
Flexibility in Spanish Company Law, 1885-1936¹

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Introduction

Until the 1950s, Spain enjoyed relatively little of the sustained, often rapid economic growth that had become typical of most of Western Europe by the mid-19th century. Economic historians have offered several explanations for this stagnation, many of them centered on a set of economic institutions that inhibited growth.² This paper examines a specific version of that institutional view.³ We study the relationship between company law and the organization of multi-owner firms, first by tracing the evolution of organizational law in Spain from 1886 to 1936, and then by using two different empirical sources to study the way the different organizational forms were used by

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2. Malo de Molina, Martín-Aceña (2011); Bernecker (2009); Valdaliso (2002); Tortella, García Ruiz, Ortiz Villajos, Quiroga (2008), among others.

3. De la Torre and García-Zúñiga (2013) study the specific statutory scheme of *foral* vs. Spanish law.

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Spanish business. The period we study also coincides with the development of a new enterprise form in Germany, Britain, and other European countries. This form, which combined aspects of the corporate and partnership forms, came to dominate new firm registrations wherever it was introduced. Guinnane *et al* adopt the term Private Limited-Liability Company (hereafter PLLC) as a general rubric for enterprise forms such as the British Private Limited Company (hereafter PLC), the German *Gesellschaft mit beschränkter Haftung* (hereafter GmbH) and the French *Société à Responsabilité Limitée* (hereafter SARL).⁴ The PLLC appeared in Spain as *Sociedad de Responsabilidad Limitada* (hereafter SRL). While the specific rules for these forms differs from country to country, all have some attributes of corporations and some attributes of partnerships, and thus represent an intermediate form. The Spanish SRL was created in a different way, as we demonstrate, but bears important similarities to the other PLLC forms. We end our study in 1936 because of the Spanish Civil War.

Recent research in the law and economics literature stresses the importance of flexibility for virtually all areas of economic life: flexibility permits agents to tailor their activities more precisely to particular situations, allowing them to avoid transactions and other costs that come with rigid law. On this dimension, Spanish company law scored very well. We define flexibility in two ways. The first pertains to the freedom to make contracts among the founders and owners of firms. In the United States for example, the law governing corporations in the late 19th century was quite prescriptive. Entrepreneurs setting up new firms with this form had little choice in many key matters. British law, on the other hand, afforded great flexibility to organizers of corporations.⁵ Spanish company law was more like the British, that is, more contractual, but Spanish law was more flexible in a second way: the menu of legal forms was open, unlike the situation in most civil-law countries. “Typicality” is a general idea thought by Spanish legal experts to be necessary for legal certainty.⁶ Applied to company law, typicality implies a fixed and defined set of choices for the legal form of enterprise — that is, the so-called principle of *numerus clausus*. Most civil-law countries relied on *numerus clausus* then and now to limit new firms to one of a small set of forms set out in the code. For example, the French commercial code of 1807 (§19) recognizes three company forms: the ordinary and limited partnerships, and the corporation. Spanish business law, on the other hand, had the opposite principle, that of *numerus apertus*. The Spanish business code of 1885 (§122) recognized the

4. Guinnane *et al* (2007).

5. Harris and Lamoreaux (2010).

6. Spanish scholars treat the notion of typicality as a basic legal principle, and often trace the idea’s influence to the German penal theorist Ernst Beling. See Casado Burdano (2000), p. 1053.

same three forms as the French “as a general rule.” Spanish firms were explicitly free to create any form they wanted, so long as no feature of that form was illegal under some provision in the business code.

The Spanish example poses a serious challenge to the idea of legal development that underlies what is probably the dominant view of the relationship between law and company formation and operation. This civil-law *vs.* common-law distinction lies at the heart of an influential literature. La Porta et al. (hereafter LLSV) pioneered the so-called “law and finance” literature, which argues that countries with a civil-law legal tradition tend to do worse in fostering a climate that leads to investment, and more generally in economic growth.⁷ These authors find that common-law countries enjoy better protection for corporate investors and other features associated with better capital markets. Their argument echoes a long tradition that emphasizes the ability of common-law judges to devise sensible solutions to new problems.⁸ The civil-law reliance on statutory changes involves too much time or is too easily hijacked by special interests to produce necessary outcomes, according to LLSV. The circumstances of the SRL’s birth were exceptional and appear to violate one of the central differences between civil-law and common-law legal systems.

The law and finance approach has generated enormous discussion, much of it focused on the law relevant to large public companies, and little of it focused on long-run historical development. (The latter fact is rather curious, given that LLSV view their argument as grounded in history.) LLSV and their followers rely heavily on coding legal rules on a national basis, and then using those rules as part of a cross-country regression strategy. Things look different when one examines particular countries in more depth. Lamoreaux and Rosenthal show that the common-law can also produce conservatism: if judges are uneasy with a legal innovation introduced by the parliament, the judges can construe it so narrowly as to make the innovation useless as a real reform.⁹ Guinnane *et al* provide an example of this conservatism that accounts for the fact that the United States did not have a PLLC form until well after World War II.¹⁰

Spanish law was more flexible, in both of our senses, than is supposed to be the case in civil-law countries. As noted, corporate law allowed a wide variety of approaches. This flexibility was enhanced by the notarial practice of enabling firms to adopt practices that were, if not clearly illegal, at least dubious.¹¹ The most flagrant cases involve corporations. Spanish corporations

7. La Porta et al. (1997, 1998, 1999, 2008).

8. Priest (1977) and Rubin (1977).

9. Lamoreaux and Rosenthal (2005).

10. See Guinnane *et al* (2007), pp. 715-719.

11. For example, there are cases of limited partnerships where limited partners are listed as managers. This practice violates an organizing principle of the limited partnership. (See *Li-*

did not have to have a minimum capital or number of owners, and the rules concerning the management committee (*Junta de Gobierno* or *Junta de Administración*) were modest. There were also no rules on minimum paid-in capital or reserves, or even stipulations detailing the requirements for reserves until the 1940s.¹² But Spanish corporations pushed further. By the end of the 19th century, we see corporations that entrench a majority shareholder as the firm's *de facto* dictator, and even give the firm a name that alludes to the majority shareholder, which, while not explicitly forbidden, was frowned-upon.¹³ Naming someone as president for life would be allowed in some jurisdictions and not in others; the Spanish code is silent on this practice. Only in 1951 did Spain adopt corporation legislation that sought to regulate corporate behavior.

The SRL's creation is harder to pinpoint, as it was not at first written into any code. The Commercial Register for Spain announced in 1919 that it would approve registration of SRLs.¹⁴ Entry in the Commercial Register is fundamental, as it gives the firm legal existence (§119 of the Spanish Business Code, 1885). Thus from 1919, the SRL was a fact, even if the SRL did not appear in any legislation until 1953. The SRL's creation reflects the second aspect of flexibility, the lack of *numerus clausus*. Spanish firms could create their "own" legal form, and, starting in 1919, many of them did. We suspect, but cannot at this point document, that the Commercial Register's 1919 rules reflect pressure from notaries and their clients, who wanted forms organized as was possible in Germany or the United Kingdom, and were already using the flexibility of Spanish law to do so. We do know that some existed as early as 1916, which suggests that some notaries had convinced local registries to accept firms organized in this way.¹⁵

How did firms use all this flexibility? In this paper we focus on describing the choice of enterprise form and how that changed over time, especially after the SRL's appearance. Ideally, we would prefer a nominative listing of all firms active in a given year or series of years. Unfortunately, no such source exists for the period we study. As a substitute, we focus on the registration of *new* companies as reported by the *Dirección General de los Registros y el Notariado* (General Directorate of Registries and Notaries). Databases drawn

bros de Inscripciones del Registro Mercantil de Murcia, sheet n. 1045). Benito (1904 [1924]), I, pp. 469-470 complained about the acceptance of this practice, noting that it allowed firms to take advantage of a PLLC-like form in a way contrary to Spanish law.

12. Boletín Oficial del Estado (1942a, 1942b, 1947, 1951).

13. The corporation "Cros, SA", founded by Amadeo Cros, illustrates the practice. Some authorities—for instance, Benito (1904 [1924]), I, pp. 470-471—considered a corporation named after an owner an abuse.

14. The regulation of the commerce register was published in: *Gaceta de Madrid* (1919a), pp. 1018-1025; (1919b), pp. 1038-1043; (1919c), pp. 1059-1070.

15. Pelegrí (1918), p. 339 notes that in 1916, the commercial registry of Barcelona accepted three firms organized as SRLs, including one that had no capital.

from this source allow us to document both the choice of legal form and how it changed over the period 1886-1936.¹⁶ For a more limited period, we have firm-level data that allows us to examine the characteristics of firms adopting different forms. Scholars have previously used this source to study company investment.¹⁷ Tafunell's revisions to the original statistics include both national and provincial estimates, and attempt to correct some apparent inconsistencies in the original.¹⁸

Our discussion is divided into three parts. We first explain how the menu of permitted forms affects the decisions entrepreneurs make in setting up multi-owner firms. We then turn to a brief account of Spanish commercial law, focusing on the treatment of companies and enterprise form. Finally, we use two empirical sources to study the way Spanish firms used these choices. This paper is part of a larger project on the development of company law in Spain during the 19th and 20th centuries. Here we focus on legal rules and the basic patterns of choice of enterprise form. In other work in progress, we use econometric modeling approaches to dig into the determinants of legal form, using sources related to those exploited in the present paper.

Why enterprise form matters

The legal form of enterprise frames the way investors in multi-owner firms combine their assets and efforts to create new companies and new investments, thus promoting economic growth. Firms face two central contracting issues: the problem of untimely dissolution and the problem of minority oppression.¹⁹ Untimely dissolution refers to a situation where a firm has sunk investments that may not yield their potential if the firm dissolves before originally contemplated. Because a partnership ordinarily ended with the death of any owner, simple mortality created problems for those seeking to use the partnership form for investments of this type. More importantly, capital invested in a partnership was not locked in; an investor could threaten to withdraw and thus provoke the firm's end as a way to secure a greater share of the

16. We describe the source in detail in the Appendix.

17. Jiménez Araya's (1974) seminal paper studies capital formation and investment fluctuations. The same source has been used to study other issues, including business cycles and business expectations. Martínez, Reig y Soler (1977), on the business cycle in the region of Valencia; Vázquez (1980), on Asturias; and German (1980), on Aragon, among others. More recently Tafunell's (2005) database has been used to create entrepreneurship indices (Valdalisio (2005), García Ruiz (2008), García Ruiz and Pérez Amaral (2011) and De la Torre and García-Zúñiga (2013), among others.

18. Tafunell (2005), pp.710 ff.

19. Throughout, we discuss multi-owner firms only, since our focus is on contracting problems. We acknowledge that multi-owner firms were a minority of all businesses.

firm's profits, then the enterprise might be unworkable from the start. Minority oppression arises when one group of investors cannot prevent others from engaging in actions with private benefits that at the same time reduce the value of the shares owned by the minority. The oppressor can be other investors, the firm's management, or both.

Partnerships, because they are essentially contracts between two or more people, are always vulnerable to untimely dissolution. On the other hand, they face relatively little minority oppression, because partners are free to contract on key matters such as the right to make decisions. The option of the limited partnership allows some investors to limit their liability in return from surrendering the right to participate in the firm's management. Corporations represent the opposite extreme. Investments in corporations are locked-in; owners can only withdraw by selling their shares to someone else. On the other hand, corporations are especially vulnerable to minority oppression. Their concentrated management allows those running the firm to abuse their insider status against all owners, and, depending on the voting rules associated with shares, majority owners can shape firm policy to suit private ends.

The introduction of PLLC forms added considerable flexibility to the options facing entrepreneurs who wished to form a multi-owner firm. Until the late 19th century, in countries other than Spain, firms had to select from one or the other extreme of this tradeoff. Only with the introduction of more flexible limited-liability forms could all investors enjoy limited liability and also contract flexibly to achieve the structure that most suited their firm. The German GmbH represents the first clear case of this intermediate form. Its investors enjoyed limited liability and transferable equity, but the articles of association could shape governance in ways that a corporation could not. The firm could also limit share transfers to protect current owners from takeovers by investors hostile to their interests. The Spanish situation was different even before the SRL's advent. Just how different depends in part on the comparator; in France, for example, the corporate form was relatively flexible, while Germany's corporation was unusually rigid and expensive after the reform of 1884. Most U.S. states also insisted on specific governance practices.²⁰ Prior to 1919, Spanish firms chose between corporations and partnerships (ordinary and limited). And, just as elsewhere, the Spanish version of the PLLC, SRL, allowed firms to manage the trade-off between untimely dissolution and minority oppression more precisely. On the other hand, because Spanish corporations enjoyed a great deal of flexibility, the SRL mattered (as we show empirically) and represented a less dramatic change in the trade-off than was the case with the introduction of the German GmbH.

20. See Guinnane *et al* (2007), pp. 698-699 and pp. 714-723.

Lack of flexibility implies that some firms could not tailor their organization to suit the needs of their technology, potential investors, or both. Two examples convey the flavor of the problems. Suppose a small firm operates a technology that implies considerable sunk cost. As a partnership, this firm always faces the problem of untimely dissolution and the sunk cost may not be made, at least to the degree optimal. The inability to lock-in capital on a small scale (in the absence of the SRL or something like it) implies that certain investments will not be made, to the detriment of economic development overall. Now consider the investor's perspective. Prior to the SRL, an investor who wanted limited liability had to invest either in a corporation (and face oppression by the majority) or as a limited partner (where by law the investor could have no voice in management issues). The PLLC form allows the investor to demand contractual arrangements that suit their situation and concerns, and thus makes it easier for firms to amass such investments.²¹

The legal framework

Spain's first Commercial Code (1829) displays strong French influence, although it also followed the tradition of Spanish commercial law as contained in the Ordinance of Bilbao (1737) and the Castilian Acts.²² The Spanish code differed from its French model in several ways. The 1829 code's provisions for corporations were especially advanced: it embodied the principle of general incorporation (§ 293, § 294). Any group of investors who met the criteria enumerated in the code could form a corporation, subject only to the principle of publicity. Several U.S. states had adopted general incorporation prior to 1829, but elsewhere, every corporation required a specific and idiosyncratic grant from the state. Britain, the industrial pioneer, did not adopt general incorporation until 1844, and general incorporation did not come to France and most Germany states until the late 1860s.²³ The 1829 code did lead to the creation of some corporations, but the historical circumstances at the time were not favorable to this form's growth. The South American wars of independence led to repatriation of capital and might have been one stimulus to incorporation, but Spain remained locked in dynastic and civil war until

21. Hansmann, Kraakmann and Squier (2007) argue that limited liability requires accounting innovations and monitoring technology that permit creditors to verify a firm's assets.

22. Prior to the modern codes that begin in 1829, there was an attempt to compile all Spanish law, referred to as the *Novísima Recopilación* (1805-1829 [1975]). A substantial part of those acts come from the Kingdom of Castile, before the unification of Spain as a modern country. See *Nuevas Ordenanzas de Bilbao*, approved by the Castilian Council in December 2, 1737. Martínez-Rodríguez (2013).

23. For an overview of the development of company law in Britain, France, Germany and the United States, see Guinnane *et al* (2007).

1840, and general incorporation was repealed in 1847, largely because of a series of scandals involving the Madrid stock market.²⁴ Spain also lacked important complementary economic infrastructure (such as banks).²⁵ During the following decade, several laws were passed allowing the creation of corporations in specific sectors, including banking, mining and railways.²⁶

The 1866 international economic crisis led to another collapse in the Spanish stock market. The real economy also suffered, with a halt to railway construction and a contraction of Catalonia's textile industry. The economic crisis provoked a military uprising that ended the monarchy and ushered in the first Spanish republic (1868). The new government tried to promote economic and social modernization. A new law once again granted general incorporation.²⁷ The government also started drafting a new business law, which the restored monarchy eventually approved as the 1885 Commercial Code. The 1885 code made few changes to the 1829 code's treatment of business firms, but it introduced one modification that proved critical to later developments. The 1829 code held to the principle of *numerus clausus* in the menu of enterprise forms.²⁸ The 1885 code (§117), on the other hand, proclaims the principle of *numerus apertus*. The 1885 code also moved strongly in the direction of the "modern" corporation, with minimal prescriptions on the articles of association. This development promoted the creation of corporations that were ordinary business firms; previously, an important justification for a firm taking the corporate form was that its mission had a public-service aspect. Not until 1951 did Spanish law provide more specific requirements for corporations.²⁹

The SRL

Thus, by 1885, Spanish firms clearly enjoyed both aspects of flexibility. The commercial code's *numerus apertus* feature was central to the SRL's creation. The Spanish version of the PLLC was not in any sense the first. Germany adopted the GmbH in 1892, and the British PLC dates from 1907. Similar forms had been discussed and even introduced even earlier elsewhere

24. Gómez de la Serna (1878), pp. 29 ff.

25. Bernal (2004), p. 77, shows, based on Madoz (1850)'s *Diccionario Geográfico Estadístico Histórico* as well as the *Anuarios Estadísticos de España*, that the 1829 code led to the creation of about forty corporations.

26. Tortella (1968), pp. 69-84; Prados de la Escosura (1988); Erro (1995); García López (1994).

27. Gaceta de Madrid (1869).

28. On *numerus clausus*, see Hansmann and Kraakman (2002), pp.373-420.

29. The 1885 Spanish code also differed from developments elsewhere in that it kept corporations in the business code; it did not "decode", as took place in France or Germany.

and the idea of a PLLC-like form was debated in Spain during the years after 1885.³⁰

Spaniards advocating a PLLC after 1885 stressed the importance of flexibility in organizing multi-owner firms. The SRL's backers thought the 1885 code was sufficiently flexible that adding a new form would work well, but they wanted explicit definition of the new form to create certainty about how it would be used. Opponents of a new form thought the 1885 code offered the corporation itself enough flexibility that it could be used as written for small companies and family enterprises, so no new form was needed.³¹ One important issue concerned the possible confusion of the SRL with the partnership. This possibility was acute, since all expected that most SRLs would be small firms. Reflecting and guiding this debate were two well worked-out proposals offered in the second decade of the 20th century.³²

In 1919, the Ministry of Justice issued a regulation for all commercial registries that short-circuited this discussion. The regulation's §108 stated that the SRL was distinct from the standard legal forms described in the Commercial Code's §122, so commercial registries were instructed to enroll firms organized as SRLs. Below we document an almost immediate reaction to the new possibility.³³ In 1926, Spain established a commission charged with drafting a new commercial code. The commission discussed, among other issues, specific rules about SRLs such as minimum capital, voting rules, etc.³⁴ As the 1926 project never came to fruition, the rules governing the creation of SRLs remained those of the 1885 code's default rules on partnerships until 1953, when Spain passed its first legislation governing its PLLC. In issuing regulations in 1919, the Ministry did not anticipate that Spain would wait so long to adopt formal law governing the SRL.

Table 1 summarizes the legal forms of enterprise available to Spanish entrepreneurs in our period. The comparator countries, France, Germany, the United Kingdom and the United States, constituted four of the largest and most industrial economies of the time. The project from which this table is adapted stresses that while France and Germany were civil-law countries, and the United Kingdom and the United States were common-law countries, neither "within" nor "between" comparisons provide much comfort for the LLSV stress on civil *vs.* common law in driving the legal foundations of economic life. The law of enterprise form differed considerably between France and Germany on the one hand, and the United Kingdom and the United States on the other. France and the United Kingdom had relatively flexible corpo-

30. *Diario de las Sesiones de las Cortes* (24.01.1883); Prieto (1968), pp. 215-245.

31. Ruiz (1919) provides a summary of the positions for and against.

32. Roig i Bergadá (1923 [1930]).

33. *Gaceta de Madrid* (1919a), p. 1018.

34. Lasso (1999), p. 399 and ff.

TABLE 1 • *The Menu of Organizational Choices: Industrial Countries vs. Spain*

Form	Definition of Form	Availability - Western Countries	Availability - Spain
Ordinary partnership	Two or more partners, all unlimitedly liable	France: yes Germany: yes UK: yes US: yes	Yes
Limited partnership	One or more general partners with unlimited liability, and one or more special partners who cannot participate in management but who have limited liability	France: yes Germany: yes UK: only after 1907 US: yes, but in an unattractive form	Yes
Limited partnership with tradable shares	Same as limited partnership, except special partners' shares can be bought and sold on the market	France: yes Germany: yes UK: no US: no	Yes, but reference in code is indirect, and it was not widely used
Corporation	All members have limited liability and their shares are tradable	Required special permission until: France: 1867 Germany: 1860s–1870, varied by state UK: 1844 without limited liability and 1855–56 with limited liability US: mostly middle third of nineteenth century, varied by state	General incorporation from 1829 Code to 1847. General incorporation re-introduced in 1869 and affirmed the 1885 Code
Private limited liability company	All members have limited liability but their shares are not tradable	France: 1925 Germany: 1892 UK: 1907 US: 1870s–1880s for a few states, but unattractive; laws in 1950s–1970s allowed close corporations to mimic; 1980s–1990s	Legally possible after Business Code of 1885; specific regulations for registration introduced in 1919

Source: Adapted from Guinnane *et al* (2007), p. 59.

ration law, while Germany and the United States placed considerable structure on the corporation. Adding Spain to this picture further undermines the image of how civil-law countries differed from common-law countries. Spain seemed not to enforce some of the rules it did have about enterprises. More specifically, Spain had general incorporation long before most other countries, and its corporations were flexible in comparison to at least one common-law country, the United States, and the SRL's creation does not fit the image of inflexible law that LLSV stress. The SRL's creation illustrates an approach to new law that students of the common-law have long stressed as the supposed unique advantage of that legal system.³⁵

Choice of enterprise form: evidence from two empirical sources

How did Spanish firms use all this flexibility? To answer this question we rely on two distinct datasets that allow us to study the choice of enterprise form. As is often the case with historical data, our sources do not provide precisely what we want, but together the two sources yield a remarkable picture. The Appendix describes these sources in detail; here we provide a brief overview. Both datasets are based on the registration of new firms with the Commercial Registry. The first source consists of the number of firms organized under each form, along with the total capital in these firms, for the period 1886-1936. This aggregate source, which we call the *Anuarios*, is available annually at the province level, and provides a rare complete picture of how firms were organized.³⁶ The second source, which we call *Asociación*, has firm-level information on legal form, total invested capital, and other information for every firm registered in Spain in the years 1925-1927. This firm-level detail is unfortunately available in this way only for these three years, but since the source pertains to a period after the SRL's introduction, it casts considerable light on firm choices.

Both databases share limitations because of the underlying source. All information about a firm pertains to the day it was registered; attributes such as capital stock or number of owners could and probably did, in some cases, change over the firm's life. We suspect that our capital-stock figures for corporations are more questionable than for other firms for this reason. In addition, our sources do not tell us anything about a firm's subsequent survival. Some firms apparently never really operated, and others probably failed fairly soon after their registration. (See the Appendix for more on this issue.) For both partnerships and corporations, not all of the stated capital was paid-in

35. See Table 1 in Guinnane *et al* (2007), p.59.

36. Further discussion on this source has already been noted in footnotes 17 to 19.

at the time the firm registered, although this practice was much more common with corporations.

Figure 1 uses the *Anuarios* to report the distribution of firm registrations, by legal form, over the period available (1886-1936) for Spain as a whole. For the late 19th century, the ordinary partnership accounted for most new firms, with the limited partnership accounting for 15-20 per cent of new firms in each year.³⁷ Some 5-10 per cent of new firms organized as corporations. Starting in 1898, we see an increase in the proportion of new firms using the corporate form, a change that probably reflects repatriation of capital after the loss of Cuba, Puerto Rico and the Philippines in 1898.³⁸ The SRL's appearance in 1920 did not arrest the growing proportion of firms organized as corporations, but led to immediate, dramatic reductions in the use of both the ordinary and the limited partnerships. The SRL was a closer substitute for the partnership forms than for the corporation. Entrepreneurs organizing small and medium-sized firms welcomed the chance to adopt limited-liability and locked-in capital without taking on all the requirements of the corporate form. By 1926, limited partnerships had become rare, and the ordinary partnership accounted for about fifteen per cent of new firms.³⁹

Figure 1 implicitly gives a tiny partnership the same weight as a large corporation. Figure 2 reports the allocation of capital invested across the different enterprise forms. Here we see that corporations usually account for at least sixty per cent of all capital invested in new firms in a given year, and that in the 20th century this proportion was even larger. When introduced, the typical SRL remained small, accounting for much less of total capital than in numbers. Comparing Figures 1 and 2 highlights an important fact to be borne in mind with all these comparisons: most corporations were huge compared to firms organized in other ways.

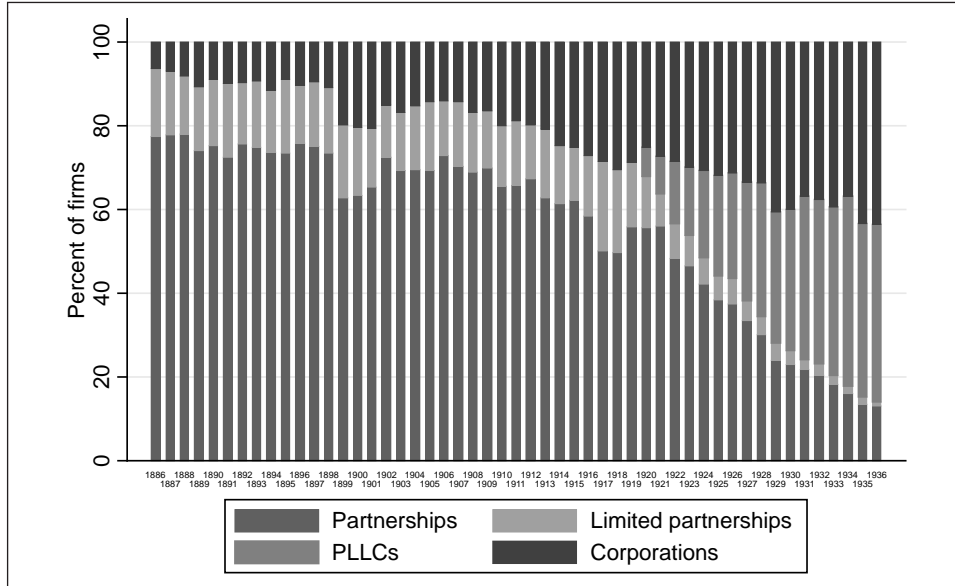
Figure 3 documents the overwhelming weight of Barcelona and Madrid in Spanish commercial life, especially for corporations. The figure reports the total number of corporations registered in Spain, as well as the same figures for Barcelona and Madrid. We include an estimate of GNP per capita to show that incomes are rising throughout this period, and that company formation is not closely correlated with changes in GNP. Between them, Barcelona and Madrid often account for more than half of all new Spanish corporations. This dominance does not extend to other legal forms; it is peculiar to the corporation. Figure 4 shows capital invested in corporations, and not numbers of corporations. While Barcelona and Madrid were home to a disproportion-

37. Martín, Hernández and Garrués (1999) underscore the SCO's persistence in Andalusia.

38. Maluquer (1996), pp. 317-330.

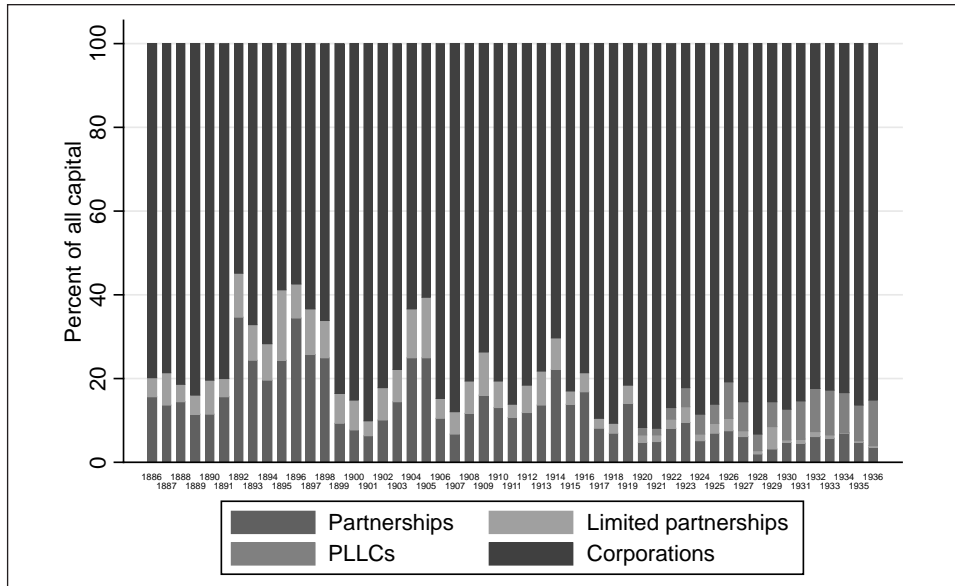
39. Guinnane and Rosenthal (2012) show that in France, the SARL's introduction led to the near-disappearance of the limited partnership.

FIGURE 1 ▪ *Number of firms, by type*

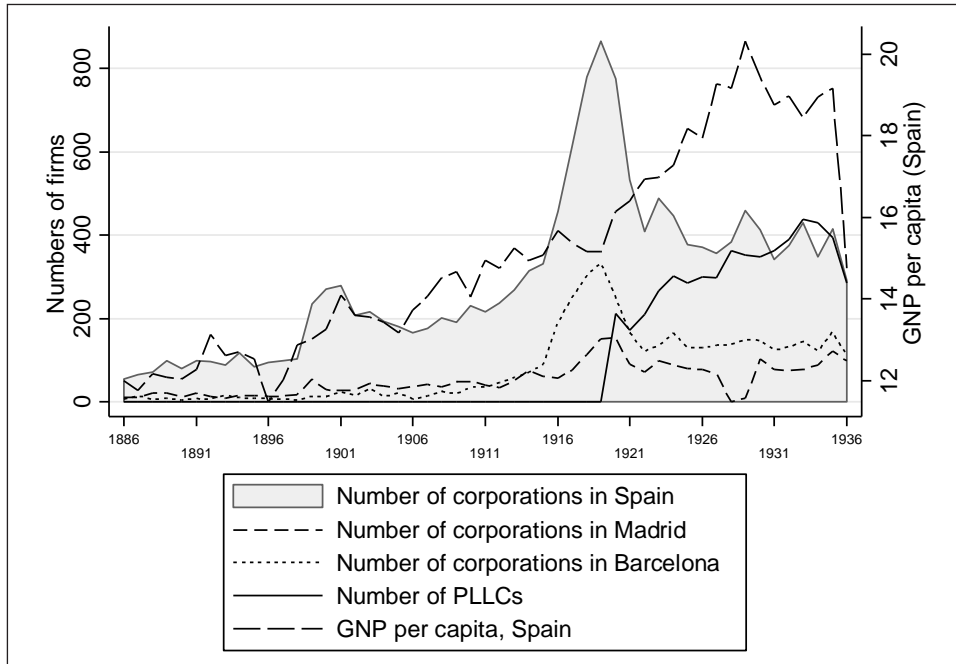


Source: Dirección General de los Registros Civil y del Notariado (1901; 1911; 1909 to 1936)
 Note: PLLC is the SRL

FIGURE 2 ▪ *Distribution of capital by legal form*



Source: Dirección General de los Registros Civil y del Notariado (1901; 1911; 1909 to 1936)
 Note: PLLC is the SRL

FIGURE 3 • Number of new corporations in Barcelona, Madrid, and Spain as a whole

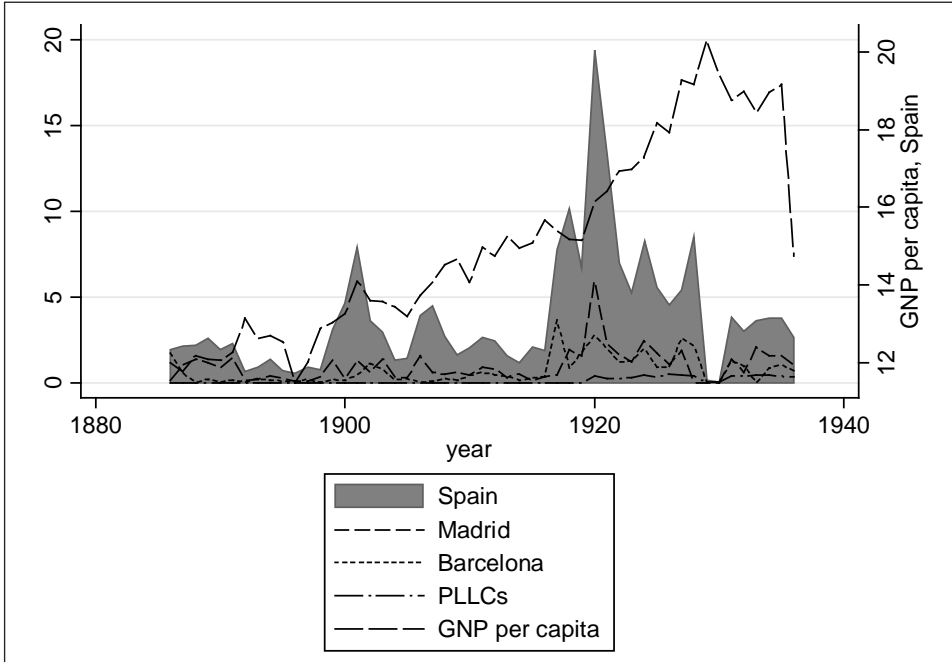
Source: For firms, Dirección General de los Registros Civil y del Notariado (1901; 1911; 1909 to 1936); for GNP per capita, Roses, Martínez-Galarraga, Tirado (2010)

Note: PLLC is the SRL

ate share of all corporations, those firms were not always the largest corporations in Spain. In 1900, for example, the average corporation registered in Barcelona had an authorized capital of 885 thousand pesetas, and in Madrid in that year, 784 thousand pesetas. On the other hand, the three corporations registered in Seville in 1900 had an average capital of more than 4 million pesetas.

The reasons for these two provinces' role for corporations are not hard to find. As the national capital, Madrid was the logical headquarters for firms that had, or aimed to have a national, reach. Barcelona played a similar role for Catalonia, a relatively heavily-industrialized part of Spain. Barcelona and Madrid also account for a large share of all new limited partnerships and SRLs, but nothing like their domination for corporations. This is as we expect: smaller firms worked in a more local environment, and had little reason to be far from customers or owners. In any case, the importance of Barcelona and Madrid require caution in all that follows.

FIGURE 4 • Capital invested in new corporations, Barcelona, Madrid, and Spain as a whole



Source: For firms, Dirección General de los Registros Civil y del Notariado (1901; 1911; 1909 to 1936); for GNP per capita, Roses, Martínez-Galarraga, Tirado (2010). Capital (left-hand vertical axis) is in hundreds of millions of pesetas.

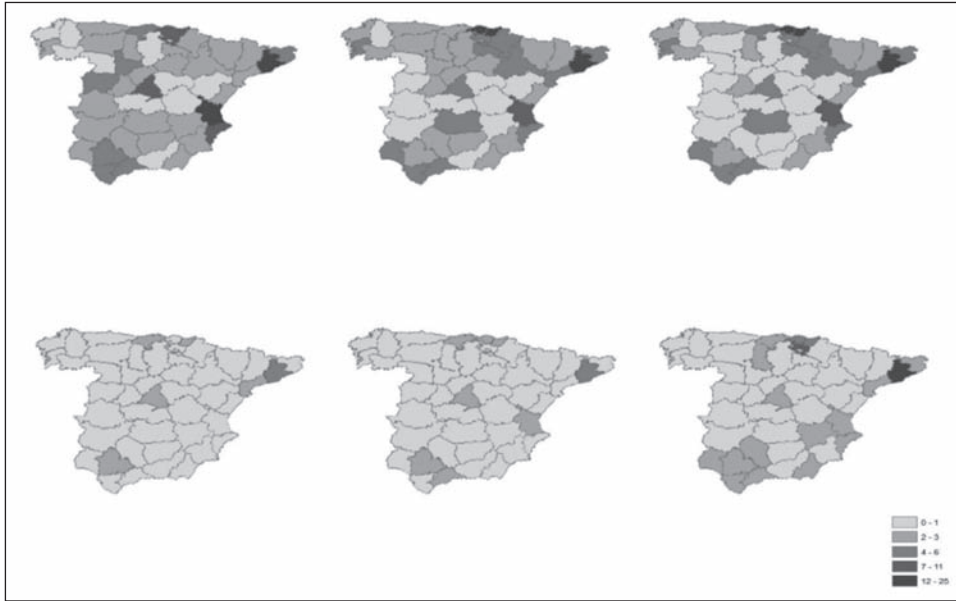
Note: PLLC is the SRL

Regional variation

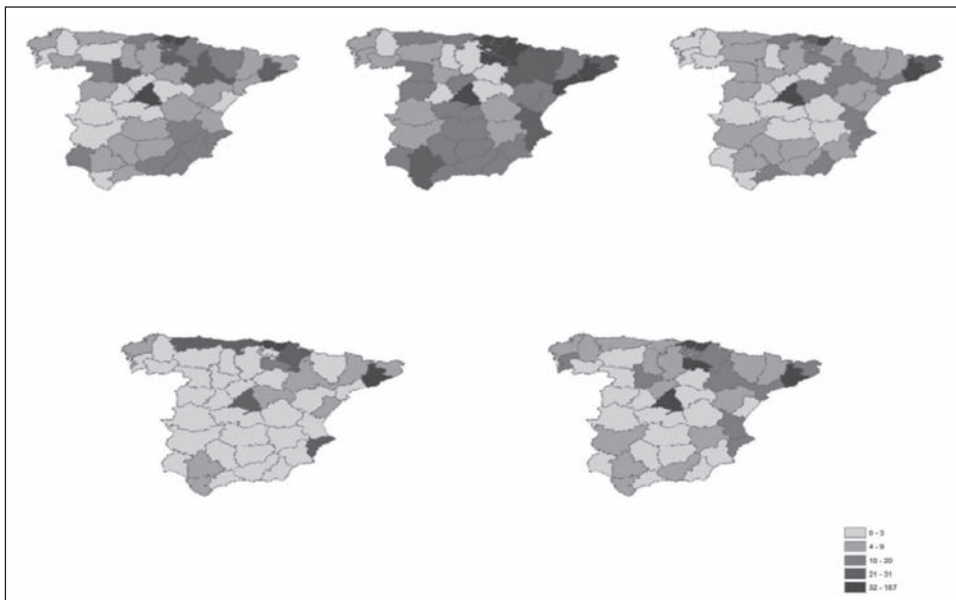
Another way to examine this information takes advantage of the provincial detail in the *Anuarios*. Maps 1-3 present the geographical distribution of new firms across Spain for years corresponding to a population census. The geographical distribution of enterprise forms implies some clues about how and why firms chose a particular enterprise form. An enterprise form found nearly everywhere probably suits the needs of small firms that every local economy needs, does not require complementary institutions such as a stock market, and does not exceed the abilities of local lawyers and notaries. An enterprise form found only in a few places, on the other hand, must be one that is only suited to particular business types, and that may not be possible without a stock market or more advanced notarial expertise.

Maps 1 and 2 show the number of firms registered, per 100 thousand people in a province. (Note the difference in the legends for Maps 1 and 2). Map 3 reports the total capital invested for SRLs and corporations in a given year,

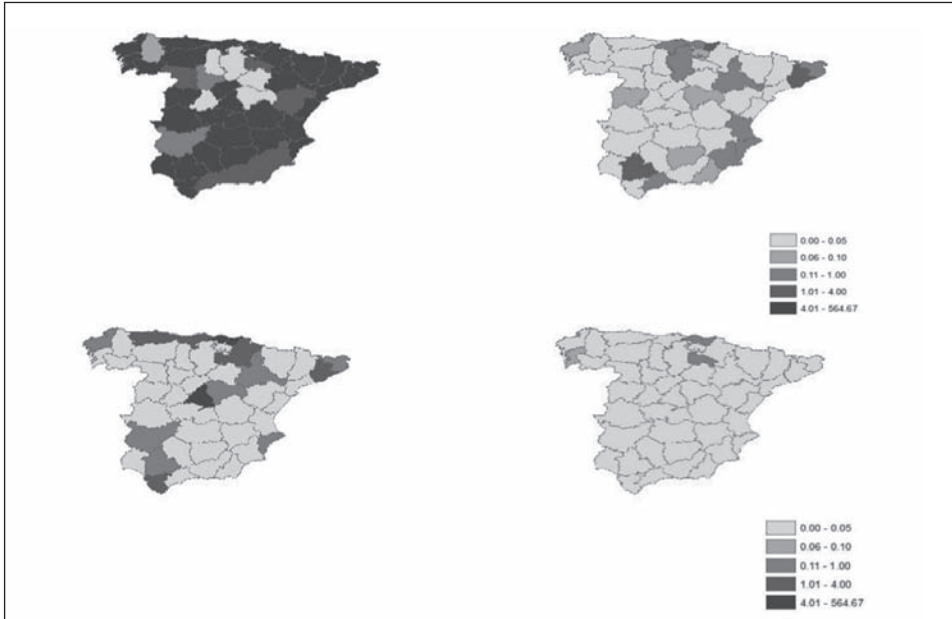
MAP 1 - Number of partnerships and limited partnerships per 100 thousand



MAP 2 - Number of corporations and SRL 100 thousand



MAP 3 • *Total capital invested for SRLs and corporations, per capita*



divided by the province's population. Map 1 shows the contrast between the ordinary and limited partnerships. We already know that at the national level, many more firms preferred the ordinary to the limited partnership. The map shows that the limited partnership's use was heavily concentrated in Barcelona and Madrid, and outside these provinces to centers limited to a few commercial centers. Fewer firms established corporations, but the corporations that did come into being were found in most of Spain's provinces.

The decline in corporations from 1920 to 1930 has a geographical pattern similar to the decrease for ordinary partnerships, reflecting the general reduction in new companies in the last years of that decade. The SRL, on the other hand, was concentrated at first in a few provinces; fifty per cent of Spanish provinces in 1920 saw no new SRLs at all, and fully one-quarter of them were in Barcelona. The SRL found favor in areas with different economies, however; the Basque Country (most notably Vizcaya and Guipúzcoa) registered a total of 49 firms (out of 213) in 1920. By 1930, the SRL had increased its geographic spread to include more provinces, but Barcelona still accounted for a large proportion (50 out of 348 firms). The SRL's rise between 1920 and 1930 does not correspond precisely to the reduction in either limited partnerships or corporations, suggesting that whatever substitution was taking place did not occur strictly along geographic lines. Map 3, finally, shows the reduction in capital invested in new corporations and SRLs in Spain between

TABLE 2 • *Concentration of Spanish firms*

Year	Number of zeros	Numbers of firms		Firms/1000 people		Capital/1000 people	
		PC3	PC10	PC3	PC10	PC3	PC10
Partnership							
1887	4	0,49	0,72	0,28	0,60	0,46	0,78
1910	2	0,43	0,68	0,33	0,56	0,38	0,68
1920	2	0,44	0,70	0,28	0,56	0,46	0,72
1930	9	0,53	0,72	0,30	0,57	0,31	0,68
Limited Partnership							
1887	16	0,56	0,77	0,36	0,68	0,53	0,85
1910	17	0,53	0,78	0,35	0,68	0,54	0,85
1920	11	0,53	0,76	0,34	0,63	0,41	0,73
1930	37	0,66	0,94	0,51	0,94	0,58	0,98
Corporation							
1887	28	0,49	0,78	0,34	0,75	0,76	0,98
1910	9	0,43	0,66	0,32	0,60	0,54	0,90
1920	5	0,58	0,75	0,37	0,63	0,44	0,89
1930	11	0,65	0,83	0,39	0,67	0,56	0,84
SRL							
1920	30	0,55	0,90	0,48	0,88	0,74	0,95
1930	14	0,57	0,83	0,48	0,76	0,57	0,84

Source: For firms, Dirección General de los Registros Civil y del Notariado (1901; 1911; 1909 to 1936); for population, Instituto Nacional de Estadística.

1920 and 1930. The diminution in capital invested in corporations affected nearly the entire country. For SRLs the contraction was similarly broadly based, and by 1930 capital invested in new SRLs was negligible in all but a few provinces.

Table 2 explores an important feature of the geographic variation shown in the maps, which is the degree to which firms of different types were concentrated in a few Spanish provinces. Concentration in this sense can be summarized with several different indices, most notably the Herfindahl-Hirschman index. Here we rely on two simpler indices, which are the proportion of firms (or capital) accounted for by the three (or ten) most important Spanish provinces. We limit ourselves to the four years that correspond to a Spanish population census, so we can compute accurate per-capita measures. Note first the

number of provinces with no firms of a given type. Not surprisingly, nearly all provinces see at least a few ordinary partnerships registered in each year. Also not surprisingly, many provinces did not see any corporations until the corporate boom of the late 19th century. The limited partnership was more uncommon, not appearing in a substantial number of provinces. In 1930, it becomes even rarer, which reflects the way it was driven out by the SRL, as noted earlier. Finally, when the SRL was first introduced, it was limited to a small number of provinces, but by 1930 it had spread to be more common than the limited partnership and almost as common as the ordinary partnership.

We present the two concentration indices in three different ways: the number of firms of a given type; the number of firms per thousand people; and the total registered capital per thousand people. Normalization by population reduces apparent concentration considerably, which just reflects the fact that some Spanish provinces had many more people than others. (In 1910, the most populous province, Barcelona, had 1.14 million inhabitants, while the next two, Valencia and Madrid, each had roughly 880 thousand. Several provinces, on the other hand, had fewer than 250 thousand persons, and Alava had only 97 thousand.) One would expect a province with more people to have more firms. Several patterns stand out in this table. Focusing on the proportions per capita in the ten most important provinces, we see essentially the reverse of the “zeros” discussed above. The SRL was at first highly concentrated, but this declines considerably from 1920 to 1930. Limited partnerships became more concentrated in a few provinces, and the ordinary partnership was the least concentrated. But even the ordinary partnership suggests the importance of a few places: ten provinces, roughly one-fifth of the total, accounted for over half of all ordinary partnerships, whether we normalized by population or not.

Capital invested in firms was even more concentrated, suggesting that the places with relatively many firms also had the larger firms. Even in 1930, after some decline, the ten most important provinces account for 90 percent of all corporate capital. Capital invested in limited partnerships behaves similarly; the largest were concentrated in a few places. The SRL started out highly concentrated by capital, but rapidly declined. Concentration of specific firm types could reflect either features of the local environment or the nature of the local economies, as noted.⁴⁰ On the other hand, the geographic patterns we observe would reflect local economic opportunities and the firm type best suited to their exploitation. For example, in a mining region we would not be surprised to see relatively many corporations, as was the case in Murcia and Asturias.⁴¹

40. Paz-Ares (1997), p. 176.

41. We defer econometric analysis to future work. But we did check for spatial correlation in the distribution of firms of each type (both counts of firms and counts per 100 thousand

Choices at the firm level

Our second database, the *Asociación* source, contains firm-level information on some 3200 firms registered in the years 1925-1927 only.⁴² For each firm, we know the enterprise's name, the province in which it registered, its nominal capital, and the firm's intended duration as stated in its articles of association. The source also reports the line of business the firm intended to pursue, which we have classified using the standard CNAE 2009 scheme.⁴³ Table 3 allocates our firms to these sectors. Table 3 suggests a strong association between sector and legal form (the X^2 test for independence has a p-value of zero), but at the same time shows that with the exception of the limited partnership, each legal form was found in nearly all sectors. Hesitation about the SRL's appropriateness for banking and insurance probably accounts for the small number of firms in these sectors. The corporation was most common in some sectors that required large, sunk investments, such as mining, energy, and water and sanitation. This prevalence probably reflects the problem of making this type of investment under the threat of untimely dissolution. Partnerships were most common among firms that had lower capital requirements, and for which the advantages of a guaranteed lifespan do not offset the problems of minority oppression. The SRL, for its part, had a broad representation across nearly all sectors.

Figure 5 reports the density of stated capital by legal form for all firms and for firms in a selected group of sectors. The figure uses the (natural) log of capital to make the graphs easier to interpret; the difference between "10" and "15" is thus not five pesetas, but 3.2 million pesetas. We focus on the sectors "manufacturing," "trade," and "transportation" in part because they have the largest numbers of firms, but also because Table 3 demonstrated considerable differences in the forms used in these sectors.⁴⁴ The distribution of firm sizes measured in this way is remarkably similar across industrial sectors. Corporations were much larger than other firms. And ordinary partnerships were relatively more numerous among smaller firms. But with the exception of the transportation sector, there is relatively little difference between limited partnerships and SRLs, and the shapes and relative placement of the distributions is similar across sectors. This suggests that the SRL's advantages

people). Neither the Moran I nor the Geary's C statistics suggest significant correlations of this type in any of the four years represented on the maps.

42. The source also includes information on 70 enterprises that were organized under the civil law. We exclude them from our analysis.

43. If a firm lists more than one business activity, we classify it according to the first. CNAE 2009: Clasificación Nacional de Actividades Económicas 2009. <http://www.ine.es> [13.08.2013].

44. The figures report densities of the capital distribution, which can be interpreted as the probability that a firm of a given type has a capital of the given quantity.

TABLE 3 - *Distribution of legal form by sector*

Sector	Percentage of firms in this sector that are:				Number of firms
	Partnership	Limited partnership	Corporation	SRL	
Agriculture	10.5	5.3	50.0	34.2	38
Mining	15.8	4.9	65.8	13.4	82
Factories	37.8	6.6	30.9	24.6	1,230
Energy	20.4	2.1	67.7	9.7	93
Water and sanitation	11.1	3.7	74.1	11.1	27
Building	31.4	2.5	43.0	23.1	121
Trade	42.8	7.5	21.2	28.5	1,081
Transportation	38.0	5.3	36.0	20.7	150
Hotel and restaurants	32.6	2.0	32.6	32.6	49
Media	4.8	6.4	67.7	21.0	62
Finance and insurance	32.7	1.9	61.5	3.85	52
Real estate	22.2	0	63.9	13.9	36
Professional	15.9	1.6	46.0	36.5	63
Rents_Offices_Travel	20.0	0	26.7	53.3	15
Public administration	70.0	0	20.0	10.0	10
Health	9.1	0	54.6	36.4	11
Leisure and arts	20.0	0	40.0	40.0	25
Other	40.0	0	36.7	23.3	30

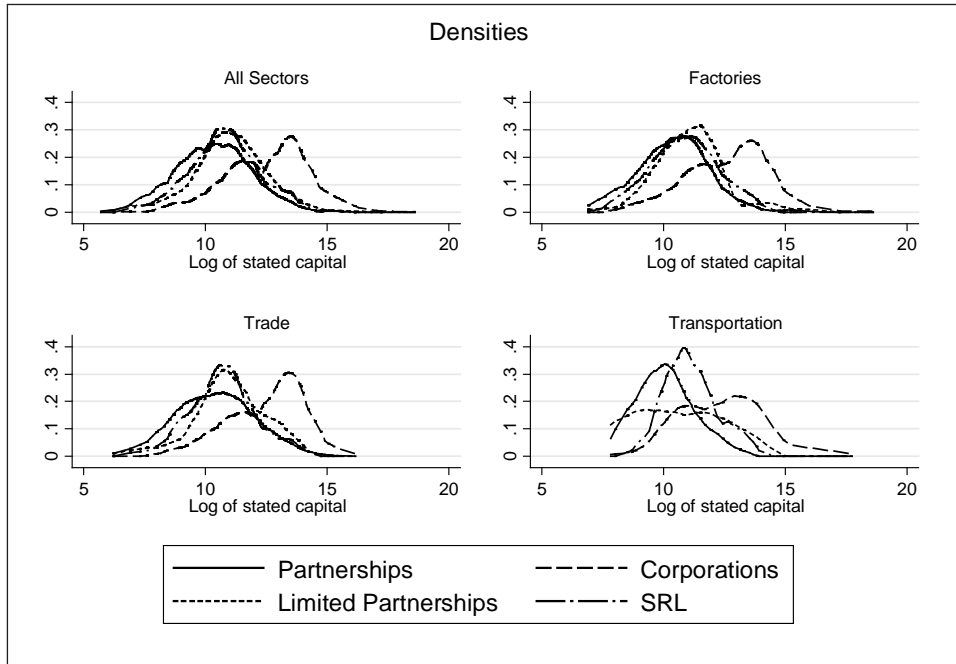
Source: Ministerio de Trabajo, Comercio e Industria (1927; 1928a; 1928b)

Note: Sectors are defined as in the CNAE (2009)

included its ability to offer a corporation's advantages with a more flexible internal structure.

Table 4, finally, addresses the question of time limits on the firm written into the articles of association. The articles could either limit the firm's existence to a specific time period, or leave the issue open. We must stress that partnerships were effectively at-will, so for them, this time limitation was an upper bound and not necessarily binding. Several regularities stand out. First, only about thirty per cent of corporations limited the firm's existence, far less than for the other forms. Corporations that did adopt a time limit tended to make it a long time, with a median of twenty years and one-quarter of firms using a time limit of fifty or more years. The SRL and the partnerships tended to adopt much shorter-lived contracts. One interesting difference is that SRLs were more likely than partnerships to make their contracts open-ended, perhaps a suggestion that firms were using this form for purposes more

FIGURE 5 • Size of Spanish firms by legal form



Source: Ministerio de Trabajo, Comercio e Industria (1927; 1928a; 1928b)

TABLE 4 • Duration limits for firms

Percentage of firms that limit firm's duration by contract:

Legal form	Percentage
Partnership	52
Limited partnership	55
Corporation	31
SRL	45
All firms	43

Contractual duration (in years) for firms that state a limit:

Legal form	Median	25 th percentile	75 th percentile	Number of firms
Partnership	6	5	10	553
Limited partnership	8	5	10	100
Corporation	20	10	50	297
SRL	6	5	10	334

Source: Ministerio de Trabajo, Comercio e Industria (1927; 1928a; 1928b)

nearly like those suited to a corporation. This emphasizes the fact that one reason to adopt an SRL rather than partnership was the SRL's ability to contend with problems of untimely dissolution.

Conclusion

Our account of the development of Spanish company law in the 19th and early 20th century stressed its long tradition of flexibility, as well as the introduction of a completely new form, the SRL, in 1919. Using two related empirical sources, we have documented the choice of legal forms entrepreneurs made within this system. Spanish enterprise law was flexible in two important ways. First, the law itself imposed relatively few restrictions, on the corporation especially, and we can document that some important restrictions were simply ignored. Second, by abandoning the principle of *numerus clausus* for enterprise forms, Spanish law allowed firms to organize however they wished. The most remarkable feature of this aspect of Spanish legal history is the creation, outside of any parliamentary sanction, of the SRL in 1919. Spain's interest in and use of the SRL clearly reflects the experience of countries like Germany and the United Kingdom with similar enterprise forms. But the way the SRL came to be reflects a process thought more typical of common-law countries, and (further) undermines the central notion of common-law flexibility and civil-law inflexibility that underlies the influential "law and finance" research program.

Our empirical findings show how Spanish firms used all this flexibility. First, the corporation was more common in Spain than in some other civil-law jurisdictions such as France or Germany. This ubiquity may reflect the flexibility of the Spanish corporation, and the opportunities it afforded entrepreneurs to adapt the form to their own needs. Second, the introduction of the SRL nearly wiped out the limited partnership and made the ordinary partnership uncommon, a pattern we see after the PLLC's introduction in France but not in Germany.

At the outset, we noted that a long tradition in Spanish economic historiography blames slow growth on rigid institutions that did not allow Spanish people to take advantage of opportunities created by changing technologies and other features of the late 19th and 20th centuries. This theme dovetails with LLSV's core idea that the civil-law tradition, by limiting legal change to new law or codes enacted by parliaments, makes it too easy for a small group to protect their interests at the expense of improved opportunities for the many. Our story of Spanish legal flexibility ultimately raises a question: in this domain, rigidity was *not* a problem. We must look elsewhere to understand Spain's long economic stagnation.

Appendix: sources

This appendix provides more detail on the two datasets employed in the paper. Starting in 1886, Spain maintained an exhaustive register of companies appearing in each province's commercial register. The files reflect the information provided by the firms as they register the creation of new firms. Each new entity was assigned a number, which it retained for the life of the firm. The law required that changes in the articles of association also be registered, along with the firm's merger, transformation, or dissolution. We do not use the reported information on firm changes or death because there is good reason to doubt its completeness. Many firms wrote a time limit into their articles of association, as we showed, and if the firm ceased operation when originally planned, there was no requirement to report that fact to the registry.⁴⁵ Some owners of defunct firms had to report, since changes to the commercial registry freed them of liability associated with the dead firm. But the law imposed no real penalty for failure to register the end of a firm's operations, so if owners had no incentive to report, that fact could go unreported.⁴⁶

We constructed our own *Anuarios* database following the approach taken by Tafunell. The underlying source is the annual, official publication: *Anuarios de la Dirección General de los Registros y del Notariado* which appeared under various titles during our period: *Estadística del Registro Mercantil* (1886-1898), *Estadística del Registro Mercantil* (1899-1909), and *Anuario de los Registros y del Notariado*. This last publication started in 1911 and continues to the present.

These three references each list, at the province level, the number of firms registered by legal form and total capital. The sources also divide firms by basic function: for example, which are banks, which have some type of concession, which are mines, etc. This source has strengths and weaknesses. We highlight two problems. First, the capital figures are always authorized (not paid-in) capital, so they probably reflect an over-estimate for corporations especially. Second, in some cases when a firm registered a branch offer, the registry listed that branch's capital as the capital for the entire firm, leading to double-counting at the national level and over-estimates for the province where the branch was located.

Anuarios Estadísticos de España

The publication of Spain's Annual Statistics bulletins commenced at the beginning of the 19th century. Starting in 1912, the Bulletin was published al-

45. § 38 Reglamento del Registro Mercantil, 1885; §112 Reglamento del Registro Mercantil, 1919.

46. Tafunell (2005), p. 715-716 discusses the completeness of the "death" registrations.

most annually. We use the *Anuario Estadístico de España* for the period 1912 to 1936. The outbreak of civil war prevented publication of the 1935 issue. Annual publication did not resume until 1943, after our period. This publication is the source for the total number of corporations used in Appendix Table A.1. The *Anuario Estadístico de España* is also the source for the population data used in the maps, but we rely on an electronic version, “Series Históricas de Población” by the Spanish Statistical Office.

La Asociación Mercantil en España

The second collection is based on an unusual source that unfortunately was only constructed for three years. Starting in 1927, the Special Statistics Section of the General Directorate of Commerce, Industry and Services published *La Asociación Mercantil en España*, a nominative list of all the companies registered by the Commercial Register. Apparently, this publication was to be maintained indefinitely, but it appeared only for the years 1926, 1927 and 1928. The publication contains three types of information regarding commercial companies that (1) registered/constituted; (2) dissolved; and (3) modified. We focus on the first, for the same reasons discussed above.

Stocks versus flows in the *Anuarios*

One limitation of the source is that it reports the registration of new firms and does not include any information about whether the firm actually started operations or how long it lasted. Thus it is a particular type of “flow” data. To cross-check this source, we would like to compare this flow information to the stocks of firms operating at a given time, but the first opportunity to do some comes rather late and in any case only reports the number of corporations. Nonetheless, it is worth looking to see how the two reports compare. Because we do not know how long firms operated, we do not know which set of registrations to compare to the stock of firms at a given time. That is, some of the firms operating in 1925 (for example) were first registered in 1924, while others are much older, and we do not know the complete “life table” for firm mortality. The best we can do is to construct several comparisons and see how they compare.

Table A.1 reports four such measures, by province. In each case, the denominator of the ratio is the number of corporations operating in 1925, a stock. The numerator consists of the total number of corporations registered in various timespans (a flow). The first uses all corporations registered in the period 1900-1924; the second, 1910-1924; the third, 1920-1924; and the last, simply the number of corporations registered in the single year of 1924. The

ratios imply that at least some corporations lived short lives. The mean of the first measure for all of Spain is 3.27, implying that three times as many corporations were registered from 1900-1924 as still operated in 1925. The ratios vary across provinces to a surprising degree; in Murcia, there were 6.25 corporations created in 1900-1924 for every corporation operating in 1925, while in Vizcaya the ratio was about 1.5. The different definitions yield different results in the way expected, and are highly correlated (the correlation between the first columns is 0.9, for example, and the lowest correlation, between the first and fourth measure, is still 0.48). Because the ratios are lower in Barcelona and Madrid than in other provinces, the weighted means of these measures for Spain are considerably smaller than the unweighted means. The weighted mean of the first ratio is 2.11, for example (where the weights are the number of corporations operating in 1925).

TABLE A.1 • *Comparing corporation registrations to stocks of corporations in 1925*

Province	Number of corporations registered in this period/ number of corporations extant in 1925			
	1900-24	1910-24	1920-24	1924
Alava	2.91	1.68	1.00	0.36
Albacete	2.20	1.80	0.53	0.00
Alicante	4.91	3.69	0.86	0.11
Almería	5.25	3.00	0.95	0.25
Ávila	1.60	1.40	0.60	0.40
Badajoz	4.27	3.18	0.91	0.00
Baleares	2.00	1.53	0.67	0.07
Barcelona	1.54	1.42	0.53	0.10
Burgos	1.95	1.35	0.50	0.20
Cáceres	1.82	1.00	0.53	0.06
Cádiz	2.73	2.00	0.56	0.07
Canarias	5.25	3.42	2.21	0.13
Castellón	3.61	3.06	1.39	0.33
Ciudad Real	2.55	1.55	0.32	0.06
Córdoba	2.89	1.93	0.74	0.07
Coruña	3.84	2.48	0.52	0.04
Cuenca	2.25	1.50	0.50	0.25
Gerona	3.27	2.79	1.09	0.09
Granada	3.97	2.89	0.81	0.14
Guadalajara	3.33	2.67	1.17	0.33

Guipúzcoa	3.09	2.45	1.06	0.18
Huelva	3.86	2.93	1.36	0.36
Huesca	3.38	2.38	1.31	0.46
Jaén	4.70	2.19	0.70	0.08
León	2.73	1.73	1.18	0.18
Lérida	3.79	3.47	1.21	0.16
Logroño	5.09	4.36	1.64	0.09
Lugo	2.67	1.89	0.89	0.00
Madrid	1.88	1.45	0.60	0.11
Málaga	4.95	4.03	1.28	0.05
Murcia	6.26	3.26	0.91	0.09
Navarra	3.06	2.16	0.94	0.14
Orense	3.57	2.43	1.14	0.00
Oviedo	2.17	1.27	0.48	0.08
Palencia	9.00	5.67	2.67	1.00
Pontevedra	3.71	2.43	1.29	0.14
Salamanca	3.09	2.55	1.09	0.27
Santander	2.51	1.73	0.34	0.01
Segovia	2.13	1.50	0.38	0.00
Sevilla	3.26	2.62	1.08	0.21
Soria	3.50	1.75	0.25	0.00
Tarragona	2.41	2.09	1.09	0.18
Teruel	3.22	1.78	1.11	0.22
Toledo	3.64	3.09	1.73	0.18
Valencia	2.24	1.93	0.59	0.06
Valladolid	2.75	1.95	0.55	0.15
Vizcaya	1.50	0.85	0.32	0.05
Zamora	2.11	1.78	0.67	0.11
Zaragoza	1.82	1.05	0.35	0.02

Source: See appendix text

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Flexibility in Spanish Company Law, 1885-1936

ABSTRACT

The Spanish business code allowed firms two types of organizational flexibility in the late 19th and early 20th century. Firms enjoyed great leeway in adapting rules to their needs. The corporation was especially flexible in this way. Spanish law also allowed firms to in effect create their own legal form. Until 1920, firms faced the choices typical of civil-law countries, namely, the corporation, and the ordinary or limited partnership. But the Spanish business code was explicitly “open,” allowing firms to do something else if they wished. This second type of flexibility reached its zenith in the *Sociedad de Responsabilidad Limitada* (SRL), a form similar to Germany’s GmbH or Britain’s PLC. For its first decades the SRL was a creation of notaries and entrepreneurs, and was not written into Spanish law until 1953. This paper describes the law governing formation of Spanish companies, and documents the choices firms used.

KEY WORDS: limited liability, business code, commercial registry, Spain

JEL CODES: K22, N40, N80, O57



La flexibilidad en la Ley de Sociedades Anónimas española, 1885-1936

RESUMEN

El Código de Comercio español permitió que las sociedades mercantiles gozaran de una elevada flexibilidad hasta comienzos del xx. Empleamos dos conceptos de flexibilidad. En primer lugar, las firmas poseían un amplio margen para adaptar las reglas a sus necesidades. La sociedad anónima disfrutó especialmente de dicha flexibilidad. En segundo lugar, la legislación permitía crear un tipo nuevo de sociedad a partir de las definidas en el código —sociedad anónima, sociedad comanditaria y sociedad colectiva—. Gracias al carácter abierto del código se introdujo la Sociedad de Responsabilidad Limitada (SRL), una figura semejante a la GmbH alemana o la PLC británica. Hasta 1953 la SRL careció de ley propia y sus características estaban definidas por la práctica de los notarios y las demandas de los emprendedores. En este artículo analizamos la legislación societaria española y las decisiones de los empresarios a la hora de decantarse por una forma mercantil determinada.

PALABRAS CLAVE: responsabilidad limitada, código de comercio, registro mercantil, España

CÓDIGOS JEL: K22, N40, N80, O57