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# Choosing a legal framework for Spanish stock markets, 1800-1936

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### **Abstract**

The paper analyses the legal transfer of formal rules regulating stock markets in Spain between 1800 and 1936. We argue that the transfer of French legislation in the 1830s provoked a "transplant effect", which generated serious distortions in Spanish financial markets. As a result, Spain developed a unique system in which official French style stock markets coexisted with Anglo-Saxon style free markets and small traditional markets, reminiscent of the ancien regime. This unique schism of systems reflects the result of multiple natural experiments whereby each region constituted its own stock market system. Diverse economic scenarios and path-dependence processes determined different institutional settings. We find that the unparalleled Spanish system was the result of lacking central power, persistence of institutional inertia, and the diversity of Spain's geographical economy.

**Keywords:** stock markets, exchanges, commercial law, comparative law, legal origins, legal transfer, legal transplant, rule of law, Spain.

**JEL Classification:** N23, N24, N43, N44, K20, K22

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# Choosing a Legal Framework for Spanish Stock Markets, 1800-1936

Juan Carlos Rojo Cagigal\*

Law matters. In the 1920s the institutional economist John R. Commons emphasized the important role played by law in structuring the evolution of economy.<sup>1</sup> Since the 1970s a combination of social sciences, Law and Economics, and the discipline of Institutional Economics, have put the analysis of legal systems back on the research agenda. The logic underlying Law and Economics —an American academic paradigm— suggests that altering the legal relations governing society or changing the working rules will ultimately affect economic growth. Therefore, law has important implications for economic structure, behaviour and performance.<sup>2</sup> For their part, institutionalists believe that the economy is a system of maleable rights that are traded on the market, not as commodities or physical entities “but as the right to perform certain actions and as individual rights which are established by the legal system.”<sup>3</sup> According to Douglass C. North, the transactions which take place within an economy are structured by institutions that can be either “formal rules” or “informal constraints”. The formal rules are determined by the legal system and other types of explicit regulations. The informal constraints are norms of behaviour, customs, rules of conduct or beliefs.<sup>4</sup> Institutions establish the appropriate rules of the game, which allow transactions among individuals and organisations to be carried out efficiently. In this respect, law constitutes the hard core of the institutional structure.

The paper presents a positive description of how stock market law was determined in Spain. Given the lack of previous studies on this evolution, this pretends to be one of its main contributions. Our point of departure is situated at the beginning of the nineteenth century, when the first official stock markets were created. We will go on to describe how the different markets evolved up to the Spanish Civil War. The institutions that controlled legislative decision-making suggest that we focus on the nation-state as the geographical unit of study. But as we will see later on in this work,

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<sup>1</sup> Commons (1924).

<sup>2</sup> Mercurio and Medema (1997), pp. 22-24.

<sup>3</sup> Coase (1992), p. 717.

<sup>4</sup> North (1990) and (1998).

regional variations and external transfers also played a prominent role. On the other hand, sequence analysis of decision nodes will be an important tool for our analysis. Law is not something that is given or to be discovered, instead it is a complex human artefact conceived by deliberate and non-deliberate human choices.<sup>5</sup> Actors with decision-making capacity choose between different vectors of formal rules. Choices taken are often affected by the institutional structures associated to the issue to be regulated.

This article argues that the transplant of French law in the 1830s had important consequences on the final composition of the legal system regulating stock markets. Due to causes to be analysed, the legislator opted to introduce institutions which did not exist in Spain. The reason why law penetration was weak—it was limited to Madrid—and its implementation in other regions was unattractive may be found in the potential costs it generated and the weak trade-off with private and social benefits. At the same time, Spanish governments had limited capacity for law enforcement. The unattractiveness in terms of cost and benefit and the limited state capacity to enforce it led Catalonia to develop its own financial and stock exchange system in Barcelona after the 1840s. During the 1880s, when the state tried to impose further unification and rationalization, it was confronted with hard opposition from Catalonia. In the end, Spanish state opted for a model which permitted the coexistence of both systems: an official French-styled *étatiste* model, approved in Madrid and Bilbao, and a private free market model tolerated in Barcelona. At the same time, the low degree of enforceability and the weak demand for securities encouraged the consolidation of “curb-trading” stock markets (*bolsines*) in smaller cities, promoted by traditional local merchant organisations. This triad system remained in place until the end of the Spanish Civil War.

## **1. Commercial codification and the transplant of 1831**

The historical origins of official organised stock markets in Spain can be dated back to 1809, during the reign of Joseph I, when a royal decree proclaimed the creation of the Madrid Stock Exchange. In 1810 a second decree set up its regulatory rules. The first Spanish stock exchange session opened in January 1811, but trading was very short-

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<sup>5</sup> Mercurio and Medema (1997), p. 117.

lived. In December of that year stock prices ceased to be published because of the Peninsular Wars.<sup>6</sup> After this first attempt, Spanish stock markets remained closed during two decades. In September 1831 a new law re-established the Madrid Stock Exchange. This second start is usually considered founding date for official stock markets in Spain. Markets traded through more or less continuously. Occasionally political instability led to short interruptions. The most important suspension took place in the twentieth century, when stock markets closed between 1936 and 1940.<sup>7</sup>

The first code of commerce, approved in May 1829, was one of the keystones in Spain's institutional modernization during the nineteenth century. Before its implementation business transactions were regulated by ordinances of particular merchant guilds known as consulates —*consulados* in Spanish or *consolats* in Catalan—, which operated in the major cities. In 1737 Bilbao Ordinances were reorganised and quasi-codified by a group of six merchants belonging to the Consulate. The compilation, systematization and innovations that were introduced proved so satisfactory that they became the dominant commercial law both in Spain and her American colonies. Although widely extended, they were not applied on the entire Peninsula. In Barcelona, the ordinances of the Consolat del Mar, which can be traced back to customs from the second half of thirteenth century, remained in force.<sup>8</sup> Finally, in 1805 the ancien regime authorities approved the so called *Novísima Recopilación* in an attempt to gather the kingdom's most important laws in written volumes.

The diversity and complexity of the existing law were the main driving forces towards codification in continental Europe.<sup>9</sup> This seems to be the case of the Spanish code of 1829, one of whose primary objectives was putting order in the disperse and confused commercial law made up of the Bilbao Ordinances, those of the Consolat del Mar and the *Novísima Recopilación*. Investor protection was increased notably by the new code. It established mechanisms for the defence of private property and reduced the discretionality of the judicial system.<sup>10</sup>

The last few years have witnessed the appearance of an interesting literature, both theoretical and applied, about legal transplants. The applied studies cover a lengthy chronological span, from the spread of the Roman law to legal transfers taking place in the 1980s and 1990s in developing countries and former communist Eastern European

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<sup>6</sup> See Rojo (1977).

<sup>7</sup> Although unofficial small stock markets worked for that period. Olivencia (1994): p. 1993.

<sup>8</sup> Álvarez, Bonilla y Miñana (1915): pp. 73-79 and 94-97. For a compilation of the Spanish commercial ordinances during the Ancien Regime, see Quirós (1810).

<sup>9</sup> Watson (1981), pp. 101-102.

<sup>10</sup> Gacto (1971), Menéndez (1986), Tomás y Valiente (1997).

countries.<sup>11</sup> The concept of legal transplant refers to the adoption of another country's laws or even its entire legal system. The Spanish code of 1829 is traditionally regarded as one of the first legal transplants of the 1807 French code. However, a detailed analysis of both legal pieces reveals that we are dealing with a phenomenon that is more complex than the simple replica of foreign law. French influence cannot be denied in certain aspects—for example, in currency exchange law or accounting law—but previous Spanish compilations retained a notable weight in the regulation of concrete aspects, especially from the Bilbao Ordinances. The code is even said to have received some influences from Prussian Landrecht.<sup>12</sup> More than a legal transplant we observe an adaptation of the regulations to a new economic (capitalist) and political (constitutional) order, with the logical French influence.<sup>13</sup>

Some authors argue that for legal institutions to be implemented effectively the adoption of law has to be adapted to local conditions. A demand for the adopted legislation must exist. People need to become familiar with the new law in order to have incentives i) to use it and ii) demand institutions to enforce it. When this does not occur, a “transplant effect” takes place, i.e. the legal order functions less efficiently than in the donor country.<sup>14</sup> The fact that the author of the code, Pedro Sainz de Andino, took into account the commercial legislation ruling in Spain for centuries, helped to avoid a transplant effect. He also set the precondition for the Spanish code to be introduced in many Latin American countries, since their former legislation was close to Spanish law, with the result that the new Spanish legal framework fit better than others.

Sainz de Andino was also responsible for the Stock Exchange Law of 1831. But contrary to what happened in the case of the code of commerce, the jurist limited himself to carrying out a complete legal transplant from the French system, imitating the model of the Paris Stock Exchange. Practically everything was imported. The extensive law of 144 articles left a wide margin for state intervention, including the initiative and faculty to create stock exchanges and regulate further operation. Why did

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<sup>11</sup> Some relevant works are Watson (1981) and (1993); Mattei (1994); Posner (1998); Schauer (2000); Buscaglia and Ratliff (2000), especially the 2nd chapter; Berkowitz, Pistor and Richard (2003a) (2003b); or Miller (2003).

<sup>12</sup> Álvarez, Bonilla y Miñana (1915); Rubio (1950); Gacto (1971); Duque (1986); Menéndez (1986), Eizaguirre (1988).

<sup>13</sup> The evolution of the Spanish legal system as a whole followed a different pattern due to the absence of civil codification until 1889. The civil code preceded the commercial code in France; but in Spain the commercial legislation laid the foundations of institutional change. Duque (1986), pp. 90-91. Solá Cañizares (1963), p. 39. Menéndez (1986), p. 63.

<sup>14</sup> Berkowitz, Pistor and Richard (2003), p. 167. “Legal transplant” is a metaphor which implies its need to be somehow “domesticated” to fit into its new context; otherwise, there is the risk that they may “fail” by being “rejected”. The main problem of this metaphor is that it suggests that the result of transferring law and institutions is either success or failure, when it is more likely to be a mix. Nelken (2002), pp. 29-33.

the legislator choose to carry out a simple emulation of the French system?<sup>15</sup> An element we have to take into account is the absence of organised stock markets in Spain and the lack of institutional structures explicitly designed to regulate them. The jurist himself pointed out in the law's preface that Spain, which had century-old commercial institutions such as the *casas de contratación*, had no official stock exchanges.<sup>16</sup> In fact, the absence of organised markets partly explains why he decided to separate stock market legislation from the code. Sainz de Andino, in common with other encoders, conceived his task as constructing a coherent legal system, which would last over time. The regulation of a newly created commercial institution ran the risk of functioning improperly, or of simply not functioning at all, which would have implied almost immediate modifications to the code —had they been included. This is why he chose to legislate separately, leaving flexibility for changing the legal framework if it proved unsuitable. The state was creating a new market with a high potential for easing state finance and its foremost aim was to make it operative. Given that such markets had not existed previously, it seems that Sainz de Andino considered the best option was copying an already existing model. The Anglo-Saxon framework, evolutionary and self-regulated, was not an option to be considered. The French *étatiste* model seemed the more adequate to be transplanted. It included the state action required to reinforce an emerging market. An evident sign of Sainz de Andino's concern about the new stock market functioning well is the regulation he devised for forward deals, which was very permissive. As he indicated in an essay written in 1845, he was primarily concerned with stimulating stock-market business.<sup>17</sup>

The Law of 1831 created a new profession of intermediaries which did not exist in Spain: an official stock-broker called *agente de cambio*, almost a literal translation of the French *agent de change* both in name and functions. This is a clear case in which previous institutional structures could have played a major role. Before the introduction of this new agency relationship, other intermediaries called licensed brokers (*corredores de comercio*) already operated in traditional merchant markets called *lonjas*. These brokers had traditionally been middlemen for insurance, freights, bills of exchange and commodity trade in Spain. Their profession can be traced back to Early Middle Ages in Europe, probably due to the expansion of long distance trade in the thirteenth century. Municipal authorities specified their functions. In most towns the *corredores de*

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<sup>15</sup> We can dismiss the vague and largely empty idea of reputation to explain legal transplants from one system to another. See Mattei (1994).

<sup>16</sup> Rubio (1950), p. 76.

<sup>17</sup> In Rubio (1950), p. 187.

*comercio* were assigned a public notary status, limiting their economic activity to that of mediator. They were not allowed to participate or have any personal interest in the transaction they took part in.<sup>18</sup> The public nature of their activity was later enforced by Crown recognition, when a law of 1522 gave them official status, with the denomination of royal licensed brokers (*corredores reales*). Chapters XV and XVI of the Bilbao Ordinances also regulated this profession in the eighteenth century. When regional trade ordinances were repealed by the 1829 Code, this figure was standardized throughout all of Spain, although maintaining the basic characteristics already mentioned.

In spite of the secular existence of these middlemen, Sainz de Andino decided to introduce the French *agent de change*. Surprisingly, not even the Law of 1810, which had been approved during a period in which Spain was under the French rule, had led to the introduction of this figure.<sup>19</sup> What differentiated transplanted official stock brokers from previously existing licensed brokers was the legal status of official brokers.<sup>20</sup> They acted as contractual middlemen or representatives of their clients whose name they could disclose. It diverted the traditional function somehow and turned it into that of a commission agent. The official stock brokers were part of a contract, and as such they were legally bound to it and liable to keep their part of the deal.<sup>21</sup> Moreover, and this is one of the most important characteristics, the law granted them a monopoly on all securities trade carried out on and off the stock market.

That is to say, the official stock broker provided greater legal guarantees for security transactions. This is an important factor to take into account when explaining its super positioning. In a moment of state building, which required heavy financing, one of main objectives was to establish a well functioning regulated market where public stocks could be emitted or exchanged at low risk. The existence of geographically located markets eased the placing of new issues of public stocks. At the same time, formal stock exchanges guaranteed higher liquidity, which gave potential investors additional incentives for investing in securities. Sainz de Andino also considered that the French figure of *agent de change* would provide a lower risk in

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<sup>18</sup> Rodríguez Sastre (1944), pp. 147-154. Rubio (1950), pp. 178-180.

<sup>19</sup> Rojo (1977).

<sup>20</sup> We use in this article the term “licensed” for *corredores de comercio* and the term “official” for *agentes de cambio*.

<sup>21</sup> Olivencia (1994), pp. 1977-1979.

public debt transactions: in exchange for the granted monopoly, they vouched for the transaction and were compelled to pay a surety.<sup>22</sup>

To sum up, the conjunction of two considerations explains the final result of the choice process. On one hand, the absence of formal stock markets before the law making favoured the transplant of the already existing French model in the belief that consolidating such a formal market would be easier via state intervention. On the other hand, the state's increasing needs for finance required greater guarantees to stimulate trade. These greater guarantees modified the traditional legal framework regulating the agency relationship, causing distortions —probably a 'transplant effect'— which had important consequences for the latter development of the Spanish stock market system.

## **2. Free markets and resistances**

The fact that the Law of 1831 was modified in the 1840s and 1850s shows that separating the regulation for stock markets from the commercial code made good sense. Most of the changes were related to the regulation of forward deals. As we have mentioned, Sainz de Andino's law had been very permissive, allowing any kind of operations except for those considered 'stock exchange gambling'. Proving whether operations were gambling or not was difficult in practice, the rule permitted all kind of operation. As Madrid's market grew, speculative trading became more common. This led to government concern. Governments were primarily interested in the protecting and promoting public securities trade and therefore decided to introduce restrictive measures so as to avoid high volatility speculation.<sup>23</sup> In general, despite these isolated restrictions, Spanish legislation remained permissive with regard to forward transactions throughout the nineteenth and the beginning of the twentieth century, especially by comparison with other European countries or the United States, where many of these practises were banned.

An important modification was introduced in 1845. Legislators decided to limit the monopoly that official stock brokers had since 1831 on all operations performed in

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<sup>22</sup> Agent's obligation of paying a surety was typically French. For example, German brokers were not bound to observing this requirement. González Echegarri (1933), p. 37.

<sup>23</sup> A royal decree on April 5th, 1846, forbade all shorts of forward deals; another one on September 30, 1847 authorised them if the period was no longer than 59 days; and a new decree on March 22, 1848 forbade them again. The Exchange Law of February 8th, 1854 allowed them but it required guarantees in order to prevent "gambling": the seller was obliged to extend a receipt or certificate signed by him and by the middleman in which traded stocks' numbering must figure. Rodríguez Sastre (1944), pp. 17-22.



stock markets, reducing it to public stocks.<sup>24</sup> The decision can be explained by the growing importance of private stock trading, which had not been foreseen by Sainz de Andino in 1831. He corrected for this by restricting the monopoly of official stock broker to the basic function it had been created for, namely the trading of public debt.<sup>25</sup> In trading of other securities they should compete with licensed stock brokers. With the exception of the interim period between 1869 and 1874, the *agentes de cambio* kept that monopoly on public debt trading until the 1980s.

These changes did not modify the basic functioning of the system established in 1831. Its main principle —the creation of an official market with strong state intervention— was maintained. Given that Madrid was the only city with an official exchange, it meant that the system was only applied to this market. In all other cities, the traditional licensed brokers (*corredores de comercio*), governed by provisions of the 1829 Code of Commerce, continued to be the middlemen in public and private stock trading. No other stock markets of significance were constituted until the 1860s. The only exception was Barcelona, where an important private stock exchange started to develop in the 1840s.

The process of industrialization sped up in Catalonia after the First Carlist War (1833-1839). Mechanization was introduced in the textile industry and rapid growth took place. At the end of the 1840s the first Spanish railway started operating between Barcelona and Mataró. Soon after a rising number of insurance and industrial companies were created. Although the size of Catalan textile companies continued to be relatively small by comparison with British or continental counterparts, joint-stock companies spread in sectors such as banking, railway and insurance. Thereby the demand for stock trading provided by the licensed brokers grew. Greater capital resources also provoked an increase in the demand for public debt. The higher level of trading induced Barcelona's Association of Licensed Brokers to publish official quotes in December of 1851. According to Josep Fontana, this development constituted the birth of the Barcelona Stock Exchange.<sup>26</sup>

Thus, while Madrid Stock Exchange was born as a state's initiative designed to facilitate the trading of public securities, Barcelona's Stock Exchange emerged in answer to the need for private finance. As opposed to the Madrid Stock Exchange,

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<sup>24</sup> Bonilla y Miñana (1924), pp. 47-48.

<sup>25</sup> The Stock Exchange Law of 1854 even forbade the *corredores* to stay on the trading floor when public stocks were being dealt. Rodríguez Sastre (1944), pp. 164-165.

<sup>26</sup> Fontana (1961), pp. 16-18. Barcelona was in that period "without any doubt the state's economic capital", according to Sudriá (1985), p. 258.

which was born by decree, Barcelona's market developed —like many other European markets of evolutionary type— from merchandise trading to stock trading.<sup>27</sup> As security trading increased, a process of specialization took place: a part of the Lonja del Mar (Sea Market), the traditional commodity exchange, was designated to stock trade. At the same time, a group of licensed brokers became specialized on stock trading. The market's self-regulation can be visualized by the Lonja del Mar building. This had been donated by the Crown vaguely “to the commerce” in 1728 and its property rights were not clearly defined. At the beginning of the twentieth century the municipality, the provincial government and the state were contending for it.<sup>28</sup> It was already an institution courted by many rather than a building.

The Law of 1831 was applied exclusively to the Madrid Stock Exchange. All other stock trading in the rest of Spanish cities was regulated by the 1829 Code. Theoretically, the *corredores* controlled all commercial transactions carried out there. The Code of Commerce had gathered the traditional legislation of the ancien regime's ordinances and had granted them (article 66) the exclusive right of brokering. However, the drive to industrialization in Barcelona from the beginning of the 1840s allowed other non-licensed stock brokers or free brokers to enter trading. These middlemen, acting outside the law, broke the monopoly formerly held by licensed brokers. The fact that licensed brokers were unable to defend their privileges appears to reveal that i) these brokers could not respond to the increase in the demand of financial services, ii) and that the state had little capacity for law enforcement in peripheral regions.

Therefore, a scheme of free competition was established in Barcelona, both regarding financial intermediaries and market formation. Apart from the stock market functioning in a designated area of the Lonja del Mar, another market, the Bolsín Catalán, emerged in 1845. A gentlemen's club, the Casino Mercantil, also established a market for its members in the 1850s. Catalan banks began participating actively in the stock trade as well. In the course of time these three markets were coordinated allowing the establishment of a functional specialization. The Lonja del Mar, dominated by associated licensed stock brokers, continued being the main trading centre, although it was specialized on public stocks trade and cash deals. Trading in the Lonja del Mar was settled in a payment office installed in the Casino. But the Casino also worked as a stock market itself for cash deals and, with greater frequency, in forward deals. As regards the Bolsín Catalán, it became a market in which banks were predominantly

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<sup>27</sup> The licensed stock brokers were called *corredores reales* in Barcelona.

<sup>28</sup> Comité Interventor del Mercado Bursátil de Barcelona, 1928, vol. II.

involved in stock trading. In phases of expansion other small stock markets (*bolsines*) also appeared spontaneously to meet the demand. We can think of this interconnected system as a network responding to specific needs and demands, as a dynamic “financial district”.<sup>29</sup> Due to flexibility and absence of entry barriers, the Casino Mercantil eventually gained a key position in the Catalan stock-market system. It established its own regulations and trading rules, and came to have several hundreds of members. Thus, Barcelona followed a similar path to other North European and North American stock exchanges in which self-regulation and flexibility predominated.

The increasing creation of joint-stock companies in the 1860s —mainly in the banking and railway sectors— extended the stock market phenomena to other Spanish cities such as Valencia, Bilbao, Corunna, Saragossa, Santander and Seville. But the small stock markets established there adopted the non-state-regulated model, with trading controlled by traditional licensed brokers. Why did the statist model fail? The answer is related to the “transplant effect” resulting from the borrowed legislation referred above. The creation of a new profession of intermediaries was a threat to existing licensed brokers because the concession of monopoly on all operations and later on public debt —the most important part of the stock trading at that time— might led to introduce incentives for crowding-out.

Therefore, most of attempts to transfer the official model to other Spanish cities met with strong resistance. When central government contacted Barcelona’s Consulate in the 1820s to consider the possibility of installing an official stock exchange, their reply was negative due to strong pressure from the Association of Royal Licensed Stock Brokers (Colegio de Corredores Reales). When a decree in 1834 forced Barcelona to establish the same regulations as on the Madrid Stock Exchange with regard to public debt trading, Barcelona’s Colegio answered that legislation was applicable to official stock brokers but not to licensed brokers, and that Barcelona only had licensed brokers. When a new initiative was launched in the middle of the 1840s, coming from some traders in Barcelona itself, it was brought to a sudden halt because the licensed brokers managed to retain power. When new attempts were made in the 1860s, there were met anew with strong resistance on behalf of the licensed brokers. In Bilbao, the city council issued an unfavourable report on the installation of an official stock exchange, due to

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<sup>29</sup> Hortalà i Arau (2004), pp. 10-11.

pressure from the local Colegio de Corredores. In Barcelona the licensed brokers demanded that their acquired “historical rights” be respected.<sup>30</sup>

All this indicates that the legislation of 1831, introducing an agency relationship different from that of the local tradition, obstructed the expansion of the official model. In those cities where the licensed brokers possessed the monopoly on transactions, the introduction of official stock exchanges involved uncertainty and a risk of corporate financial breakdown. In Barcelona, which had developed a free market, licensed brokers might have had the temptation to become official stock brokers and regain the lost monopoly on security trading. But after several decades of development of a self-regulated market, they were no longer able to overcome the opposition of the free intermediaries, banks, the Casino Mercantil or local authorities. Clearly, given the existing institutional structure, the official *étatiste* model was not able to impose itself on the open trade market of Barcelona.

### **3. The consolidation of a triad system**

A major change in the laws that regulated the stock markets took place after Spain’s Glorious Revolution. A decree of 1868 removed all restrictions on the profession of intermediary: it could be carried out by anyone without any prerequisite of authorization, surety or exam. Free brokers no longer had a status of notary public, but they had to compete with the rest of middlemen. The notary status was reserved for official stock brokers or licensed brokers, but their number became unlimited. Entry barriers to the profession were also reduced. In the same spirit, a decree in 1869 established absolute freedom regarding the creation of exchanges or any other type of market.<sup>31</sup> Its preface, committed to the ideals of free trade, was a declaration of economic freedom. The legislators argued that economic and legal sciences had shown the convenience and superiority of free trade. Imposing artificial barriers damaged the individual rights which the Revolution had proclaimed. It attacked the ‘arbitrary’ intervention that previous governments had carried out in private transactions. Contrary to previous state interventionism, legislators now defended forward deals, whose regulation had suffered the greatest degree of government intervention in the past. Forward deals were described as “convenient and necessary in the economic order

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<sup>30</sup> Horlà i Arau (2004), pp. 6-10; Torrente Fortuño (1966), pp. 39-40 and Montero (1996), p. 11.

<sup>31</sup> Rodríguez Sastre (1944), p. 166.

because they constituted a price regulatory”. The state had no right to limit them, since they were contracts among private individuals.<sup>32</sup>

After the fall of the First Republic in 1874, a decree re-established the 1854 laws. In the preface to the decree, legislators argued that “selfishness” and “greed” had prevailed as a result of the laws of 1868 and 1869; “freedom” had turned into “profligacy”; “speculation” and “immorality” were now common.<sup>33</sup> Therefore, the stock market regulation returned to the scheme of a single official exchange in Madrid, the strict function of official stock brokers as mere intermediaries and their monopoly on trade of government securities. At the same time, the decree put into effect article 66 of the 1829 Code, which granted the monopoly on all transactions for the licensed brokers in those cities in which there were no official exchanges, i.e. all except Madrid.

The enactment of a new Code of Commerce in 1885 defined the rules of the Spanish securities markets until 1936. Unlike that of 1829, the new code did regulate them. As regards the markets, the commercial legislation allowed that public authorities, semi-public corporations as chambers of commerce or even private companies could request the creation of an exchange in any Spanish city. After the request, the government reserved the right to authorise it so that it became official, although this could occur if its “usefulness or public interest” was proven, for which a number of references would be requested. In the case of requests from public institutions or semi-public corporations, the new stock market institution could receive state subsidies. All this is novel with respect to the legislation in force between 1831 and 1869. The same legislators asserted in the preface that, choosing between the two systems of regulation of securities markets which had existed in Spain —the interventionist one in 1831-1869 and 1874-1885, and that of total freedom between 1869-1874—, the Code of Commerce had opted for the latter, undoing the “irritating monopoly granted to Madrid market”.<sup>34</sup>

But innovation was only apparent. By allowing the formation of more official exchanges, what the government pretended was simply generalizing Madrid’s statist model to other regions. When it talked about the “irritating” monopoly granted to Madrid to have official exchanges, this was all fiction since a majority of the cities were reluctant to adopt this model. In fact, the 1885 Code introduced very few changes in the

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<sup>32</sup> In Rodríguez Sastre (1944), pp. 389-391.

<sup>33</sup> Royal decree of July 10, 1874. A later decree (March 12, 1875) increased guarantees on the forward dealing of public securities: the payment period was reduced and the *agentes* were impeded to increase their sureties. The *agentes* were also authorised to require guarantees to their customers. In Rodríguez Sastre (1944), pp. 392-393.

<sup>34</sup> The preface in Gay Montellá (1948), pp. 275-280.

stock market system established with the 1831 Law and updated in 1854. It remained an *étatiste* system which preserved the two basic characteristics: the state created or authorised the constitution of new exchanges and the official stock brokers had the monopoly on trading in public stocks.

Nevertheless, by introducing principles of economic freedom such as the liberty to create markets or the freedom of profession, the 1885 Code of Commerce ended up consolidating a mixed or dual system. Any group of people could organise a market without state authorisation, and article 74 of the code explicitly stated that any merchant could operate on any stock trade without the intervention of licensed or official stock brokers. The only difference was that free middlemen would not have public authority to attest the transactions carried out, which would be subjected to civil law, not to commercial law. Only licensed brokers or official stock brokers, designated by the government, could notarise commercial transactions, but this did not mean that they held a monopoly: unlicensed “free” stock brokers could act in any kind of deals.

To sum up, the new legislation attempted to impose an *étatiste* model whilst it explicitly recognized principles of economic freedom, allowing private markets and free middlemen to coexist with official exchanges and licensed and official brokers. One might ask why this was the final result of the choice process. One possibility is that the authors of the 1885 Code assimilated the spirit of the liberal legislation set about between 1868 and 1874 and decided to protect economic freedom in general, including that of the stock markets. This is the traditional interpretation, which attributes the adopted legislation to the ideology of the law makers.<sup>35</sup> However, it is doubtful that the liberal fervour of the legislators of 1869 was present among the conservative Restoration’s ruling classes, which could be characterised as a rather “mild” liberalism. An alternative and more plausible explanation might be the presence of resistances coming from the periphery. Since Barcelona had consolidated institutions such as the *Casino Mercantil*, the intention to impose the official exchanges model led to outright rejection. The local elites were not willing to yield the control or assume the costs of modifying current institutions, which could cause distortions. Not even the *corredores reales*, who held the legal monopoly on all transactions but had lost it *de facto* long before, raised doubts about the peculiar financial system developed in Barcelona.

The resistance to centralization from peripheral regions was common in many

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<sup>35</sup> According to Olivencia, although the legislation was passed during the Liberal Revolution and was in force just for 5 years (1869-1874), its influence on Spanish law lasted several decades. Olivencia (1994), p. 1984. See also Duque (1986), pp. 99-101.

European countries. The novelty in the Spanish case was that reluctant groups were successful. Again, it is essential to mention the weakness of nation-state building in nineteenth century Spain. The financial system was not the only institution unable to establish a uniform model. After 1876 the Basque Provinces and Navarre were allowed to preserve their fiscal autonomy and several regions managed to maintain their particular civil laws. In fact, the Spanish Civil Code (1889) was the first European code to sanction the idea of legal diversity, preserving separate legal regimes in Catalonia and other regions.<sup>36</sup>

The inclusion of basic principles of economic freedom restrained subsequent attempts at state interventionism in securities markets to a certain extent. Several governments tried to extend the official exchange model to other regions. A decree in 1910 placed restrictions on the operation of free brokers in official markets. Another decree in 1920 prohibited “illicit competition” among diverse types of middlemen, a measure that would have discriminated against free brokers. A new code project in the late 1920s prohibited the creation of other markets in those cities which had an official one.<sup>37</sup> But the project for a new code did not become law and several sentences passed by the Supreme Court reaffirmed the freedom of middlemen. In other words, although they could not prevent Madrid and Bilbao’s official markets from establishing a de facto monopoly by official stock brokers, the 1885 Code —its article 74— reduced government interventionism.

What occurred in Catalonia after 1915 constitutes a good example of peripheral resistance to centralization. It also illustrates the distortions that the introduction of the *étatiste* model would have caused in a city with consolidated alternative financial institutions. In March of that year a part of Barcelona’s *corredores reales* requested the government to create an official exchange. The apparent reason was the *matanza* (massacre) carried out during a panic in July 1914. *Matanza* in stock-market language meant a unilateral intervention which established fixed prices in forward deals on behalf of an authority, in this case the private Casino Mercantil. The intervention led to considerable losses and even to a close of the stock market. The group of licensed brokers blamed the situation on the lack of an efficient regulator. However, this argument was probably just a good excuse to justify their request for an official exchange; the most likely reason was the opportunity they saw in monopolizing public

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<sup>36</sup> Jacobson (2002), 312. See also Harty (2002).

<sup>37</sup> Gay de Montellá (1948), pp. 290 and 308-315. Olivencia (1994), pp. 1995-1996.

stock trading. As we will see in the next section, the creation of Bilbao Stock Exchange in 1890 also followed this logic.

Although the request was approved by the government, a group of licensed brokers, the free middlemen and a sector of Catalanian banking system decided to create a new institution, the Free Stock Market Association of Barcelona. Its first assembly was celebrated on July 14, 1915, the same day that the official exchange was constituted. The Free Market was in fact a continuation of the Casino Mercantil, constituted under the protection of the law of freedom of association. Its creation shows that it was possible to create a stock market without government authorization. It could not be called 'stock exchange' or issue official prices, but it worked as a real market.

The introduction of a state-sponsored official exchange distorted Barcelona's "financial district". The licensed brokers who had become official stock brokers now had a monopoly on public stock trade, but only in the official market, according to law; those licensed brokers who decided to stay in the Free Market could operate in the official exchange trading private stocks, and theoretically they could deal all types of securities in the private exchange; the free middlemen could legally trade in both exchanges, although only private stocks in the official exchange; the members of the Casino Mercantil, now members of the Free Market, could continue trading in this exchange without any interference. In addition to this, the Bolsín Catalán was still functioning. Summing up, the introduction of an official bourse left the financial district in chaos.

The costs were so high that the parties negotiated an agreement to function as a single market. They established that official stock brokers, free brokers and members of the Free Market would act on the same cash trading floor. Payments would be unified. All cash deals would be included in the official quotation, which contradicted what was established by the Code of Commerce, which clearly stated that only official exchanges could issue official quotations. Likewise, the Free Market would publish a journal in which members of both institutions could contribute.<sup>38</sup> Both organisations, nevertheless, would maintain their independent internal structure and develop a separate trade accounting. What is surprising is that the government, by means of a decree of the Ministry for Public Works in 1916, countersigned this agreement and authorised the constitution of this sui generis stock market. Between 1916 and 1936 Barcelona's single market operated normally. Only after the Civil War did Spain's fascist authorities

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<sup>38</sup> Villacampa (1961), p. 76.



decide to put an end to the Free Market, closing it in 1940 and declaring it dissolved in 1942.<sup>39</sup>

TABLE 1. SPAIN'S STOCK MARKETS UNTIL 1936

Exchange (date of foundation)	Status	Property	Intermediation	Management	Stock trade 1925	Public stocks 1925	Public stocks 1930
Madrid (1811 and 1831)	Official Stock Exchange ( <i>Bolsa de Comercio</i> )	State	Official stock brokers ( <i>agentes de cambio y bolsa</i> )‡	Official stock brokers (The <i>Colegio</i> ) §	990	520	665
Bilbao (1890)	Idem	Private	Idem‡	Idem§	221	58	70
Barcelona (1915)	Idem	State	Idem‡	Idem§	856††	n.a	523‡‡
Barcelona Free Market (1915) Casino Mercantil (1851)*	Private association	Private	Licensed brokers, official brokers (since 1915), members, banks	Association's members§§	400††	n.a.	-
Other cities (approx. since the 1860s)	Small exchanges ( <i>bolsines</i> )	Public ( <i>colegios</i> )†	Licensed stock brokers ( <i>corredores</i> )	Licensed stock brokers**	n.a.	n.a.	n.a.

Sources and specifications: Data in million pesetas. It reflects the total volume of stocks traded in 1925 and the volume of public securities traded in 1925 and 1930, i.e., the volume of public stocks traded in Bilbao Stock Exchange during 1925 represented 26,24% of total trade ((58\*100)/221). Data collected in Comité Interventor del Mercado Bursátil de Barcelona (1928), vol. II; Asociación del Mercado Libre de Valores, Anuario de 1930; Memoria de la Cámara de Comercio de Bilbao, 1925; Anuario Financiero y de Sociedades Anónimas de España, 1925. \* Free Stock Market Association of Barcelona (*Asociación del Mercado Libre de Valores de Barcelona*). The Free Market was created in 1915, but in fact it was a continuation of the activities formerly performed by the Casino Mercantil, which had operated from the 1840s. † City councils, provincial governments (*Diputaciones*), chambers of commerce or other entities were the building's owners in some cities. ‡ The *agentes de cambio* held a legal and *de facto* monopoly on trading public securities. Intermediation on private stocks was restricted by practice (not legally) to *corredores* and free brokers. It was legally restricted to *corredores* since 1910. The situation was much more complex in the official Barcelona Stock Exchange, due to the agreement it reached with the Free Market in 1915. § The *Colegio de Agentes de Cambio y Bolsa* was the corporate body and the *Junta Sindical* was the governing one. \*\* Licensed stock brokers were also integrated in a *Colegio de Corredores de Comercio*. †† Only cash dealing. ‡‡ This figure includes the traded volume by the Stock Free Market Association of Barcelona. §§ Two governing bodies: *Consejo de Gobierno* and *Junta Directiva*.

The approval of a legal framework which, although betting on an *étatiste* model, was liberal enough to allow the coexistence of other type of markets, ended up shaping a varied stock-market system. In Table 1 we have elaborated a summary of the existing types of markets and their characteristics until 1936. During the interwar period, there were three official exchanges (Madrid, Bilbao and Barcelona), a Free Market in Barcelona and traditional small markets (*bolsines*) in cities such as Valencia, Seville, Saragossa or Santander. But this triad system becomes even more complicated if we include an analysis of ownership, intermediation and management. The ownership of

<sup>39</sup> Rodríguez Sastre (1944), p. 34-35.

the official markets was different in the case of Bilbao, given that it was a private company that had promoted the formation of the Bilbao Stock Exchange. The Madrid Stock Exchange belonged to the state, while that in Bilbao was property of a corporation and later, that of the official stock brokers. With regards to intermediaries, there also existed differences between some official markets and others. As we have seen, Barcelona functioned as a hybrid market as a result of the 1916 accord. In Madrid and Bilbao, however, as a consequence of that established in the Commercial Code, independent brokers were expelled from the market, and even the licensed stock brokers saw their seniority disregarded by the official brokers from 1910 onwards. The intermediation in the *bolsines* presented a wide variety of situations: from the monopoly of licensed brokers, which was the most prevalent, to the existence of few barriers to entry in some cities. With regards to institutional management, the markets were run by the *colegios*, which integrated exchange agents and stock brokers, or the licensed stock brokers. The exception was the Barcelona Free Market, where Association members were in charge of management. Finally, in the table some data is offered about volume traded in the different markets. The existing volume data is disperse but that which we have gathered permits us to have an idea of the relative importance of the large markets. In 1925, half of the cash deals in Barcelona were negotiated in the Free Market, which indicates the strength of this private market, which was capable of successfully resisting the implementation of the official market. Taken together, the strength of the Barcelona and Madrid markets were similar in the decade of the 1920s. Almost certainly the volume was superior in Barcelona, given that the data from this city does not include forward deals.

#### **4. The rigidities of the official model**

Both stock market systems, the Free Market in Barcelona (prior to 1915) and the official exchange regulated by the state in Madrid and Bilbao, had costs and benefits. An open market with few entry barriers encourages competition. Players tend to look for new sources of income, and market owners are willing to allow a freer access to avoid the entry of competing institutions. Theoretically, a free market is more dynamic and increases market liquidity. On the negative side, congestion costs can emerge and, most important, transaction costs related to investment risk may be higher if there is no efficient regulator or a high degree of speculation exists.

On the other hand, in markets kept under close state supervision, official intermediaries provide higher legal guarantees in stock trade, which reduces transaction costs. State-licensed middlemen act as gatekeepers or law enforcers, with *ex ante* preventive control functions: they avoid compensation costs with regard to *ex post* damages; and in case of market overheating, they restrict speculative excesses through control of access and traffic flow.<sup>40</sup> But a market of this type presents important costs. Firstly, in compensation for the guarantees required, the legislator tends to grant a monopoly to the group of middlemen that has been licensed. This group immediately opts for rent-seeking by imposing strong barriers to entry into the market. Having reached a dominant position, the following step is to impose entry barriers to the profession. All this involves higher intermediation costs, less competition and, consequently, less liquid and smaller markets.

The Bilbao Stock Exchange is a good example of the rigidities generated by the new model. Following the approval of the 1885 Code, the local city council and the chamber of commerce repeatedly requested the establishment of an official exchange, but they failed due to the head-on opposition of licensed stock brokers. Finally, in 1890 a group of merchants and industrialists constituted a joint-stock company that presented a proposal to the government, which was accepted immediately. The government wanted the stock market model established by the Code to be extended to other provinces. The Bilbao Stock Exchange began operating in February of 1891, becoming the second official exchange, sixty years after Madrid.<sup>41</sup>

The Basque region —especially the province of Vizcaya— was the second to carry out an industrialization process after Catalonia. Until the 1870s the Basque economy had focused on trade, Bilbao's port playing an important role in the export of agricultural products of Castile, La Rioja or Navarre, and the import of manufactures from European markets. But after 1876 the mining export activity accelerated. The local heavy industry and the merchant shipping sector grew at a fast pace. Given that an industrial “take off” was under way, it seems logical that a demand for the creation of a formal capital market existed, more so if we take into account that the local banking industry had not performed a major role in financing industrialization. This had been financed by means of capital coming from self-financing inside families and business clans and several other resources —including profits from iron mining exports, trade, urban proprietors, rentiers or banks from other Spanish region.

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<sup>40</sup> Fugardo Estivill (1999), p. 132.

<sup>41</sup> See Torrente (1966) and Montero (1996).

However, the analysis of the market structure does not reveal a consistent demand for a securities market. It has been calculated that, between 1891 and 1897, 68.5% of trading volume was carried out on public debt; 17.8% on company bonds; and just 13.7% on private securities, of which an important part were state monopoly firm stocks.<sup>42</sup> According to this data, less than 10% of the market volume was devoted to private stocks linked to Basque industrialization. In iron mining, few companies were organised as joint-stock companies, and many those which did were foreign owned. Most firms were family-owned companies or possessed by investment groups in which re-investment of profits prevailed. In the shipping sector, although 74 out of the 77 companies created between 1879 and 1900 adopted the legal form of joint-stock companies, none of their stocks appeared on Bilbao's trading floor before 1899. The companies were relatively small and ownership was extremely concentrated, so that the potential liquidity was limited. In the iron and steel industry, ownership was highly concentrated, and market transactions were scarce. The shares of the main iron and steel industry, Altos Hornos de Bilbao, were traded with little regularity before 1895; and those of Sociedad La Vizcaya did not reach the market until 1898.

In view of how the exchange functioned during the 1890s, it seems doubtful that sufficient demand for this financial service existed. And what the existing demand does not explain is why an official market was preferred. As we have seen, the new 1885 legislation introduced the novelties that official exchanges could be created in any city, the state could subsidize part of the costs, and a new commercial intermediary acted in them. These new official agents were required to give greater guarantees but in exchange they obtained the monopoly of public stock trading. This put pressure on the existing licensed brokers associations who had no organised markets, that is, who lacked a physical location for stock trading. In those places which have no physical exchange, there was more probability for local public institutions to ask for an official market.

At the same time, the commercial regulations of 1885 could be an incentive for prosperous brokers —healthy enough to pay a surety 10 times higher than that of a licensed broker— to become official stock brokers and get the monopoly on public securities. In 1887, Valencia's licensed brokers came to an agreement to install a permanent stock trading centre. That is, they organised their stock market on the

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<sup>42</sup> Montero (1994), p. 52.

previous basis in order to avoid the installation of an official exchange.<sup>43</sup> But in Bilbao a small group of licensed brokers saw an opportunity to take advantage of the new legislation and obtain a monopoly on public stock trading, and their initiative was accompanied by three favourable circumstances: the other licensed brokers remained disorganised; the group received support from some of the more dynamic economic elites, which saw an official market as another innovation in the modernization of local institutions; and finally they counted on the government's interest in promoting channels for placing and trading public debt. Therefore, the Bilbao Stock Exchange emerged as a division within the Licensed Stock Broker Association. It is probable that something similar occurred in Barcelona in 1915. The Free Stock Market Association affirmed in 1926 that the creation of an official exchange in Barcelona was the result of a split within the Casino Mercantil.<sup>44</sup>

TABLE 2. THE LEGAL FRAMEWORK FOR STOCK EXCHANGES IN 1913: A COMPARATIVE VIEW

Country	Creation	Management	Listing requirements	Forward dealing	Intermediaries
France	Restrictive	The exchange	Chambre Syndicale	Permissive	Mixed
Germany	Restrictive	Mixed	External committees	Permissive	Free - mixed
Italy	Getting restrictive	Mixed	Chambers of commerce	Usually permissive	Mixed
Spain	Dual	The exchange	Junta Sindical	Permissive	Mixed
United Kingdom	Open	The exchange	Stock exchange committees	Some restrictions	Free
United States	Open	The exchange	Committee of Business Conduct	Very restrictive	Free

Sources: Álvarez, Bonilla y Miñana (1915); González Echávarri (1933); Gay de Montellá (1948); Cano Rico (1980).

Once they obtained an official exchange, the official stock brokers immediately demanded their legal monopoly on public stock trading, reporting any form of

<sup>43</sup> Cuevas (2001), pp. 5-6.

<sup>44</sup> Asociación del Mercado Libre de Valores de Barcelona, Anuario de 1926, p. 15.

interference from non-official brokers.<sup>45</sup> They also began pressing to get the state to extend the monopoly to all trading. The disputes were intensified by the 1901 stock exchange crisis, after which a general drop of trading volume contracted the incomes of all brokers. In 1906 the Official Stock Broker Association suggested denying access to licensed brokers to the Stock Exchange building; and the following year they agreed to charge a high entrance fee. In the end Madrid and Bilbao's official stock brokers reached their main objective as pressure group: removing the competition from non official brokers and restricting access to the profession. A decree of December 20<sup>th</sup>, 1910 established that in those places which had official exchanges the Ministry of Public Works would name no new licensed brokers. It also limited the maximum number of official stock brokers to 50 for Madrid and 40 for Bilbao. Thus, the decree meant the gradual disappearance of licensed brokers in both cities. It also meant the consolidation of the monopoly on stock trading by official stock brokers. Although free brokers could legally act in official markets, in practise they did not.

The official stock brokers of Madrid and Bilbao were also able to establish strong barriers to entry. To access the profession it was necessary to pass an aptitude test and deposit a substantial surety. But the Stock Exchange Regulations of 1928 required that candidates received a 4/5 majority from association members before gaining access to examination. In addition, the official brokers created a body of trainees or *attachés*. They had the exclusive right to select their trainees, and after five years of apprenticeship, these had preference to being named official stock brokers in case of a vacancy. In practise, it became common for official stock brokers chose their sons as trainees, who then entered the profession after their father's death or retirement. Thus official stock brokers made their position hereditary. At least five out of the eleven new official stock brokers nominated in the 1930s were sons of former official brokers. On top of all this, official stock brokers also attained control over the stock exchange building.

Table 2 compares the legal frameworks of stock markets in several countries. Attention is focused on five basic aspects: creation, management, listing requirements, forward dealing and intermediaries. The organisation of the British and North American stock markets corresponds to a system in which freedom in the creation and operation predominated. The other four countries selected correspond to the *étatiste* model. As we can be observe, in both France and Spain the law granted exclusive power to official

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<sup>45</sup> See Torrente Fortuño (1966), pp. 109-111.

stock brokers. The *Chambre Syndicale* in France and the *Junta Sindical* in Spain, which were the governing bodies of the official brokers, had exclusive jurisdiction over listing requirements. The majority of the countries with a statist model were subject to inspection by the state, regional governments, municipalities or chambers of commerce. For instance, a committee called *Zulassungsstelle für Wertpapiere*, made up of 22-28 members with no ties to stock markets, decided on this matter in Berlin. Several bodies were in charge of taking a decision in Italian stock markets, although local chambers of commerce were the most important. But in France and Spain the official brokers had an almost exclusive jurisdiction.<sup>46</sup> To sum up, institutional administration was an almost exclusive competence of official stock brokers in the French and Spanish cases, while in Germany and Italy other public institutions exerted greater weight in the administration of the markets or regulated manager activities more closely.

## Conclusion

This paper has analysed the construction of the legal framework that regulated stock markets in Spain until the Spanish Civil War. Our study shows that legal transplant of French law produced by the decision of legislators in 1831 generated serious distortions in Spanish financial markets. Lawmakers were convinced that the inexistence of previous institutions explicitly dedicated to stock market regulation made it necessary to effect a transfer of foreign law. French legislation was chosen because its statist model seemed to introduce greater guarantees in the equities trade. We must remember that the stock exchanges permitted investors to acquire public debt, and that nation-state building required strong financing. Theoretically, the French statist model promised greater judicial guarantees, and as such, it promised to reduce transaction costs along with a greater volume of commerce for public securities.

However, the 1831 decision gave rise to what the literature describes as a transplant effect. The new legislation was not adapted to local conditions. The reason is the previous existence of informal markets and institutions. In many cases these had origins that reached back to medieval times. Stock exchanges as such did not exist, but certain institutions did exist which in other countries later evolved into formal markets. The 1831 legislation introduced an organization (the official stock market) and a new

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<sup>46</sup> Gay de Montellá (1948), pp. 298-300.

agency relationship (the official brokers), that immediately clashed with these traditional institutions. As a result the transplanted model was imposed only in Madrid. In the remaining Spanish cities the traditional *colegios* of licensed brokers successfully resisted the official model and evolved from trading merchandise to trading equities.

The evolution was quicker in Barcelona due to the process of rapid industrialization which had begun in Catalonia in the decade of the 1840s. Traditional licensed brokers were not capable of meeting the great demand for financial services, which gave impetus to the appearance of free brokers and even the formation of a private stock market. In the end, an authentic financial district formed in Barcelona, specialized in function and formed by a complex mix of institutions evolved from medieval times and others newly created. The Barcelona stock market was different not only from that in Madrid but also from all the others in Spain, and was characterized by its great dynamism and the freedom of action afforded to its investors, banks and intermediaries. The appearance of this type of market is a sign evidencing the scarce law enforcement capacity of the Spanish state in peripheral regions during the 19<sup>th</sup> century, given that such an exchange functioned in a clearly illegal or extralegal way.

Thus, in the early 1880s there existed a triad system: an official market in Madrid, as a result of the 1831 transplant, traditional markets in the principle Spanish cities, and a complex and dynamic free market in Barcelona. While recognizing the high degree of liberty in the financial markets, the 1885 Code of Commerce consolidated this mixed system. The authors of the Code therefore opted to maintain the *status quo*, although they attempted to extend the statist model. Various liberal governments tried to stimulate the installation of official exchanges, but were only able to create one in Bilbao. In Barcelona and cities with curb-trading stock markets, the *status quo* was maintained. That is, despite the desires of the liberal political elite for centralization and rationalization, the introduction of the statist model failed. The cause for this is that the statist system continued to produce a transplant effect: its implementation generated uncertainty and transformation costs that the actors involved tried to avoid. The experiment of founding an official stock exchange in Barcelona in 1915 clearly demonstrated the distortions that the statist model was capable of provoking. The costs were so high that the actors involved saw themselves obliged to rapidly negotiate a compromise solution, giving rise to a hybrid exchange that functioned until the 1930s.



This paper has also posed the question of how efficient the different models were. It is recorded that in Madrid and Bilbao, where statist models were established, the official stock brokers developed rent-seeking strategies that were ultimately successful. In both markets, the official intermediaries managed to eliminate competition from licensed and free brokers, and established strong barriers to entry in the profession. In Bilbao, the official stock brokers became the owners of the trade building, and arranged that their positions became almost hereditary. This contrasted with Barcelona's stock market, where the division between the property of the building and traders was maintained; licensed brokers, official brokers, free middlemen and banks competed with one other; and access to the market was generally open. The fragmented data we have suggests that the Barcelona exchange enjoyed greater relative success. That is not to say that the French law applied to the official exchanges was in itself inefficient, or that the French model inexorably led to rent-seeking activities. Rather, it does say that the same law may be efficient or inefficient depending upon the institutional background. In Spain, the legal transfer produced undesired effects because the law was not adapted to local institutions, and because the institutional environment was different.

However, Spanish experience also suggests that state weakness to enact law and the de facto decentralization minimized the damage produced by the transplant effect. After all, Barcelona was able to construct a singular market and traditional financial institutions survived in most of cities. It is possible that, in this unique Spanish system, each region obtained the institutional framework which was more efficient in the sense of providing markets adapted to local economic conditions. The absence of an industrial base and state financing requirements perhaps recommended a statist model in Madrid in the 1830s; the Catalan industrialization required an evolutionary and highly flexible financial system in the 1840s and 1850s; big banking and heavy industry made preferable an official exchange in Bilbao in the 1890s; and low trading contributed to maintain traditional markets in the rest of the cities. These choices produced intense path dependence processes which limited the possibilities of change, as it happened in Barcelona after 1915.

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