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Fragmentation of capital markets in early modern Spain?

Composite monarchies and their jurisdictions

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The study of market integration in early modern Europe has intensified in recent years, underpinned by an appreciation of how market growth allowed specialization, promoting productivity and economic growth. Through the use of a new dataset of private annuities, the analysis draws on capital flows between the Crown of Castile and the Crown of Aragon, where interest rates between kingdoms differed by two per cent in the first half of the eighteenth century. My analysis shows that there was very little capital flow between kingdoms. As for most European monarchies, I argue that Spain's fragmented jurisdiction created a significant divergence in legal rights between historic territories, which in turn hindered market integration.

I Financial market integration in early modern Europe

In August 1735, Don Joseph Doz and Doña Beatriz de Funes, residents of Tarazona in the Crown of Aragon (province of Zaragoza), borrowed from the Cathedral of Tarazona 1,000 Aragonese pounds, a tidy sum since the average loan in these regions was about 50 pounds.¹ In return, Don Joseph Doz, Doña Beatriz de Funes, and their descendants had to pay a five per cent annual interest rate until full repayment of the loan. At the same time, in January 1735, 20 kilometres away, though in the Crown of Castile, the convent of Augustinian Recollects of Agreda (province of Soria) had lent 26,000 vellon reals to the city council of the said city, and received in return a three per cent annual interest rate,² which was a tidy sum as well considering that the annual salary of a day labourer in Madrid was about 860 vellon reals.³ Why did not Don Joseph Doz and his wife borrow from the convent of Augustinian Recollects at a lower price in the Crown of Castile, whereas the couple was just 20 kilometres away from that place? This case actually serves to illustrate what this paper is about: interregional capital flows and the fragmentation of capital markets in early modern Spain.

For new institutional scholars, capital market integration provides a fundamental measure of the role of transaction costs in determining market formation and growth in early modern Europe.⁴ As money had a favourable weight-value ratio, transportation costs played a smaller role than transaction costs for the integration of capital markets. Recent research has discovered that financial markets were integrated earlier than those for goods due to the more advantageous weight-value ratio of money, even for coins. Chilosí and Volckart found that

¹ Archivo Historico de Protocolos de Tarazona (thereafter AHPT), caja 447/01 (photo no. 4936).

² Archivo Historico Provincial de Soria (thereafter AHPS), caja 1755, vol. 2627 (photo no. 3791).

³ A day labourer in Madrid earned, on average, around four vellon reals per day (Pinto Crespo and Madrazo Madrazo, *Atlas histórico*, p. 203). I follow Álvarez-Nogal and Prados de la Escosura, 'The decline of Spain', p. 327, who assumed that day labourers worked between 180 and 250 days p.a. (for a complete list of sources, idem, 'The rise and fall', p. 7), giving an average of 215 days. As such, a day labourer in Madrid would have earned around 860 vellon reals p.a. in the eighteenth century.

⁴ North, 'Structure and change'; Greif, 'The fundamental problem of exchange'.

the Central European financial markets integrated in the fifteenth century.⁵ They also showed that the market for urban annuities was rather well integrated as early as the sixteenth century.⁶ Using stock market analysis, Neal furthermore shows that London and Amsterdam were well-integrated in the eighteenth century, whilst Flandreau et al confirm that monetary transactions centred around Amsterdam, London, and to a lesser extent Paris and Hamburg.⁷

For Spain, like for many European countries, to date, the focus has been on the integration of grain markets, even though the Spanish monetary market has been the subject for many studies. Bernholz and Kugler showed that between 1564 and 1603, deviations of up to six per cent between the Spanish Ducado and the Dutch Groat were possible between Seville and Medina del Campo, whilst Flandreau et al found that the Franco-Spanish connection played a central role to draw out of Spain the American gold during the eighteenth century.⁸ Studies on the integration of the Spanish long-term credit market are still lacking. Álvarez-Nogal examined the spread of interest rates between public annuities across Spain (*juros*) and the origins of inter-city investors between 1540 and 1740.⁹ This research shows fragmentation in the market for long-term public bonds. In the same vein, Grafe briefly argues that capital markets were fragmented and poorly allocated, especially outside Madrid and the large ports. According to her, the relaxed capital constraint allowed by ecclesiastical institutions' credit provision affected the development of specialized financial institutions that could raise capital and the incentives for institutional development.¹⁰

This paper analyses long-term capital market integration in early modern Spain from a new point of view. I examine an original dataset of spreads between interest rates on private annuities between 1705 and 1750 in two neighbouring kingdoms of the Spanish monarchy, the Crown of Castile and the Kingdom of Aragon. Then, the analysis of the origin of borrowers and lenders demonstrates that there was hardly any capital mobility between the two kingdoms despite of large spreads between interest rates. The lack of capital mobility can be explained in different ways. Prices or transportation costs can be one of them. In this paper however, I decide to focus on the role of institutions, and among the vast range of institutions at stake, I analyse the impact of legal institutions, since I believe that they played a key role in the fragmentation of credit markets in Spain. Examining capital market integration sheds light on how transaction costs are the key determinants of market development. The rise of centralised states in pre-modern Europe was instrumental in overcoming market failures caused by political decentralisation. Epstein argues that state formation along with the development of legal systems in the late Middle Ages were the cause of market development and thus economic growth.¹¹ Since they guaranteed the enforcement of transactions, they allowed a rational allocation of production factors that led to a better productivity. Though, Epstein's observation of the development of norms and legal systems is rather incomplete. The analysis has to be pushed further by examining the enforcement of norms and of the activities of these systems. This paper tries to test Epstein's arguments by drawing on a more

⁵ Chilosi and Volckart, 'Money, states, and empire'.

⁶ Chilosi, D., Schulze, M.-S., and Volckart, O., 'Benefits of empire? Capital market integration North and South of the Alps, 1350-1800', LSE Working Paper no. 236/2016.

⁷ Neal, 'London and Amsterdam stock markets'; Flandreau, Galimard, Jobst, and Nogués-Marco, 'Monetary geography'.

⁸ Bernholz and Kugler, 'Financial market integration'. Flandreau, Galimard, Jobst, and Nogués-Marco, 'Monetary geography'.

⁹ Álvarez-Nogal, 'Oferta y demanda'.

¹⁰ Grafe, *Distant tyranny*, p. 225.

¹¹ Epstein, *Freedom and growth*.

delimited issue, the interaction between the judiciary system and indebtedness, and on a specific area and time, early modern Spain.

The paper is organized as followed. Section 2 provides some historical background on early modern Spain about private annuities and interest rates. Section 3 presents the natural experiment used which sheds light on the fragmentation of capital market. The analysis of new data on private annuities and capital flows shows that there was hardly any capital flow between territorial jurisdictions. Section 4 argues that jurisdictional fragmentation, by increasing transaction costs, obstructed capital market integration, which can be analysed by the role of the political economy in early modern Spain in shaping the institutions in which the economic activities would take place (section 5). Then section 6 concludes.

II Historical background

During the early modern period, Spain was divided between historical territories, basically the Crown of Castile, the Crown of Aragon (that included the Kingdom of Aragon, Catalonia, and Valencia), the Basque Provinces, Navarre, and the Balearic Islands (see figure 1). Each one of these territories had its own jurisdictions and legal systems. As a result, credit markets could differ in their institutions, actors, and instruments across the Spanish territory, which calls for being cautious when comparing these markets.

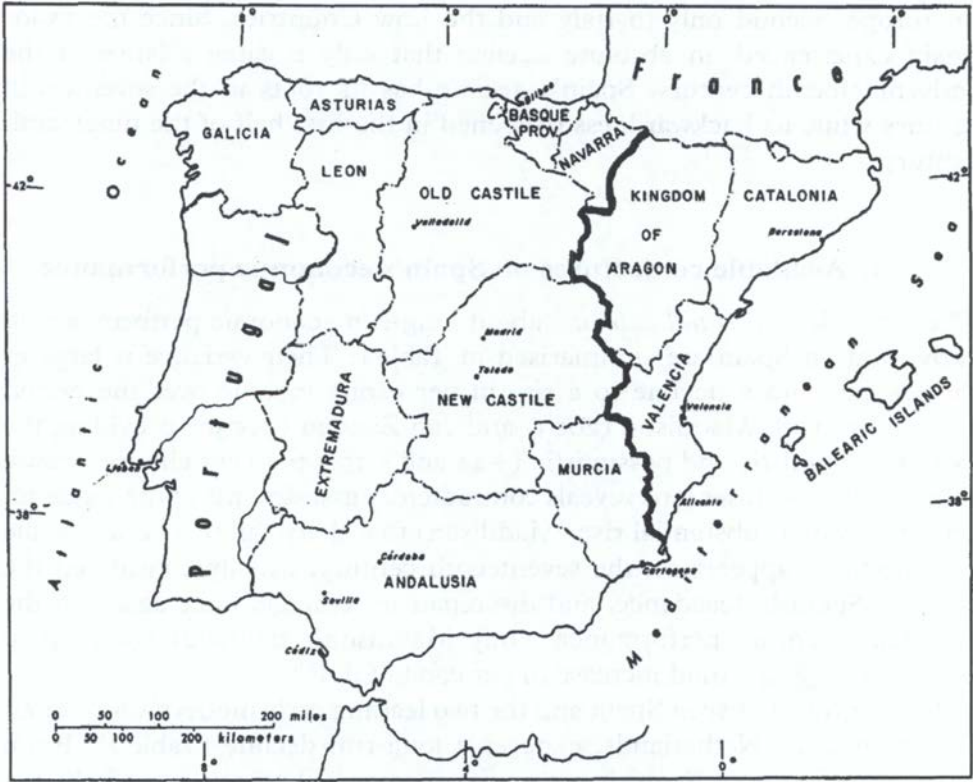


Figure 1. Early modern Spain.

Like many other regions in Europe, the predominant instruments of long-term private credit in Spain were obligations (*obligaciones*) and redeemable annuities, called *censos*

consignativos in the Crown of Castile or *censales* in the Crown of Aragon.¹² *Censo* and *censal* were exactly the same long-term annuity. Contemporaneous notaries used to draw them with the same clauses and conditions to the extent that they could be considered as substitutes.¹³ The *censo* or *censal* was a mortgage-backed loan that can be compared to the English mortgage or the French *rente constituée*.¹⁴ The contract was supported by collateral that could be a real asset such as a land, a farm, or a house. It was the only debt instrument that entailed explicit payment of interest, provided a legal maximum rate wasn't exceeded. The contract was actually drawn up in such a way that it represented a contract of sale of goods where the lender actually bought a rent sold by the debtor. This rephrasing made it possible to circumvent usury laws.¹⁵ One of the characteristics of the *censo* / *censal* was that the lender could not demand the capital from the borrower: the latter repaid the capital whenever he wanted. This is a consequence of the legal structure of the *censo* / *censal* that did not entitle the lender to recover the capital; it only entitled him to a stream of annual payments. These annual payments could be redeemed by the borrower with the return of the capital.¹⁶ By contrast, the *obligaciones* were due within a particular time bracket, and could not stipulate the payment of interest, at least until the end of the eighteenth century.¹⁷ This is one of the reasons why *censos* / *censales* were much more popular than obligations, and were the dominant credit instrument in early modern Spain.¹⁸ In addition, the difference in average duration between *censos* / *censales* and obligations implies that the financial stock was overwhelmingly *censos* / *censales* credit.¹⁹ As a result, the analysis of *censos* contracts produces a broader picture of the early modern Spanish long-term credit market.²⁰

As previously mentioned, interest rates on these annuities were regulated by public authorities (the *Cortes* and the king), which fixed an interest cap. Interest rate on redeemable annuities could be set at a lower rate than the cap, but not higher. Crucially, in Spain this cap differed across the country between 1705 and 1750. On 12 February 1705, Philip V reduced the interest cap to three per cent in the Crown of Castile for private annuities (*censos*), but

¹² Fernández de Pinedo, 'Del censo a la obligación', p. 298. In the rest of the paper, I will use the word *censo* instead of *censo consignativo* for convenience. Other types of *censos* actually existed, namely *censos enfiteúticos*. While the *censo consignativo* was akin to a mortgage, *censos enfiteúticos* were leaseholds and also perpetual contracts. However, from the sixteenth century, the use of this type of contract seriously declined and I did not find any *censos enfiteúticos* in the notaries' records that I use.

¹³ For Castile, see Don Joseph Febrero (1789), *Libreria de escribanos, e instruccion juridical teorico practica de principantes*, part I, tome II, chapter V, pp. 185-303. For Aragon, see Don Manuel de Alliaga Bayod y Salas Guasqui (1789), *El escribano perfecto, espejo de escribanos teorico-practico*, tome II, pp. 7-135. For a complete list of contemporaneous notaries' books, see Lujan Muñoz, 'La literatura notarial'.

¹⁴ See Hoffman, Postel-Vinay, and Rosenthal, *Priceless markets*. Sometimes an estimation of the collateral is provided in the contract. For those contracts where I could find it, the ratio between the capital and the estimated collateral is broadly equal to one third.

¹⁵ See Grafe, *Distant tyranny*, pp. 223-4.

¹⁶ In some *censos* called *irredimibles*, this was not an option.

¹⁷ It is nonetheless clear that interest was charged on the *obligaciones*, often at a rate above the limit on *censos*. The interest was included in the amount that had to be paid back. It was a way to negotiate outside the legal maximum interest rate. See Tello Aragay, 'El papel del crédito rural' and Santonja Cardona, 'El clero regular'.

¹⁸ Fiestas Loza, 'La doctrina', p. 640; Sánchez González, 'El crédito rural', p. 285; Tello Aragay, 'El papel del crédito rural', pp. 13-5; Fernández de Pinedo, 'Del censo a la obligación', pp. 299-300.

¹⁹ We do not have a precise estimate of the average lifetime of a *censo*, but can make a guess based on the average lifetime of the French *rente constituée*, of around 17 years, which is the closest debt instrument to the *censo*. See Dormard, 'Le marché du crédit à Douai', p. 824. By contrast, the obligation fell due in several months or years, in general between three months and eight years. See Tello Aragay, 'El papel del crédito rural', p. 13.

²⁰ The vast majority of long-term loans were drawn up by notaries for jurisdictional reasons, avoiding unobservable contracts between two individuals. See Hoffman, Postel-Vinay, and Rosenthal, *Priceless Markets*, pp. 7-8.

maintained it at five per cent in the Crown of Aragon until 1750. King's decision to lower the maximum legal rate was not taken overnight.²¹ Since 1621, the interest cap was set at five per cent for these annuities. However, the monetary reforms between 1680 and 1686 caused a significant drop in farm prices and rents. Indebted owners saw themselves forced to sell their mortgaged properties after debt collection procedures to be able to repay their arrears, which accentuated even more the drop in property values. In Castile, several voices then requested the reduction of the interest cap. These voices were mainly those of the nobility, large and small landowners, urban classes and the cities (represented by the Cortes) that were in debt through the *censos*. Already debated within the Council of Castile in the years of deflation between 1680 and 1684, the reform on the reduction of the interest cap on the *censos* got a second wind in 1690 following a significant drop in prices. Much of these *censos* had been granted by ecclesiastical institutions and any alteration in the interest rate would have been detrimental to them. In 1691, the Church, through the primate of Toledo, decided to put pen to defend its interests and address a memorandum directly to the King containing its arguments against the reduction of the interest cap. Arguing that the reform would affect considerably its revenues, the Church threatened to demand the reduction of its contributions to royalty (namely *subsidio* and *excusado*). As a result, the balance of power has tipped in favor of ecclesiastical institutions and the reform was adjourned. However, the repeated attacks of the nobility and the Cortes against the interest cap clearly showed that the reduction was on a roll and that it was only a matter of time. Indeed, the last two decades of the seventeenth century saw a reduction in Castile in real interest rates for large loans (over 20,000 vellon reals) that were often set at a lower interest rate than the cap (usually between four and five per cent). Perhaps a new practice, common in the eighteenth century, was born: to reduce the interest rate of *censos* considered safe and with a large capital below the interest cap. This practice preceded the official reduction to three per cent made by Philip V in 1705 for all Castilian *censos*. In that vein, Yun argues that the official reduction only followed the real situation on the credit market.²²

However, as I mentioned above, the reduction has not been extended to the Crown of Aragon. Aragon had its own representative assemblies, at least until 1707, and such reform should thus also have been approved by them before being applied in the realm. In addition, the reform arrived during the war of succession that divided Spain between the Castilian part supporting Philip V, and the Aragonese part supporting the Hapsburg monarch.²³ At the end of the war in 1714, the question of the extension of the reform to the Crown of Aragon was raised.²⁴ However, the systematic opposition of the Aragonese Church delayed the enactment of the reduction of the interest rate cap until 1750.²⁵ As a result, a large gap was established between the two Crowns for 45 years.

As soon as the King enacted his royal order, the interest rate on all the existing and future *censos* in Castile was reduced to three per cent, whereas it remained at five per cent in

²¹ The analysis that follows is based on Alvarez Vazquez, 'El memorial' and *Rentas y precios*, pp. 279-291.

²² Yun, *Sobre la transición*, p. 357.

²³ This assessment is clearly made in the royal order of 1750: 'remaining the Crown of Aragon with the same interest of five per cent, because the situation in which it was found, did not allow for such a reduction'.

²⁴ Again, this is clearly written in the royal order of 1750: 'and once abolished its fueros ... many doubts were raised whether the reform could be extended to it (the Crown of Aragon)'

²⁵ In a memorandum addressed to the King in 1720, the Cathedral of Valence listed all the arguments of the Aragonese Church against the reduction of the interest rate cap on the *censales*. Depósito Académico Digital Universidad de Navarra, Fondo Antiguo, *Reflexiones, que el cabildo, y canonigos de la Santa Metropolitana Iglesia de Valencia, exponen a los señores del Real Consejo de Castilla. Sobre el precio de los censos de aquel Reyno*, Catedral de Valencia, 1720. See <http://dadun.unav.edu/handle/10171/30903>.

Aragon. Such a differential would have triggered critical capital flows between Aragon and Castile during this period. I henceforth decided to analyse the evolution of the spread between interest rates of the two Crowns and to explore the city from which the borrowers and lenders originate. I exploit the insight that people from Aragon had more interest in borrowing at lower costs in Castile. As a result, the number of transactions would have decreased in Aragon and the real interest rate would have converged over the interest cap of Castile. I would also find more borrowers in Castile coming from Aragon up to the convergence of interest rates. The idea is that in a perfectly integrated world, interest rate should converge.

III New data on private annuities

To capture the effect of transaction costs, I explored the private annuities of various cities that I selected according to some geographical constraints. First, I chose cities within a 20-kilometre radius from the border between Castile and Aragon, so as to avoid issues regarding transportation costs. Then, I selected the cities that were located in two neighbouring jurisdictions, one in Castile and the other in Aragon, so as to get quite similar geographical conditions. I checked in the selected jurisdictions the existence of transportation networks between Castile and Aragon and that there were no major geographic obstacles. Finally, under these constraints and given the availability of sources, I recorded all the credit operations (obligations and annuities) registered in notaries' records of the selected cities for two years, 1725 and 1735. I chose these years in order to be enough distant from the reform on the reduction of the rate cap in Castile in 1705 and the end of the war between Castile and Aragon in 1707, and from the implementation of the same reform in Aragon in 1750.

Through the whole sample, redeemable annuities are the dominant long-term credit instruments. All the obligations recorded were short term, between three months and one year, and were more akin to commercial credit. In most cases, they were payment terms for agricultural or industrial products and services. This demonstrates that obligations were not an alternative to long-term annuities in that specific credit market, when interest rates between Aragonese and Castilian annuities differed by two percentage points. I could examine 56 annuities signed in 1725 and 1735 in three cities (Ágreda, Noviercas, and Olvega) in the province of Soria (Old Castile) and 32 contracts signed in the city of Tarazona in the province of Zaragoza (Kingdom of Aragon) (see table 1). Noviercas, and Olvega were small cities located alongside the border with Aragon. Ágreda was the head of a *corregimiento* and the main city located on the road that linked Soria, the capital of the province, to Tarazona in Aragon.²⁶ It was only 20 kilometres far from Tarazona. Head of a *corregimiento* as well and of a bishopric, Tarazona was in the eighteenth century the second biggest town (behind Zaragoza) of the province of Zaragoza. Located in the Queiles valley that links the Ebro valley and the Meseta, the city is at a crossroads between Aragon, La Rioja, Navarra, and Castile. Therefore all person travelling between Zaragoza and the Meseta (where Madrid is located) had to pass by Tarazona, Ágreda, and then Soria.

All the contracts contain the borrower's and lender's names, the place where they reside, the capital borrowed, the annual rent, and the collateral pledged as security. For the Aragonese annuities, 13 contracts (40 per cent) give information about the borrower's profession: seven were labourers, one doctor, one knitter, one chandler, one wool dresser, and two were religious from the cathedral of Tarazona. Seven borrowers (20 per cent) had the title 'Don'

²⁶ See Heras Santos, 'La organizacion de la justicia', for a complete list of *corregimientos*. *Corregimientos* were administrative and judicial districts during the *Ancien Régime*.

associated to their names and usually borrowed larger amounts than the others.²⁷ For the Castilian annuities only two contracts mentioned the borrower's profession: one notary and one presbyter, and only three of them (five per cent) had the title 'Don'. The largest amount of capital (26,000 vellon reals) had been borrowed by the city council of Ágreda. Concerning the contracts where the profession is not mentioned, there are good reasons to think that most borrowers were labourers or small craftsmen, given that they did not know how to write and that they borrowed in most cases small amounts backed with small pieces of land. On the other side, lenders were ecclesiastical institutions in 91 per cent of the contracts in Castile and 75 per cent of the contracts in Aragon, whereas they were borrowers only once in Castile. It confirms that ecclesiastical institutions were the main providers of long-term credit in eighteenth-century Spain.²⁸ The motivation for the loan is only mentioned in four contracts: to buy a land, a mill, or to face some financial difficulties.²⁹

As we can see in table 1, both the mean and the median of the amounts lent are quite similar between Castilian annuities and Aragonese annuities. All these similarities allow us to think that these two markets do not differ that much.

Table 1. *Private annuities in Castile and Aragon, 1725 and 1735 (grams of silver)*

	Castile ^a	Aragon ^b
Number of contracts	56	32
Total amount	104,085	59,150
Mean	1,858	1,850
Median	770.5	567

^aÁgreda, Noviercas, and Ólvega.

^bTarazona.

Sources: see text.

All annuities bore the maximum legal interest rate: three per cent in Castile and five per cent in Aragon. Across time, the interest rate in Aragon did not converge towards that of Castile, and remained stuck to the maximum legal rate whereas it could have been lower. As a result, Aragonese people should have stopped borrowing in Tarazona and have gone twenty kilometers away in Ágreda for example to borrow at three per cent. Although I cannot conclude on a decrease in loan transactions in Tarazona,³⁰ I can examine capital mobility and

²⁷ The title 'Don' does not necessarily refer to the nobility but can also refer to important people, for instance, those in commerce or administration.

²⁸ In the mid-eighteenth century, according to the Cadastre of Ensenada, ecclesiastical institutions were largely dominant in the Spanish long-term credit market. In the Crown of Castile, they received 72.9 per cent of the total rent generated by the *censos*, for an amount of 27.86 million vellon reals. See Marcos Martín, 'La actividad crediticia', pp. 71-2. The kingdom of Aragon is similar to Castile in this respect. Pérez Sarrión notes that ecclesiastical institutions lent the largest share of the capital of the *censales* in the second half of the eighteenth century. In particular, he calculates that they received 82.3 per cent of the *censales* rent in Zaragoza in 1725. See Pérez Sarrión, *Agua, agricultura y sociedad*, pp. 201-3.

²⁹ The same motivations are also mentioned in the work of Tello, 'El papel del crédito rural', p. 11, and that of Fernández Pinedo, 'Del censo a la obligacion', p. 301.

³⁰ Some notaries' records are missing, which makes impossible to have an exhaustive idea of the lending activity in Tarazona for these years.

capture possible foot voting effects by looking at the city of origin of borrowers and lenders in Castile and in Aragon.³¹

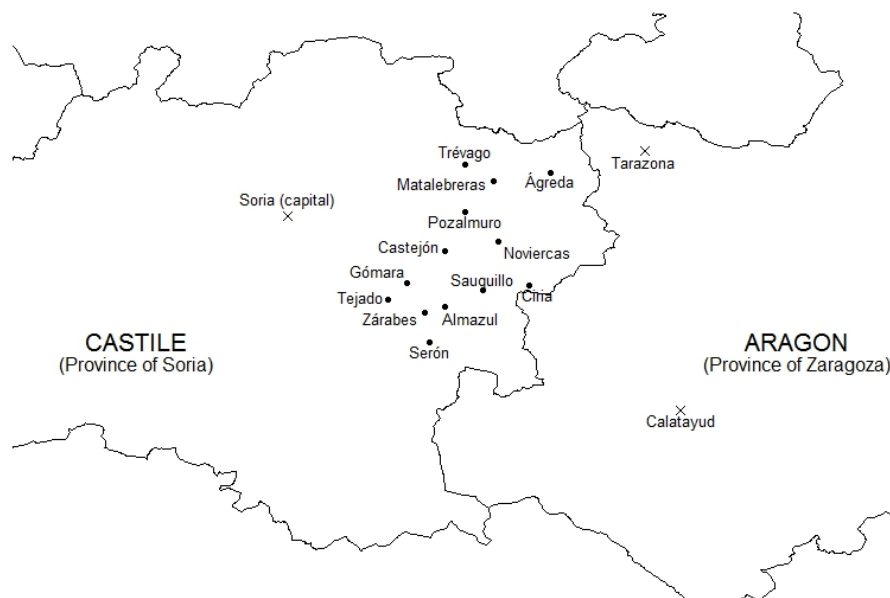


Figure 2. *Borrowers' hometown in Ágreða, Noviercas, and Ólvega in 1725.*

Note: cities with a cross symbol are indicated for information only.

Sources: AHPS, cajas 1737, 2367, and 2443.

³¹ Tiebout, 'A pure theory'.

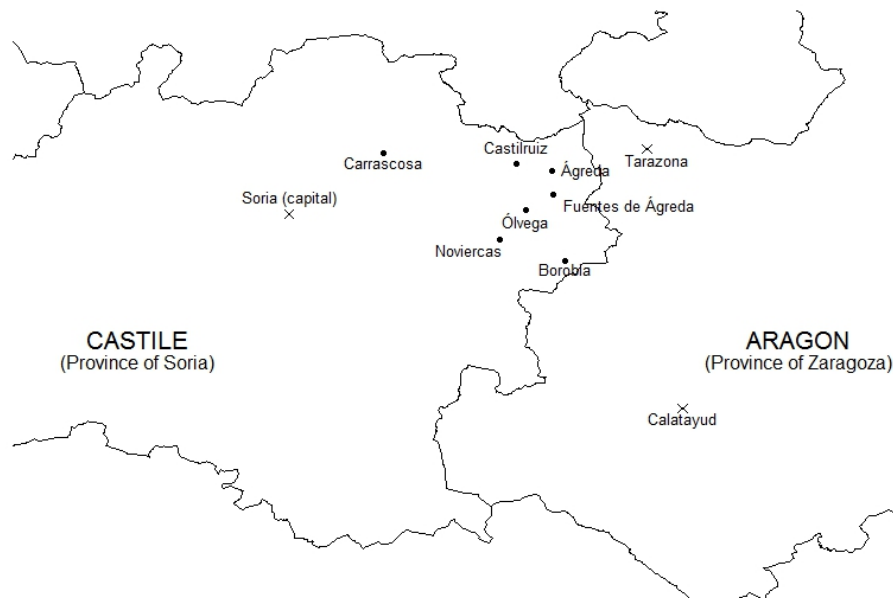


Figure 3. *Borrowers' hometown in Ágreda, Noviercas, and Ólvega in 1735.*
 Sources: AHPS, *cajas* 1740, 1755, 1774, 2369, and 2446.

The analysis of the borrowers' hometown in Castile highlights that not a single person from Aragon borrowed in Castile (see figure 2 and figure 3). For instance, nobody in Tarazona adopted the strategy of borrowing at a lower cost in Ágreda. To come back to my first example, Don Joseph and Doña Beatriz preferred to borrow 1,000 Aragonese pounds at five per cent in Tarazona, whilst they could have borrowed at three per cent 20 kilometres away.

One might think that loan transactions between the Aragonese and Castilians would have been easier to set up in large cities than small ones, as the former were more likely to find a financial intermediary to carry out transactions. For instance, Marcos Martín showed how the provincial house of the Theresian Carmelite in Valladolid, managed to pool capital across its network of convents, and lent it to the city council of Valladolid or to rich nobles.³² In figure 4, I examine the borrowers' hometown in the capital of the province, Soria. I did not trace any borrower coming from Aragon, whereas the elite of the city could have expanded its coverage outside Castilian provinces.

³² Marcos Martín, 'La actividad crediticia'.



Figure 4. *Borrowers' hometown in Soria, 1735.*

Sources: AHPS, *cajas* 1516, 1572, 1633, 1643, 1660, and 1681.

I also examined lenders' hometown through 32 contracts signed in Tarazona (Aragon).³³ This city, situated close to the border, could have attracted Castilian lenders looking for higher rates of return. Not a single person from Castile went to lend at five per cent in Tarazona. With apparently similar conditions, people in Castile preferred to lend at a lower cost in Castile than to lend in Aragon. On 7 June 1725, for example, the administrator of Don Pedro Garay's pious memories in Noviercas preferred to lend 640 vellon reals at three per cent in Ciria,³⁴ whilst he could have lent at five per cent just one kilometre away in a socio-economically and geographically equivalent situation.

One possible explanation for the absence of arbitrage between the two kingdoms could be that two different products were concerned. Lending at five per cent might allow for riskier projects, whilst at three per cent more collateral may be required. Therefore, less risk-taking borrowers would go to the Castilian side, whilst riskier ones would go to the Aragonese side. However, the analysis of annuities contracts in Castile and Aragon does not show any difference in the kind of collateral pledged as guarantee.³⁵ Another explanation relies on personal relationships between borrowers and lenders. The Aragonese might have preferred to borrow in Aragon since they could have borrowed from their family or acquaintances. Likewise, Castilian lenders would have preferred to lend to their relatives that were likely to live in the neighbourhoods. In my sample, only two contracts explicitly stipulate a family

³³ AHPT, for 1725: *cajas* 420/02 and 442/02; for 1734-7: *cajas* 459/02, 447/01, 469/01, and 475/02.

³⁴ AHPS, *caja* 2367, vol. 3879.

³⁵ As I mentioned, the type of activities financed is not given except in four cases. Usually, the motivations given were the buy of a land or a house, or to face some financial difficulties. It seems that there were no differences in the type of activities financed between Castilian contracts and Aragonese contracts.

relationship between the borrower and the lender. In one case, the daughter's dowry was lent to the father and in the other case, the uncle lent to his nephew. Likewise, in only three contracts I found a correspondence between the borrower's name and the lender's name (or the administrators' names). Most credit transactions were local. In my sample, all transactions in Tarazona involved citizens from Tarazona's jurisdiction. In the three Castilian cities that I studied, the average distance between borrower's and lender's hometowns was 14,6 kilometres in 1725 and 3,5 kilometres in 1735. Thus, local acquaintances certainly mattered a lot but I do not think that they can explain in a satisfactory way such a territorial fragmentation with a differential of two percentage points in the interest rate.

With almost no transportation costs, these results clearly display how the market of private annuities was jurisdictionally fragmented. Many explanations may be put forward to understand that lack of capital mobility. One major explanation is, I believe, the fragmentation of legal institutions.

IV Capital market and jurisdictional fragmentation

In this paper, I consider the market for long-term private annuities in two neighbouring jurisdictions, the province of Soria in the Crown of Castile, and the province of Zaragoza in the Crown of Aragon during the first half of the eighteenth century. Examining capital flows between these two regions is exceptionally fruitful, since interest rates between them differed by two percentage points. To analyse capital markets in this setting allows gauging potential effects of jurisdictional fragmentation on capital market integration.

The analysis of jurisdictional fragmentation as an obstacle to market development has been present in Spanish historiography since the nineties. In this historiography, Spain is described as a composite monarchy which is a polity "including more than one country under the sovereignty of one ruler" and which meant "a profound respect for corporate structures and for traditional rights, privileges and customs".³⁶ The king had to coexist with a myriad of smaller territorial and jurisdictional units jealously guarding their independent status. He did not have the monopoly of day-to-day coercion, and its justice had to coexist with very strong jurisdictions in very specific fields such as tax collection, military levies, market regulations, and in general civil and criminal laws. Spanish history and especially capital market integration need to be assessed from this standpoint rather from that of a parasitic absolutist state defended in Acemoglu, Johnson, and Robinson's work.³⁷ In his seminal work *'A Europe of Composite Monarchies'*, Elliot first wrote about seventeenth-century Spain that 'the institutional and legal diversity of the kingdoms of the monarchy represented an intolerable impediment to ... maximize resources'.³⁸ He suggests here that jurisdictional fragmentation had been a serious obstacle to market development. Market formation is closely related to the evolution of transaction costs. These are seen by new institutional scholars as the main determinant of market formation and therefore growth in pre-modern Europe.³⁹ By increasing transaction costs, jurisdictional fragmentation clearly held back the integration of capital markets in Spain.

³⁶ Koenigsberguer, 'Dominium regale'; Elliot, 'Composite monarchies'.

³⁷ Acemoglu, Johnson, and Robinson, 'The rise of Europe'.

³⁸ Elliot, 'Composite monarchies', p. 63.

³⁹ North, *Structure and change*; Greif, 'The fundamental problem of exchange'.

This term of ‘jurisdiction’ is a large concept that encompasses different realities. Territorial jurisdictions stood alongside corporatist jurisdictions such as the army, the ecclesiastics, or the merchants. Royal justice had therefore to coexist with very strong jurisdictions under the control of local elites where a shell of privileges defended the local oligarchies and nobility interests. This situation has continued until at least the nineteenth century.⁴⁰ These overlapping jurisdictions often created some confusion, and conflicts between them were legion in early modern procedures. In order to avoid jurisdictional conflicts in credit transactions, both Castilian and Aragonese notaries used to insert a renunciation clause within the credit contract. This renunciation clause concerned local laws, customs, and the one called *sit convenerit de jurisdictione omnium judicum* which basically could block the renunciation. Instead of their own jurisdictions, both parties explicitly indicated that they chose to be under the jurisdiction of the royal justice:

‘For greater security of that contract, we gave power to the justices of His Majesty of any jurisdictions that may be, to the jurisdiction of the which we submit ourselves, renouncing our domicile, in order that all rigor and executive way compel us to that which is said as by sentence passed in court of law and they renounced the laws of their defense and the general rights’.⁴¹

Since 1573, this clause had to be included in all the *censos* and *censales*.⁴² It basically says that both parties choose to be judged under the royal jurisdiction if there is any dispute.

The royal justice had to implement the legal code where it resides.⁴³ In Castile, judges had to implement the legal code of Castile, called *Novisima Recopilacion de Leyes*, and in the Kingdom of Aragon, they had to implement the Aragonese legal code, called *Fueros y Observancias del Reino de Aragon*. When drawing a contract, the main concern for both parties residing in two different territorial jurisdictions, should have been to ensure that they would be judged under the same rules. As we could see previously, there are hardly any differences between the clauses of a *censo* (Castile) and of a *censal* (Aragon). Thus, I examined the procedure for a debt collection trial in both cases. In Castile, the debt collection trial is determined in the tome V of the *Novisima Recopilacion*,⁴⁴ whilst in Aragon the procedure is derived from the *fueros* and especially from the *proceso de aprehension*.⁴⁵ When comparing these two legal codes, the only difference lies in the time of prescription that is 30

⁴⁰ As an example, the Spanish civil code dated from 1889.

⁴¹ ‘Y a la observanzia y cumplimiento de esta escriptura en su nombre y por lo que representamos damos poder a las Justizias y Juezes de su Magestad que conforme a derecho podemos y devemos y de ello devan conozer a las quales nos sometemos y a esta dicha villa y sus capitulares y lo recibimos por sentenzia passada en cosa juzgada y renunziamos las Leyes de nuestro favor y el suyo con la que prohibe la General Renunziacion de ellas’. This is the renunciation clause of the contract between the convent of Augustinian Recollects and the city council of Agreda (Crown of Castile); AHPS, caja 1755 vol. 2627 (photo. no. 3791). Within the Aragonese contract, notaries used to abbreviate these clauses. For instance, in the contract between the Cathedral of Tarazona and Don Joseph Doz and Doña Beatriz de Funes, the notary wrote: ‘& con clausulas de execucion precario constituto, aprehension inventario, emparamiento et queremos que fechas, no fecha & **Renunciamos y susmetemos** &’. As the reader may have noticed ‘Renunciamos y susmetemos’ is the abbreviation of the renunciation clause of local laws and customs; AHPT, caja 447/01 (photo no. 4936).

⁴² Royal Decree 20-02-1573, *Libreria de Escribanos* (op. cit.), tome II, chapter IV, p. 64.

⁴³ See Don Manuel Silvestre Martinez (1791), *Libreria de jueces*, tome I, chapter II, p. 98.

⁴⁴ For a complete description of the procedure, see the *Novisima Recopilacion de Leyes de España*, tome V, book XI, pp. 169-302.

⁴⁵ The *proceso de aprehension* is one of the four *procesos forales* of Aragon. It is described in Don Juan Francisco La Ripa (1764), *Ilustracion a los cuatro procesos forales de Aragon*, part I, ‘Del Proceso de Aprehension’, pp. 1-218.

years in Aragon and 10 years in Castile.⁴⁶ All the rest of the procedure is exactly similar between the two codes. As a result, the borrower was judged under a common jurisdiction (the royal jurisdiction) and under the same rules whether he was judged in Aragon or in Castile for debt. Therefore, differences between legal codes across the Spanish territory should not have constituted an obstacle within the credit market.

The explanation for this lack of capital mobility lies elsewhere. In case of any dispute, the existence of similar legal dispositions across territorial jurisdictions does not actually reflect the difficulties that the lender faced if the borrower lived in another jurisdiction. If both parties resided in two distinct territorial jurisdictions, two cases could be distinguished. First case, both jurisdictions were part of a same kingdom, for example both jurisdictions were part of the Crown of Castile. Several obstacles can then be noticed. First of all, the judge was only competent in his territorial jurisdiction. For example, if the lender took to court in jurisdiction A and the borrower resided in jurisdiction B, then the borrower's assets could only be seized by the judge of the jurisdiction where the assets were located. So as to seize them, the judge in jurisdiction A had to send a request, called *requisitoria*, to the judge in jurisdiction B at each judicial act (notification, sentence, foreclosure...). Justice was expensive at that time, and any request required a supplementary fee.⁴⁷ Then, the enforcement of the request was also uncertain. Local judges were elected within their own jurisdiction.⁴⁸ As a result, we can reasonably think that if judge B received a request to sue one of his electors, he might have taken more time to enforce the request.⁴⁹ Another obstacle lies in the fact that the trial took place in the jurisdiction where the lender had taken to court. As a result, to defend himself, the borrower could either go in person or appoint an attorney in order to represent him before the court, which supposed to have some acquaintances in the jurisdiction where the trial took place. This certainly was a deterrent factor for the borrower to take out a loan in a distinct jurisdiction.

When both parties resided in distinct kingdoms, then the enforcement of a legal procedure was even more uncertain. Until the end of the fifteenth century, the extradition of delinquents between kingdoms was somehow 'voluntary', since it did not exist any legal dispositions to regulate it.⁵⁰ In the early modern period, the distinct kingdoms of the Spanish monarchy signed extradition treaties or promulgated legal dispositions that regulated extraditions between Spanish kingdoms. For example, the royal order that Charles V enacted on 28 February 1520, regulated extraditions between the kingdoms of Navarre and Castile.⁵¹ Within our particular case, the *fueros* that framed the extraditions of the kingdom of Aragon were approved in the Cortes of Tarazona in 1592.⁵² These treaties and legal dispositions defined a precise framework for extraditions. Between the kingdom of Aragon and Castile, extraditions concerned 'capital offence, forgers ... murderers ... etc', but never mentioned indebtedness.⁵³ The absence of a clear legal framework concerning extraditions for debt collection sentences may have seriously undermined the efficiency of a legal sentence in a debt collection process.

⁴⁶ Differences between Castile and Aragon are well described in Don Manuel Silvestre Martínez (1791), *Librería de jueces*, tome I, chapters I, II, and III; and especially pp. 470-1.

⁴⁷ For instance, the cost of one request in Madrid in 1828 was 20 vellon reals (if it did not exceed two pages), plus 8 vellon reals for the judicial decree of enforcement. See Don Antonio Martínez Salazar (Fifth edition, 1828), *Práctica de sustanciar pleitos ejecutivos y ordinarios*, p. 234-5.

⁴⁸ Heras Santos, 'La organización de la justicia'; Lorenzo Cadarzo, 'Tribunales castellanos'.

⁴⁹ Lorenzana de la Puente, 'Jueces y pleitos'.

⁵⁰ Ferrer Mallol, *Entre la paz y la guerra*.

⁵¹ *Nueva Recopilación*, VIII, 16, 7.

⁵² Pascual Savall y Drona and Santiago Penén y Debesa (1866), *Fueros, observancias, y actos de corte*.

⁵³ A complete list can be found in *Novísima Recopilación*, II, VIII, pp. 414-415.

In addition to that absence of legal framework for extraditions, it appears that the requests were not efficiently implemented between kingdoms. In 1580, the Cortes of the kingdom of Navarre complains in these terms:

‘In accordance with the law and old traditions of these kingdoms, when someone is absent, and is called on court, we send a request (*requisitoria*) to notify him his official summons. And it seems that ... those of the kingdom of Aragon do not consent to notify the requests which are sent to this kingdom against those who reside in it. This is against the law, and justice, and good administration.’⁵⁴

In this complaint, we can read that the judges in the kingdom of Aragon do not implement the requests of the judges of Navarre. This is not an isolated case. At the beginning of the eighteenth century, a commercial conflict opposed two Basque Provinces, the province of Vizcaya and the province of Guipuzcoa. In order to put pressure on his neighbour following that conflict, Guipuzcoa decided to stop implementing Vizcaya’s requests.⁵⁵ As a result, judicial conflicts between the two were blocked. Judicial cooperation was therefore limited to historical territories. Even within a same administration, the royal justice here, personal, commercial, and political interests impeded its good functioning. More importantly, it appears that natives could not be expelled to another kingdom within the Spanish monarchy. If Mr Y was native and resided in kingdom B and was sued by Mr X in kingdom A for debt, the former could not be expelled to the latter’s jurisdiction, as it is stipulated, for example, in Navarre’s laws: ‘Firstly, the natives of this kingdom, for no reason, neither civil, nor criminal, can be expelled from it’.⁵⁶ In order to seize Mr Y’s assets, Mr X would have to sue Mr Y in kingdom B: ‘In accordance with the law, the delinquents who committed a crime in another kingdom or province, can be judged and sentenced in the place and the kingdom where they originated.’⁵⁷ Clearly, this could have been the source of many obstacles. Mr X would have had to go to Mr Y’s kingdom in order to take court and prove its allegations. In the best case, he could have relied on a court agent to represent him, thereby avoiding long journeys. Second, if not the more obvious, local matters could have influenced the judge's decision in favour of Mr Y. Last, until the beginning of the eighteenth century, even local languages were used in judicial processes.⁵⁸ Actually, the compulsory use of the Castilian language was confined to the world of official acts and correspondence only from the *Nueva Planta* Decrees.

Application of the law was therefore uncertain if you came from different jurisdictions. Legal risk and enforcement costs were much higher, which definitely increased transaction costs. Clearly, these differences affected annuities contracts, especially small loans for which fixed transaction costs were proportionally higher. All these differences imply that the Castilian and Aragonese had very little incentive to lend to each other despite the two percentage points spread between both jurisdictions.

⁵⁴ *Novísima Recopilación de Navarra* (1735), tome II, ‘Proceder contra los ausentes’, p. 681.

⁵⁵ Lasa, ‘Rutas comerciales’, p. 512.

⁵⁶ *Novísima Recopilación de Navarra* (1735), tome II, ‘Proceder con los Ausentes’, pp. 686-7.

⁵⁷ *Novísima Recopilación de Navarra* (1735), tome II, ‘Proceder con los Ausentes’, pp. 686-7.

⁵⁸ This changed with the *Nueva Planta* decrees.

V Composite monarchies, justice, and political economies

The very judicial system was impregnated by the very nature of the composite monarchy. The fragmented nature of the Spanish monarchy had therefore very important drawbacks on Spanish economic development. Despite the union of the Crown of Castile and the Crown of Aragon in 1469, both Crowns continued to be treated as distinct entities, and the monarchy remained divided across a variety of kingdoms. According to the seventeenth century Spanish jurist Juan de Solorzano Pereira, Spanish kingdoms were unified in the form of *aeque principaliter* which preserved their own legal and political constitutions (*fueros*), and privileges.⁵⁹ The *fueros* of estates, guilds, towns, territories, and the Church provided special rights entitling them to make decisions about taxes, economic regulations, currencies, weights and measures, as well as forms of social and political organization. The constant negotiations among the king and the different corporations of the monarchy, reveal a crucial aspect of the composite monarchy's political economies: the binomial of royal patronage and the non-economic ways of reciprocity between them to mobilize resources, which will be crucial for the shaping of the institutional framework in which economic activities would evolve. In all of the Spanish Habsburgs' possessions, there were negotiations between the centralizing power of the king and the local and corporate agents. Everywhere, conflictive pacts emerged that entangled the nobilities, the cities and their oligarchies, the clergy, and even some merchants and merchants corporations, with the Crown's interests in a way in which non-monetary aspects were crucial. In Castile, Aragon, Catalonia, Valencia and Navarre, in very different ways and different trends, a conflictive pact between the Crown and the elites and parliaments was reached that preserved and reproduced the institutional system and even gave, not money, but increasing autonomy and privileges to the towns of the fiscal arena. There was, therefore, a continuous exchange of resources, mainly military resources provided to the king by the components of the composite monarchy in exchange for political capital and resources materialized in many different ways: fiscal autonomy, economic and jurisdictional privileges.⁶⁰

The consequences of these conflictive pacts are crucial to understand the political economy of the composite monarchy. One of these is the maintenance of their coercive power by the local elite in most territories and, more in particular in Castile. The accession of the new Bourbon dynasty to the Spanish throne in 1700, and the revolt of the Catalans, Aragonese, and Valencians against its legitimacy (1701-15) did not change the rule. Even after the promulgation of the *Nueva Planta* decrees by Philip V between 1707 and 1716, historic territories' legal systems have not been hugely affected.⁶¹ In spite of later claims to the contrary, the Crown of Aragon retained its essentially constitutionalist and contractual character.⁶² These decrees were actually never enforced. The Catalans and the Aragonese kept their civil, and most of their penal, law. Only Valencia was somehow 'castilianized'.⁶³ Historical territories remained in many respects kingdoms apart, and saw no major transformation of its traditional laws, institutions, and customs before the mid-nineteenth century.

⁵⁹ Elliot, 'Composite monarchies', p. 53.

⁶⁰ Yun Casalilla, *Marte contra Minerva*, pp. 312-23.

⁶¹ The *Nueva Planta* decrees were a number of decrees where Philip V suppressed the institutions, privileges, and the ancient charters of the provinces of the Crown of Aragon (Aragon, Catalonia, Valencia, and Mallorca).

⁶² Elliot, 'Composite monarchies', p. 61.

⁶³ Tomas y Valiente, *Manual de historia*, chapter XXI, pp. 369-82.

The development of the royal justice across the whole territory did not wipe out the jurisdictional obstacles between historical territories. Indeed, during the fifteenth and the sixteenth centuries, the *Chancelleries* and the *Audiencias*, the main institutions of royal justice, were developed and improved across the whole territory of Spain, as well as the number and professionalism of the judges and *letrados*.⁶⁴ The development of the main institutions of royal justice came along with the recompilation of legal codes such as the *Nueva Recopilacion de Leyes*. This ‘legal revolution’ as called by Kagan, gave room for a better enforcement of the law. The development of these institutions across the whole territory and the recompilation of legal codes, should have paved the way for a reduction of transaction costs and better-integrated markets.⁶⁵ However, the analysis of the activities of these institutions and the enforcement of the law tell us a different story. Judicial cooperation as we saw above was very limited between historical territories and the Castilian *chancillerias*, like others in Europe at that time, were not completely independent third parties. The balance of power and patronage in the Court, introduced a high degree of arbitrariness in the system as Owens showed it in a famous legal case involving two powerful litigants, the city of Toledo and the Duke of Béjar.⁶⁶ Laws pretend to ensure impartiality but the judges are related to a particular social reality from which they cannot or do not want to escape. For instance, the analysis of the letters sent to Juan Manuel Villena, president of the *chancilleria* of Granada in 1758, shows that the judge was involved in numerous social networks that influenced court ruling.⁶⁷ This is all the more true at a more local level. Day-to-day justice was performed by *corregidores*, *alcaldes mayores*, and at the bottom of the pyramid by *alcaldes ordinarios*.⁶⁸ Usually the King (the *Camara*) appointed the *corregidores* among the urban elite of the jurisdiction, who in turn appointed the *alcaldes mayores*. The *alcaldes ordinarios* were elected by the city council, but most often under the *corregidor*’s advice.⁶⁹ Clearly, the administration of justice in early modern Spain gave some room to partial justice. Judges were embedded in political and social networks and concerns. Not only the judges, whose office was not on sale contrary to France for example, but also the influence of administrative offices on court ruling deserves to be analysed. In her seminal work *La justicia en almoneda*, Inés Gomez Gonzalez also showed how the venality of administrative offices in the *chancilleria* of Granada influenced the application of justice. Thereby a lot of offices escaped royal control, such as the *alcaldes* of chamber of nobility (the *sala de hijodalgos*) and the provincial notaries (less important judges of the *chancilleria*), but also a fair number of subaltern offices such as collectors, court clerks, prosecutors... The consequences of these alienations were legion. The privatisations of these offices led to these officers to search to make their investment profitable and sold their services in exchange of some gratifications.⁷⁰

The king’s judicial system was therefore completely embedded in local and corporative concerns. The pact among the elites and the king for the preservation of the rules of the composite monarchy was a key determinant in the appointments of the presidents of *chancelleries* and *audiencias*, *corregidores*, and *alcaldes*. This pact even could have led to mistrust vis-à-vis the royal justice, which could be noticed in the reduction of sentences

⁶⁴ Kagan, *Lawsuits and Litigants*.

⁶⁵ Epstein, *Freedom and growth*.

⁶⁶ Owens, “*By my absolute power*”.

⁶⁷ Castellano Castellano and Gomez Gonzalez, ‘Reflexiones sobre la justicia’.

⁶⁸ There were between 60 and 80 *corregimientos* in the Crown of Castile between the sixteenth and the end of the eighteenth centuries. See Heras Santos, ‘La organizacion de la justicia’, p. 128.

⁶⁹ *Ibid.*, pp. 126-35.

⁷⁰ Gomez Gonzalez, *La justicia en almoneda*.

during the seventeenth century (even faster than the population decline), the longer duration of the judicial trials and the corporative agency of the judges.⁷¹

VI Conclusion

Achieving market integration is a long path. In Spain, this article studies one component of capital markets, that of private annuities. Despite a crucial differential of two percentage points between the Kingdom of Castile and that of Aragon for 45 years, I show that there was hardly no capital flows between the two kingdoms and that interest rates were stuck at their legal maxima. Several explanations can be put forward to understand that lack of capital flows. Among them, I believe that institutional explanations and in particular legal institutions were key determinants in the fragmentation of credit markets.

Local control over justice and different legal systems imposed massive transaction costs on local credit market activities. Legal fragmentation increased legal risk in the capital market and impeded capital mobility between historic territories. To come back to Epstein, state formation alongside the development of a judiciary system and the judicialization of social relations do not necessarily mean the development of an integrated market. Judicial cooperation and the administration of justice within a composite monarchy were also key elements to a better integrated market. Clearly, these requirements did not seem to have been reached in Spain due to the kind of political economies put in place.

The administration of justice and more generally jurisdictional fragmentation, whereby transaction costs and risks were pressed upwards, were certainly not the only reason for economic backwardness. Economic performance in Old Regime societies was only indirectly affected by the official justice system. However, the evolution of the composite monarchy and the pacts among the elites created obstacles to the formation of a more solid base for a more efficient political economy, which may have reduced risks and transaction costs. At the end of the sixteenth century, a very well informed *arbitrista*, Sancho de Moncada, wrote that “many people complain that they cannot even put a foot on earth without violating some of the laws of Spain”.⁷² As we could see through our case study, this had an impact upon the allocation of productive factors. The existence of a parasitic absolutism is not the reason, but the sort of implicit agreements in the very same nature of a composite monarchy.

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⁷¹ Thompson, *War and government*.

⁷² Moncada, *Restauracion politica*, p. 201.

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