amendment power exercised for the European institutions that reflects in the internal constitutional order.

Finally, this work also refers to the political limits that can be derived from the existence of the Autonomous State as factual constraint of constitutional reforms as well as the latest developments of the independence tensions in Catalonia from the perspective of constitutional reform and constituent power.