

**«The effect of the Spanish
Constitution on Spanish
Private Law»**

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**The effect of the Spanish
Constitution on Spanish Private Law**

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- Three examples of the effect of the Constitution in private law institutions:
 - Privacy, honor and own image
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**Some remarks on the legal status of the
Constitution in Spain**

- The *Constitución Española* (CE) as the highest law of the land.
- Constitutional adjudication: The Constitutional Court and the judiciary
- Human Rights adjudication:
 - Europeanization of HR protection
 - Dritwirkung of HR

Article 9.1 CE

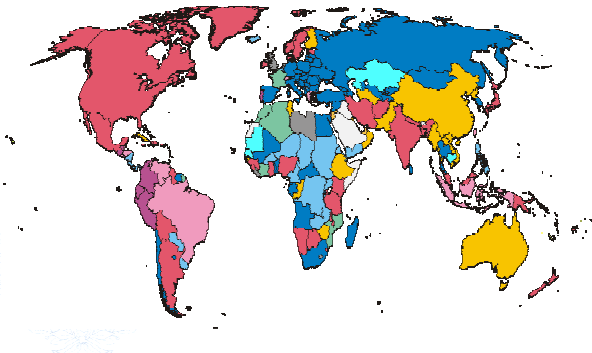
«Citizens and public authorities are bound by the Constitution and all other legal provisions».



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Models of Constitutional Adjudication

American model European model Constitutional Council



Article 10.2 CE

«Provisions relating to the fundamental rights and liberties recognized by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain»



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Privacy, honor and own image

- The constitutionalization of the rights to honor, to privacy and to own image in the CE
- The Constitutional relevance of free speech
- The Constitutional boundaries of criminal law and the preference of civil liability (Organic Law 1/1992)

Article 18.1 CE

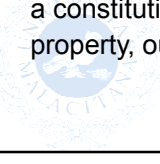
«The right to honor, to personal and family privacy and to the own image is guaranteed»



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Private Property

- The constitutionalization of private property
- The «social function» of the right to private property
- The «downgrading» of private property as a constitutional right: the right to private property, outside the *amparo* appeal



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Article 33 CE

«1. The right to private property and inheritance is recognised.
2. The social function of these rights shall determine the limits of their content in accordance with the law.
3. No one may be deprived of his or her property and rights, except on justified grounds of public utility or social interest and with a proper compensation in accordance with the law»

Marriage

- The constitutionalization of the right to marriage
- Constitutional evolution (II): equality of the spouses and beyond
- Constitutional evolution (I): the right to divorce (Law 3/1981)
- Constitutional evolution (III): same sex marriage (Law 13/2005 and STC 198/2012)

Article 32 CE

«1. Man and woman have the right to marry with full legal equality.
2. The law shall make provision for the forms of marriage, the age and capacity for concluding it, the rights and duties of the spouses, the grounds for separation and dissolution, and their effects.»

Conclusion

The Constitution as the new *ius commune*
in Spain, regardless frontiers between
Public and Private Law



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