Creating the *Sociedad de Responsabilidad Limitada* (SRL). The Use of Legal Flexibility in Spanish Company Law, 1869-1953.

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Spanish Business Code (1885) permit firms to adopt organizational forms not enumerated in the code itself.

- Sociedad de Responsabilidad Limitada
Creating SRL

0. Target: SRL

SRL== Spanish version of PLLC (Guinnane et at, 2007)

• New organizational business form that combined
  • Advantages of legal personhood
  • Flexible internal organizational structure.
Creating SRL
0. Target: why this matters?

- Civil law legal system mechanism introduce new legal forms

- How a new legal form appear?

- Why only few types became popular and others died?
1. Introduction

2. On Company law in Spain

3. Precedents of PLLC: Comparative perspective & Spain

4. On SRL and flexibility without SRL

5. Case law on SRL

6. Conclusions
Some facts:

- 1953 SRL Act.
- 1920: SRL registered

General Framework:

- Civil-law == it is not possible to change legal rules without changing legislation
Creating SRL
1. Introduction

• SRL success was possible because:
  • Business code (Art. 117, Art 122) + other modifications.
  • Active role of lawyers and notaries
    • witness of European legal innovations.
  • Guarantees to propose new forms as SRL
1. **Introduction**: relevant issues for this paper

2. **On Company law in Spain**

3. **Precedents of PLLC**: Comparative perspective & Spain

4. **On SRL and flexibility without SRL**

3. **Case law on SRL**

4. **Conclusions**
Creating SRL
2. Spanish Company Law

Business Code (1829): Multi-owner firms MENU:

• Partnerships

• Limited Partnerships

• Corporations

...............French Business Code (1807)
Creating SRL
2. Spanish Company Law

Business Code (1885). Multi owner firms MENU:

• 3 types:
  • Partnerships
  • Limited Partnerships
  • Corporations

• NOVELTY: Any other business form that follow the law
  • Articles 117 & 122
Creating SRL
2. Spanish Company Law

Entrepreneurs → Notary → Business Register → Multiowner firm
Creating SRL
2. Spanish Company Law

- Entrepreneurs
- Notary
- Business Register
- Multiowner firm

Agents & agencies verify quality of the process

Business Code, 1885

Law flexibility
Creating SRL
2. Spanish Company Law

• Could an SRL exist in 1895?

  • Business Code: YES! (Article 117, 122).

  • ... there were only few.

    • scholars wrote about them

    • Business Registers had enrolled some “false friends”
Sociedad The Esperanza Copper and Sulphur Company Limited
*British Law
*Huelva, 1906== compañía limitada
Creating SRL
2. Spanish Company Law

When did real “SRL” appear?

• New Regulation on Business Register (1919): 1/243
  • Allow to register SRL
  • SRL ≠ corporation
  • SRL ≠ partnership.
Why was Business Register so important?

• Legal personhood

• Decreased transaction costs:
  • Guarantees for owners & 3 “C” (Clients, Creditors, Citizens)
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2. Spanish Company Law

Distribution of Multiowner Firms per year (%), type

Partnerships
L. Partnerships
Corporations
SRL

Guinnane, Mtnez.-Rdguez (2014)
Creating SRL
2. Spanish Company Law

Distribution of Multiowner Firms per year (%), type

- Partnerships
- L.Partnerships
- Corporations
- SRL

1886: 77.5%
1953: 15.5%
Creating SRL
2. Spanish Company Law

Distribution of Multiowner Firms per year (%), type

Partnerships
L. Partnerships
Corporations
SRL

1886: 77.5%
1953: 15.5%

[Graph showing the distribution of multiowner firms per year, with the percentage for 1886 and 1953 noted.]
Creating SRL
2. Spanish Company Law

Distribution of Multiowner Firms per year (%), type

- Partnerships
- L. Partnerships
- Corporations
- SRL

1932: 40%
1953: 47.5%
SRL success was explained by:

- Business Code
- notary writing
- registration process
• And a previous knowledge on PLLC...
0. Contents

1. **Introduction**: relevant issues for this paper

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3. **Precedents of PLLC: Comparative perspective & Spain**

4. **On SRL and flexibility without SRL**

3. Case law on SRL
   - Supreme Court Decisions
   - DGRN Decisions

4. **Conclusions**
Creating SRL
3. Precedents

- Before GmbH (1892): attempts to introduce similar ideas

- Urgency to update company law to match economic development
  - UK on limited liability
  - France on limited liability and corporation

- No economic urgency, just following tendencies
  - Brazil
  - Mexico
  - Spain
Creating SRL
3. Precedents

• Spain
  • On Credit Corporation Act (1869):
    • on new European limited liability companies.

  • European novelties.
  • Combination on well-known legal form to fulfill entrepreneurs-demands
Creating SRL

3. Precedents: loophole in the law

- Legal obstacles to prevent SRL diffusion
  - On partnerships & default rules of Business Code
    - E. Castellar (1895)
    - F. Lanfranco (1904)
    - M. Martínez (1907)
    - J. Pelegrí (1918)
Owners create a firm governed by the Code and these articles

La forma de la compañía es de responsabilidad limitada por manera que los socios no responderán a las operaciones más que con el capital que aportan

(***The Company’s type is “SRL” which means that liability of the owners is their capital (contribution))

“José Pela y Compañía de Responsabilidad limitada”, Alicante, 1920, Number 1278

“constituye una compañía mercantil que se regirá con estricta sujeción a los preceptos del código”
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Creating SRL
4. On flexibility

Notaries recommended to entrepreneurs alternatives to SRL:

• Corporations.

• Civil societies with limited liability
Creating SRL
4. On flexibility

... benefits of SRL without SRL
Creating SRL
4. On flexibility

• Corporations & SRL
  • Since 1900: Fiscal motivations + corporations.
  • Corporations customized as partnerships
    • Family name instead a trade name
    • Kinds among the owners
    • Far from a big corporation
Legal proposals on SRL before 1919

• Association of Lawyers of Barcelona: 1905
  • Corporation with
    • Small size
    • Administrative simplification
  • J. Ponsa Gil (1906): Compañía Limitada con Razón Social == Limited Company with partnership name
Creating SRL
4. On flexibility:
SRL drafts

Legal proposals on SRL before 1919

- Secretary of Justice, Roig i Bergada (1918):
  - PLLC with influences from Germany & UK
  - Enrollment in the Business Register
  - No tradable shares (2 years)
  - Stock capital fully subscribed at the constitution
  - SME

- Political instability ➔ resignation of Roig
Creating SRL
3. On flexibility

• 1919: Next government support the SRL
  • Unique clause at Business Register Regulation
  • Inscribing SRL in the Business Register offered new guarantees to the public and entrepreneurs

• 1920: Taxes over profits of all types of firms also the SRL
Creating SRL
(4. On flexibility)

Distribution of Multiowner Firms per year (%), type

- Partnerships
- Limited Partnerships (L. Partnerships)
- Corporations
- SRL

Year:
- 1886
- 1890
- 1894
- 1898
- 1902
- 1906
- 1910
- 1914
- 1918
- 1922
- 1926
- 1930
- 1934
- 1938
- 1942
- 1946
- 1950
1. Introduction: relevant issues for this paper

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5. Case law on SRL
   - Supreme Court Decisions
   - GDRN Decisions

4. Conclusions
• Where to find evidence on how the SRL operated daily?

• Articles of association...
Sociedad mercantil limitada.

Adquiere, junto a compañeros, tal rad.

[Document text in Spanish, likely a historical or legal document]
Where to find evidence on how the SRL operated daily?

- Articles of association... (in progress, Guinnane, Martínez-Rodríguez).

- Court decisions.
  - **Common law**: primary source.
  - **Civil law**: precedents are not so relevant
    - Spain: secondary source.
Creating SRL
5. Case Law

**Spanish tradition**: case law secondary source

- Value of case law depends on the authority
  - Supreme Court (SC).
  - Resolutions of General Directorate of Registers and Notaries (GDRN)
NOTE: General Directorate of Registers & Notaries:

- Department of the Ministry of Justice

- Aim:
  - Keep uniformity in the implementation of Notary Law and Registration Law
  - Instructing a high-qualified group of public servants
    - register officers
5. Case Law

- **Spain tradition**: secondary source

- Value of precedents depends on the authority that created them
  - Decisions of Supreme Court (SC)
  - Resolutions of General Directorate of Registers and Notaries (GDRN)
Creating SRL
5. Case Law

• Lack of litigation reflected the legal framework flexibility & success of SRL

• Taulet (1936)
Creating SRL
2. Spanish Company Law: (When GDRN acted?)

Enterpreneurs → Notary → Business Register → Multiowner firm
Creating SRL
5. Case Law

- Entrepreneurs
- Notary
- Business Register
- Multiowner firm
Register said NO when:

- Notary was not following
  - Commercial Register Regulations
  - Business Code.
- Notary’s view of the SRL came too close to other legal type
Creating SRL
3. Case Law:
GDRN

• Chances for the Notary
  • Rewrite the articles of association
  • Complain to GDRN:
    • No appeal
Creating SRL
5. Case Law
GDRN

Notary ➔ Register

- YES: Registration
- NO:
  - Re-write the articles of association
  - Complain to DRGN
    - Support the Register
    - Support the notary
Creating SRL
5. Case Law:
GDRN

GDRN: <50

- *Repertorio de Jurisprudencia Aranzadi*

GDRN supported the register-officers decisions:

- a conservative attitude
- declined to interfere
Creating SRL
5. Case Law: GDRN

- GDRN “disclaimer statement”
  - Complained about the lack of written law.
  - Did not want to create a set of rules for the SRL.
    - boundaries among enterprise forms.
    - “hybrid” nature of the SRL, part partnership – part corporation
Creating SRL
5. Case Law: GDRN

Discourse of GDRN evolved:

• Abroad evidence

• Spanish notaries expertise writing articles of association.

• Evolution: SC $\rightarrow$ SA

• 1948 GDRN stressed the way SRLs were acting like small corporations
Key points of GDRN resolutions:

• Items must contain SRL’s articles of association

• Nature & name:
  • on the partnership similarities

• Minority oppression:
  • limit managers’ power and guarantee all members a voice in decision attempts
Supreme Court

• Cases that arrived to SC and were significant <20
  • Jurisprudencia Civil. Colección Completa de las Sentencias
    Dictadas por el Tribunal Supremo

• SC judgments: were not always followed & respected
  • Taulet (1936)
  • Gay y Montellá (1947)
Creating SRL
5. Case Law: SC

• SC main contributions on SRL before 1953
  • On freedom to contraction for the legal business forms.
    • August 11, 1928.
  • Invoked DRGN authority.
  • SRL paid in capital:
    • November 7, 1947 [vs. Gay y Montellá (1947)]
SC main contributions to SRL before 1953

• SRL no shares, but capital participations.
  • February 4, 1929 [vs Taulet (1936)]

• Items to include in the articles of association
  • July 5, 1940

• SRL close to SA
  • February 18, 1948
  • June 19, 1952
Civil Law Countries: PLLC

- Intermediate form:
  - advantages of legal personhood
  - flexible internal organization structure
- A written law authorized the PLLC
SRL suggest:

- Flexible mechanism in the civil law to update business without change the code itself
- Active role of economic agents to demand and made effective new organizational forms.
6. Conclusions

Agenda:

• How did the SRL behave?
  • Articles of association (Guinnane, Mtnez-Rdguez, in progress).
    • Madrid and Vizcaya
• Suggested citation:

• Website of the conference