

THE GMBH AS AN ELEMENT OF
TRANSNATIONAL EUROPEAN
COMPANY LAW. THE CASE OF
SPAIN

SUSANA MARTÍNEZ RODRÍGUEZ UNIVERSITY OF MURCIA-SPAIN



**Die GmbH als Element eines transnationalen
europäischen Gesellschaftsrechts**



10. Oktober 2022, 09.00 Uhr

Begrüßung (Anna Moszyńska)
Deutschland (Martin Löhnig)
Österreich (Kamila Staudigl-Ciechowicz)
Tschechoslowakei (Petra Skřejpková)
Polen (Anna Moszyńska)

10. Oktober 2022, 14.00 Uhr

Ungarn (Zsolt Bujtár)
Italien (Ferdinando Mazzarella)
Spanien (Susana Martínez-Rodríguez)
Lettland (Philipp Schwartz)

11. Oktober 2022, 09.00 Uhr

Frankreich (Alexis Mages)
Belgien (Dave De ruyscher)
Niederlande (Pim Osterhuis)
Ukraine (Oleksandr Kovalyshyn)
Schlußwort (Moszyńska/Löhnig)

Tagungsort: Café Goldenes Kreuz,
Haidplatz, Regensburg und ZOOM
Veranstalter: Martin Löhnig, Anna
Moszyńska
Anmeldungen: rechtskultur@ur.de

SPANIARD GMBH == SRL

**SOCIEDAD DE RESPONSABILIDAD
LIMITADA**

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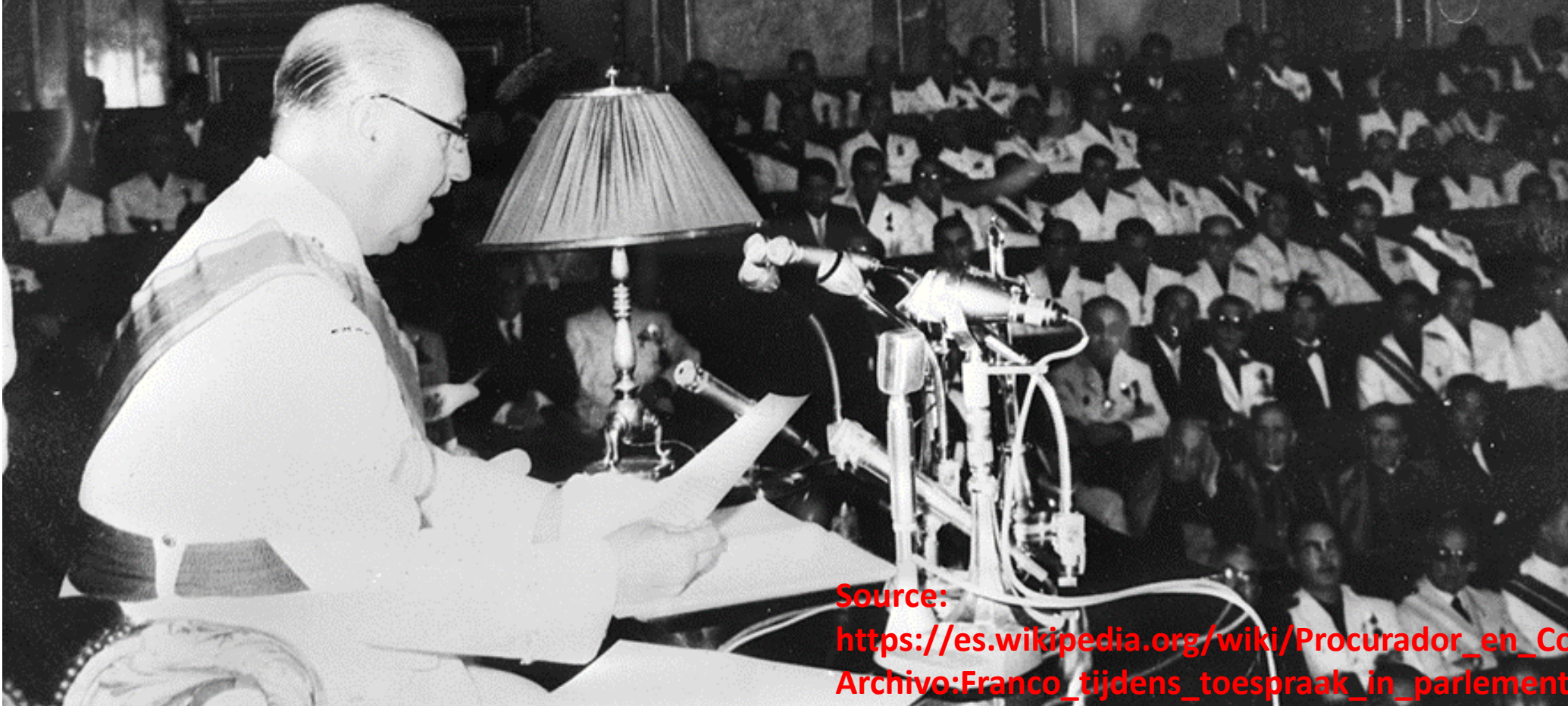
1. Introduction
2. The european influence on the codification proposals of 1869.
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5. Mercantile Register Regulation 1919.
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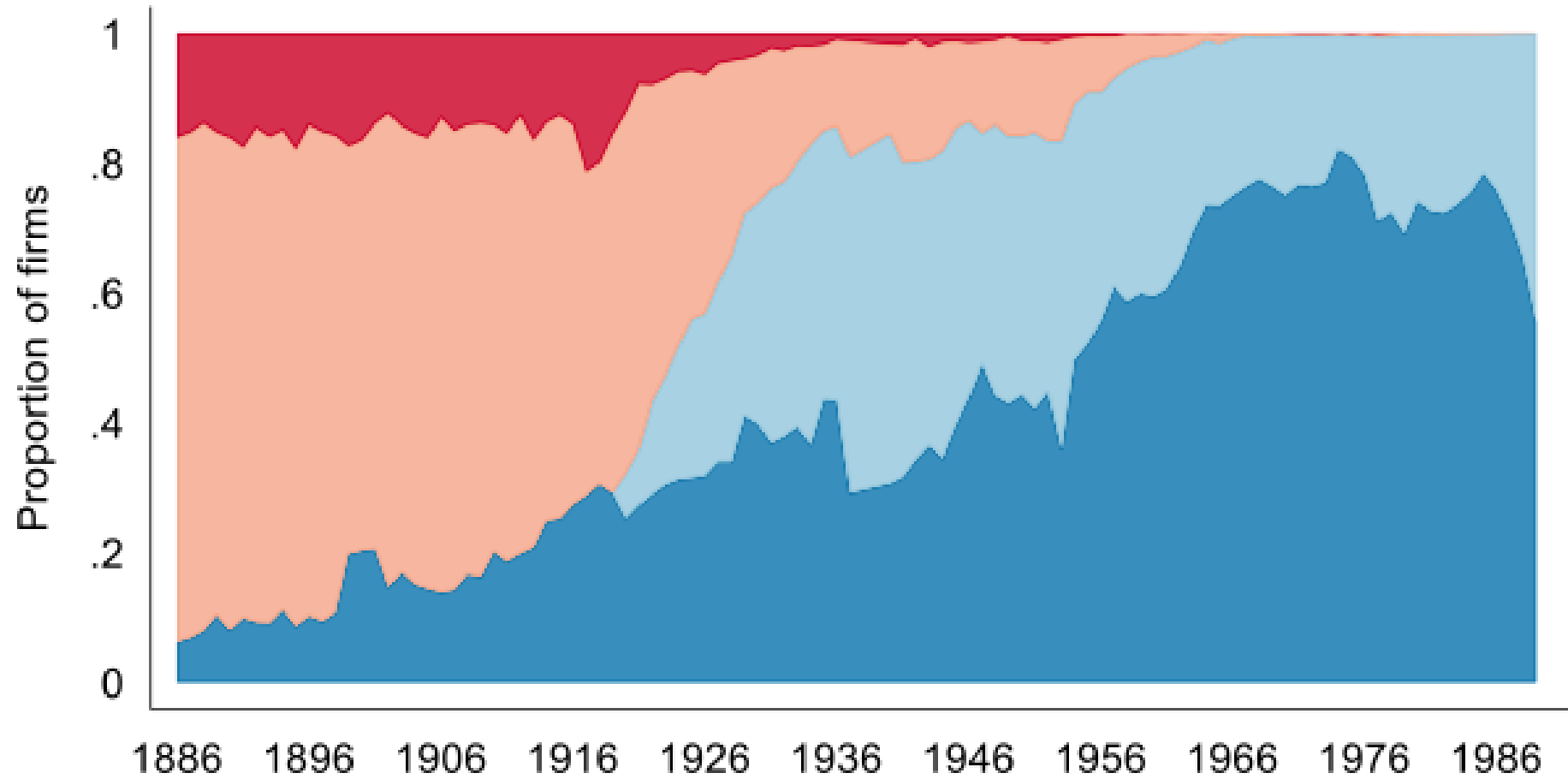
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**The first SRL law appeared in Spain in 1953,
as a demand of the small corporations that
had been left in a legal vacuum after the
approval of the SA. law of 1951.**



Source:
[https://es.wikipedia.org/wiki/Procurador_en_Cortes#/media/
Archivo:Franco_tijdens_toespraak_in_parlement,_Bestandde](https://es.wikipedia.org/wiki/Procurador_en_Cortes#/media/Archivo:Franco_tijdens_toespraak_in_parlement,_Bestandde)



FACT: in 1953 4 out of 10 companies were already registered as SRL

- Corporations
- PLLCs
- Partnerships
- Limited partnerships

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LA REVOLUCIÓN DE SEPTIEMBRE

The legislator commented that companies with LL were already operating in Europe (= 5th base of the RD of September 20, 1869)

The Law on the Freedom of Incorporation of Joint Stock Companies and Credit Companies.

(19.10.1869) in addition to reinstating the legislation on corporations of 1829, demanded the need to modernize it





A decree appointed a new commission to revise the Commercial Code.

The law (5th base) established that the future code would include companies with more or less limited liability, already known in Europe

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During the discussion of the new Commercial Code, the proposal of Limited Liability Partnerships was made by Catalanian MPs, linked to the world of commerce and industry.

It was not a *Sociétés à Responsabilité Limitée à la française*, but of a limited liability partnership

Who were the MPs?

- **Maciá Bonaplata** opened the discussion:
- A missing legal type in the Commercial Code
- Companies with LL + Limited partners with managing powers



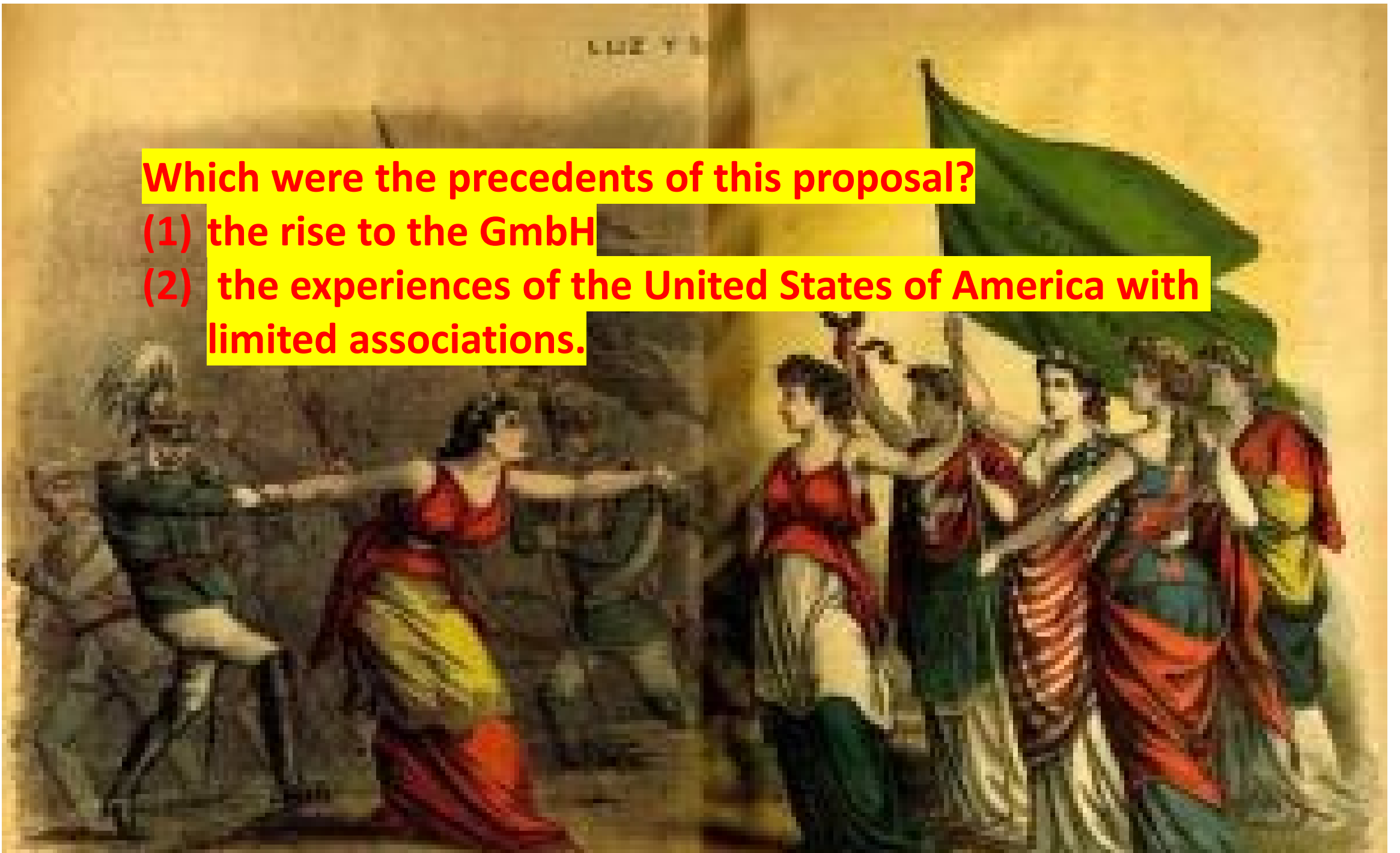


Fabra i Deas presented a proposal: a partnership with responsibility limited liability company, not a small corporation

Which were the precedents of this proposal?

(1) the rise to the GmbH

(2) the experiences of the United States of America with limited associations.

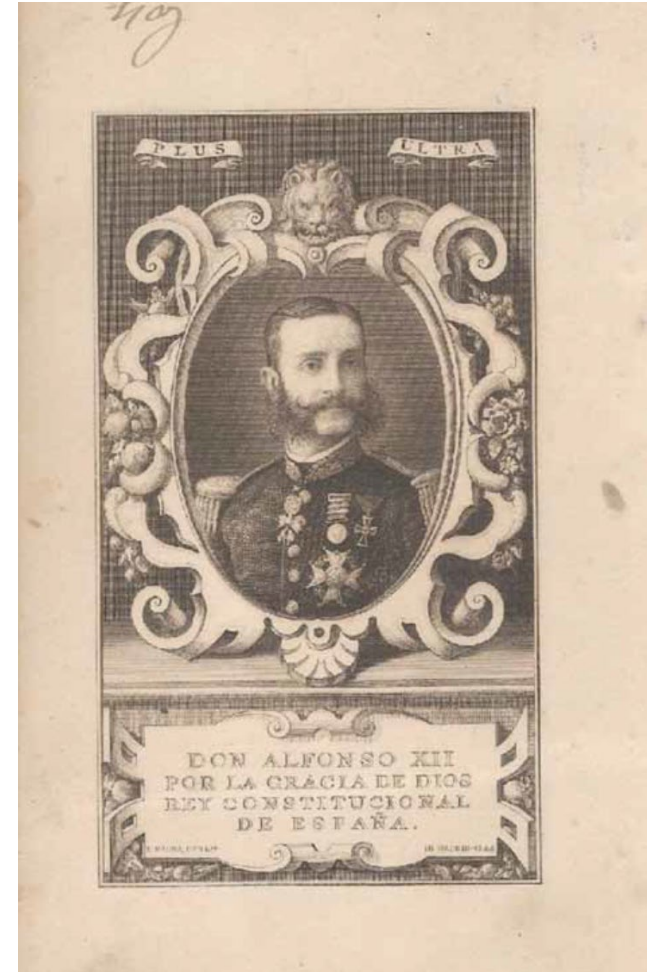




Fabra and Deas' proposal was rejected:

1. The proposal had been submitted after the deadline
2. The proposed Code defended in its articles an open legal form typology (i.e., by appealing to the principle of atypicality).

The experts who proposed this change were Colmeiro and Moret, two prestigious experts



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The image shows a grand, arched doorway with intricate wrought-iron scrollwork and floral patterns. The arch is set within a stone frame. The text is overlaid on the central part of the image.

Barcelona Academy of Jurisprudence and Legislation (1905):

- 1. Collective partnership with LL for all the owners**
- 2. Great powers to the manager**
- 3. "SLR" named was**

- Secretary of Justice, **Roig i Bergada** (1918) (Secretary of the Barcelona Academy of Jurisprudence):

- PLLC with influences from Germany & UK
- Enrollment in the Business Register
- No tradable shares (2 years)
- Stock capital fully subscribed at the constitution
- SME





LA CAMPAÑA DE GRACIA

ANTONI LAPILLERESCA

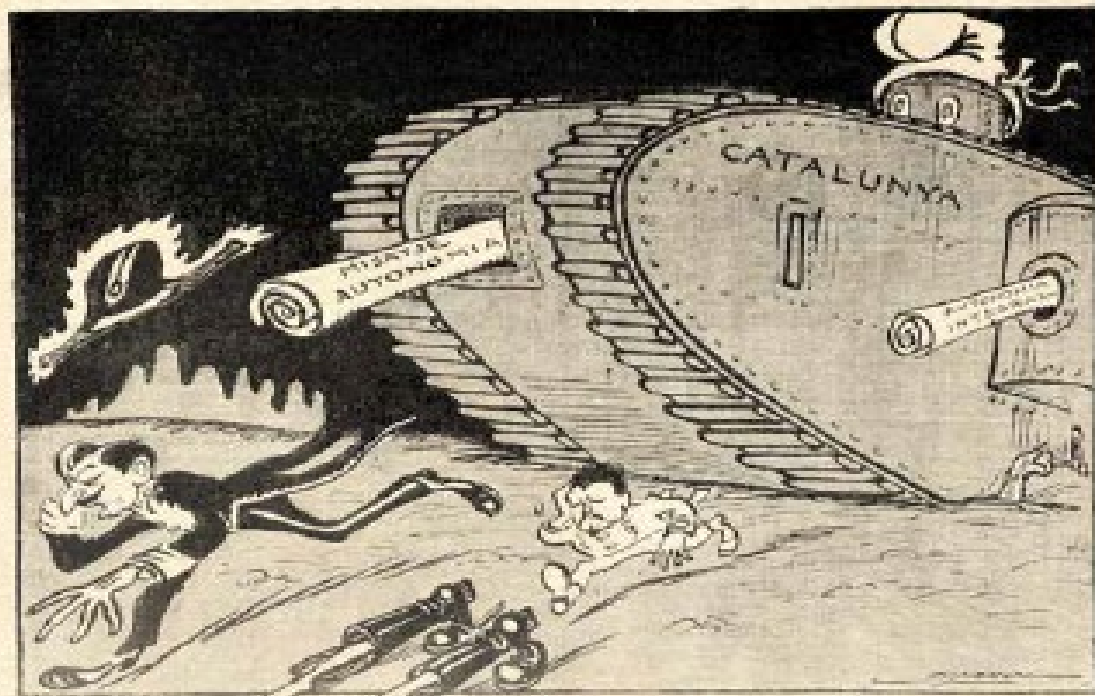
CONARÀ AL MENYS UNA BATAJADA CADA SEMANA

AQUEST NUMERO 10 CÈNTIMS PER TOT ESPANYA

REDACCIÓ: AVINGUDA DIAGONAL, 616 BARCELONA

PRECI DE COPIAR: 10 CÈNTIMS

ELS CATALANS A MADRID



La darrera ofensiva

L'Esquella de la Torratxa

Any XL - Núm. 2004

15 còntims - Abonament 30

Barcelona, 8 Desembre de 1918



CATALUNTA I ELS GOVBENS ESPANYOLS

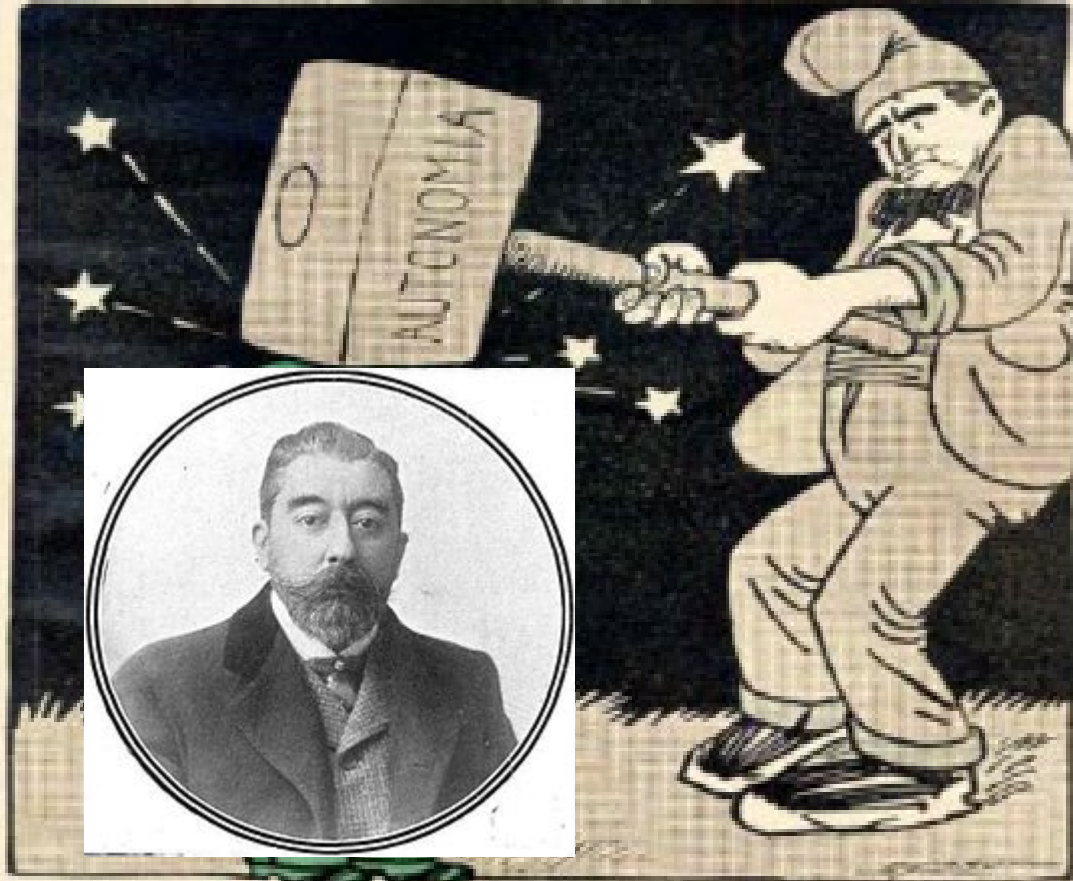
—Al primer cop, ja m'he deixat un d'índol. Ara
ambra per un altre.

L'Esquella de la Torratxa

Aug. 25. - Nov. 1914

15 cèntims - Abonament 30

BARCELONA, 3 Desembre de 1914



CATALONIA I ELS GOVERNES ESPANTOLS

-Al primer cop, ja s'he deixat un ditell. Ara
aniré per un altre.

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San Clemente



Provincia de *Cuenca*

Carta de pago núm. *23*

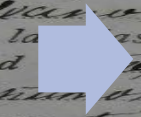
Presupuesto de 1890 a 1891

Concepto *Derechos de Boate, Arrendamiento mercantil*

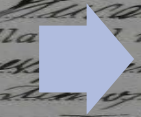
D. *Francisco Ruiz Carrasco*
Administrador de esta Cofradía de es...

Recibí de *Don Francisco Ruiz Carrasco*
la suma de *229 87* en concepto de *...*

Public notary



Register



Final Registration
in the Book of
Entries

CLASIFI

Oro		
Plata		
Calderilla		<i>87</i>
Billetes de Banco		
En junto	<i>229</i>	<i>87</i>

Segun escritura otorgada en *Salamanca* en presencia de *...*
actua ante el notario *...*

Para justificante de mis cuentas, ó resguardo del interesado,
expido la presente carta de pago, la cual será nula y sin valor
si se omitiese la toma de razón por el Interventor de esta de-
pendencia.

San Clemente 16 de *Octubre* de 1891

TOMÉ RAZÓN,
El Interventor,
Santiago Arcas

El Administrador,
Francisco Ruiz Carrasco

San Clemente



Provincia de *Cuenca*

Carta de pago núm. *23*

Presupuesto de 1890 á 1891

Concepto *Derechos Reales de Arrendamiento mercantil*
del 21 de la parista a 1891

D. *Francisco Ruiz Carrasco*
Administrador subalterno de Hacienda de este Distrito.

Recibí de D. *Santiago y Doña Manuel Ontiveros*
Suñinos de Salgado del Páramo
en las clases de valores que se detallan al margen, la cantidad de *trecientas treinta y nueve pesetas ochenta y siete céntimos por el cincuenta céntimos por ciento al sesenta y siete mil novecientos ochenta y tres pesetas cincuenta y ocho céntimos* á que asciende el capital activo de una sociedad mercantil que han constituido según escritura otorgada en Salgado en primer día de *octubre* ante el notario *D. Juan José Ruiz*

Para justificante de mis cuentas, ó resguardo del interesado, expido la presente carta de pago, la cual será nula y sin valor si se omitiese la toma de razón por el Interventor de esta dependencia.

San Clemente 16 de *Octubre* de 1891

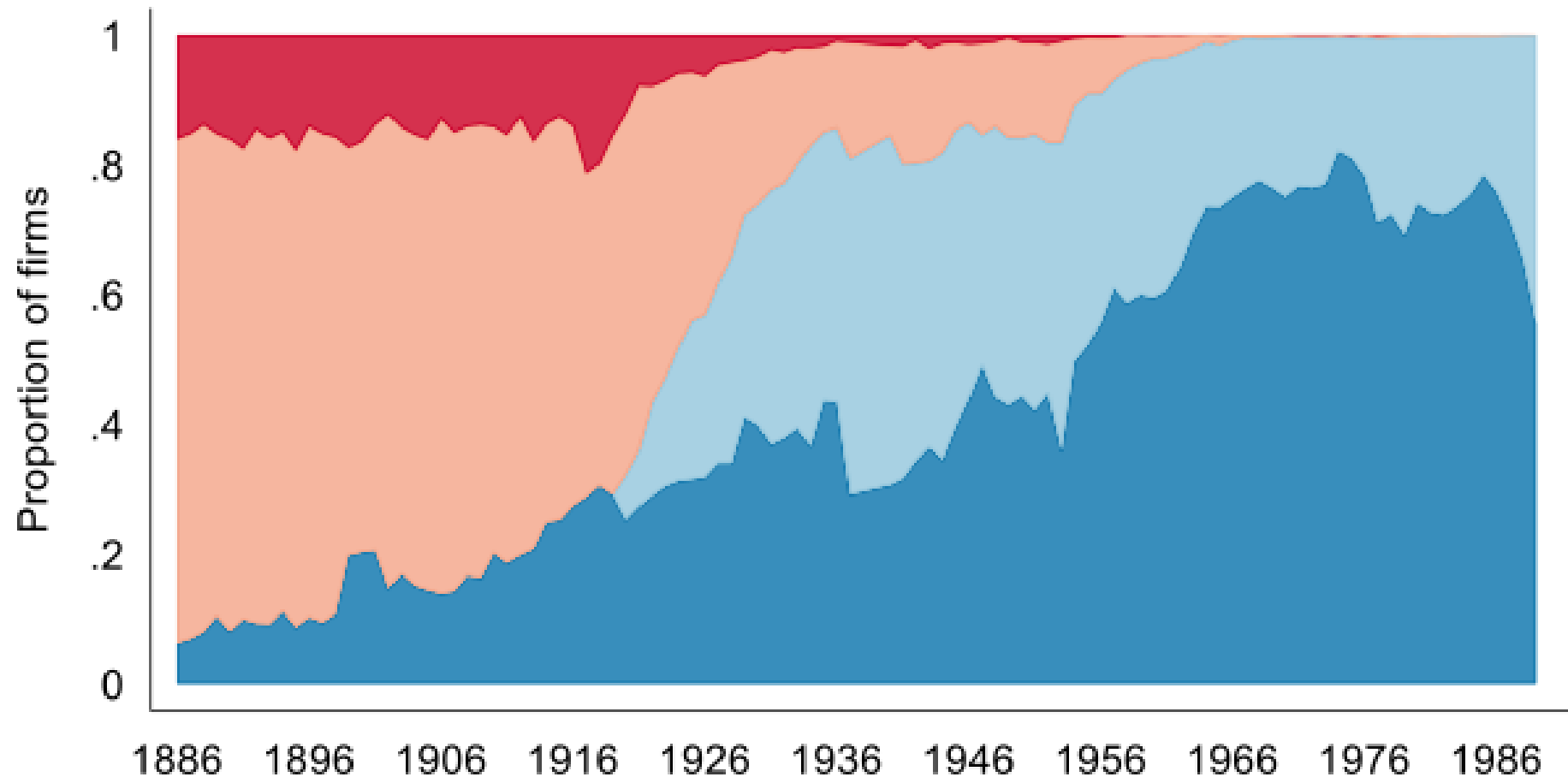
El Administrador, *Francisco Ruiz*

CLASIFICACION DE LOS VALORES

	Plas.	Cts.
Oro		
Plata	<i>339</i>	
Calderilla		<i>87</i>
Billetes de Banco ..		
En junto	<i>339</i>	<i>87</i>

TOMÉ RAZÓN,

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What did SRL do?

- For 30 years, Spanish jurisprudence **assimilated SRL to a partnership.**
- It was a decision based on the fact that the general partnership was the oldest type of company and that it offered the greatest protection to third parties.
- It was also a decision based on a clear anomaly: SRL did not have its own law.

Notaries, lawyers and judges respected this practice, appealed to the simplicity, customs and decisions of the Supreme Court.



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- In 1953 the new SRL law clearly established that the SRL had as an accessory rule the Corporations Law (1951).
- A new stage began that made a clean sweep of what had gone before on general partnerships & SRL.



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Final Remarks

- The GmbH is one of the most important corporate innovations of the 20th C. and it has been widely disseminated in a large number of countries.
- The SRL proliferated without a law, even though scholars paid a lot of attention to European legal forms similar to GmbH.
- Notaries, lawyers and judges appealed to the simplicity matching the SRL with general partnerships rules.
- In 1953 a new period began with a regulation by its own