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## Did the cooperative start life as a joint-stock company? Business law and cooperatives in Spain, 1869 - 1931

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CENTER DISCUSSION PAPER NO. 987

## **Did the Cooperative Start Life as a Joint-Stock Company?**

### **Business Law and Cooperatives in Spain, 1869–1931**

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## **Did the Cooperative Start Life as a Joint-Stock Company? Business Law and Cooperatives in Spain, 1869–1931**

### **Abstract**

Studies of Spanish cooperatives date their spread from the Law on Agrarian Syndicates of 1906. But the first legislative appearance of cooperatives is an 1869 measure that permitted general incorporation for lending companies. The 1931 general law on cooperatives, which was the first act permitting the formation of cooperatives in any activity, reflects the gradual disappearance of the cooperative's "business" characteristics. In this paper we trace the Spanish cooperative's legal roots in business law and its connections to broader questions of the freedom of association, the formation of joint-stock enterprises, and the liability of investors in business and cooperative entities. Our account underscores the similarities of the organizational problems approach by cooperatives and business firms, while at the same time respecting the distinctive purposes cooperatives served.

**Key Words:** cooperative, general incorporation, business enterprise, freedom of association, freedom of contract

**JEL Codes:** N43, N23, K20

#### **Resumen:**

Los estudios acerca de las cooperativas española datan su difusión a partir de la Ley de Sindicatos Agrícolas de 1906. No obstante, la primera legislación al respecto apareció en 1869, a propósito de la libertad para crear compañías anónimas y de crédito. La ley de 1931 fue la primera sobre cooperativas, permitiendo la creación de cooperativas de todo tipo, y reflejando la gradual desaparición de las cooperativas con características de "empresas". En este artículo perfilamos con detalle el origen legal de las cooperativas españolas en la legislación mercantil; su conexión con cuestiones más generales, como la libertad de asociación, la formación de sociedades anónimas, y la responsabilidad legal asumida por los inversores, tanto en las cooperativas como en otras fórmulas de negocios. Enfatizamos las concomitancias entre la organización de las cooperativas y las fórmulas mercantiles, como también señalamos los propósitos particulares a los que obedecieron las cooperativas.

**Palabras clave:** cooperativas, formación de sociedades anónimas, fórmulas mercantiles, libertad de asociación, libertad para contratar

## 1. Introduction

In many European countries, many banking, retail, and farm-related business activities have been conducted as cooperatives since the late nineteenth century. The historical literature on European cooperatives stresses the ideological component underlying the establishment of cooperatives. The literature has paid little attention to developments in the law under which these enterprises were organized. In the Spanish case, this neglect has led to the conclusion that the legal basis for Spanish cooperatives was created in 1906, when in fact cooperatives had legal form, and exist in statistical surveys, from at least 1867. Neglecting the history of cooperative law has broader implications, as the Spanish case we consider illustrates. European cooperatives in the late nineteenth century were at the intersection of three great debates over the nature of organization. We do not claim that the cooperatives were central to any of these discussions, but it is clear that the nature of cooperative organization meant their problems, and leaders, had a special perception of each problem, and in some cases at least the cooperatives were able to attach themselves to broader movements to achieve what they wanted from the law.

Cooperatives took many forms and reflected many different ideological positions in Europe in the later nineteenth century, the period on which we focus. Some cooperative leaders saw the cooperative as a stepping-stone to the creation of ordinary business enterprises. Others saw in cooperatives an alternative to capitalist economic organization itself. Perhaps the majority viewed cooperatives as a useful adjunct to their members' main concerns, whether farmers, artisans, or shopkeepers. The development of cooperatives in general and cooperative law in particular reflects broader issues in the nature of economic organization. Here we focus on those issues, leaving aside the distinctive features of cooperative development in agriculture, retailing, and other particular branches.

Cooperatives nearly everywhere faced three legal issues in this period: *Freedom of association*: Until the late nineteenth century in most of Continental Europe, the right of citizens to associate for any purpose, whether explicitly political or not, could be limited or regulated by the State. One reason for the development of distinct business

organizations and business codes was that business firms as such usually fell outside the political oversight of the police. For cooperatives, which were often harassed on the grounds of being an illegal association, it was critical either to be recognized as a default “permitted association,” as a business organization, or to have rights which allowed them to escape this scrutiny altogether. *Investor liability*: An investor’s ability to own all or part of a firm without risking anything more than their original investment was hotly debated in the early- to mid-nineteenth century. Some Continental countries allowed the limited partnership, in which all but one owner enjoyed limited liability. But most still drew the line at firms in which no investor had unlimited liability. Cooperatives themselves held mixed views on limited liability, but increasingly, many cooperative leaders saw limited-liability forms as crucial to their movement’s health. For most members, the cooperative was a sideline to the member’s primary economic activity. It seemed unreasonable to expect membership in a cooperative to carry the risk of complete economic ruin. *Incorporation and division of capital into shares*: In most European countries the right to form a corporation was strictly controlled by the State until sometime in the mid nineteenth century. General incorporation, or the right to form a corporation by just following rules about publicity, investment sizes, etc, was not granted in some countries until the 1870s. The corporate form closely resembled what many cooperatives wanted to achieve: an enterprise that had clear legal personality, limited liability for owners, and capital divided into shares such that the entity could exist in the face of a changing membership. The essential *legal* similarity of the corporation and the cooperative will surprise those accustomed to thinking of cooperatives as the very opposite of the corporation, and often formed to combat the power of corporations. But at their heart, both the corporation and cooperative are vehicles for assembling capital and undertaking contracts that do not depend on the enterprise having any particular set of investors.

## **2. How many cooperatives?**

Confusion over the early law on cooperatives has led the Spanish historiography to ignore the existence of cooperatives in the nineteenth century. In this section we aim to document the number and type of such cooperatives, at least approximately. The Spanish

historiography has not yet provided a tabulation of the numbers of early cooperatives. There are two obstacles to this goal. One is the need to assemble the information from a variety of dispersed sources. The other is that, as we discuss, the law was not entirely clear on what should qualify as a cooperative. Outside of agriculture, early Spanish cooperatives constituted a tiny fraction of the economy (Garrido, 2006) (Martínez Soto, 2001)). But to understand the implications of the early legislation on cooperatives, we need at least a preliminary estimate of the number and type of institutions formed under the law. Here we focus on the evidence available for the period prior to 1931, when the law clarified the status of cooperatives and also began to collect regular statistics on them.

The first references to cooperatives dated to the 1850s. All were apparently producer cooperatives such as "The proletariat of Valencia" (1856) or "The Producers Association Buñol" (1857), also in Valencia. Notice of these institutions comes only indirectly. We also see evidence of a budding cooperative movement in newspapers such as "The Worker" (*El Obrero*) or "Association" (*La Asociacion*) - both Catalan. Numerous articles in these publications discussed cooperatives. This apparently enthusiastic support for cooperatives cooled when the first labor organizations decided that cooperatives did not have significant revolutionary potential.<sup>2</sup>

This indirect evidence on cooperatives may suffer from a lack of agreement on what was understood to be a cooperative. We, on the other hand, adopt a single, conservative criterion: the government's definition. That is, what we take as a cooperative all entities that the government allowed to register as such. The cooperative appears for the first time in a legal text on the "Law for free creation of joint-stock and credit companies" (*Ley de libertad de creación de sociedades por acciones y de crédito*). The law stipulates that cooperatives adhere to publicity requirements similar to those for a corporation. Once the authorities approved a cooperative's statutes, they would be advertised in the *Madrid Gazette*. Garrido (1879) reports that 600 cooperatives were founded between 1868 and 1874. Our examination of the *Gazette* yields a much lower

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<sup>2</sup> One of the key issues for the Catalan Workers' Congress held in 1865 was the possible role of cooperatives in the workers' struggle. The First Spanish Workers Congress (June 19, 1870) discussed the issue extensively and concluded that cooperatives were not useful for the workers' movement (Reventós, 1960, p.92-94).

estimate, not quite 20.<sup>3</sup> The names of some of these entities leave no doubt as to their form and purpose. We find, for example, “The workers co-operative society for the Chocolate Factory D. Matías López (Cádiz)”; the “Great Thought society for rewarding virtue and labor” (“*Sociedad cooperativa de socorros y premios a la virtud y el trabajo El Gran pensamiento*”) (Madrid).

The first official figures on cooperatives appear in the statistics of associations preserved in the Historical Archive in Madrid. From this “Summary of companies of every kind existing in Spain on 1 January 1887,” which also includes the firm’s purpose and legal form, we count a total of 39 cooperatives. The regions with the highest number of cooperatives are Madrid (9), Valencia (7), Murcia (7), Oviedo (5) and Catalonia (4). The 1887 count does not include a single cooperative in the province of Barcelona, which is suspicious. Two cooperatives in Tarragona consisted of “cooperative sailors” and may indicate that some older guilds adopted the new form.<sup>6</sup> Most of Valencia’s cooperatives were for consumption and production. Some were apparently intended for the employees of specific enterprises; one was run by the Ateneo Commercial and Savings Bank, and another by the pawnshop. Middle-class cooperatives were especially numerous in Madrid. There cooperatives included organizations for teachers, for private-school teachers in private education, and for employees of the Stock Exchange, among others. Murcia for its part had two medical and pharmacy cooperatives. This cooperative type never did well, facing stiff opposition from pharmacist’s organizations. All cooperatives with two exceptions had been approved by the Civil Governor, reinforcing our view that these statistics reflect the official definition of cooperatives.<sup>4</sup>

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<sup>3</sup> Specifically: Cooperativa de consumo de la Asociación de Amigos del País Aragonesa (Zaragoza); Cooperativa de Consumo de Valencia; Sociedad cooperativa de la Calle Jesús y María (Madrid); Sociedad cooperativa de Córdoba; Sociedad cooperativa de agricultores de Córdoba, Sociedad cooperativa para el fomento de las Artes (Sevilla); La Igualdad – Sociedad Cooperativa de Artesanos (Málaga); La Unión (Valencia); Sociedad cooperativa agrícola Trebujena (Trebujena- Cádiz); Sociedad cooperativa de Alimentación y ornato de Badajoz; Sociedad cooperativa y Agrícola de Trebujena – Numero 1 (Trebujena-Cádiz); Cooperativa de Braceros (Albacete); Cooperativa Gaditana de Fabricación de Gas, SA (Cádiz); Sociedad cooperativa creada por D. Camilo Botella (Madrid); Sociedad cooperativa de obreros de Alicante; Cooperativa de empleados municipales (Murcia), Sociedad cooperativa para los obreros de la fábrica de Chocolate de D. Matías López (Cádiz); Sociedad cooperativa de socorros y premios a la virtud y el trabajo El Gran pensamiento (Madrid).

<sup>4</sup> One cooperative in Murcia says it was approved by its members (!).

In 1895 the economist J. Díaz de Rábago compiled the first systematic cooperative statistics by asking all provincial governments for copies of their enterprise registers. He concluded that in that year, Spain had 138 cooperatives distributed across consumption (87), production (39) and credit (12). His estimates imply a considerable increase over the 1887 figures. Especially striking in his estimate is the region of Valencia with 65 cooperatives. For this region Díaz de Rábago relied on a study by Pérez Pujol (1872), and we suspect the Valencia figure reflects double-counting. Following Valencia in this tabulation was Catalonia with 19 cooperatives, Andalusia with 18 and Madrid with 12. The apparent rise of Andalusia contrasts with the loss of registered cooperatives in the north of Spain but this change may again reflect errors in the source. For example, the Workers Cooperative Society in Barakaldo (1884), Consumer Cooperative Sestao (1887), and the Workers' Cooperative Union of Araya (Hermua (1887) were all operating in the Basque country, even though they do not appear to be in Díaz de Rábago's count (Rousell; Albóniga, 1994).

New interest in cooperatives in the twentieth century led to more systematic data collection. There are two especially useful tabulations, one for 1915 and another for 1931. The statistics for 1915 were developed by the Third Section of the Institute of Social reforms and are contained in the "Preview of the census of associations" undertaken by the Institute for Social Reform (1915). This source lists only the number of cooperatives by province. We have aggregated up to the regional level to maintain consistency across sources. We also refined the data, as some cooperatives were registered under slightly different rubrics. Data for 1932 reflects the legal definition of a cooperative in 1931, where Spanish law first clearly defined the concept.

The patterns evident in the nineteenth-century estimates are also clear in Table 1. Most cooperatives are in Spain's eastern regions, and consumer cooperatives dominate. Now Catalonia comes first, with 304 cooperatives, of which five-sixths are consumer cooperatives. For Catalonia we have an additional source that indicates a possible problem with this information. The Social Yearbook published by the Social Museum (Museo Social) for 1914-1915, indicates that only 193 registered cooperatives in Catalonia were actually operating. We lack a parallel source for the other regions, but it is



possible that a similar discrepancy existed elsewhere. In both Valencia and Andalucía, the most common cooperative type was also the consumer cooperative.

The cooperative taxonomy given in the 1931 law contains 25 categories, plus two catch-all groups for those "mixed and indeterminate" cooperatives and those not classified. In that year we find a total of 592 cooperatives, of which 42 percent are consumer cooperatives. Agricultural cooperatives had grown to nearly one-fifth of all institutions, and the growing demand for decent housing is reflected in the 17 percent of cooperatives that were for housing. The remaining 25 categories accounted for only 22 percent of the total. In comparison with the 1915 statistics, it appears that the cooperatives for production and credit had lost ground. But this difference may reflect the many agricultural cooperatives that had not appeared as such in the classification of cooperatives under the Associations Act 1887.<sup>5</sup>

In 1931 cooperatives were located mostly in Catalonia and the Basque Country. Catalanian cooperatives continue the tradition of consumer cooperatives, but the region's economic development is reflected in a large number of new types of cooperatives suited to assisting members in their various businesses. The number of housing cooperatives is surprisingly low, given the industrial workforce in the area. But this fact may just reflect the difficulty of purchasing land in big cities like Barcelona. In the Basque country, over ninety percent of cooperatives were for "consumption", "housing" and "agriculture." Housing cooperatives were by far most numerous, reflecting the efforts of Basque cooperative leaders to provide housing for a population swollen by migration. Valencia's 99 cooperatives include a marked presence of agricultural cooperatives. Housing cooperatives were also important, nearly one-quarter of the total (almost 25 percent of the total).

The advent of civil war rendered the 1931 Act moot for the cooperative movement. In 1942, after the civil war, the Franco dictatorship established a new legal regime for cooperatives. The statistical information on cooperatives available to us for 1931 and before is enough to suggest an important historical puzzle: long before the historical literature thinks Spain had cooperative law, it had cooperatives.

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<sup>5</sup> See G. Plana (1998), who relies on information reported in "El Cooperador" (year 8, 1914). On cooperative pharmacies see Rivas Moreno (s.f)

### 3. Two paths to cooperative law

European cooperatives have several different models. In general Spanish cooperators looked to Italian and French inspiration more than they did the older and larger German movement. Spanish cooperative law, too, owes more to French influences than it does to German influences. Yet it is instructive to consider the difference between German and French cooperative law because it helps to frame some of the central issues at hand. The German cooperative movement was, by the outbreak of World War I, both very large within Germany and influential as a model for other European countries. But the development of cooperative law in Germany was unusual. In some parts of Germany, notably Bavaria and Saxony, cooperative law developed much as in France, which we describe below. But the most influential (for Germany) legal developments were in Prussia, and here cooperative leaders took a different approach.

The first serious efforts to develop a Prussian cooperative law date from the early 1860s. The cooperative leader Hermann Schulze-Delitzsch wanted two things from legislation: clear recognition that cooperatives were not subject to police oversight under the laws controlling association, and the right for cooperatives to act as an entity, that is, to sue and be sued, sign contracts, etc., in their own name. These two *desiderata* reflected the cooperative movement's history to that point, where its association with political Liberals made it vulnerable to police harassment and oversight, and where cooperatives' inability to act in their own name forced them to adopt cumbersome and expensive mechanisms for dealing with the law. The Prussian Cooperatives Law of 1867 marked a large step towards solving both problems. The simplest way to achieve this goal would have been to write cooperatives into the German business code, as a legal form alongside corporations, partnerships, etc. But this did not happen. The first all-German commercial code was completed in 1862, and the cooperatives were not in any position to influence its writing. The 1867 Prussian Cooperatives Law draw heavily on the business code; most notably, the cooperatives were given something approaching legal personality by strict analogy to the rights of commercial partnerships under the commercial code. Cooperatives were able to acquire these and other rights by registration, that is, by simply observing the appropriate formalities. The cooperatives successfully evaded the demands

of some to force them to obtain permission, just like had been the case with corporations, to exist.

The next major cooperatives act in Germany came in 1889, and applied to the entire country. This Act again remained outside the commercial code, but here we see the role the cooperatives play in broader discussions of enterprise law in Germany. Some cooperative leaders wanted to legalize a cooperative form in which every member had limited liability for his investment. Arguments about this potential innovation (which came to pass) quickly engaged a broader public concerned about the nature of the corporation more generally. In response to a stock-market bubble in the early 1870s, the German government had made it much harder for investors to form a corporation. Some observers were leery of allowing something that looked very much like a corporation for investors with meager assets.

Cooperatives also became part of the debate over the 1892 law allowing the GmbH (*Gesellschaft mit beschränkter Haftung*), a limited-liability company intended to promote the creation of small firms. Cooperative members themselves wanted the GmbH, as many of them had businesses for which the law was intended. But cooperative law and experience once again became part of a larger debate. Critics of the GmbH claimed that a limited-liability form with small investors would just abuse creditors. Defenders noted that the same worry had come up with the creation of limited-liability cooperatives, and experience had not born out the fear.<sup>6</sup>

The French approach to cooperative law was different: the first authorization of cooperatives was as a variation on the corporation, and was explicitly imbedded in the commercial code. The Company Law of 1867 introduced the “variable capital corporation,” a legal form that allowed the formation of cooperatives similar to those created in Germany by Schulze-Delitzsch. Thus the first French cooperatives were legally a sub-species of a commercial corporation. Several German observers had noted the close similarity of the cooperative and corporation. Both are entities that “lock in” capital and allow the enterprise to persist even with a changing membership (for a cooperative) or

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<sup>6</sup> Guinnane (2010a) discusses the development of German cooperative law in more depth. Guinnane (2010b) traces the development of the GmbH and the wider German debate over limited liability for small enterprises. Guinnane (2001) provides more information on the development of German cooperatives, while Guinnane, Harris, Lamoreaux and Rosenthal (2007) provide a comparative account of the law of business enterprise in France, Germany, the United States and the United Kingdom in this period.

ownership (for a corporation). Due to the high capital stock requirements of the 1867 law, other kinds of cooperatives, such as those built on Germany's Raiffeisen model, did not gain ground in France until much later. France, like its legal imitators, also adopted ad-hoc measures that created cooperatives not allowed under the company law. French organizers created a different type of *de facto* cooperative under the guise of labor unions. The 1884 law on associations, officially granted workers the right to unionize, and more generally, allowed "professional groups" to organize to assist in their activities. It was not until 1894 that the first piece of legislation specifically targeting cooperatives appeared in France (Ingalls; Herrick, 1914, 328–333).

Thus we can think of two approaches to a cooperative law. The German model developed a body of cooperative law that draws heavily on the principles of the business code, but exists outside the business code. German cooperatives had to conduct themselves in ways often detailed in the business code, but the law was clear that a cooperative was not a business form of enterprise. The French model, on the other hand, creates two distinct types of cooperative. The first type of cooperative is a twist on the standard corporation. The second is a specific body of law, like the German, that creates special institutions that are not business entities under the law.

Students of the Spanish cooperative movement have for the most part ignored Spain's cooperative law. They have thus missed the Spanish cooperative's mercantile roots. Garrido (2007, 183–200) who focuses on the first third of the twentieth century, links the rise of the cooperative movement to the spread of agrarian associationism. He is right to see in the Law on Agrarian Syndicates of 1906 the essential legal step for most rural cooperatives, but this approach misses the legal context that accounts for much of the unusual organization of Spanish cooperatives. The Spanish cooperative, as imported from French legislation, was generally composed of a small credit union, usually along the lines of the German Raiffeisen rural cooperatives; an agricultural supply cooperative; or a small consumer cooperative that sold to members only. Apart from agricultural cooperatives, which depended on the agrarian syndicates law, other cooperatives were regulated by the 1887 law on associations until the passing of the first general law on cooperatives in 1931. Garrido (2007) centers his attention almost exclusively on

agricultural cooperatives, given their share of the economy, and emphasizes the tax advantages of these cooperatives as instrumental to their spread.<sup>7</sup>

We on the other hand focus on the cooperative's appearance from a legislative standpoint. For this reason the period under consideration does not begin with the rise of agricultural cooperatives at the turn of the twentieth century, but rather fifty years earlier. During the second third of the nineteenth century, the government, inspired by the principles of freedom of association and freedom of contract, began pushing for the creation of cooperatives. While in practice this government initiative had little impact, there was in fact a considerable legislative effort to invest cooperatives with mercantile characteristics, a thesis we develop in the forthcoming pages.

Our approach requires a long excursus in the development of Spanish company law. The close association between the cooperative and general incorporation observed in France was at first also a characteristic of Spanish cooperatives. The fact that Spanish commercial law is fundamentally defined by its applicability to profit-seeking activities became an insurmountable obstacle for cooperatives to hold on to their status as business entities, something that did not happen elsewhere. The Commercial Code of 1885 thus applied to cooperatives only in exceptional cases, with cooperatives being bound by the Law on Associations of 1887 until the passing of the later, specialized legislation.

#### **4. Business entities: the Commercial Code of 1829 and its repeal in 1848**

Prior to the 1829 Commercial Code, Spanish firms relied on multiple sources of commercial law.<sup>8</sup> Prior to modern legal codification, some of the most influential among many existing ordinances were the Bilbao Ordinances (Royal Edict, December 2, 1737), which recognized the existence of several business entities: general partnerships, limited partnerships, and corporations (public limited companies or *sociedades anónimas*). The Code of 1829 upheld the existence of this triad, while introducing important innovations with respect to incorporation. What the Bilbao Ordinances classified as “corporations” were in fact associations whose existence was brief and limited to the specific purposes

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<sup>7</sup> A consumers' cooperative movement began to gain force in the Mediterranean coast, especially Catalonia, beginning in the last third of the nineteenth century (Martínez; Pujol, mimeo).

<sup>8</sup> For a detailed account of previous commercial legislation, particularly with relation to the Commercial Consulate of Catalonia, see J. Sarrión and M.J. Espuny (1989).

of the agreement (Tapia, 1839, 17–19) (Petit, 1980, 56). With the new commercial code, the *sociedad anónima* became a standardized legal entity regulated by law, in which capital is owned by investors whose liability is limited to the amount they have invested in the company.

This represented a true revolution in terms of contemporary legislation. Elsewhere in Europe at the time, incorporation required the express consent of the government, since a business enterprise with multiple investors, all of whom enjoyed limited liability, was considered suspect (Tortella, 1968)). Even the most advanced European economies then required explicit charters to form a corporation (Guinnane, Harris, Lamoraux and Rosenthal (2007)). Under the 1829 code, Spanish corporations did not require royal or government authorization. They simply had to comply with the principle of publicity. Only corporations enjoying special, additional privileges, specifically monopoly rights, were subject to approval by royal decree (art. 294).<sup>9</sup> The Code recognized two other legal forms of enterprise, the ordinary partnership and the limited partnership. In the former, all partners had unlimited liability; in the latter, some but not all could have limited liability. The code required registration for all three legal forms (Art. 26), “as guarantees against the abuse of credit in commercial relations” (art. 21). By law, each province’s capital was to have its own public commercial registry.<sup>10</sup> The code also outlined the authority of the newly created Commercial Court to solve and mediate in disputes involving commercial agents and their actions.

The latitude granted by Ferdinand VII for the incorporation of business enterprises was unparalleled in Europe and surprising given his conception of absolute monarchy.<sup>11</sup> The best explanation for this precocious code can be gleaned from the words of the code’s author, Sáinz de Andino (an expert in Civil and Business Law and later member of the Senate) during his appearance before the Senate to advocate the repeal of the section on incorporation of the previous Commercial Code in favor of a new and

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<sup>9</sup> Article 294 speaks of companies “with privileges,” now referred to as corporations “with privileges”: “Article 294. When public companies require that We grant special privileges for their development, their regulations will be subject to Our approval.”

<sup>10</sup> Article 22 additionally established the creation of an index of all registered documents.

<sup>11</sup> The 1834 Law on Freedom of Industry was enacted only after the monarch’s death: Queen Regent Maria Christina agreed to eliminate the last vestiges of the *Ancien Régime* in exchange for the support of the Liberal Party for her daughter Isabella II, heir to the throne.

more restrictive law on the incorporation of public limited companies.<sup>12</sup> Sáinz de Andino stressed the need to promote capital accumulation in Spain, and in particular to encourage the repatriation of capital from Spain's lost American colonies. In any case, freedom of contract preceded the appearance of other individual rights. As long as they adhered to the principle of publicity, individuals had the legal right to create business entities and enjoyed freedom of contract.

But the Spanish still did not enjoy freedom of association. Nearly every other form of association was deemed illegal by the Penal Code of 1822 (art. 317), which required that unauthorized meetings “with a number of at least four people” be disbanded (art. 300). Behind this restriction on basic civil liberties, such as freedom of speech, assembly, and association, was an absolutist regime bent on quelling even the smallest sign of opposition. The coming to power of the Liberals in 1833 and the new Penal Code of 1848 did not do much to improve the situation. During this period, there were minor advances with respect to freedom of association. The Royal Decree of 1839 sanctioned the creation of a mutual insurance association similar to a Friendly Society, or a *montepío*, in Barcelona. This decree later served as umbrella legislation for the creation of other similar legal entities.<sup>13</sup> At the same time, however, freedom of contract was curtailed with the repeal of the section on joint-stock companies of the 1829 Commercial Code.

#### *Limits to freedom of contract under the Liberals: the law of 1848*

According to contemporary sources, the tide of public opinion turned against the *sociedad anónima* after the Madrid stock market crash of 1845, although not so among the business community.<sup>14</sup> In fact, it is not until *after* the crash that we observe a noticeable rise in the number of public limited companies. Beginning in 1846, successive governments introduced measures aimed at regulating incorporation.<sup>15</sup> In 1847 the

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<sup>12</sup> Parts of this speech can be found in J. Rubio (1950).

<sup>13</sup> We are specifically referring to the Royal Order of February 28, 1839, authorizing the creation of mutual aid associations. Reprinted in M. Alarcón Caracuel (1975, 314–315).

<sup>14</sup> Gómez de la Serna (1878).

<sup>15</sup> Early in 1846 (January 19), Francisco Armero, Minister of the Navy under the first Ramón María Narváez government, presented the Senate with a bill for the regulation of public limited companies. The first article of this bill proposed that a company could only be incorporated “subject to consent through a Royal Decree authorizing its creation.” (art. 1) The short life of this government, combined with the

government assumed the company oversight previously exercised by Commercial Courts.<sup>16</sup> A year later, a law was passed prohibiting the creation of all joint-stock companies, as well as limited partnerships, without express government authorization. Article 2 of this bill also required specific laws for the establishment of “banks of issue and associated banking institutions, or the construction of general roads, canals for navigation, and railroads.” (art. 2, par. 1) During the short-lived Progressive government (1854–56), several special laws were passed granting certain economic sectors greater freedom to set up joint-stock companies, adversely affecting investors who did not enjoy such privileges. A two-month grace period was provided so joint-stock companies created prior to this law could meet the terms of the new legislation. Those unable to comply were to be dissolved.<sup>17</sup>

Requests to form a new corporation were first screened by the province’s Political Chief, and after his approval sent to the Royal Council for it to “begin an inquiry into the approval of the company, its regulations, and bylaws” (art. 16).<sup>18</sup> Rules of conduct were published nine years later to standardize the regulatory role of provincial governors, thus suggesting the incidence of malfeasance. For some period special delegates carried out the inspection duties assigned to civil governors.<sup>19</sup> The government enjoyed latitude to set minimum capitalization and to revise the company’s charter and bylaws.

In 1856, new laws on banks and credit institutions simplified the process of incorporation in the financial sector, allowing an influx of foreign capital, particularly from France. The new laws revealed the existence of potential investors interested in Spain, as well as the lack of the proper legal business framework to allow foreign investment. The 11 articles making up the law on credit institutions outlined the

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instability of those succeeding it, meant the bill remained paralyzed until the following year. On February 9, 1847, a Royal Order was printed in the Official State Bulletin banning Commercial Courts from sanctioning social pacts or agreements.

<sup>16</sup> Royal Decree (April 15, 1847) containing the basic elements of the bill signed by Nicomedes Pastor Díaz, Minister of Trade, Industry, and Public Works.

<sup>17</sup> Applications were received from 41 companies wishing to continue their incorporation as public limited companies under the pre-existing law. Of these requests, 13 were denied and the corresponding companies dissolved. The process was particularly slow, as shown by the staggered fashion in which applications were received in the years after the 1848 law: 9 in 1848, 14 in 1849, 8 in 1850, 5 in 1851, 2 in 1852, none in 1853, and 3 in 1854 (Bernal, 2004).

<sup>18</sup> The Royal Council also had the authority to request original documentation and additional reports in cases where it saw fit (art. 17).

<sup>19</sup> Royal Decree of February 15, 1854, rescinded August 15, 1854, signed by Francisco Luján, Minister of Public Works.



operational guidelines for these business entities, which were to be organized as public limited companies. Credit institutions were required to publish their financial statements every month in the Official State Bulletin (*Gaceta de Madrid*) (art. 8). The law detailed the operations that incorporated credit institutions were allowed to carry out. Tortella (1970) has shown how the increase in the number of credit institutions in the years following the law stands as evidence of its success, as well as confirmation of how restrictive the 1848 law had been for the economic development of the country.

### **5. The joint-stock company law of 1869**

The liberal revolution of 1868 set the basis for full modernization of the country, beginning with the protection of civil liberties. (The sequence in Spain was unusual: a very liberal business code preceded modern civil liberties.) The 1868 government then sought to provide for civil liberties before adopting liberal economic organization. In 1869 the provisional revolutionary government repealed the law of 1848 and temporarily reinstated the Commercial Code of 1829, pending a new law on joint-stock companies and a new commercial code. Shortly before this, Minister of Public Works Echegaray had presented a Royal Decree outlining some of the guidelines for the new code. These included greater freedom of contract as well as the inclusion of recent European legal innovations, such as the cooperative.<sup>20</sup> The hopes which some members of the political class had placed in these reforms are documented in that year's Journal of Debates of the Cortes: Moret (1869) (then a young liberal MP, later an important politician and economist) praised the cooperative as a means of improving workers' livelihoods; Garrido (1869), also a n MP and a well-known champion of the cooperative movement, spearheaded a Parliamentary commission for the improvement of the conditions of the working class.<sup>21</sup>

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<sup>20</sup> “In what generally respects commercial contracts, their forms, and effects, these will have to be expanded to include not only those of existing incorporated companies, but also those of all company forms already in existence and practice in Europe, and which are not in the present Code, as are banks of issue and discount, mortgage and agricultural credit associations, companies with semi-limited liability, cooperatives, mixed associations including both benefactors and profit-sharing investors, etc. so general regulations can, as far as possible, accommodate all business entities that we presently know of.”

<sup>21</sup> Their addresses to the Cortes appear in the 1869 Journal of Debates: S. Moret (March 24, two days after the introduction of the bill) and F. Garrido (July 19).

In the end, cooperatives were included as an explicit element of that year's law on joint-stock companies.<sup>22</sup> The preamble to the draft of law on the freedom of incorporation for joint-stock companies and credit institutions stated that the law's objective was to "give the Spanish people back the freedom to create industrial associations, to set up business enterprises of any kind, to reinvigorate credit." The only restriction was the principle of publicity, which substituted for state control the requirement to publicly and periodically disclose a company's financial statements (Matilla, 1986, 397–399). The law was not groundbreaking in its effects; it simply repealed the law of 1848 in favor of the Commercial Code of 1829. It was, however, groundbreaking in principle, inspired by the ideals of freedom of association and contract. The law stated that new firms needing to contract with third parties to undertake their business could be incorporated under any of the three forms established in its Article 2. Incorporation was registered by public deed, through a notarized affidavit signed in the presence of at least half of the company stakeholders or their legal representatives (art. 3). Once the company was formally created, its legal representatives had up to two weeks to submit a copy of the deed of incorporation and company bylaws to the Governor of the province in which the company was registered. Submission of the company charter remained optional. Upon receiving the necessary documentation, the Civil Governor would in turn submit these to the Ministry of Public Works. Additional copies were to be sent to the Official State Bulletin (*Gaceta de Madrid*) and each of the official provincial bulletins within a two-week period. Companies were also required to submit annual financial statements to the provincial government (art. 4).<sup>23</sup> Article 10 underscored the fact that companies incorporated under this new law were not subject to monitoring and control by the government. Investor rights as well as the corporate obligations were the "exclusive purview of the courts."

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<sup>22</sup> A summary of the development of this law can be constructed from the following official documents: (1) draft of law of March 22, 1869, *Journal of Debates of the Constitutional Cortes, Appendices 1–33*; (2) May 20 ruling, *Journal of Debates of the Constitutional Cortes, Appendices 1–78*; enacted law, *Journal of Debates of the Constitutional Cortes*, October 6, 1869; amendment, *Journal of Debates of the Constitutional Cortes, Appendices 3–84*; defense, *Journal of Debates of the Constitutional Cortes*, October 6, 1869.

<sup>23</sup> These regulations were to be enforced through fines of "100 to 1000 *escudos*" to firms which neglected to make these documents public (art. 12).

### *The first legal mention of cooperatives*

The final version of the bill recognized cooperatives as lawful entities and granted them legal personality to deal with third parties. This is the first mention of cooperatives in the Spanish legal corpus. The inclusion of cooperatives within this legislation resulted from the efforts of a group of liberal economists. In the original draft of law, presented before the Cortes on March 22, 1869, cooperatives were mentioned only once and rather indirectly: as part of the legal guarantee of freedom of incorporation for joint-stock companies, credit institutions, and a long list of others, Article 1 established a clause extending this right to “other associations whose purpose is to assist and cooperate with industry or trade.” The draft was sent for analysis to a commission that included some of the most important liberal economists of the period.<sup>24</sup>

The associations contemplated by the bill were to “be established by public deed in one of the ways prescribed by the first section of the Commercial Code, Book 2, Title II.” The committee also added the following paragraph: “Associations which legally do not have mercantile characteristics, and those cooperatives in which the determined number of investors has been fixed, can adopt in their deed of incorporation the legal form which its members consider fit.” The purpose was to create a simple legal arrangement under which these groups could acquire the legal personality to interact with external parties. The law did not designate the cooperative as a mercantile body, but it did not rule it out as one, either. This dual nature of the cooperative could also be observed in other countries. In France, Article 1832 of the Civil Code established that all associations, including cooperatives, which did not seek profit, were not mercantile in character. On the other hand, those which sought profit would be subject to the commercial code.<sup>25</sup> This dual classification was not exempt from abuse, and in certain instances, disputes had to be resolved before a judge. As a general rule, the Spanish Commercial Code of 1885 did

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<sup>24</sup> The committee included Santiago Diego Madrazo, José Echegaray (president), Eduardo Chao, and Manuel Pastor y Landera (secretary). Tomas María Mosquera Pastor y Landera was not an economist, though he had a close relationship to Laureano Figuerola and José Echegaray, having studied for some time at the Escuela de Ingenieros de Caminos in Madrid. Chao was named Minister of Public Works a few months later and signed off on the bill. During his tenure in the Ministry, Echegaray wrote the bases for the Commercial Code of 1869, while Figuerola was part of the Codification Commission from the start.

<sup>25</sup> German law, on the other hand, treats cooperatives as businesses for most purposes under the business law, even though cooperatives themselves are not part of that code. This principle extends to other entities; the GmbH, for example, is treated as a business even when it is explicitly a not-for-profit.

not apply to cooperatives; the code only applies to the rare commercial cooperatives that did try to earn profits. The problem lay in the absence of legislation on non-commercial cooperatives prior to the Law on Associations of 1887.

To legally constitute a cooperative in accordance with the law of 1869, an organization's charter had to be registered through a notarized affidavit, a copy of which was then sent to the Civil Government. Upon its approval, the provincial government would then submit the necessary documents to the Ministry of Public Works. The cooperative's administrators were required to publish the cooperative's bylaws and deed of incorporation in the Official State Bulletin, as well as in the corresponding provincial bulletin. Cooperatives with a variable number of investors and capital could "adopt the legal form which its members considered most convenient." Some cooperatives apparently did not trust the guarantees of freedom of association, assembling and religion enshrined in the 1869 Constitution. Many cooperative bylaws published in the Official State Bulletin contain articles stating that they were in no way associations created for the debate and discussion of politics or religion. This claim was made in order to prevent any opposition from civil authorities. According to the limited accounting requirements outlined in Article 4, the cooperative was to post a monthly statement summarizing transactions, the number of members, and the total capital stock, which was displayed at the cooperative's administrative offices, "signed by the administration, so it can be freely perused or copied by whoever deems it appropriate."

The Spanish law reflects the 1867 French law on variable capital companies. Cooperatives were thus a means of introducing into the Spanish milieu something close to a joint-stock company in which investor liability was limited to the sum of individually invested capital and in which the company charter was flexible enough to allow the number and identity of investors to fluctuate freely. Though French cooperatives were not explicitly mentioned within the text of this Spanish law, they could in fact be incorporated as joint-stock companies, a business entity free from the limitations of general partnerships and the intricacies of public limited companies. Capital, unless company bylaws specified otherwise, was to be divided into registered shares (art. 49), and the number of investors could fluctuate without requiring the dissolution of the company. Full incorporation was formalized once 10% of the capital stock was paid in

(art. 50). Additionally, the company had legal personality and the legal capacity to take administrative action and appear before the law (art. 52). In contrast, the Spanish law of 1869, instead of allowing its incorporation as a joint-stock company, explicitly recognized the cooperative as a separate legal entity.

## **6. Cooperatives in the Commercial Code of 1885 and its precedents**

Echegaray, then Minister of Public Works, published the principles for a new commercial code on September 20, 1869.<sup>26</sup> The document stressed that radical reforms to the existing legislation were required on two issues: “associations and bankruptcy, both of which at this time are incomplete.” Associations, particularly cooperatives, received a special focus during these early stages. For Echegaray, the cooperative was defined by two characteristics: mutual insurance and the sharing of dividends as a compensation for labor. He argued that cooperatives did not fall under the commercial code since neither their objectives nor their compensation of labor was economic in nature. Mutual insurance societies were excluded from the code for the same reason.

One would have expected the Sixth Commission on the commercial code to have thoroughly revised laws on business entities according to the guidelines set by Echegaray.<sup>27</sup> However, the committee’s minutes show that the revisions were not as extensive as the decree had announced. Debates regarding the legal form of business enterprise were brief and achieved a quick consensus. We have located two instances where this issue is addressed. In the first, Alonso Martínez lists the points of the reform to Title I of Book 2 on business enterprises: “Fifth. General and limited partnerships, public limited companies, credit institutions, industrial cooperatives, and others shall be freely established, restricted only by the general and lawful principles of the government.”<sup>28</sup> The minutes inform us that these principles were accepted by all members of the

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<sup>26</sup> “Decree disbanding the committee charged with revising the Commercial Code and the law of Commercial Procedure Rules, and calling for the creation of one to draft a Code and Commercial Procedure Rules.” (Official State Bulletin, September 24, 1869, number 26)

<sup>27</sup> Presided over by Gómez de la Serna; with Francisco Camps as secretary; and Figuerola, Cirilo Álvarez, Díaz Pérez, Luis María Pastor, Alonso Martínez, and Joaquín Sanromá as members of the committee. Francisco de Paula Canalejas, Colmeiro, and González Marrón would join later. (Official State Bulletin, May 31, 1881, number 151).

<sup>28</sup> *Sesión 15ª del 23 de enero de 1870. Presidencia del Sr. Gómez de la Serna* (Centenario del Código de Comercio, III, 1991, p. 52–53).

commission. It wasn't until February 1872 that the issue surfaced once again, while Book 2, "On the matter of Companies," was being revised. The final role assigned to these business enterprises was both broader and more flexible than that contemplated under the 1829 code. In the final draft of the new Commercial Code, the number of business forms was expanded beyond the original three included in 1829. The new Code did not explicitly include cooperatives. But article 142 allowed firms to adopt any form necessary to achieve their ends, so long as their agreements did not contradict other law. In addition to this new list of enterprise forms, which did not include cooperatives, a special clause kept the code open to the possibility of other entities: "Art. 142. Depending on the nature of their operations, companies can be: credit institutions; banks of issue and credit; mortgage companies; mining companies; agricultural banks; railroad and public works concessions; public warehouses; and of other kinds, as long as their agreements are lawful and their purposes commerce or trade." The Commercial Code only covered those cooperatives that were engaged in acts of commerce "unrelated to mutual insurance or those engaged in one-time, specific commercial undertakings..." (art. 143).<sup>29</sup> This echoed the precepts of 1869, according to which cooperatives possessing mercantile characteristics were to become business entities endowed with legal personality.<sup>30</sup> This draft did not specify the *modus operandi* of commercial cooperatives, the type of transactions they were allowed to carry, or their internal operations. Its wording would be later incorporated into the 1882 draft code and would make its way into the final draft of the Commercial Code enacted in 1885. Certainly when compared to the importance the cooperative received under other European codes, the Spanish approach was, as we shall see, imprecise.

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<sup>29</sup> "Art. 143. Mutual companies providing insurance against fire, disability, old age, or any such combination, as well as producer credit and consumer cooperatives, will only be considered as having mercantile characteristics and thus covered under the provisions of this Code, if they engage in acts of commerce unrelated to mutual insurance or those converting to fixed premiums."

<sup>30</sup> This last point, concerning legal personality, would not be cleared with the enactment of the 1889 Civil Code. The code established that all professional partnerships (*sociedades civiles* or "civil enterprises") could adopt any of the business entities detailed in the Commercial Code, thus obtaining the legal personality to do business and obtain credit.

*Cooperatives in the Mediterranean region under other commercial codes of the 1880s*

Spain's neighbors Italy and Portugal also revised their commercial legislation in the 1880s. Italy and Portugal paid special attention to the clear definition of commercial cooperatives and to the similarities between their operation and that of corporations. Italy enacted a new commercial code in 1883, two years prior to Spain. This code contained a detailed description of cooperatives as legal entities. Eight of the code's articles<sup>31</sup> were devoted to defining the operations, rights of members, and the legal framework put in place to foster the development of cooperatives. Cooperatives were only covered under the commercial code if they were commercial in nature (art 219), in which case, incorporation followed the guidelines set for public limited companies (art. 221).<sup>32</sup> There are two important features in this characterization: first, a cooperative was considered commercial if it sought profit, which coincided with the Roman-French conception of a business enterprise, rather than with the Germanic model, in which classification depended on legal form rather than aim. Second, a cooperative was formally defined as a special type of corporation, offering limited liability to its members, something again in line with the influence of French commercial law.

Portugal also wrote a section on cooperatives into its Commercial Code of 1888.<sup>33</sup> The Portuguese code defined cooperative societies on the basis of their variable capital stock and potentially unlimited number of investors (art. 207). For their incorporation, cooperatives were to assume one of the following business forms: an ordinary partnership, limited partnership, or public limited companies (art. 105). In some respects, they were bound by the same regulations as public limited companies, insofar as legal obligations and the principle of publicity; their inclusion in the official bulletin was however free (art. 209). Cooperatives could opt for either limited or unlimited liability (art. 207, item 3), with the limitation of liability being subject to the amount of capital

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<sup>31</sup> Art. 221-228: Sezione VII, Disposizioni riguardante le società cooperativa. Book I. Title IX, *Codice di Comercio Italiano*.

<sup>32</sup> Article 76 established that for a cooperative to be considered commercial it had to have as a purpose one or more acts of commerce. This indicates a French legal influence, contrary to what would have been expected, considering that Luzzatti, one of the salient figures of the first cooperative movement, had been inspired by Schulze-Delitsch.

<sup>33</sup> Title II, Chapter V, disposicoes especiais as sociedades cooperativas, Portuguese Commercial Code.

subscribed by each member (art. 215).<sup>34</sup> In addition, cooperatives were exempt from stamp duties and taxes on profit in any form.

The lack of similarly detailed cooperative legislation in Spain apparently did not lead to any complaints. This is a bit surprising; legal discussions in Spain display a keen understanding of contemporary developments in France, Italy, and Portugal. This is perhaps because a new law on associations, which was to include general provisions on the cooperative, was being drafted simultaneously.

## **7. The Spanish law on associations of 1887: cooperatives as partnerships**

The civil liberties proclaimed by the Revolution of 1868 and ratified in the Constitution of 1869 had not been fully secured. The Constitution of 1874, which marked the beginning of the Bourbon Restoration, sought to once again protect freedom of association for commercial aims: “Every citizen of Spain has the right [...] to assemble for the purpose of their livelihood.” (art. 13) It also specified that the essential freedoms of the press, association, and assembly would be governed by a special law (art. 14). The first legislative proposal, the “Bill on Workers’ Associations,” was presented to the Senate in December 1876 but failed to pass. That same year, the International Workers’ Association was outlawed, the first step in a wave of repression against all worker-related associations. Beginning in 1881, the government’s stance towards organized labor became more tempered and conciliatory;<sup>35</sup> a new law was proposed on the issue of freedom of association, and though the bill never reached the floor, it did lay the basis for the new law which was eventually passed.

Between 1881 and 1887, and in parallel to the association movement, the ideological movement known as *Neo-gremialismo* began to make headway. This movement sought to restore old craft-union structures in order to bring workers and employers back together under one association, by adapting these institutions to a modern liberal context. A bill on these “new” organizations was presented before Congress in 1882—“Bill Setting the Terms for the Formation of Unions (May 28, 1882).” One of its clauses states that other associations, such as cooperatives, could be legally created

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<sup>34</sup> This treatment of liability is similar to the relevant provisions of the German cooperative law of 1889.

<sup>35</sup> For a more detailed review on labor legislation during this period, please refer to M. Alarcón Caracuel (1975) and B. Olías de Lima Gete (1977).



within a union (term 3).<sup>36</sup> This development suggests that cooperatives had lost their alleged revolutionary character, and instead were now an instrument for society's most conservative elements. Finally, after several drafts, the general law on associations was passed in 1887 and would remain in force until 1964. This was mainly a law on administrative procedures, unifying the existing protocols governing the most recent forms of popular associationism. Rising government interest in these entities led the Ministry of Public Works to create a registry of all Spanish associations by conducting a special survey (1897). The results revealed the existence of over 3000 associations, of which 80, or less than 3% of the total, were cooperatives.<sup>37</sup>

The law clearly established the cooperative as a form of *sociedad civil* (a "civil enterprise" or professional partnership), regardless of whether its purpose was "production, credit, or consumption," (art. 1) as well as outlining the legal requirements for its incorporation. This required a statement of the cooperative's "name, purpose of association, its address, form of administration or governance, of the resources with which expenses shall be met, and the destination of funds and social assets shall it be dissolved." Once incorporated, cooperatives were required to keep account books and a registry of members, "in which under the responsibility of those charged with administrating affairs, all credits and debits of the association shall be recorded, and the origin and assignment of all funds explicitly stated. An annual balance sheet shall be submitted to the provincial registry." (art. 10) The law of 1887 was quite straightforward when compared to the law on joint-stock companies and credit institutions of 1869. It did not require the publication of bylaws in the Official State Bulletin, and observance of the publicity principle simply entailed informing the civil government and the appropriate legal authorities. As pointed out in Article 11, associations collecting funds from their members, which included virtually every cooperative, were expected to report their income and expense accounting "to make these known by its members and to file a copy with the provincial government within five days of making these official." Failure to comply with the terms of articles 10 and 11 was subject to a fine.

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<sup>36</sup> Alarcón Caracuel (1975, 259–260).

<sup>37</sup> "A summary of the societies of every kind existing in Spain as of January 1, 1887, with a description of their purposes according to the official data made available by the General Directorate." Quoted in S. Castillo (1994, 403–404).

The 1887 law on associations was silent on cooperative's internal structure: there were no guidelines on management structure, nor were there formal rules for dealing with third parties, as in the case of credit operations.<sup>38</sup> This last point changed with the enactment of the 1889 Civil Code, which awarded legal personality to all associations. Ironically, it was the government administration itself which on more than one occasion violated this decision regarding the associational, non-business character of cooperatives.<sup>39</sup>

## **8. The Law on Agrarian Syndicates (1906) and the Law on Cooperatives (1931)**

The arrival of the twentieth century brought with it a new awareness of the cooperative movement, which slowly continued to spread across Spain. The Law on Agrarian Syndicates of 1906 (and companion regulations of 1908) created a legal framework that proved beneficial for agricultural cooperatives and created a new legal form under which they could thrive: the agrarian syndicate. In Article 1, Section 8, the law stated that those rural “cooperative institutions” involved in agricultural activities which adopted the agrarian syndicate as their legal form would be entitled to a variety of tax benefits, as well as legal personality as defined in Article 38 of the 1889 Civil Code. Both in essence and form, this law was inspired by French legislation. While France's trade union law of 1884 did not specifically authorize the creation of cooperatives, its wording was ambiguous enough to suggest that all those entities “promoting common interests” could be set up as unions, an ambiguity that cooperatives used to their advantage. After 1884, the French in fact began forming organizations that were cooperatives in all but name. It appears plausible that Spanish legislators, in light of the experiences of the French cooperative movement, decided to take that extra step and include cooperatives in the law on agrarian syndicates.

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<sup>38</sup> Ponsa Gil (1924, p. 84).

<sup>39</sup> One such example was the 1892–93 budget law (art. 39), which required cooperatives to pay a sales tax. This directly contradicted Article 1 of the regulations issued on June 13, 1882, which stated that industrial taxes could only be levied on industry, and not on other unrelated legal entities, such as cooperatives. An Oviedo consumer cooperative by the name of *La Unión Obrera* (“the Workers’ Union”) reported this irregularity in 1897, but the Court of Contentious Administrative Proceedings did not rule in favor and mandated that they pay the tax beginning the next fiscal year. Decision handed down on April 3, 1897, Official State Bulletin, October 6, 1897.

In the Spanish case, this new law established a process of approval and legalization much simpler than the one under the law on associations of 1887. It also defined the (essential) rights of members and a body of regulations. The success of this law resided in the assortment of tax exemptions (stamp duties, property taxes, etc.) and customs benefits offered by its regulations.<sup>40</sup> It was a law conducive to the development of agricultural cooperatives, particularly those dedicated to credit, and more specifically, to what came to be known as *Cajas Rurales*, rural savings and loans associations based on the Raiffeisen model.<sup>41</sup> This, however, only helped bring confusion over what was meant by the term cooperative by introducing the new term “agrarian syndicate” as a category under which cooperatives could be included.

An indirect positive externality of the new law was the proliferation of non-agricultural cooperatives, which were still subject to the 1887 law on associations. In fact, from the beginning of the twentieth century, there had been a continuous effort within the Associations Section of the Social Reforms Commission to compile basic statistics on cooperatives, which though scarce, suggested the importance of consumer cooperatives (Martínez; Pujol, mimeo). During the 1910s, the Associations Section put together several reports which imply considerable interest in the subject. The view that a specific law on cooperatives was needed would gain influence in the years to follow. In 1927, Gascón Miramón published what was this period’s most fully-fledged draft of law on the issue. Much of the law on cooperatives of 1931 derived its content from this preliminary document. The period between the drafting of the bill and the enactment of the final law was so protracted that several countries in Latin America passed their own laws based on the Spanish bill, even before the legislation actually existed in Spain (Reventós, 1960).

One of the main objectives behind the 1931 law was to wrestle with the issue of the wide variety of associations which could potentially apply for status as a cooperative. The law and its corresponding regulations made it explicitly clear that only associations which invoked their rights under this law could use the designation “cooperative” (art. 6); all others would be fined (Regulations, art. 27). Spain’s first general law on cooperatives traced back its roots to the Rochdale Principles, advocating an open-door policy and

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<sup>40</sup> Salinas Ramos (1976).

<sup>41</sup> For more on the spread of Raiffeisen cooperatives in Spain, see A. P. Martínez Soto (2003).

democratic vote, as well as the creation of a reserve fund and a compulsory social fund.<sup>42</sup> For the first time, a cooperative was explicitly defined by law: “Art. 1. A Cooperative Society shall be understood as an Association of natural or legal persons, which in its organization and operation abides by the terms of the present Decree and does not seek profit, with the object of satisfying a common need for the social and economic betterment of all its members through joint action in a collective endeavor.” The law also established a set of legal characteristics that cooperatives covered by this law were required to comply with. As a general rule, control was to be democratic, following the principle of “one man, one vote.” Management of the cooperative was to be in the hands of its members, and management by external parties was expressly forbidden. From an organizational standpoint, cooperatives were to have a board of directors as an administrative body, as well as an assembly or general meeting of members in charge of management. Cooperatives with 100 members or more were required to appoint an auditing committee.<sup>43</sup>

Any surplus was to be divided among the members in proportion to their input in the cooperatives activities. Article 13 established that 10% of a cooperative’s annual returns were to be set aside as part of a reserve fund, until the point where the amount in this fund was equal to the total capital stock. There were also special requirements on the destination of funds for community projects (art. 27 and art. 44). Shares were only transferable between members. The law also envisaged the creation of unions and federations of cooperatives, as well as their economic integration (art. 37). The degree of liability to third parties was either limited, unlimited, or subject to assessment. Incorporation of cooperatives did not require a notarized public deed. The only essential requisite was registration before the Ministry of Labor, which was formalized once the cooperative’s bylaws and regulations received ministerial approval. While registration was free of charge (art. 7), cooperatives were not exempt from bookkeeping (art. 38), and were bound by law to submit records and proceedings, balance sheets, and statements of profits and losses, as well as informing of any changes in their administrative bodies and facilitating inspection and auditing (art. 39).

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<sup>42</sup> The social fund consists of earnings set aside to contribute a local public good such as a school.

<sup>43</sup> Montolio (2006) argues that this executive structure clearly differs from the German dual model.

The impact of this law on the cooperative movement was frustrated by the onset of civil war, after which the Franco regime enacted its own legislation in 1942.

## **9. Conclusions**

This discussion of the legislative framework for Spanish cooperatives highlights three important points for these institutions in Spain and elsewhere. First, in Spain as in some other European countries, the development of cooperative law is closely tied to the development of the law of corporations. Cooperatives and business firms have many similarities as well as important differences, but at some level the issues that need to be confronted in shaping one apply with equal force to the other. In the Spanish case we see specifically that allowing cooperatives to form is equivalent to tolerating general incorporation for a specific kind of enterprise. The Spanish case also illustrates the more general issue of the connection between enterprise law and the freedom of association. One reason cooperatives wanted a legal framework was to allow their members to work together without police surveillance.

The Spanish case also illustrates the precarious position of cooperatives between company law and civil law, and between a privileged entity and one that is just tolerated. The 1869 law never defined what a cooperative meant under the law, and allowed cooperatives to organize as any of the then-extant legal forms. The draft Commercial Code published in 1869 (and enacted in 1885) indicates a clear intention to treat cooperatives as a type of corporation. But Spanish commercial law was built on the notion of profit, and eventually this definition made it awkward to treat the cooperative like any other commercial entity. Thus France and other countries treated cooperatives as a species of business enterprise, but Spain did not. The Spanish Law on Associations (1887) stripped cooperatives of the economic benefits gained with the law of 1869.

Our second contribution is a corrective to the literature that dates the beginnings of Spanish cooperatives to the Agricultural Trade Act of 1906. This Act and the 1931 Cooperatives Act both proved very beneficial to the development of Spanish cooperation. However, we were able to document that cooperatives did organize under the earlier legislation discussed above. These early cooperatives are themselves worthy of fresh research on the role they played and how they operated.

Our most important contribution is to demonstrate the close ties between the commercial law and the law governing cooperatives. The point would seem unremarkable to any nineteenth-century observer with experience of the two types of enterprise. Yet subsequent research has often focused on left-wing cooperatives and stressed the ideological reasons for cooperative movements. To contemporaries some were doubtless tied to one or another social or ideological movement, but most were simply a way for individuals to combine to attain some concrete, shared goal. As such they were very much like a partnership, a corporation, or another business enterprise. We do not dishonor cooperatives by appreciating their roots in commercial organization and commercial law.

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**Table 1: Cooperatives by province and type, 1915**

Province	Production cooperative	Credit cooperative	Consumer cooperative	Housing /construction cooperatives	Medical cooperatives	Other types	Total cooperatives
ANDALUCIA	5	13	99	24	3	34	178
ARAGON	0	11	23	2	0	12	48
BALEARES	0	1	15	2	1	6	25
C.LEON	0	5	52	3	0	5	65
C.MANCHA	0	7	32	2	0	1	42
CANARIAS	1	0	0	1	0	2	4
CATALUÑA	5	10	252	4	1	32	304
EXTREMADURA	1	4	11	0	0	21	37
GALICIA	0	3	11	0	0	0	14
LOGROÑO	0	0	2	0	0	1	3
MADRID	1	7	5	1	1	2	17
MURCIA	0	2	30	0	0	5	37
NAVARRA	0	0	4	0	3	1	8
OVIEDO	0	0	30	0	0	0	30
PAISVASCO	2	15	38	1	4	4	64
SANTANDER	0	0	13	0	1	3	17
VALENCIA	2	33	95	7	0	32	169
<b>TOTAL</b>	<b>17</b>	<b>111</b>	<b>712</b>	<b>47</b>	<b>14</b>	<b>161</b>	<b>1062</b>

Source: *Avance al censo de asociaciones* (1915).

**Table 2: Cooperatives by province and type, 1931**

	Consumer	Housing	Agricultural	Other	Total
ANDALUCIA	23	3	16	8	50
ARAGON	23	3	16	8	50
BALEARES	2	1	6	1	10
C.LEON	19	6	5	5	35
C.MANCHA	10	1	8	8	27
C.VALENCIA	19	24	34	22	99
CANARIAS	1	1		2	4
CATALONIA	56	4	11	46	117
EXTREMADURA	3	1	3	1	8
GALICIA	8	3	6	3	20
LOGROÑO	1		1	1	3
MADRID	13	6	3	15	37
MURCIA	4		3	0	7
NAVARRA	2		1	1	4
OVIEDO	4	1	1	2	8
P.VASCO	65	41	4	6	116
SANTANDER	7	2	3	3	15
TOTAL	183	44	70	102	438

Source: *Anuario Estadístico de España* (1932-33).