CHAPTER 7

# From Commercial Guilds to Commercial Law: Spanish Company Regulations (1737–1848)

*Carlos Petit*

## 1 Introduction

> A partnership is the union of two or more men, made with the intention of acquiring something in common, by uniting themselves together. Great advantage arises from such union, where it is formed between good and honest men; for then they mutually assist one another, as if they were brothers.

This definition, contained in the *Partidas* (5,10,1),[1] brilliantly captures the essence of the old commercial company; from the ancient community of heirs (*consortium ercto non cito*) contemplated by Roman law to the general partnership articulated by modern law, it can be asserted that the family has constituted the model for for-profit associations. For instance, the so-called partners' *ayuntamiento*—from the verb *ayuntar*, which, according to Sebastián de Covarrubias in *Tesoro de la lengua castellana o española*, 1611, 93, means *quando dos cosas distintas se allegan la una con la otra* ("when two different things ally themselves with each other")—can also be found in the *Partidas* (4,2,1), where marriage is defined as an *ayuntamiento de marido e de muger, fecho con tal entencion de beuir siempre en vno, e de non se departir; guardando lealtad cada vno dellos al otro*.[2] The similarity between the two definitions is obvious: an identical interpersonal situation (*ayuntamiento*), the existence of a shared objective (*entencion*), and the same moral premise (*lealtad*). In Latin,

1 "*Compañía es ayuntamiento de dos hombres o de mas, que es fecho con entencion de ganar algo de so vno, ayutandose los unos con los otros. E nasce ende gran pro, quando se face entre algunos omes buenos, e leales: ca se acorren los vnos a los toros, bien assi como si fuesen hermanos*": Louis Moreau Lislet and Henry Carleton (trans.), *The Laws of the Seven Partidas which are still in force in the State of Louisiana* (New Orleans, 1820), vol. 2, 765.

2 "Marriage is the union of husband and wife, made with the intention of always living together and never separating, each observing mutual fidelity towards the other.": Lislet and Carleton, *The Laws of the Seven Partidas*, vol. 1, 453.

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the rare term *affectio* (and not *consensus*, which was the standard term in contract law) was employed to express the love that existed between the partners (*affectio societatis*, cf. D. 17,2,31; *voluntad de fincar en ella*, according to the *Partidas*, 5,10,11), and which was akin to the love between spouses (*affectio maritalis,* cf. D. 34,1,32,12). Were that noble sentiment to disappear, the only option was divorce, or for the commercial company, the dissolution of the company.

## 2 Family and Partnership

The family mould into which partnerships were inserted led to a number of consequences.[3] The first important consequence was that the contract overlapped with family bonds, acting like a natural extension of kinship. The *paterfamilias* would teach his offspring his profession with the aim of turning them into business associates. Consequently, should the widow and their children take over the business after his death, his absence would not provoke the insolvency or liquidation of the company. This same practice applied to the husbands of one's daughters. Those were often young trade colleagues or even home employees—almost like sons who had been raised there and who culminated their careers by becoming junior partners of the boss.[4]

Secondly, those bases meant that the daily activity of any commercial company was similar to family life. Every company had its own name—a trading name—with which it was identified in the business world and which bound its partners before third parties. More often than not, the name was a reflection of the network of personal relations that underlay the contract ("X and Sons," "X and Z Bros," "Widow of X and Sons," and other such combinations). Furthermore, the *affectio societatis* enclosed a level of intimacy that was far more intense than the generic love and friendship that existed between colleagues of the same profession. In this regard, Savary would rightfully warn that

3 On the family origins of the commercial company, see Max Weber, *Historia económica general* (1923), Manuel Sánchez Sarto (trans.) (Madrid: Fondo de Cultura Económica, 2011), 264 *seq*. For a didactic and pertinent description, see also Umberto Santarelli, *Mercanti e società tra mercanti* (Turin: Giappichelli, 1989), 127 *seq*. (from "*Guadagnare e mangiare il medesimo pane*").

4 The following sociohistorical study on Cadiz clearly reflects those aspects: Manuel Bustos Rodríguez, *Los comerciantes de la Carrera de Indias en el Cádiz del siglo XVIII* (Cádiz: Universidad de Cádiz, 1995), 134 *seq*. (family and sons), 149 *seq*. (assistants and servants), and 177 *seq*. (commercial companies).

*la première chose que doivent avoir deux associés est l'amitié et la déférence l'un pour l'autre, car c'est d'où dépend tout le bonheur ou le malheur de leurs affaires communes* ("the first thing that two associates are owed towards each other is mutual friendship and respect, because on this the happiness or misery of their common affairs depends").[5] Another example of the manner in which business resembled family was the possibility that the partners had of designating each other as executors of wills or even as testamentary agents. However, the most frequent agreements implied a shared home and living costs, for those partners who were not united by blood led a family life. As we already know, the word *compañía* (company) means to eat the same bread.[6]

When the company was established between father and sons, the former usually assumed the living costs of the house. Paternal authority (*persona mayor de la compañía*, *padre y cabeza de la casa y compañía*, "the main partner", "father and head of the household and company") generally justified the inequality with which profit and loss quotas were defined as well as the inequality in the administration of common business. As one would expect, the deterioration of the father's health naturally led his sons to manage the company. Only then were they able to benefit from the prerogatives that belonged to the *caput*, including running the private business without requiring the consent of the partners.[7]

Thirdly, the closeness between the family and the company explains the characteristics of the contract. Its very personal nature (*intuitu personarum*) was based on reciprocal trust, thus justifying its dissolution when one of the partners passed away, unless an agreement was reached to continue doing business with the heirs. Those were certainly already known to the surviving partners and were held in esteem by them. In such cases, joint liability—a derivation of family debt liability—applied vis-à-vis common creditors.[8] This

5 Jacques Savary, *Le parfait négociant* (Paris: les frères Étienne, 1763), vol. 1, 386. See 388, in which it is asserted that among the "*ressources pour trouver de l'argent*" ("means to obtain funds") that are available to the partner who manages the finances "*la plus grande* (…) *est celle des amis particuliers qui sont puissans en argent, qui n'en refusent pas quand ils y trouvent leur sûreté*" ("the main resource to raise funds are rich friends, who are willing to lend money if they esteem their investment a surety"). It can thus be concluded that one cannot be a trader without friends.

6 According to the knowledgeable Joan Corominas, the etymology of the word "company" can be traced back to Merovingian Latin, where *con/cum-panis* was derived from the Gothic word *gahlaiba* (from *hlaifs*, which means "bread," and the prefix *ga*).

7 I documented those matters in *La compañía mercantil bajo el régimen de las Ordenanzas del Consulado de Bilbao, 1737–1829* (Seville: Universidad de Sevilla, 1980).

8 Let us also recall that despite the principle of the personal nature of penalties, in the most

rule was the exact opposite of what was foreseen within the framework of civil obligations.[9]

## 3 Partnerships and Mercantile Ordinances

Despite the fact that *ius commune* jurists produced a number of well-structured monographs that enjoyed wide circulation, including Pietro degli Ubaldis' *De duobus fratribus* (1472) or Ettore and Angelo Felicio's *Tractatus de societate* (1610), it was daily practice that defined the legal structure of the company. In this matter, as in many other matters that we associate with private law, regulatory norms were barely dictated by superior jurisdictions. At best, the task was assumed by lower ranking jurisdictions; in this case, it was the commercial guilds ("consulates"). Between the fifteenth and the eighteenth centuries, guild bylaws (the *ordenanzas* of the consulates of Burgos, Bilbao, Seville, Mexico, and Lima) were nevertheless scarce, and merely dealt with guild activities (government and consultation positions, honours, employees, elections, patron saints, and alms), the royal recognition of privileged jurisdictions, including procedural rules in trade matters, and a couple of contracts regarding maritime traffic (insurance, sea risks, and charter).

This situation changed in 1737. Following the example of France (*Ordonnances pour le commerce*, 1673; *Ordonnances pour la Marine*, 1681), the traders'

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serious cases, the entire family group suffered (*unus potest puniri pro alio*) the consequences of the crime: Mario Sbriccoli, *Crimen laesae maiestatis. Il problema del reato politico alla soglie della scienza penalistica moderna* (Milan: Giuffrè, 1974), 239 *seq*.

9 Cf. *Nueva Recopilación* (1567) 5,16,1 (Enrique IV en Madrid, 1458) (= *Novísima Recopilación* (1805) 10,1,10): *"Establecemos, que si dos personas se obligaren simplemente por contrato o en otra manera alguna para hacer y cumplir alguna cosa, que por ese mismo hecho se entienda ser obligado cada uno por la mitad: salvo si en el contrato se dijere, que cada uno sea obligado in solidum, o entre sí en otra manera fuere convenido e igualado, y esto no embargante cualesquier leyes del Derecho común que contra esto hablan; y esto sea guardado en los contratos pasados como en los por venir"* ("We establish that if two people simply agree by contract or otherwise to do and accomplish something, that by that very fact it is understood that they are held each for the half; unless if the same contract provides that each party is obliged jointly and severally, or if the same were agreed in another way, and this irrespective of any contradicting laws of the *ius commune*; and this should be respected in past contracts and in contracts to come").

"Doctrinal opinion, which was in favour of (exceptional) joint liability, understood that partners were bound by a relation of reciprocal mandate: Petit, *La compañía mercantil*, 204–205.

non-matching quotation marks

guild of the city of Bilbao, which constituted the main port of the northern peninsula, drafted a number of comprehensive ordinances that were soon after approved by the crown. Those were admirably written and innovative in nature. Unlike the French text, they dealt both with the institutions of terrestrial commerce and with maritime law, thus forming a sort of *avant la lettre* commercial code that would, by universal consensus and despite its local validity, be copied and applied myriad times in Spain and the Indies.[10]

The text was divided into 29 chapters that contained 723 laws, or "ordinances." Chapter 10, which was titled *De las compañías de comercio y de las calidades y circunstancias con que deberán hacerse* ("On trading companies and its qualities and circumstances"), had 17 articles. To a contemporary observer, the regulation of the institution may appear quite limited. Just like the 1673 *Ordonnance*, which was one of the code's main sources,[11] the guild rules of Bilbao primarily sought to guarantee trade security. This explains the numerous formal requirements they contained.[12] Substantial legal matters were relegated to a secondary position,[13] whereas the different types of company—of utmost importance today—were not even mentioned (only the *compañía general* is alluded to in section X,2). The quasi-family nature of the contract was reflected in the official stated intention of avoiding disputes (section X,16: submission to

10 Cf. *Ordenanzas de la Ilustre Universidad y Casa de contratación de la M.R. y M.L. Villa de Bilbao* (Madrid: Fernandez, 1775). The first eight chapters (jurisdiction of the consulate, appointment of positions and remunerations, elections, board meetings, damage management, and the responsibilities of the administrator) define commercial procedure and the corporation's regime. The following chapters, up to Chapter 18, cover the institutions of land commerce (accounting, companies, trading requirements and conditions, exchange instruments, representatives, bankruptcies). Chapters 18–24 cover maritime commerce (charters, shipwrecks, general average, insurances, bottomry loans, captains, and other staff of the ship). The last five chapters form a group of norms on the port and ships of Bilbao (master navigator and harbourmaster's office, the conservation of the estuary, shipwrights, bargemen, and boatmen).

11 José Martínez Gijón, "El capítulo X de las Ordenanzas del Consulado de Bilbao de 1737 (De las compañías de comercio y de las calidades y circunstancias con que deberán hacerse) y el título IV de la "Ordonnance sur le Commerce" de 1673 (Des sociétés)," *Revista de derecho mercantil* 175–176 (1985), 171–188.

12 The contract was turned into a public writ (sections X,4, X,8 and X,9); concerning its registration in the corporate archives, see section X,5. Rules regarding company accounting books and public announcements of dissolution are mentioned in sections X,6 and X,17 respectively.

13 With regard to the contract definition, see section X,1. Capital and contributions are dealt with in sections X,4, X,10, X,11, and X,14. Partners' liability is addressed in section X,13.

arbitrator judges), in partnership succession (section X,9), and in the prediction of possible family expenses that were to be considered common costs (section X,7).

In fact, the Bilbao ordinances allowed for a wide range of pacts; the parties were to determine *las … circunstancias, capítulos, y condiciones licitas, que se quisieren imponer, y pactar* ("freely the clauses, circumstances, and licit conditions") (section X,3). All that was required was for the public to be well informed of the establishment of the company and of its main clauses through announcements and the deposition of the contract at the consulate, *para manifestarle siempre que convenga* ("in order to display the agreement to anyone concerned") (section X,5).

The unclear Law No. 13 on the external liability of partners illustrates this issue well:

> Anyone interested in a company will be obliged to pay, and bring due execution, at loss, or gain, for any business agreed and executed by the partners with other persons and traders outside the company; each partner is responsible for losses that may occur according to his share in the capital and profits; but it is understood that the partner or partners under whose signature the company operates should respond, besides their share and profits that belong to them, with all their assets, present and future, even when they or any of them joined the partnership without any funds.[14]

It is likely that those who drafted that law had in mind the two precepts that were contained in the *Ordonnance pour le commerce* (IV,7–8), which they combined into a single and confusing text. In any case, the resulting text was a reflection of the company types that were known in Bilbao, and generally in Spain, during the eighteenth century. The law provided two kinds of partners with varying degrees of liability before third parties with regard to the activities that were carried out *nomine societatis*. On the one hand, *aquel, ó aquellos, bajo de cuya firma corriere la Compañía*, ("under whose signature the company oper-

14 "*Todos los interesados en una Compañía serán obligados á abonar, y llevar á debida execucion, á pérdida, ó ganancia, qualesquiera negocios que cada compañero haga, y execute en nombre de todos con otras personas, y negociantes fuera de ella; saneando cada uno las pérdidas que puedan suceder, hasta en la cantidad del capital, y ganancias en que fue interesado, y resultaren del total de la Compañía; entendiéndose, que aquel, ó aquellos, bajo de cuya firma corriere la Compañía, estarán obligados, demás del fondo, y ganancias que en ella les pertenezcan, con todo el resto de sus bienes, habidos, y por haber, al saneamiento de todas las pérdidas, aunque ellos tales, ó alguno de ellos entrase sin poner caudal en dicha Compañía*".

ates", that is the managers) who would respond *con todo*[*s*] *sus bienes, habidos y por haber* ("with all their assets, present and future"); on the other hand, the remaining partners (that is, the non-managers), who had the obligation of *sanea*[*r*] *cada uno las pérdidas que pueden suceder, hasta en la cantidad del capital, y ganancias en que fue interesado* ("to respond for the losses according to their share in the capital and profits"). Putting the ambiguous expression *correr bajo la firma* aside,[15] one could be led to assert that the company form that was contemplated in the ordinances (that, as mentioned before, only alluded to *las Compañías mas frequentes en el Comercio aquellas generales que usan, y practican muchos de sus individuos*, "the most common companies in commerce, the so-called general partnerships, which are widely used among merchants") was that of a limited partnership—a peculiar formula that was a reflection of the need to finance the merchant's activity[16] and which constituted a first and decisive step toward the disassociation between the commercial contract and its traditional family pattern.

Nevertheless, local practice contradicts that impression. The Bilbao contracts demonstrate that almost always, partners answered fully and jointly with regard to common debts, regardless of whether they had the power to conduct business in the name of the company or not. A judgment on the bankruptcy of Aréchaga e Hijo y Galíndez (1805–1806) describes the situation well:

> Although it is said that a partner is not held but in proportion to his share in the company, this applies to the relations among the partners, but not vis-à-vis the creditors of the company, in whose favour any and all of the partners are jointly liable to pay debts not only with the common fund but also with their separate property, as each and every debt is understood to be assumed by all partners as a result of a reciprocal mandate established among them.[17]

15 It should be interpreted as contract-making on behalf of the company, regardless of whether the name of the managers appears or not in the company name. In other words, the clause referred to the partners who were authorized to deal with third parties. This is suggested in the version of section X,13 of the Bilbao ordinance that is contained in an unpublished ordinance project (1794) for the Consulate of Seville (section VIII,12: "*pero el compañero, o compañeros, que hiciesen los tales negocios serán responsables a las pérdidas*": "because the partner authorized to trade is liable for losses"). See Petit, *La compañía mercantil*, 200–201.

16 See Santarelli, *Mercanti*, 148 *seq*., 172 *seq*., and 19 *seq*.

17 "*Aunque se dice que un socio no se obliga sino a prorrata de aquella porción o capitalidad que pone en compañía, esto rige y se entiende tan solamente para con los mismos socios*

In those cases in which it was agreed that the liability of one of the partners would be limited, with the exception of the previously mentioned limited partnership (that existed but was residual),[18] the liability-limiting clause responded to the mere will of the parties. There were companies with partners who were in charge of common business and who were authorized to sign in the name of the company, who nevertheless only responded with the capital they had contributed, in addition to profits, when they existed, or with a predetermined sum. The consulate accepted this, on the condition that at least one of the partners had the obligation to respond with all his goods, present and future. Given that such agreements were public, third parties had to trust in the solvency of the company, or in its main liable partner.[19]

## 4 Merchant Partnerships and Royal Companies

When the ordinances were approved, another form of association emerged in Spain. It was adopted by chartered companies whose capital was divided in shares and which served to explore colonial commerce or promote large-scale industrial production. The ordinances are completely silent with regard to those companies; nevertheless, upon the initiative of the consulate, Bilbao did experience a contemporary project of that sort (1736).[20] The fact that it failed does not justify, at least in principle, the surprising lack of corporate regulation.

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*entre sí, mas no para con los acreedores de la compañía, para con los cuales todos y cualesquiera de los compañeros son responsables con insolidación al pago no sólo con los caudales comunes sino también con los demás bienes separados y particulares, como que todas y cada una de las deudas se entienden contraídas por todos ellos por el concepto de mandatario recíproco que tienen entre sí los unos de los otros*". See Petit, *La compañía mercantil*, 347 *seq*.

18 Only a little over 8% of the companies that were established in Bilbao between 1737 and 1829 adopted the scheme of limited partnership: Petit, *La compañía mercantil*, 49 *seq*. There were even fewer contracts that employed the term *comandita* or "limited": "*voz extranjera introducida en nuestras plazas de comercio*" ("a foreign word introduced lately in our merchant towns") according to Eugenio de Tapia, *Tratado de jurisprudencia mercantil* (Valencia: Mompié, 1828), 9.

19 Petit, *La compañía mercantil*, 206 *seq*.

20 On the desired "*Compañía de Real Fábrica y Comercio para la ciudad y las tres provincias de Buenos Aires, Tucumán y Paraguay*," see José María Mariluz Urquijo, *Bilbao y Buenos Aires. Proyectos dieciochescos de compañías de comercio* (Buenos Aires: Universidad de Buenos Aires, 1981).

In fact, there existed other reasons. To begin with, these royal companies bore no resemblance to genuine partnerships.[21] While the latter can be described as contractual, the former were, strictly speaking, institutional. Those who contributed to the establishment of royal companies by purchasing capital shares could not alter the legal regime that the company was subjected to within the framework of the decree that created it. This will be further explored below.

It should be added that these institutions were the result of an original concept of power.[22] During the seventeenth and eighteenth centuries, the monarch of the *ancien régime*, who had traditionally been in charge of "civil and political government", that is, *tutto quello, che riguarda gli affari publici di Stato per la conseruatione, aumento, decoro, e felicità del Principato* ("everything that relates to public affairs of state for the conservation, increase, decorum, and happiness of the principality"),[23] would additionally assume the responsibilities of a *paterfamilias*, the "economic" or "domestic government" that was necessary to keep a household: [*a*]*dministración y dispensación recta y prudente de las rentas y bienes temporales: lo que comunmente se dice Régimen y gobierno en las casas y famílias* ("prudent management and disposition of income and temporal goods: what is commonly said to be the regime and government of households and families").[24] Without going into the details of that cultural transformation which ultimately led to the emergence of the administrative state, it is enough to mention here that the fatherly monarch, who possessed broad economic power both in the public and private spheres, exercised the trade profession in his own way and devoted significant resources to promote the trade of the kingdom.

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21 It was therefore inevitable that commercial literature would remain silent on privileged companies. See Henri Lévy-Bruhl, *Histoire juridique des sociétés de commerce en France aux XVIIe et XVIIIe siècles* (Paris: Domat-Montechrestien, 1938), 42 *seq*., and Charles E. Freedeman, *Joint-Stock Entreprise in France, 1807–1867. From Privileged Company to Modern Corporation* (Chapel Hill: University of North Carolina Press, 1979), 4 *seq*.

22 Daniela Frigo, *Il padre di familia. Governo della casa e governo civile nella tradizione dell'economica tra Cinque e Seicento* (Rome: Bulzoni, 1985). Spanish sources include Ignacio Atienza Hernández, "Pater familias, señor y patrón: oeconómica, clientelismo y patronato en el antiguo régimen," in Reyna Pastor de Tognery (ed.), *Relaciones de poder, de producción y parentesco en la edad media y moderna. Aproximación a su estudio* (Madrid: CSIC, 1990), 411–458.

23 Giovan Battista De Luca, *Il Principe cristiano pratico* (Rome: Camera Apostolica, 1680), 66. See Frigo, *Il padre di famiglia*, 208 *seq*.

24 "Economía," in *Diccionario de Autoridades*, vol. 3 (Madrid: del Hierro, 1732), http://web.frl.es/DA.html (consulted on 17 January 2017).

It may seem paradoxical that the exercise of paternal power would allow the prince to establish companies that differed from the family model that company law had upheld to that point. In fact, the studies that have been carried out on the shareholders of those companies demonstrate that the "family" of the trader-monarch was a constellation of corporations, of more or less privileged estates, and of subjects of any condition, including foreigners.[25] The royal company was in turn an institution that was established by virtue of a sovereign decision of the king in the absence of a pre-existing contract; it drew a non-trading public that purchased the shares of a legally determined (*ope legis*) capital, and it was run by a small number of elected administrators whose mandates varied in duration.

The variety of investors formed an actual nation that supported the monarch in his *oeconomic* adventures and constitutes the third factor that allows us to differentiate between commercial companies and the privileged companies that attracted different people. In addition to the king himself, it drew noblemen who did not lose their condition, the under-aged and the legally incapable, religious and territorial institutions, and even literary and scientific academies. The commercial nature of the company was thus reduced to its object, which helps explain that the shares were transferable, for the personal condition of the partner was no longer relevant.

To highlight the differences between the two forms of association, the terminology was refined, and the term *sociedad* (*societas*, *société*, "partnership") was reserved for those associations where *il suffit de la volonté des associés* ("the free will of the parties is sufficient to conclude the contract"). The business initiatives of the monarchy—*établies … par la concession du prince* ("established by princely authority")—were in turn referred to as *compañías* (*collegium*, *compagnie*, "corporation").[26] This distinction became well rooted in France.[27] In

25 For example, Teresa Tortella Casares, *Índice de los primitivos accionistas del Banco Nacional de San Carlos* (Madrid: Archivo Histórico del Banco de España, 1986).

26 See Levy-Bruhl, *Histoire juridique*, 43–44.

27 *Encyplopédie Méthodique, ou par ordre de matières. Commerce*, vol. 1 (Paris: Pancoucke, 1783), s.v. *compagnie*, 552: "*société se disant de deux ou trois négocians, ou de peu davantage* (…) *et compagnie s'entendant pour l'ordinaire d'un plus grand nombre d'associés, qui n'est fixé que suivant les secours, dont ceux qui s'associent, croyent avoir besoin pour les entreprises ou les établissements qu'ils veulent faire* (…). *Une autre différence* (…) *c'est que* (…) *les compagnies ne peuvent être établies que par la concession du prince* (…) *et que pour les autres, il suffit de la volonté des associés* (…) *le mot compagnie* (…) *ne se dise plus guères préssentement, que de ces grandes associations qui se sont fait* (…) *pour les commerces étrangers*" ("one speaks of *société* when there are two, or three partners, or

Spain, Miguel de Zavala y Auñón distinguished in his *Representación ... dirigida al más seguro aumento del Real Erario* between *la sociedad de pocos individuos que juntan sus caudales; y encargandose uno, ù dos de dirigir las negociaciones, hacen el trafico en aquellas cosas limitadas à que fe estiende su fondo, y su crédito* ("the society of few individuals who pool their funds; with one or two of the partners taking charge of the business, and they trade in those limited things that their capital and their credit allow"), and genuine *companies*, which are a *cuerpo de muchos individuos, que contribuyen con sus caudales y su consejo, y con su inteligencia al logro de unas crecidas ganancias; se goviernan con methodo, y reglas fixas, y seguras para el acierto; y caminan, baxo la Real proteccion, con establecimientos, y con honores*[28] ("a body of many individuals, who contribute with their wealth and their advice, and with their intelligence to achieve high profits; they are methodically governed, according to fixed and safe rules, apt for success; and they march under the Royal protection, with establishments, and with honours"). Nevertheless, the Spanish language would not easily assimilate the commercial sense of the term *sociedad*.

Legally speaking, the royal companies were entities (*body politick*, *corporation*, *compañía* or *cuerpo*) that were established according to the law, or those *reglas fixas, y seguras* ("fixed and secure rules") that Miguel de Zavala would refer to. According to scholarly language—not many jurists (such as Johannes Marquardt) tackled those entities[29]—they constituted a *collegium* or *sodali-*

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a few more, whereas *compagnie* is applied when there is a high number of parties, as high as the founders consider necessary to finance their common enterprise (...) There is another difference: *compagnies* only exist by royal decree, whereas other partnerships depend on the partners' free will (...). Also the word *compagnie* is rarely used nowadays, except for businesses trading abroad"). It was an *ad pedem litterae* reproduction of Jacques Savary des Bruslons, *Dictionnaire universel de commerce ... 1/2: Contenant les articles du commerce et des compagnies*, Philemon-Louis Savary (ed.) (Geneva: Cramer & Philibert, 1742), s.v. *compagnie*, cols. 1039 *seq*., in which he traced the distinction, while at the same time acknowledging "*quoi que compagnie et société soit* (...) *dans le fond la même chose*" ("*compagnie* and *société* are really the very same thing").

28 *Representació ... dirigida al más seguro aumento del Real Erario, y la felicidad, mayor alivio, riqueza, y abundancia de su Monarquía* (s.l.: s.n., 1732 [1738]). The work contained an early proposal for trade through companies and was repeatedly published as a main part of the *Miscelánea económico-política* (1749, 1787).

29 Johannes Marquardt, *Tractatus politico-juridicus de jure mercatorum et commerciorum singulari libri IV* (Frankfurt am Main: Götzius, 1662), cf. book 3, chapter 1, *"De Judiciis & Curiis Mercatorum singularibus. Ubi primo de eorum Collegiis & Sodalitiis, vulgo Kompagnien"*. See also Ralf Mehr, *Societas und universitas: Römischrechtliche Institute im Unternehmensgesellschaftsrecht vor 1800* (Cologne: Böhlau, 2008). Also, Johann Friedrich Bachoff von Echt,

*tas*. This was a form of *universitas*, according to Marquardt [*a*]*d horum Collegiorum exemplum commerciorumque promotionem faciliorem, institutae sunt hodiè societates seu Compagniae mercatorum, versus certas oras negotia tractantium* ("an example of these *collegia* for the better use of trade are those companies of merchants nowadays that were established for trade upon certain coasts"). They were thus subject to the approval of the sovereign, like any other *universitas* (for *collegia a superior sunt confirmanda*, "collegia are to be confirmed by the sovereign"). Their independent existence further rested on the existence of a business address (*collegiati quoque in certo loco conveniunt*, "the associates assemble in some location"), a common treasure (*collegiati communem possident arcam*, "associates hold a common treasury"), and a seal and insignia (*collegiati utuntur commumi sigillo in obsignandis litteris & obligationibus liberationibusque ad collegia spectantibus*, "associates are to make use of a common seal in signing letters and obligations that concern the *collegium*"), in addition to the activity of their managing directors *quos omnis est directio et auctoritas*, ("every one has the administration and authority"), agents, and employees who executed the collective will (*collegiati suos habent officiales et minimos*). Furthermore, these companies were not subject to commercial jurisdiction and had the power to ensure the execution/implementation of their own regulations/rules (*quod si vero quis secus facere attentaverit, ille arbitrarie etiam exclusione punitur*, "he who will attempt to do otherwise, will be punished extrajudicially with exclusion").[30] Endowed with sovereign faculties and exclusive trading areas,[31] royal companies did not trade in an ordinary way ([*c*]*ommercia non ut simplices mercatores propagarunt*, "they will engage in trade not in the way of ordinary merchants"). But the main difference lay in the respective legal bases of the organizations. Whereas *las Compañías mas*

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*De eo quod iustum est circa commercia inter gentes* (Jena: Litteris Hornianis, 1730), which is an academic essay that briefly mentions (at 34 *seq*.) shareholding companies, "*qvae octroyirte compagnien adpellari solent*".

30 Cf. Royal Decree of 25 September 1728, *Compañía de Caracas*, s. 7; Royal Decree of 18 December 1740, *Compañía de La Habana*, s. 23; Royal Decree of 4 May 1755, *Compañía de Barcelona*, s. 24, and the ordinances of April 11 1756, s. 84–92. See Raquel Rico Linage (ed.), *Las Reales Compañías de Comercio con América. Los órganos de gobierno* (Seville: Excma, 1983), documents at 26 *seq*.

31 "*Quibus rationibus*," wrote Marquardt on the Swedish East India Company, "*rex motus modò dictam Societatem eôdem anno 1626 egregio dotavit privilegio*." ("For these reasons, in the year 1626 the king endowed this partnership with a privilege"). We already know of some of those that were granted to the *Compañía de Barcelona*. However, the law that established them was referred to in its totality as a "grace" (cf. s. 19).

*frequentes en el Comercio* (…) *que usan, y practican muchos de sus individuos* (1737 Bilbao ordinance X,3), were regulated, as seen above, by means of a contract (*las circunstancias, capítulos, y condiciones licitas, que se quisieren imponer, y pactar, que decía* (1737 Bilbao ordinance X,4), in the *collegia*-companies, the shareholders *secundum statute stricte vivunt* ("strictly obey the statutes"). And those mandatory statutes naturally bound the partners, starting with the *octroi* or creation privilege,[32] which was an imperative law that personified the company and established the framework of its activity according to the superior judgment of the monarch and his bureaucrats.[33] That is why their foundation laws often included more matters than was strictly necessary. For example, the Bank of San Carlos included the first general regulation of bills and notes that was known in Spain.[34] In addition, although the shareholders, or the corporate body that was established for that purpose, developed the internal regulations of the company, their confirmation pertained to the crown.[35]

non-matching parenthesis

## 5 The Kingdom as Corporation

*Contract* vs. *status*, one could thus conclude *à la* Maine. *Status* is a term that suggests predetermined rights and obligations, a pre-existing complex that is imposed upon the subjects who adhere to it. In this regard, it certainly helps in understanding the genesis of privileged companies and the secondary

32 The privilege was so inherent to this type of company that it helped name it: "[*a*] *Germanis vero*"—warned Bachoff von Echt in *De eo quod iustum est circa commercia inter gentes*, 41—"*privilegierte Compagnien vel, vti vulgo loquuntur, octroyrte Compagnien a voce ista belgica octroy, quae idem denotat ac permissio, nuncupari solent*." ("By Germans they should be called *privilegierte Compagnien* or, as they are commonly called, *octroyrte Compagnien*, after the Dutch word *octroy*, which means "permission"").

33 In addition, the privilege could only be interpreted by the prince who granted it: Bachoff von Echt, *De eo quod iustum est circa commercia*, 43.

34 Carlos Petit, "Signos financieros y cosas mercantiles, o los descubiertos de la Ilustración cambiaria," in Vito Piergiovanni (ed.), *The Growth of the Bank as Institution and the Development of Money-Business Law* (Berlin: Duncker & Humblot, 1993), 224–310, here 301 *seq*. The Royal Decree of the *Compañía de Filipinas* (12 July 1803) included, among other things, the concession of port liberty to Manila and the concession of free passages to professors and craftsmen (s. 44–45): Rico, *Las Reales Compañías*, 36 *seq*.

35 Cf. Royal Decree of the *Compañía de Barcelona*, s. 20. The *iuris communis* rule was applicable to the *potestas condere statuta* of corporations with minor degrees of jurisdiction: "Statuti delle arti nella dottrina del diritto commune" (1964), in Antonio Padoa Schioppa, *Saggi di storia del diritto commerciale* (Milan: LED, 1992), 11–62.

position that the partners held within that framework. The merely derived commercial nature of those associations of distinct political content inspired certain metaphors that philosophers used to explain the new social thinking:

> A kingdom is comparable to a corporation. Because the latter is subject to the narrow rules of trade, there is no reason to claim from each partner less than what has been earned, or more than what was lost, in proportion to the shares in the common mass; directors have no authority to undertake excessive spending, or to diminish what is necessary for the good of the company, but instead they have to maintain its existence and increase its prosperity[36] add period?

The comparison is admirable. The corporate metaphor served in the first place to attribute to the ruler the responsibility for collective interests. He was thus depicted as an attentive server of the company-nation and of the partner-citizens. Whether a sign of the times or a simple coincidence, the fact is that the Spanish king referred to himself at the time as the "supreme state administrator" (s. 8, royal letter-patent of 14 January 1783). The image further served to attribute positions and responsibilities within the company in accordance with the stock portion of the shareholder. This reflected a new rationality that was based on the equalitarian *actio pro socio*, and it imposed itself on the old estates.

However, it also revealed the consequences of commutative justice, which excluded from the *res publica* those who did not possess any shares. This was the painful result of the metaphor, as expressed in one of the *Patriotischen Phantasien* of German scholar Justus Möser, *"Der Bauernhof als eine Aktie betra-*

36 "*Un reino es comparable a una compañía de accionistas, sujetas a las estrechas reglas del comercio, que no hay razón para repetir a cada uno menos de lo que se gana, ni más de lo que se pierde, a proporción de sus acciones que tenga en la masa común; ni en los directores hay autoridad para hacer gastos superfluos, ni menos para escasear los necesarios al bien de la compañía, tanto para mantener su existencia como para aumentar su prosperidad*": León de Arroyal (1755–1813), *Cartas económico-políticas al Conde de Lerena* ..., José Caso (ed.) (Oviedo: Universidad de Oviedo, 1971), *ad litteram* v, 128–129. On this thinker, who can be classified as protoliberal, see Pablo Fernández Albaladejo, "León de Arroyal: Del Sistema de Rentas a la Buena Constitución," in Emiliano Fernández de Pinedo (ed.), *Haciendas forales y Hacienda Real. Homenaje a D. Miguel Artola y D. Felipe Ruiz Martín* (Bilbao: Universidad del País Vasco, 1990), 95–111.

*chtet*" ("The farm considered as share").[37] Without going into the full details of the text,[38] it is enough to note that privileged companies offered the author a model that helped explain the origin of the state and the political position that was reserved for the citizen. Thus, those problems that had not been addressed yet, or that had been incoherently addressed by the majority, could be better understood thanks to company law. For instance, slaves would be presented as men without shares (or rights) in the common body and thus legitimately excluded from representative mechanisms. This was only a step away from the ambiguous experience of primitive liberalism, where the constant demand for equality would call for the image of the shareholder as a justification of the unequal enjoyment of civic rights.[39]

Comparative constitutional history offers a number of instances of colonial companies that transformed into political entities. However, the analysis of the cases of Rhode Island, the Bermudas, or Connecticut would take us too far. Instead, we will turn our attention to a pending matter that is the limited liability of shareholding companies.

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37 "Der Bauernhof als eine Aktie betrachtet," (1774) in Justus Möser, *Sämtliche Werke. II: Patriotische Phantasien und Zugehöriges*, L. Shirmeier and W. Kohlschmidt (eds.), vol. 3/6 (Oldemburg: Stalling, 1958), 255–270 (no. 63).

38 Thus the relation between agrarian property and the primitive social pact, according to the Möserian reconstruction of the hypothetical Germanic past, distinguishes the author from other scholars. Cf. Frederick C. Beiser, *The German Historicist Tradition* (Oxford: OUP, 2011), 9 *seq*. Also, Jerry Z. Muller, *The Mind and the Market. Capitalism in Western Thought* (New York: Anchor Books, 2003), especially chapter 4: "The Market as Destroyer of Culture."

39 Emmanuel J. Sieyès, *Proemio a la Constitución* (1789), in Ramón Máiz Suárez (ed.), *Escritos y discursos de la Revolución* (Madrid: Centro de Estudios Constitucionales, 1990), 101: "[*t*]*odos pueden disfrutar de las ventajas de la sociedad, pero solamente aquellos que contribuyan al mantenimiento de los poderes públicos son como los verdaderos accionistas de la gran empresa social*" ("all can enjoy the advantages of society, but only those who contribute to the maintenance of public authorities are considered as true shareholders of the great social enterprise"). Also, Edmund Burke, *Reflections on the Revolution in France* (London, Johnson, 1790; consulted edition Buffalo (NY): Prometheus, 1987), 100–101: "[s]ociety (…) it is a partnership in all science; a partnership in all art; a partnership in every virtue, and in all perfection (…) between those who are living, those who are dead, and those who are to be born," which brings to mind the "perpetual succession" of corporations in *common law*. From a different ideological stance: Thomas Paine, *Dissertations on First Principles of Government* (1795), in M. Foot and I. Kramer (eds.), *Thomas Paine Reader* (London: Penguin, 1987), 462.

## 6 The "Limited" Liability Question

Too many (often hasty) conclusions have been drawn with regard to the legal consequences that privileged companies had. Distinct assets, their corporate personality, and the ease with which shares could be sold limited the obligations of the shareholders to their original contribution. It has thus been asserted that the essential characteristic of the modern joint-stock partnership can also be traced back to the legal model of its direct predecessor.[40] Notwithstanding this, no proof beyond dogmatic reasoning has been successfully presented to support such allegations.[41]

The absence of provisions in this regard in the foundation laws indicate, in our view, that the Enlightenment culture dismissed such an essential aspect as partner responsibility within the framework of those privileged entities.[42] It has been asserted that the establishment of a mandatory regime that ran contrary to common regulations was intended to compensate for the risks inherent

40 Francesco Galgano, *Historia del derecho mercantil* (Barcelona: Laia, 1981), 7 *seq*. In "¿Crisis de la sociedad anónima?," *Revista de Estudios Politicos* 49 (1950), 51–106, Federico de Castro provides an intelligent analysis that is contrary to the establishment of a sort of continuity between privileged companies and the modern joint-stock partnership, in particular 77 *seq*.

41 María Jesús Matilla Quizá, "Las compañías privilegiadas en la España del Antiguo Régimen," in Miguel Artola (ed.), *La Hacienda del Antiguo Régimen*, vol. 4 (Madrid: Alianza, 1982), 323–401, at 340 *seq*. However, the clause of the *Real Compañía Marítima* (1789) that is invoked there contains a yardstick for the distribution of results. The clause concerning the *Compañía de Seguros Marítimos* (1800) is more ambiguous; the description of the capital ("[*e*]*l fondo capital de esta compañía será de pesos setecientos cincuenta mil de 128 cuartos cada uno*", "the capital will be of 750,000 pesos divided in 128 shares") was accompanied by a warning ("*sin más responsabilidad en los accionistas que la del número de acciones en que se halla interesado*", "without any liability beyond the number of their shares") that perhaps only implied the prohibition of contributions (see *infra*). In any case, given that it involved the insurance business, where the proclamation of unlimited liability was usual (cf. Jerònia Pons, "Compañías de seguro marítimo en España (1650–1800)," *Hispania: Revista española de historia* 67/225 (2007), 271–294), it would make sense to establish the opposite principle clearly.

42 A reference in the matter thus rightfully noted: "*So wichtig er uns heute für die Abgrenzung der Aktiengesellschaft von anderen Handelsgesellschaften erscheint*" that limited liability "*war nicht die treibende Kraft*" ("Even though it seems for us today so important as criterion to distinguish the corporation from other commercial companies, limited liability was not a driving force"). Cf. Karl Lehmann, *Die geschichtliche Entwicklung des Aktienrechts bis zum Code de commerce* (Berlin: Heymann, 1895), 23.

in the colonial adventure that the "commercial class" assumed.[43] Now, besides the fact that the presence of traders in those institutions was often limited (not only in Spain), my understanding is that the privileged condition was fundamentally due to the very existence of the corporation. There certainly existed other concessions and monopolies (especially in matters of navigation and fiscal taxation), but it seems to me that the main characteristic of those companies lay in the subjectivity that was granted by the *lex privata* promulgated by the sovereign. It was "the particular constitution" of the company (as expressed by Francisco Cabarrús in reference to the Real Banco de San Carlos, 1782) that conferred upon those companies their most outstanding characteristic.[44] It corresponded to that *privata lex* to establish the obligations of the partner and of the administrators (and for which the type of business would doubtless be relevant),[45] or to remain silent on the matter, as would be the case with regard to the Hispanic companies. Warnings such as [*a*]*ucun Actionnaire*

43 Francesco Galgano, *Historia del derecho mercantil*, 77. However, according to Montanari, *Impresa e responsabilità. Sviluppo storico e disciplina positive* (Milan: Giuffrè, 1990), 162: "[*l*]*'indagine storica sembra* (…) *smentire l'opinione che vede nella responsabilità limitata un 'privilegio' concesso dal sovrano alla sempre più potente classe mercantile*" ("historical inquiry (…) seems to deny the opinion that sees in limited liability a "privilege" granted by the sovereign to the merchant class that became increasingly powerful").

44 The edict of the "*Imperiale privilegiata Compagnia orientale*" (29 December 1719), which was approved by Carlos VI, is very eloquent: "*statuto composto di vari articoli* (…) *che debe costantemente servire come legge fondamentale e norma di detta Compagnia*," "*contratto e statuto fondamentale della Compagnia*," "*sua ordinaria legge fondamentale e regola obbligatoria* (…) [*che*] *verrà poi per parte Nostra dovunque efficacemente coadiuvata e sorretta*," etc. "bylaws are composed of various articles (…) that should constantly serve as a fundamental law of the company (…) the contract and fundamental statute of the Company (…) its ordinary fundamental law and mandatory rule (…) [which] will be then for Ourselves wherever effectively assisted and supported". Cf. Paolo Ungari (ed.), *Statuti di compagnie e società azionarie italiane (1638–1808): Per la storia delle società per azioni in Italia* (Milan: Giuffrè, 1993), 40–50.

45 For example, according to state provisions in New York and New Jersey, the liability of the shareholder was unlimited for banking companies. See Carlos Petit Calvo, "Ignorancias y otras historias, o sea, responsabilidades limitadas," *Anuario de historia del derecho español* 60 (1990), 497–508, here 501. During the eighteenth and nineteenth centuries in Scotland (prior to the 1879 legal reform) there existed three banks with limitation according to the letter granted by Parliament (the Bank of Scotland, the Royal Bank of Scotland, and the British Linen Company), whereas most existed without it (the so-called "free banks"); only the latter could issue bills. See Jack Carr, Sherry Glied and Frank Mathewson, "Unlimited Liability and Free Banking in Scotland: A Note," *The Journal of Economic History* 49/4 (1989), 974–978.

*ne sera responsable au delà de sa mise* ("shareholders are only liable for their investments"), which was inserted with no further explanation in the letter-patent of the *Société Imperiale pour le commerce Asiatique de Trieste et d'Anvers* (1781), were exceptions.[46]

In fact, it is not easy to establish on the basis of the foundational laws whether the shareholders were beyond the reach of creditors, and less so whether they were exonerated from having to increase their participation with approved contributions to settle their debts. A provision of the *Compagnie des Indes Orientales* (1674) nevertheless demonstrates that that was by no means extraordinary:

> Neither the directors nor individuals shareholders shall be held—by any cause or pretext whatsoever—to provide any money beyond that for which they will be obliged at the first establishment of the Company, either by way of supplement or otherwise.[47]

My understanding, contrary to Galgano's, is that the norm forbade recapitalization imposed *par manière de supplement ou autrement*.[48] The exact opposite occurred in the *Dr. Salomon* vs. *The Hamborough Company* (1671) case. Faced with the insufficiency of the corporate capital to handle a credit, the lords decided that the shareholders would contribute with new sums that were proportional to their shares. A few years later (cf. *Harvey* vs. *East India Company*, 1700), that ruling, which now constituted a precedent, allowed the conclusion that "the members in their private persons were made liable, the Company having no goods".[49] Thus, even when third parties lacked the means to pursue the shareholder, they could at least demand that the directors agree to request contributions and deal with the debts. The practice of recording the shares as registered securities in books provided for that purpose certainly allowed for

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46 Ungari, *Statuti di compagnie e società azionarie*, 189.

47 "[*l*]*es directeurs ni les particuliers intéressés ne pourront être tenus—par quelque cause ou prétexte que ce soit—de fournir aucune somme au delà de celle pour laquelle ils seront obligés dans le premier établissement de la Compagnie, soit par manière de supplément ou autrement*".

48 It is thus asserted by Lévy-Bruhl, *Histoire juridique*, 244, in particular the cases examined at 23 *seq*. The author therefore concludes that "*les actionnaires de la Compagnie des Indes Orientales sont responsables in infinitum*" ("the shareholders in the Compagnie des Indes Orientales are responsible jointly and severally"), at 245.

49 Stefania Gialdroni, *East India Company. Una storia giuridica* (*1600–1708*) (Bologna: Il Mulino, 2011), 233 *seq*.

the identification of those affected. The triumph of limited liability in English corporate law would only arrive in the second half of the nineteenth century.[50]

Were there similar cases in Spain? Here, as in the rest of Europe, the silence of the *octroi* with regard to liability is remarkable, especially if one bears in mind that the foundational laws contained provisions aimed at protecting corporate assets against the particular creditors of the shareholders. Nevertheless, as far as we know, the failure of privileged companies was never addressed with compensation through contributions. For example, the crisis of the *Compañía guipuzcoana de Caracas* following the adoption of the Free Trade regulation (1788) and the war with Great Britain (1780–1783) led to the establishment of the *Real Compañía de Filipinas* (1785), where the assets of the Guipuzcoan company converged.[51] Something similar occurred with the *Banco de San Carlos* (1782), which was re-established in 1829 as the Banco de San Fernando, which received cash injections and good bills of exchange.[52] Although there is no proof that when those companies were liquidated, their shareholders responded directly before third parties (not even before those who made up for the initial capital insufficiency by means of a loan or census), the solution provided was in any case factual and does not allow us to identify the existence of a precise legal norm. When the High Court of the Dauphiné faced litigation that affected the *Compagnies du Corail*, the judges ruled *qu'un associé peut obliger les autres associez, comme la Cour avait déja prejugé … les participes solvables fuerent condamnez à payer la part même de leurs associez insolvables*[53] ("a partner may

50 H.A. Shannon, "The Coming of General Limited Liability," (1931) in E.M. Carus-Wilson (ed.), *Essays in Economic History*, vol. 1 (London: Arnold, repr. 1966), 358–379; Peter Stein, "Nineteenth Century English Company Law and Theories of Legal Personality," *Quaderni Fiorentini per la storia del pensiero giuridico moderno* 12 (1983), 503–519.

51 In 1796, the Caracas partners were paid a little over 377 *reales* per share over a total value of 500 pesos, that is, 7500 *reales*. Cf. María Lourdes Díaz-Trechuelo, *La Real Compañía de Filipinas* (Seville: 1965), 5 *seq*. At the same time, the liquidation of the new company was prolonged until 1840, but Díaz-Trechuelo, *La Real Compañía de Filipinas*, 149 *seq*., does not offer additional information.

52 Matthias Frey, *Die spanische Aktiengesellschaft im 18. Jahrhundert und unter dem Código de Comercio von 1829* (Frankfurt am Main: Lang, 1999), 24 *seq*., and 303 *seq*., on the royal decree of establishment; Pedro Tedde de Lorca, *El Banco de San Carlos (1782–1829)* (Madrid: Alianza, 1988), 358 *seq*. The *Compañía de La Habana* also perished because of its recalcitrant debtors: Monserrat Gárate Ojanguren, *Comercio ultramarino e Ilustración. La Real Compañía de La Habana* (Donostia: Amigos del País, 1993), 29 *seq*.

53 Mehr, *Societas und universitas*, 330. See at 344 *seq*. on the obligations for shareholders to assume capital increases in the case of "*quelque accident extraordinaire et imprévu*" ("for any extraordinary or unforeseen accident"), and 34 *seq*., on the liability of the partner in

obligate other associates, as the Court had already decided … creditworthy participants were condemned to pay for other associates").

In any case, it would be quite a few years before we would come across such declarations as those that were included in the statutes of the abovementioned bank of San Fernando: [*c*]*onforme á las disposiciones del Código de Comercio sobre las Sociedades anónimas, la responsabilidad de los accionistas en operaciones del Banco se reducirá al importe de las acciones que tengan en él* ("according to the sections of the Commercial Code in matter of corporations, shareholders' liability in Bank operations is limited to the sum of their shares") (R.C., 9 July 1829, s. 7).

## 7 Partnerships by Shares

At the time, the Code was still in *vacatio*, but the matter is actually irrelevant. Indeed, the shareholding company would prove to be the ideal formula for the mobilization of resources and the pursuit of ambitious commercial objectives.[54] Setting the royal companies of the eighteenth century aside, the formula led to the existence of associations in which the possibility of investing capital by subscribing low quotas would allow anyone—*las personas de qualquier estado, sexo y calidad* ("persons of any class, sex and condition"), as it is stated in the founding documents of a Compañía Valenciana (1745)—to be interested in doing business. It can be said that those companies, far more than the limited partnership, helped finance commercial activities with non-business money.[55] Given that the general and corporate laws, in the same way as the Bilbao ordinances, remained silent with regard to this arrangement, the contracts constitute our main source of information. At this stage, it is interesting to consider the available data on commercial practice in a number of Spanish localities, amongst which the seafaring city of Cadiz stands out because of its objective importance. The shareholding companies found there from 1763 onward, all belonging to the insurance industry, responded, according to García-Baquero,[56] to the characteristics that were listed by Lévy-Bruhl:

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the external relations of the company and the presence of what Lévy-Bruhl referred to as "*fausses commandites*" "deceitful *commandites*").

non-matching parenthesis

54 José Martínez Gijón, "Las sociedades por acciones en el derecho español del siglo XVIII," in *Historia del derecho mercantil* (Seville: Universidad de Sevilla, 1999), 575–596.

55 Ricardo Franch, *Crecimiento comercial y enriquecimiento Burgués en la Valencia del siglo XVIII* (Valencia: Alfons el Magnánim, 1986), 281.

56 Antonio García-Baquero, *Cádiz y el Atlántico, 1717–1778. El comercio colonial español bajo*

a high amount of capital (the figure of half a million pesos was frequent); a precise description of that capital in the contract (fifty shares of ten thousand pesos, in the same case); and the company name (often a religious one). The existence of assemblies and boards and of directors and employees who ran the business is also worth mentioning.[57] The negotiability of the shares—a "capitalist" trait—was nevertheless non-existent, thus leading to the conclusion that those companies were

> A sort of hybrid form, a transitional type with some typically capitalist notes (…) but without that final stroke that serves to distinguish these companies from personalistic partnerships, namely: freely negotiation of their shares.[58]

Notwithstanding this, it is not possible to draw general conclusions when the transfer of shares, obviously hampered by the absence of sheets representing the capital, was entirely dependent on the corporate agreements. That which was absent in Cadiz, perhaps to offer an image of solvency, given that it was about maritime insurance, was sometimes possible in Valencia, as in the example of a company whose shareholders *en qualquier tiempo* [*podrían*] *transportar, vender o enajenar sus acciones con tal de que avisen a los Directores con seis días de antelación para hacer los asientos correspondientes al nuevo interesado* (*Compañía Valenciana*, 1745);[59] ("At any time the partner [could] carry, sell or dispose of its shares, reminding the Directors six days prior to the entry of the new partner"). From this perspective, "joint stock companies in the eighteenth century constitute a generic type of mercantile company, with the laws of each company (…) determining the specific nature of it, be personalistic or capitalistic."[60]

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*el monopolio gaditano*, vol. 1 (Cadiz: Fundación Municipal de Cultura del Ayuntamiento 1988), 412 *seq*.

57 In addition to the previous, *see* Franch, *Crecimiento comercial*, 283 *seq*.

58 "(…) *una especie de híbridos, como unas sociedades de transición en las que se dan ya algunas notas típicamente capitalistas* (…) *pero en las que falta el trazo definitivo que sirve para distinguir a estas sociedades de las personalistas, a saber: la libre disposición por parte de los asociados de sus acciones con vistas a su posible negociación o venta*": García-Baquero, *Cádiz y el Atlántico*, 420.

59 In terms of the 11th clause of a "*Compañía Valenciana*" (1745), see Franch, *Crecimiento comercial*, 282, where other examples are mentioned.

60 "(…) *las sociedades por acciones del siglo XVIII constituyen un tipo genérico de sociedad mercantil, siendo los estatutos de cada sociedad* (…) *los que determinan la naturaleza*

The clauses that dealt with the liability of shareholders were more uniform in character. However, the genetic relation between those shareholding companies and the modern limited liability company should nevertheless still be refuted. Except in a very few contracts, such as the case of the *María Santísima Nuestra Señora de las Mercedes* (1777) company in Cadiz,[61] the statutes insisted that the shareholders were obliged to satisfy common debts beyond their contributions, as can be deduced from the clause on capital outlay and the obligation of distributing proportionally amongst the shareholders the sums required to settle the existing debts of the company.[62] I believe a careful con-

*específica, personalista o capitalista de la misma*": José Martínez Gijón, "Las sociedades por acciones," 588.

61 "[*E*]*ntendiéndose esta responsabilidad y obligación mancomunada, hasta en la concurrente cantidad del fondo en que deba cada cual contribuir para dichos quebrantos con los diez mil o veinte mil pesos importe de la una o dos acciones en que se han interesado, y no más: de forma que si sucediese que las pérdidas y quebrantos de los seguros y quiebras de los compañeros excediesen el valor del fondo, no quedarán en semejante caso obligados los otorgantes, sino solamente a cubrir y pagar las tales pérdidas y quebrantos hasta en la cantidad de la acción o acciones de su cargo*" ("This responsibility and joint liability should extend over the respective amount of the fund to which each partner should contribute, for the mentioned losses, with ten thousand or twenty thousand pesos, for one or two of their shares, and no more: so that if it happened that losses due to insurance underwriting or bankruptcy of the partners were for more than the value of the fund, partners are held to cover and pay for such losses only up to the amount of their shares"): García-Baquero, *Cádiz y el Atlántico*, 424.

62 "*"En caso de omisión y morosidad de alguno de los Compañeros en contribuir su contingente"—se pactó en la escritura de la compañía "María Santísima Nuestra Señora en el misterio de su Purísima Concepción y el patriarca señor San Joseph" (1763)—"dexando, como dexan el derecho a salvo para repetir contra él y sus bienes la satisfacción de su importe, quedan y se constituyen los otorgantes junto de mancomún a voz de uno, y cada uno de por sí, y por el todo insolidum* (…) *y se obligan a la responsabilidad y efectiva paga y entrega de todas y cada una de las cantidades, que en virtud de esta Escriptura, y a nombre y por cuenta de esta Compañía se asseguren a fin de que sin embargo de la omisión, que se experimente en alguno de los socios, no padezca detrimento ni decadencia el crédito de ella*" ("in case of omitted or delayed contribution, aside from the right to file claims against the partner or his assets for satisfaction of the investment, partners are jointly liable (…) and they engage themselves to the liability and effective payment and delivery of all or any quantity which according to this text is required, and they are held and mutually ensured for the capital and account of the company, so that notwithstanding the omission by one of the partners there is no prejudice or decline of the company's credit"), which, according to García-Baquero, *Cádiz y el Atlántico*, 421, followed a repeated form. In contrast, the Valencian contracts were silent on any form of liability: Franch, *Crecimiento comercial*, 286.

non-matching quotation marks

sultation of the legal documents would allow for the discovery of those links between the shareholder and the external creditors.

## 8 From Partnerships to Corporations in the Commercial Code (1829) and the Company Law (1848)

The ordinances of 1737 and the last royal companies survived until the beginning of the liberal regime. During the last period of the rule of Fernando VII, a Code of Commerce (1829) was finally adopted in Spain. Although its provisions concerning companies owed much to the *Code de commerce*, they nevertheless contained two important novelties.

The first concerned the classification of commercial companies in a way that was unknown to the old Hispanic *ius mercatorum*. Despite a number of errors and hesitations, three categories of commercial companies were nevertheless identified (in addition to joint accounts), including the *compañía anónima* (i.e., joint-stock company). Notwithstanding the manner in which that designation had previously been used, the exceptional concession of privileges allowed by the code (s. 294) evokes a continuity with the royal companies. However, the liability of the shareholder was now clearly established, even if the limited liability still did not constitute, not even in the *Code de commerce*, a decisive element of the legal definition.[63]

The second innovation was a novelty both with regard to the tradition of privileged companies and to more recent regulations that had exerted their influence on the first Spanish Code of Commerce. This can be seen in section 293, which announced the obligation of presenting the founding statutes to the local tribunal of commerce, where they would be subjected to a brief control of legality that was a mandatory, prior, step for the company's registration at the *registro público del comercio*, as a *condición particular de las compañías anónimas*. This condition underlined the contractual nature of the new limited

63 "*Puede contraerse la compañía*," stated s. 265, "*3°. Creándose un fondo por acciones determinadas para girarlo sobre uno ó muchos objetos que den nombre á la empresa social; cuyo manejo se encargue á mandatarios ó administradores amovibles á voluntad de los socios*." In turn, s. 278 noted that "[*l*]*os socios no responden* (…) *de las obligaciones de la compañía anónima, sino hasta la cantidad del interés que tengan en ella*" ("the company can be agreed (…) by creating a fund of shares for investing in one or many objects that give name to the enterprise; the management of which is entrusted to agents who can be removed at the will of the shareholders". S. 278 states: "shareholders do not respond (…) for the obligations except up to the amount of the interest they have in corporation").

company in contrast to the institutional past of the old privileged company. However, it also side-lined the solution contained in the Napoleonic code, the approval by governmental decree of the establishment of the limited company (s. 37 of the *Code de commerce*). In fact, although the 1830s were marked by the protests against the Spanish code, which were accompanied by numerous texts (1837, 1838, 1839) and by the vain hope of the imminent adoption of the Civil Code (the 1836 project), the unique regime established in section 293 would pave the way for an almost constant special legislation.

In this regard, the 1848 Companies Law, which introduced the system of governmental control of corporations, is worth mentioning. The measure came as a response to a speculation fever that had led to the severe 1846–1847 crisis. The adverse financial situation, which was generalized in Europe during the second revolutionary cycle (1848), was further aggravated in Spain because of the ease with which shareholding companies could be created in the absence of capital that was adjusted to their business objectives.

> When this hobby grew [i.e. the foundation of corporations] to a fever pitch from 1845 to 48, when hundreds of companies were founded with a fabulous capital and different objects for all kinds of industry, including mining, agriculture, irrigation, roads, construction, factories, water supplies, grains, fish, gas and even pastry and sweets … The most fantastic programs, the most poetic emblems or mythological and allegorical titles were, it can be said, exhausted in those sublime associations; and the most ambitious projects offered to the astonished country led it to think of itself as being on the eve of a magical transformation into an earthly paradise. But unfortunately the case came which gave effect to those ridiculous perspectives, and they were scattered as images of make belief, or they went up in smoke, the Iris and the Auroras, the Phoenix, the Ceres, the Foresighted, the Fertilizer, the Advertising, the Promotion, the Persevering, the Illustration, the Ermine, the Fire, the Mercury, the Probability, the Commerce, the Villa de Madrid, the Hispano-Filipino, the Great Antilla, the Regenerating, the Fortuna, the Hope, the Happiness and other theological virtues, gifts of the Holy Spirit and Olympian deities[64]

64 "*Cuando creció esta manía hasta un punto febril fue desde 1845 al 48*"—as is recorded by a contemporal witness—"*en términos que no bajaron de ciento las sociedades improvisadas con un capital fabuloso y con objetos diferentes aplicados a todo género de industria, de minería, de agricultura, de riego, de caminos, de construcción, de fábricas, de consumos, de abastecimientos de aguas, de granos, de pescados, de gas y hasta de hojaldre y caramelos* (…). *Los programas más fantásticos, los emblemas más poéticos, los títulos mitológicos*

Satire aside, the statistics were as follows. Between 1844, when "moderate" liberals reached government, and 1847, around fifty shareholding companies were established in Madrid, from which the following stood out: 7 insurance companies; 11 banks and lending companies: 9 wholesale companies; and 8 transportation companies, with a nominal capital of around 3,649.000.000 *reales*, of which 927,247.250, were disbursed, that is, around a fourth part. There were also many fabulous projects that promised to mobilize many more hundreds of millions.[65]

The solutions contained in the Code had already been generally evoked:

> It is a particular condition of corporations that the deeds of their founding and all regulations upon administration and management, have to be examined by the Commercial Court of the jurisdiction where it is founded; and without the Court's approval the agreement is not implemented[66]

This implied, in practical terms, a liberty of constitution, which was unknown to Europe.[67] The author of the Code of Commerce would claim that this option responded to the desire to implement the intrinsically capitalist formula in

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*y alegóricos quedaron, puede decirse, agotados en aquellas sublimes asociaciones; y los proyectos más gigantescos ofrecidos bajo su consigna al pais atónito hicieron que éste se creyera en vísperas de verse transformado mágicamente en un paraíso terrenal. Pero desgraciadamente llegó el caso de hacer efectivas aquellas risueñas perspectivas, y se disiparon como cuadros disolventes, o resolvieron en humo los Iris y Auroras, los Fénix, las Ceres, Previsora, Fertilizadora, Publicidad, Fomento, Perseverante, Ilustración, Armiño, Fuego, Mercurio, Probabilidad, Comercio, Villa de Madrid, Hispano-filipino, Grande Antilla, Confianza, Regeneradora, Fortuna, Proveedora, Esperanza, Felicidad y demás virtudes teologales, dones del Espíritu Santo y Deidades olímpicas*": Ramón Mesonero Romanos, *Nuevo manual histórico-topográfico-estadístico y descripcion de Madrid* (Madrid: Yenes, 1854), 555–556, cited by Angel Bahamonde Magro and Julián Toro Mérida, *Burguesía, especulación y cuestión social en el Madrid del siglo XIX* (Madrid: Siglo Veintiuno de España, 1978), 200–201. On the protagonists of those establishments, see Alfonso Otazu, *Los Rothschild y sus socios en España, 1820–1850* (Madrid: O. Hs., 1987).

65 Data collected by Bahamonde and Toro, *Burguesía, especulación y cuestión social en el Madrid*, 198, on the basis of Madoz' *Diccionario geográfico*.

66 S. 293: "[*e*]*s condición particular de las compañías anónimas que las escrituras de su establecimiento y todos los reglamentos que han de regir para su administración y manejo directivo y económico, se han de sujetar al examen del Tribunal de Comercio del territorio en donde se establezca; y sin su aprobación no podrán llevarse a efecto*".

67 Bernhard Grossfeld, "Die rechtspolitische Beurteilung der Aktiengesellschaft im 19. Jahrhundert," in Helmut Coing and Walter Wilhelm (eds.), *Wissenschaft und Kodifikation des*

Spain. His claim, for which he offered no basis, nevertheless seems to have been driven by interest, or rather, by the desire to excuse himself.

Amidst the failure to adopt another code, the law on joint-stock companies was adopted on 28 January, 1848. Beforehand, during the worst period of the crisis, a royal order that was issued on 9 February 1847, ordained that the tribunals of commerce were to abstain from authorizing the establishment of new companies while the work was still being done on the reform of the system in force. This temporary decision was reinforced by another royal decree adopted on 15 April, which granted the government the authority to approve the constitution of limited companies, while the project it had submitted shortly before to the Cortes (27 February 1847) was being processed.[68] Before long, an extensive decree was adopted (Royal Decree of 17 February 1848).

The parliamentary material pertaining to the 1848 law, which it took the Cortes almost a year to approve, has been analysed by María Jesús Matilla. But the two studies that have been published by Francisco de Cárdenas concerning the decree that was adopted in April 1847, and the ministerial project, respectively, are less well-known.[69] In general terms, both Cárdenas' proposals and

*Privatrechts im 19. Jahrhundert, IV: Eigentum und industrielle Entwicklung, Wettbewerbsordnung und Wettbewerbsrecht* (Frankfurt am Main: Klostermann, 1979), 236–254; Anne Lefebvre-Teillard, *La société anonyme au XIX siècle. Du Code de Commerce à la loi de 1867: Histoire d'un instrument juridique du développement capitaliste* (Paris: PUF, 1985); Antonio Padoa Schioppa, "Le società commerciali nei progetti di codificazione del Regno Italico (1806–1807)," (1977) in Antonio Padoa Schioppa, *Saggi di storia del diritto commerciale* (Milan: LED, 1992), 113–135; Claes Peterson, "Juristische Person und Begrenzte Haftung der Aktionäre. Ein Beitrag zur Geschichte des Aktienrechts in Schweden," *Quaderni fiorentini* 11–12 (1982–1983), 321–387; H.A. Shannon, "The Limited Companies of 1866–1883," in E.M. Carus-Wilson (ed.), *Essays in Economic History*, vol. 3 (London: Arnold, 1933; repr. 1966), 380–405; Paolo Ungari, *Profilo storico del diritto delle anonime in Italia. Lezioni* (Rome: Bulzoni, 1974), 29 *seq*.

68 In January 1846, Minister Armero presented a project on companies before the Senate. However, it was abandoned following a change of government members: cfr. María Jesús Matilla Quiza, "La regulación del sistema capitalista en España (1829–1923): la constitución de las sociedades por acciones," *Estudios de historia social* 38–39 (1986), 7–56, in particular 16–17.

69 Francisco de Cárdenas, "Examen del proyecto de ley sobre sociedades por acciones," in Francisco de Cárdenas, *El Derecho moderno. Revista de jurisprudencia y administración*, vol. 1 (Madrid: Rodriguez de Rivera, 1847), 126–145; Francisco de Cárdenas, "Legislación actual sobre sociedades por acciones," in Francisco de Cárdenas, *El Derecho moderno: Revista de jurisprudencia y administración*, vol. 1 (Madrid: Rodriguez de Rivera, 1847), 256–268.

the governmental project and April decree coincided with regard to the objective of the reform, which was to introduce the authorization system in Spain. The latter was approved by a majority of the parliament (s. 1: *No se podrá constituir ninguna compañía mercantil, cuyo capital se divida en todo o en parte en acciones, sino en virtud de una ley o de un Real decreto*, "It shall not be constituted any commercial company, whose capital is divided wholly or partly in shares, but under a law or a royal decree"), which based its arguments on a criticism of the codified regime, cast in years, as Cárdenas said, *en que el capital nacional crecía lenta y pesadamente, en que se necesitaba más bien promover el tráfico por todos los medios posibles que cuidarse del abuso que pudiera hacerse de ellos* ("when the national wealth grew slowly and heavenly, and when it was needed to promote the economic traffic by all possible means, rather than to consider the abuses that might be made of it"). However,

> thanks to the secularization of communitarian and ecclesiastical estates, the reforms made fifteen years ago and the strong impulse that gave the revolution to the ideas, to the customs and all the elements of our civilization, national wealth has increased rapidly.[70]

The situation would appear to be completely different by the middle of the century. Within that context, limited liability in companies would come to be understood for the first time as a sort of privilege that justified that its establishment was controlled. It was also about preserving the activities of minor traders, which explains the legal measures, in section 4, against the monopoly of basic products. Although this regulation was criticized by some, who suggested the adoption of the normative system (1849) instead, the idea of public intervention continued to dominate.

There were certain nuances in the manner in which the new solutions were articulated. The extent of public intervention in the authorization of companies was a subject of debate. Although the provisional governmental regulations, the project, and the parliamentary opinion consistently referred to joint-stock companies and limited partnerships, which explains section 1 of the law (*cuyo capital en todo o en parte se divida en acciones*, "the capital of which is divided, as a whole or in part, in shares"), some progressive voices (*Ordax Avecilla*) sought to exclude the latter from the strict legal requirements

70 "(...) [*m*]*erced a la desamortización civil y eclesiástica, a las reformas hechas de quince años a esta parte y al impulso violento que ha dado la revolución a las ideas, a las costumbres y a todos los elementos de nuestra civilización, el capital nacional ha recibido un aumento rápido*".

for their authorization. This position found support in comparative law—including the French example, where it constituted the basis for capitalism—but nonetheless it was not widely shared. Cárdenas' suggestion of adopting a capital limit beyond which the authorization of the limited companies became necessary (200,000 *duros*), was barely echoed, thus impeding the adoption of an intermediate solution that would have encouraged the development of this company form, which at the time had acquired great importance in other countries.

A second controversial issue was the legal form of the governmental approval. Although the text that was approved by the Cortes accepted the decree as a mechanism of ordinary authorization, it nevertheless requested that a statute be resorted to in specific instances (s. 2: issuing banks, railroads, road and canal construction). Furthermore, the archaic possibility of privilege granting was upheld (s. 294 of the Code), but it now pertained to the legislative body.

In addition to the approval by decree or statute, other requirements were foreseen. The legal obsession with defining the object of the company was reflected in the emphasis that was placed on the exceptional nature of shareholding companies in addition to their causal nature—it was public utility that justified, by means of an authorization, the subjection of the company to the regime of limited liability (s. 4, *Ley*; s. 13,2 *Reglamento*) and of authorization.[71] That obsession is but a reflection of the historical period in which shareholding companies were being articulated and which the Spanish reform process sought to address. The suggestions that were put forward in the Cortes (Gonzalo Morón, Armendáriz) to exclude specific commercial branches from the scope of shareholding companies did not succeed. However, the government did commit to rejecting those companies that might violate the prohibition of monopolies.

The rules imposed on the capital reflected the fear of fictitious companies or investments that were disproportional to the object. Thus, it was mandatory to subscribe to (at least) half the capital (s. 7 *Ley*; s. 9 *Reglamento*) with letters of intent as to the acquisition of shares. That it was mandatory was underlined

71 s. 5 (Ley): "*Toda compañía por acciones, se constituirá precisamente para objetos determinados*", "any company by shares should have a precise object". See also Reglamento, s. 13,2: "*Las escrituras de fundación de las compañías mercantiles por acciones han de contener necesariamente: 3. El objeto o ramo de industria o de comercio a que exclusivamente ha de dedicarse la compañía*" ("the notarial documents of commercial companies by shares must necessarily contain: 3. The object or branch of industry or commerce of the company").

in the decree (s. 10). The crisis had led to the contemplation of an automatic dissolution in cases in which more than 60 per cent of the capital was lost.[72] However, the law limited itself to company inspection (s. 17), which could eventually lead to the suspension or annulment of the authorization that had been granted (s. 30 *Reglamento*). To this end, and in general terms with regard to the authorization, the decree placed its trust in the provincial governors or *jefes políticos* (right of inspection, s. 37–38 *Reglamento*; prior reports on the establishment proposals, s. 13–14 *Reglamento*).

Naturally, the regulations contained in the Code of Commerce still constituted the general law that acted in a subsidiary manner with regard to the new statute. The decree contained a number of explicit references to the 1829 text (s. 8: null nature of secret pacts; section 1,14: annual balance; etc.). However, given that the legislation on companies was limited, it would develop by means of special laws. Thus, section 2 *Reglamento* established that:

> it is an essential and common condition in all mercantile companies with shares that the partners have equal rights and participation in the profits of the company, distributed proportionally according to the number of shares held by them.[73]

This expressed an equalitarian principle that was further reflected in a number of contemporary proposals that advocated for the acceptance of a special category of shares ("industrial shares") in case of investment in patents or in the work itself. Section 33 of the decree contained another substantial rule with regard to the conditions for transferring shares, which were always registered securities (s. 12 *Ley*; s. 15 forbade shares to bearer in the absence of legal authorization). In short, the 1848 legislation introduced the system of

72 de Cárdenas, "Examen," 145: "*Cuando la pérdida ascienda al 60 por 100 del capital, se disolverá de derecho la compañía, y los gerentes o administradores son responsables personalmente respecto a los terceros interesados de las obligaciones que contrajeren, después que tuvieron o debieron tener conocimiento de la pérdida*" ("when the loss amounts to 60 per 100 of the stock, the company should be dissolved by law, and directors or managers are personally liable vis-à-vis third parties that entered into obligations with them, after the managers had or should have had knowledge of the loss"). The author's suggestion was to publicize, including by means of advertisements in the Gaceta, the loss of half of the capital.

73 "[*s*]*erá condición esencial y común en todas las sociedades mercantiles por acciones, que los socios tendrán iguales derechos y participación en los beneficios de la empresa, distribuyéndose proporcionalmente al número de acciones que posea cada socio*".

authorization of shareholding companies in Spain in terms that were strict but which were nevertheless quite common in the European landscape.

A comprehensive study of authorization rules has not yet been undertaken. What is mainly lacking is an analysis of the decrees (and laws) on authorization as an instrument around which the law on shareholding companies, which was barely dealt with in the Code or in special laws, was articulated. In short, we still need to determine whether the authorization system generated a commercial doctrine on companies similar to the French jurisprudence produced by the *Conseil d'État*.[74]

This future research work is further encouraged by the fact that the 1829 legislator, Pedro Sainz de Andino, was appointed a member of the Spanish Council of State as president of Department of Trade, Instruction, and Public Works, that is, of the section that was responsible for issuing opinions on the provisions that affected industrial and commercial activities, such as the decree of authorization of shareholding companies. In other words, the same person who conceived of the lax (rather formal) control system for joint-stock companies that was implemented by the tribunal of commerce also became, as of 1848, the main person in charge of the company authorization system that was established by governmental decree. That Andino made use of his position to filter information to his politician friends should not concern us here. It is enough to recall only that this occurred, as can be seen in his correspondence with Mª Cristina of Naples, queen widow of Fernando VII, and her second husband, Antonio Muñoz. It would be much more relevant to consult the files that are conserved at the archive of the *Consejo de Estado*. Indeed, the Council was not just about issuing the report regarding the decree of authorization; it acted as a full company police force that, for instance, looked into the opportunity of selecting determined company types, the liquidation of a limited company, the claims of the shareholders upon their invitation to a general junta, the reduction of capital, and many other similar matters that it would be important to approach with much attention at a future stage.

74 Anne Lefebvre-Teillard, "L'intervention de l'État dans la constitution des sociétés anonymes," *Revue historique de droit français et étranger* 59 (1981), 383–418.