

**THE ACCOMMODATION OF INTERESTS IN FREE SPEECH
AND REPUTATION IN THE CONSTITUTIONAL DOCTRINE
OF THE UNITED STATES AND SPAIN**

A THESIS

SUBMITTED TO THE
STANFORD PROGRAM IN INTERNATIONAL LEGAL STUDIES
AT THE STANFORD LAW SCHOOL
STANFORD UNIVERSITY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF
JURIDICAL SCIENCE MASTER

By

RODRIGO J. BUSTOS SIERRA

May 1996

ABSTRACT

This thesis deals with the United States Supreme Court's and the Spanish Constitutional Court's efforts to strike an adequate balance between the interests in Free and protection of Reputation.

My examination of both approaches is carried out from a comparative perspective. The main argument of this paper is that the accommodation processes yields different outcomes in the two countries. Reputation is much more protected in Spain than in the United States. My research demonstrates that the greater protection of reputation in Spain is due to historical, political, and especially, cultural factors.

My research starts with an analysis of antidefamation laws in both countries. The second chapter deals with the model of free speech in the U.S. jurisdiction followed by a description of the Spanish Constitution, free speech provisions and the Spanish Constitutional Court. Chapter IV examines the process of accommodation pursued in both countries and the jurisprudence issued by both Courts. Chapter V is devoted to the analysis of cultural factors, especially. Finally, I will present my conclusions.

TABLE OF CONTENTS

INTRODUCTION.

I. ANTIDEFAMATION LAWS

- A. Origins in the Common Law.
- B. Origins in Spain.

II. FREEDOM OF SPEECH AND FREEDOM OF THE PRESS IN THE UNITED STATES

- I. The First Amendment. Rationales
 - A. Free Speech and Human Dignity.
 - B. Free Speech and the Marketplace of Ideas.
 - C. Free Speech and Democratic Self-Government.

III. THE SPANISH CONSTITUTION

- i. Freedom of expression and Freedom of the Press.
- ii. Implementation of these Rights.
- iii. The Constitutional Court.

IV. THE PROCESS OF ACCOMMODATION OF INTERESTS IN FREE SPEECH AND PROTECTION OF REPUTATION

- I. American Jurisprudence.
 - A. New York Times v. Sullivan
 - B. Sullivan Progeny

II. Spanish Jurisprudence.

III. Parallels and Differences between both Doctrines.

V. CULTURAL AND POLITICAL CONSIDERATIONS

i. The meaning of reputation in both countries.

ii. Reputation in the United States.

A. Reputation as Property.

B. Reputation as Honor.

C. Reputation as Dignity.

iii. Historical notions of Honor in Spain.

CONCLUSIONS

The author:

LL.B, University Complutense of Madrid (1982); LL.M, Institute of European Studies, Free University of Brussels (1985). Member of the Bar Association of Madrid. Fellow of the Stanford Program in International Legal Studies and J.S.M candidate, 1995-96, Stanford Law School. I am deeply grateful to Sophie Pirie and Lawrence Friedman for their comments and support. I would also like to thank Jami Floyd and Marc Franklin for their suggestions.