

HOW WELL WERE CREDITORS' RIGHTS PROTECTED IN EARLY MODERN SPAIN? THE CASE OF THE PUBLIC MORTGAGE REGISTRY IN MALAGA

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ABSTRACT

New Institutional Economics treats early modern Spain as an example of a state whose political and contracting institutions hindered economic growth. However, the assumption that Spanish political institutions were predatory in this respect has been called into question. This paper challenges the idea that Spain was unable to develop sufficiently good contracting institutions, of which we know relatively little. Using data from Malaga's notarial credit market, I show that legal institutions facilitated contractual compliance in private financial transactions. Specifically, public mortgage registries, which had improved the registration of properties used as collateral since their creation in 1768, favoured the subscription of larger contracts. Furthermore, results suggest that registries could have contributed to the development of a more impersonal credit market.

Keywords: property rights, credit, early modern Spain

JEL Codes: N23, N43

RESUMEN

La Nueva Economía Institucional ha considerado a la España del Antiguo Régimen como ejemplo de Estado cuyas instituciones políticas y contractuales lastraron el crecimiento económico. El carácter depredador de las instituciones políticas en España durante el Antiguo Régimen

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ha sido cuestionado, si bien la supuesta debilidad de las instituciones contractuales no ha recibido el mismo grado de atención. Mediante datos procedentes del mercado notarial de crédito de Málaga demuestro que el cumplimiento de las transacciones crediticias se vio facilitado por la acción de varias instituciones contractuales. Una de ellas fueron los oficios de hipotecas, creados en 1768. Los oficios contribuyeron a un mejor registro de las propiedades empleadas como garantías hipotecarias, lo que redundó en la suscripción de operaciones más elevadas. Así mismo se sugiere que los oficios pudieron contribuir a la creación de mercados crediticios más impersonalizados.

Palabras clave: derechos de propiedad, crédito, España moderna

1. INTRODUCTION

The association between economic performance and the quality of institutions has been stressed by New Institutional Economics (hereafter NIE). According to NIE, institutions work as «the rules of the game in a society», altering individual incentives and the process of economic decision-making, which, in turn, leads to the development or stagnation of markets (North 1990). Sustained economic growth results from the creation of an efficient economic organisation that protects ordinary people from both predatory rulers and the unilateral alteration of contracts (North 1981).

Early modern Spain has traditionally been portrayed as the stereotype of a country that suffered economic backwardness due to its inefficient economic organisation. Spain, the argument goes, was unable to create either a political framework that limited the arbitrariness of the royal powers or an effective legal system that avoided breaches of contracts.¹ Some authors have dismissed the notion that Spanish rulers were politically unconstrained.² Yet research on the capacity of the state to guarantee contractual compliance between private parties is much less developed.³

¹ See, for example, North and Thomas (1973), North (1981) and Acemoglu *et al.* (2005).

² Some authors consider jurisdictional fragmentation, rather than predatory rule, to be the main institutional barrier to modern economic growth in Spain. See Yun (1998) and Grafe (2012). For a general approach to jurisdictional fragmentation in Europe, see Elliott (1992) and Epstein (2000).

³ On the legal and judicial changes that led to the emergence of credit markets in Castile in the transition between the medieval and early modern periods, see Carvajal (2013). On the incidence of the law on commercial practices in Castile in the 17th century, see Cárceles de Gea (2006). On the functioning of the Castilian judiciary between 1500 and 1700, see Kagan (1981). On the role played by the courts of the *Casa de Contratación*, see Fernández de Castro (2015). On the functions performed by the *Mesta*, see Drelichman (2009). On the relevance of the merchant guilds of Burgos

Certainly, some economists consider that the influence of formal contracting institutions on long-term economic growth is less important than the role played by those institutions that constrain government.⁴ However, the impact of the legal system on the development of markets through the emergence of a low transaction cost environment has been widely recognised by many scholars.⁵

Public registries—land, companies and credit registries—are among the most important contracting institutions. Well-designed public registries support impersonal exchanges by reducing transaction costs and reinforcing property rights (Arruñada 2012). As for land registries, they provide creditors with information about a debtor's collateral (*ex ante*) and accelerate the judicial process after a default (*ex post*). Recently, some economic historians have tried to measure the effects of registration systems in mortgage markets during the medieval and early modern periods. Van Zanden *et al.* (2012) and Van Bochove *et al.* (2015) show that the early registration of real estate and land transactions was crucial for the Low Countries' ability to create efficient credit markets earlier than other countries such as England. In addition, they claim that the success of these institutions can only be explained by their interaction with the legal system—mainly mortgage law—the diffusion of collateral and the role of financial intermediaries.

Building on this literature, this article analyses the impact of a specific public registry—the public mortgage registry—on Spanish notarial credit markets at the end of the early modern period. During this period, in the absence of modern banks, other financial actors emerged. Short-term credit was mainly provided by philanthropic institutions (*pósitos*, *montes de piedad* or *montes píos*) and merchants, whereas ecclesiastical institutions dominated the long-term credit market.⁶ With respect to non-philanthropic loans, although these transactions could be agreed orally or through private documents, their notarisation provided a higher level

and Bilbao, see González Arce (2010) and Lamikiz (2016), respectively. On the role of notaries, see Extremera Extremera (2009).

⁴ See Acemoglu and Johnson (2005). For a critique, see Greif (2015).

⁵ The implications of legal origins over financial development, contract enforcement and organisational forms have been stressed by La Porta *et al.* (1998), Spamann (2010), Musacchio and Turner (2013) and Lamoreaux (2016); the importance of contract design to solve information asymmetries by Hart (1995); the interaction of formal and informal institutions by Greif *et al.* (1994); the need to create institutions which provide useful information about contractual partners by De Soto (2000), Djankov *et al.* (2002) and Arruñada (2007, 2012).

⁶ The first private banking network in Spain was not created until the middle of the 19th century (Sudrià and Blasco Martel 2016). Two syntheses on credit markets in early modern Spain are provided by Ruíz Martín (1970) and Plaza Prieto (1976). On the role of philanthropic institutions, see Anes (1969), Gómez Díaz and Fernández-Revuelta Pérez (1998) and Carbonell-Esteller (2000). On the role of ecclesiastical institutions in credit markets, see Milhaud (2019).

of security.⁷ In Spain, from 1768, this system was reinforced through the establishment of a network of public mortgage registries around the country.⁸ Private parties were theoretically obliged to register those notarial contracts that included some specific assets as collateral, thereby clarifying property rights and reducing and expediting litigation.

Although public mortgage registries have been dismissed as insufficient for their purposes—due to non-observance of the law and their poor design—this article claims that this institution favoured the development of Spanish credit markets.⁹ To test this hypothesis, I draw on a database of almost 2,500 short-term credit contracts (*obligaciones*) recorded by notaries in the city of Malaga before and after the creation of the public mortgage registry in 1768. By examining special mortgage and general mortgage contracts in Malaga in 1764 and 1784, I show that the creation of public mortgage registries had important consequences for the allocation of credit resources.¹⁰ After 1768, special mortgage contracts started receiving much higher amounts than general mortgage contracts, whereas before the creation of public mortgage registries, both types had received similar amounts. Furthermore, this institution could have contributed to the development of more impersonal credit markets. Before the creation of the registry, some debtors were able to obtain larger loans thanks to

⁷ Notarised debt instruments had legal advantages over private debt instruments and oral agreements in both debt collection lawsuits (only one creditor) and meetings of creditors (several creditors). In debt collection lawsuits notarised contracts guaranteed automatic access to the executory process (*juicio ejecutivo*). This legal variant ensured the immediate seizure of the assets of the debtor in case of default and a faster trial than the usual procedure (*juicio ordinario*). In meetings of creditors, notarised contracts had priority of payment with respect to non-notarised contracts of the same category. Detailed expositions of the executory process prior to the Spanish Liberal Revolution are provided by Alcaraz y Castro (1762, pp. 58-92) and Martínez Salazar (1789, pp. 3-136). For a complete exposition of meetings of creditors, see Febrero (1786, pp. 623-738).

⁸ Some economic historians have used this source for several purposes. Congost (1988) analyses the evolution of land property in Girona between 1768 and 1862. Fernández de Pinedo (1985), Castañeda (1991), De la Torre (1994) and Díaz López (2001) study the replacement of annuities by obligations in Biscay, Barcelona, Navarre and Almería, respectively, during the 18th and 19th centuries. Cebreiro Ares (2016) describes this source for Santiago de Compostela. Congost and García Orallo (2018) study the circulation of land in 19th century Spain. Milhaud (2018) analyses the existence of a crowding-out process in Spain at the end of the 18th century.

⁹ Most legal historians question the effectiveness of this institution. Some of them consider public mortgage registries incapable of protecting creditors' rights during this period (Roca Sastre 1954; Menchén 1974; Serna 1995). Lacruz (2003) and Ribalta Haro (2007) also criticise them, but they recognise the difficulties involved in creating a more sophisticated institution in a period characterised by strong economic and legal limitations. Finally, authors such as Rivas Palá (1978) and Chico (1981) consider public mortgage registries a modern institution in an *Ancien Régime* economic context. A synthesis of arguments both for and against the role of the mortgage registries is available in Villalón Barragán (2008, pp. 241-243).

¹⁰ Special mortgages were those that guaranteed the contract with a specific asset of the debtor. By contrast, general mortgages were those that guaranteed the contract with all present and future assets of the debtor, but did not specify any particular property. For a discussion of the advantages of special mortgages over general mortgages, see section 4.

their status, but other debtors lacked the alternatives allowing them to arrive at similar arrangements. After the creation of the registry, debtors could partially solve this problem and obtain more capital in the absence of such a signalling mechanism.

The rest of the article is organised as follows. In the following section, I describe the creation of public mortgage registries in Spain, focusing on their objectives, their problems and their fees. In section 3, I describe my sources. In section 4, I analyse the impact of public mortgage registries on Malaga's notarial credit market. Finally, section 5 presents the main conclusions.

2. PUBLIC MORTGAGE REGISTRIES IN EARLY MODERN SPAIN

In 1768, King Charles III promulgated a law that mandated the creation of public mortgage registries (*oficios de hipotecas*) across Spain (except in Navarre).¹¹ This law made it compulsory to register those new notarial contracts that incorporated a mortgage on a specific piece of land or real estate, an office or an annuity.¹² Mortgage registries were created mainly to avoid *stellionatus*, the fraudulent selling or mortgaging of encumbered and mortgaged properties as if they were free (Porrás Arboledas 2004). The authorities wanted to create a network of local registries that gathered together all the information about mortgaged and encumbered properties. With this aim, a registry was created in each judicial district (*partido/corregimiento*). The registry was located in the town hall of the capital of the district, and the oldest town hall notary in the city controlled it. In addition, the high courts of justice (*chancillerías* and *audiencias*) were authorised to create new registries in other municipalities. After formalising a contract, private parties had to go to the registry where the mortgaged property was located and show a copy of the original document. The registrar would then annotate the mortgage. In the event of a default and a judicial process, this annotation would constitute proof of the property. Furthermore, unregistered mortgages did not have legal validity.¹³

The creation and diffusion of mortgage registries in early modern Spain was not an easy process. In fact, prior to 1768, the Habsburg and Bourbon

¹¹ The public mortgage registry was not established in Navarre until 1817 and it required the approval of the Navarrese estates, the *cortes* (De Pablo Contreras 1991). Some years later, mortgage registries were also created in Spanish America and the Philippines. They had other names (*anotadurias de hipotecas*), as well as some differences with respect to the metropolis (Serna Vallejo 1995, pp. 309-313).

¹² Some modifications were introduced later. For instance, in 1774, it became mandatory to register pre-1768 mortgages too (*Novísima Recopilación de las Leyes de España, Libro X, Título XVI, Ley III*, Footnote No. 3, 1805, p. 109). Furthermore, in Catalonia, since 1774, the registration of contracts with general mortgages was also compulsory (Serna Vallejo 1995, pp. 283-286).

¹³ *Novísima Recopilación de las Leyes de España, Libro X, Título XVI, Ley III*, 1805, pp. 106-109.

dynasties had both tried unsuccessfully to create similar institutions, initially for annuity contracts, and later for all the contracts that included special mortgages (Table 1). The explanation for this failure is twofold. First, the ambiguity of these laws created many problems related to terms, sanctions, the organisation of the registry and procedures (Serna Vallejo 1995, pp. 229-233). Second, these laws were systematically broken by the courts of justice accepting non-registered contracts as proof; by private parties hiding annuity contracts in order to avoid the payment of taxes, and also because they refused to give information about their debts;¹⁴ by notaries who feared the loss of attributions; and especially by municipalities, as control of the registries generated constant friction when the monarchy started to privatise the offices of registrars instead of retaining them in the hands of the town hall notaries, who were under the rule of the aldermen (Serna Vallejo 1995, pp. 229-243; Fiestas Loza 1998, pp. 31-56).

What, then, explains the relative success of the 1768 reform?¹⁵ Certainly, this law was less ambiguous than its predecessors.¹⁶ Nevertheless, I suggest that at least two other reasons were relevant. On the one hand, the monarchy finally accepted the transfer of all register attributions for annuities as well as for the rest of special mortgage contracts to a single public institution ruled by the oldest town hall notaries, and ultimately by the aldermen of the municipalities.¹⁷ With this change, the political elites of the main cities not only gained control of the offices, but also prevented—or at least obstructed—the creation of a property tax. This made economic

¹⁴ Although there was no tax on real estate transfers in early modern Castile—in Spain a real estate transfer tax was not implemented until 1829—annuity contracts had to pay a sales tax (*alcabala*). Regarding seigneurial rights, Castile had only an annual payment and a commission over emphyteutic property transfers (*laudemio*). In early modern France, for example, there were both several royal taxes (*insinuation, droit de contrôle, centième denier*) and multiple seigneurial rights (*lods et ventes, quint et requint, relief, rachant, ensaisinement*) over real estate transfers (Serna Vallejo 1995, pp. 23, 47, 129, 240-241 and 292).

¹⁵ Both Spanish archives and the *Registros de la Propiedad* of Madrid and Barcelona contain books from public mortgage registries created in the last third of the 18th century for forty-three of the fifty current Spanish provinces. This proves that—even though they were not used widely at first—a network of registries emerged rapidly across the Spanish territory. The list of Spanish archives that contain public mortgage registry books is provided in the section «Sources and Official Publications». Archive catalogues are available on their respective websites and on the *Censo-Guía de Archivos de España e Iberoamérica* website at censoarchivos.mcu.es. The information about the *Registros de la Propiedad* of Barcelona and Madrid is from López and Tatjer (1985) and Milhaud (2018), respectively.

¹⁶ Both the law of 1539 and that of 1713, to a lesser extent, failed to regulate many crucial aspects, such as procedures, terms and, above all, the organisation of mortgage books. This ambiguity generated uncertainty and was used by many municipalities to avoid applying the law effectively. In order to fill these gaps and to ensure compliance with the law, the Council of Castile began to collect reports from municipalities and high courts of justice from 1756 (Serna Vallejo 1995, pp. 275-280).

¹⁷ Some private *Contadurías* were maintained, but they gradually disappeared (Serna Vallejo 1995, p. 272).

TABLE 1.
 IMPORTANT EVENTS IN MORTGAGE REGISTRATION LEGISLATION BEFORE
 1768

Year	Event
1528	The Castilian estates (<i>cortes</i>) asked King Charles I to make the registration of new annuities compulsory in order to avoid the accumulation of annuities for a given property.
1539	After a new proposal of the Castilian <i>cortes</i> in 1538, King Charles I ordered the creation of annuity registries (<i>registros de censos y tributos</i>) in every Castilian judicial district. Nevertheless, only a few cities and villages created this institution.
1542-1598	The Castilian <i>cortes</i> submitted new requests in 1542, 1548, 1555, 1558, 1586 and 1598, but the law remained unfulfilled.
1589	King Philip II started to sell the offices of annuity registrars, until now controlled by town hall notaries. Municipalities did not provide all the information necessary to establish the price of these offices in order to hinder the impact of this measure.
1646	King Philip IV created a new institution in Castile, the private mortgage registries (<i>contadurías de hipotecas</i>), and started to sell the offices of these registrars. Private mortgage registries had to register all new contracts with special mortgages, including annuities. However, annuity registries remained active, and some cities, such as Madrid, Seville and Cádiz, had both institutions.
1713	King Philip V reorganised annuity registries. The new law ordered their establishment in each municipality, established official fees, clarified the attributions of judges, established a deadline to register old contracts and returned control of the registries to town hall notaries. Once again, the municipalities did not comply with the law.
1745	King Philip V ordered the registration of all past contracts written in Madrid that included special mortgages in the private mortgage registry there. The aldermen of Madrid claimed that the monarchy could not give those attributions to the private mortgage registry and refused to comply. In 1746, the monarchy accepted the registration of new contracts only.
1756	The person in charge of the private mortgage registry of Madrid submitted a report in which he declared that in the last 21 years, on average, only six deeds had been recorded annually. In 1757, the Council of Castile began the work that would give rise to the public mortgage offices.

Sources: *Novísima Recopilación de las Leyes de España, Libro X, Título XVI, Leyes I-II* (1805, pp. 105-106), Serna Vallejo (1995, pp. 224-262 and 270-283), and Fiestas Loza (1998, pp. 31-56).

agents more willing to register their mortgages. On the other hand, since the middle of the 18th century, in a context of economic recovery (Álvarez-Nogal and Prados de la Escosura 2013), the authorities understood that

accelerating the circulation of property required that buyers and creditors could easily obtain annuities and mortgage information on a property (Serna Vallejo 1995, p. 217). Authors such as Vizcaíno Pérez, who worked as Lawyer of the Royal Councils, remarked on the legal problems caused by the huge number of properties encumbered with annuities.¹⁸ In meetings of creditors, annuities' unpaid interest had preference of payment over other credit modalities (Vizcaíno Pérez 1766, pp. 71-74).¹⁹ This reduced the ability of other creditors to recover their capital, which made them particularly interested in knowing the situation of their potential debtors to avoid *stellionatus*. With this aim, the monarchy introduced several reforms, including the redemption of annuities or the creation of the public mortgage registries (Peset 1982). This need was also perceived by the municipalities, and in fact, from the middle of the 18th century until the 1768 law, increasing numbers of them created mortgages registries (Appendix 1).

Nevertheless, although the creation of public mortgage registries was crucial to strengthening the property rights of owners of both land and capital in Spain, this institution still had many problems. Some courts continued to accept non-registered special mortgages as proof (Serna Vallejo 1995, pp. 364-365), many individuals did not register their mortgages, so the terms for doing so were extended (Serna Vallejo 1995, p. 279), and the organisation of the registry's book was still problematic (Villalón Barragán 2008, p. 242). However, probably the most important problem was that the law did not introduce any of the principles of modern mortgage law: publicity, speciality and priority (Ribalta Haro 2007, pp. 304-342). In line with Roman legal tradition, private titling prevailed (Arruñada 2012, p. 45), general mortgages were maintained (Ribalta Haro 2007, pp. 304-342), and the reform did not alter the antiquity principle: except in the case of privileged mortgages, old mortgages always had priority over new ones regardless of whether they were general or special mortgages (Febrero 1786, p. 665).²⁰ These problems have led many legal historians to argue that mortgage registries were clearly insufficient to guarantee the protection of property rights.²¹ According to them, legal conditions did not favour the development of credit markets until the

¹⁸ For example, according to my sample, 56.0 and 69.0 per cent of the mortgage obligation contracts written in the city of Malaga in 1764 and 1784, respectively, were encumbered with public and private annuities.

¹⁹ For instance, in the meeting of creditors of the merchant Andrés del Pino (1807-1808), annuity creditors were paid in full, while lenders whose capital had been loaned through other modalities suffered partial debt relief. *Archivo Histórico Provincial de Málaga* (hereafter AHPM), *protocolos notariales de Málaga capital, libro 3639*, pp. 488r-495v.

²⁰ Privileged mortgages were credits with priority of payment in cases of default. Some privileged mortgages were dowry credits, fixed-assets loans or debts with the Royal Treasury, the Church or landlords (Febrero, 1786, pp. 653-716).

²¹ See footnote No. 9.

enactment of the Spanish Mortgage Law in 1861 and a later reform in 1869 (Serna Vallejo 1995, pp. 436-524).²²

Before measuring the effects of mortgage registries on early modern Spanish credit markets, a last legal aspect must be analysed: the cost of registering a mortgage. Registry fees have been considered a key factor in the success or failure of public registries. If they are high, they create an entry barrier, and, consequently, the role of the registry is severely damaged (Djankov *et al.* 2002). However, this position has been criticised by other authors such as Arruñada (2007), for whom this approach only takes into account the initial costs and compulsory formalities, and disregards *ex post* costs, such as court fees or the time needed to foreclose a mortgage, voluntary but common formalities and the quality of the information provided by the institution.

I have calculated the amount of notarial and registration fees for several mortgage contracts worth between 100 and 50,000 *reales de vellón* (hereafter r.v.).²³ These prices are calculated for a two-page mortgage obligation contract, the commonest credit contract in Malaga at the time (Table 2). Although notarial fees were high for small contracts, registry fees were always low, including those of small contracts.²⁴ I have also compared the costs of the Spanish public mortgage registries with the costs of similar institutions in England (deed registries) and in the Low Countries (real estate transaction registries) in the 18th century.²⁵ I use the number of daily wages of an unskilled urban labourer as a reference: data for England and the Low Countries are from Van Bochove *et al.* (2015), and I have included data on the wages of unskilled urban labourers (*peones*) in Madrid and unskilled rural labourers (*jornaleros*) in Malaga during the same period (Table 3).²⁶ This shows that the costs, in terms of daily wages, of registration in Spain were quite similar to real tariffs in Dutch municipalities—especially for reduced deeds—and were much cheaper than in England.

Two caveats must be made here, however. First, notaries might have not complied with the law, charging higher tariffs to their customers. Second,

²² This law replaced mortgage registries with land registries, and register attributions were transferred from notaries to independent registrars. General mortgages were eliminated, the number of privileged mortgages fell, and it became compulsory to register all of them. Finally, the date of inscription in the registry was the date on which the deed was presented in the registry (*Ley Hipotecaria*, 1861).

²³ An unskilled urban labourer in Madrid earned 4 r.v. per day in the 18th century (Pinto Crespo and Madrazo Madrazo 1995, p. 203). An unskilled rural labourer in Malaga earned between 2.5 and 3 r.v. per day in 1784 (Villar García 1982, p. 152).

²⁴ I have calculated registry fees by estimating one page per operation because the registration of the mortgage rarely occupied more space.

²⁵ For a detailed analysis of the English case, see Nogueroles Peiró (2007) and Van Bochove *et al.* (2015). For a detailed analysis of the Dutch case, see Van Bochove *et al.* (2015).

²⁶ I have not found out the wages for unskilled urban labourers in Malaga during this period.

TABLE 2.
LEGAL COSTS AND TAXES ASSOCIATED WITH A TWO-PAGE MORTGAGE OBLIGATION CONTRACT

Amount of the contract (reales de vellón)	Absolute costs (maravedís)*	Relative costs (%)	Relative costs: notary's fees (%)	Relative costs: registry's fees (%)	Relative costs: revenue stamp (%)
100	1,392	40.94	36.00	2.00	2.94
500	1,392	8.19	7.20	0.40	0.59
1,000	1,392	4.09	3.60	0.20	0.29
5,000	1,624	0.95	0.72	0.04	0.19
10,000	1,624	0.48	0.36	0.02	0.10
50,000	2,440	0.14	0.07	0.01	0.06

*Note: 1 real de vellón = 34 maravedís.

Sources: Febrero (1783, p. 410), Martínez Salazar (1789, p. 285), *Novísima Recopilación de las Leyes de España*, Libro X, Título XVI, Ley III, and Título XXIV, Ley X (1805, pp. 108 and 158, respectively), and Moranchel Pocatererra (2012, p. 737).

TABLE 3.
REGISTRATION COSTS IN DIFFERENT EUROPEAN MUNICIPALITIES IN THE 18TH CENTURY. EQUIVALENT VALUE: NUMBER OF DAYS' WAGES OF AN UNSKILLED WORKER

Number of words	Holland (Amstelveen in 1700)	Holland (De Zijpe in 1717)	England (West Riding of Yorkshire in 1703)	Spain (Madrid in 1700s)*	Spain (Malaga in 1784)*
200	1.3	0.7-1	1	0.64	0.94
500	1.3	0.7-1	2.5	0.64	0.94
1,000	1.3	0.7-1	5	0.79	1.15
2,500	1.3	0.7-1	12.5	1.23	1.79
5,000	1.3	0.7-1	25	1.97	2.86

*Note: the Spanish registries did not use the number of words to establish fees, but the number of pages. As each page included approximately 500 words, I have used this as a reference.

Sources: for Spanish municipalities, author's elaboration based on *Novísima Recopilación de las Leyes de España*, Libro X, Título XVI, Ley III (1805, p. 108), Villar García (1982, p. 152), Pinto Crespo and Madrazo Madrazo (1995, p. 203), and Moranchel Pocatererra (2012, p. 737); for Dutch and English municipalities, see Van Bochove *et al.* (2015, pp. 16 and 26, respectively).

registration required additional costs that are difficult to estimate. Before accepting a property as a guarantee, the lender probably asked the notary to examine the debtor's property titles. Although the 1782 official fees fixed a fee for that work (Martínez Salazar 1789, p. 285), it is possible that some lenders demanded additional work from the notaries, especially in the earlier stages of the registries, in return for higher and non-regulated payments.

3. ANALYSIS OF THE DATABASE

To check whether or not the 1768 reform improved the quality of the legal framework, it is necessary to measure its impact on the credit market. With this aim, I have taken notarial credit data from the city of Malaga. In early modern Spain, as in other contemporary countries, notaries had important functions. They drew up contracts and other legal documents that could be enforced by courts, provided legal advice and recognised documents. They developed an important role in credit markets, certifying loan contracts.²⁷ In some countries, such as France, notaries even worked as financial intermediaries, providing information to help their clients mitigate the effects of information asymmetries (Hoffman *et al.* 2000). Although the number of notarised loans was probably lower than those that were agreed in the informal market, the notary's participation was essential for larger contracts and transactions with foreigners and non-relatives (Dermineur 2019).²⁸

My selection of the city of Malaga as an example is mainly explained by the important role that credit played in its economy. At the end of the 18th century, the city and its surrounding area were among the main Spanish producers of several agricultural commodities, such as wine, raisins, almonds, figs, lemons and oranges. Most of this production was later exported to the markets of northern Europe and former Spanish domains (Fisher 1981; Nadal 2003, p. 34; García Fernández 2006). Commercial dynamism favoured an increase in population and the accumulation of capital in the city, helping to make Malaga one of the first industrialised

²⁷ See Hoffman *et al.* (2000, 2019) and Dermineur (2018, 2019) for France; De Luca (2013) and Lorenzini (2015) for Italy; Costa *et al.* (2014) for Portugal; Sola (2000), Peña-Mir (2016) and Carvajal (2018) for Spain; Levy (2012) for Mexico; Zegarra (2017a, 2017b) for Peru; and Wasserman (2018) for Argentina. In the Low Countries, although notaries were not so relevant, they nonetheless had an important role. See Gelderblom *et al.* (2018).

²⁸ Here, I understand as informal market or informal credit those transactions that were non-certified by legal agents, such as notaries (Dermineur, 2019). Nevertheless, this is not the only definition of this concept. For example, Coffman *et al.* (2018, p. 2) considered that «informal credit refers to transactions that are not intermediated by operators specialized in matching demand and supply, namely professionals whose specialization was other than this, like for instance notaries, scribes, merchants and even religious institutions». Following this definition, notarial credit would not be formal, but informal.

areas of Spain during the 19th century (Morilla 1978).²⁹ This agro-export pattern was sustained by the city's trading houses and merchants who bought the commodities produced by the farmers and financed them periodically, receiving agricultural commodities in return. As a consequence of this situation, the city's notaries drew up a huge number of agricultural credit contracts (Peña-Mir 2016). The primacy of small properties in this area may also have determined the relevance of credit transactions (Bernal 1981, p. 283; Gámez Amián 1995, p. 152). On the one hand, the small size of the plots made it difficult for the owners to accumulate capital or to exploit economies of scale, so they needed periodic loans in order to survive. On the other hand, as many farmers had land that could be offered as collateral, creditors had a greater incentive to lend them money.

I use notarial records for the years 1764 and 1784, that is, before and after the creation of public mortgage registries in 1768. These were years of peace and economic recovery after the Spanish participation in the Seven Years' War (1762-1763) and the American Revolutionary War (1779-1783). I have recorded two similar samples of obligation contracts (*obligaciones*) signed in Malaga in 1764 (1,307 contracts) and 1784 (1,181 contracts).³⁰

Obligations were contracts that «recorded a generic agreement in which a person recognized the mandatory nature of paying a debt or carrying out a future work» (Carvajal 2018, pp. 216-217). They were used mainly as short-term loans: 82.5 per cent of obligation contracts drawn up in Malaga in 1784 had a duration of 1 year or less, the average lifetime being 10.3 months. Here, they were used mostly to finance agricultural activities, but they also served other purposes such as the recognition of debts, credit sales and payment of urgent expenses.³¹

Two main reasons explain the selection of obligations—short-term credit—instead of annuities (*censos consignativos* and *censos reservativos*)—long-term credit—and other credit modalities.³² First and foremost,

²⁹ According to the Census of Floridablanca, conducted between 1785 and 1789, Malaga had 51,098 inhabitants and was the seventh most populated Spanish city. Malaga population data are available on the *Instituto de Estadística y Cartografía de Andalucía* website at <http://www.juntadeandalucia.es>.

³⁰ The 1784 sample includes all notarial records written by twenty-two of the twenty-four notaries who worked in the city that year, discarding only those books that were almost destroyed. The 1764 sample includes all notarial records written by fifteen of the twenty-four notaries. I used the information from the 1784 sample to select these fifteen notaries, choosing those with both high and low credit-recording activity. AHPM, *protocolos notariales de Málaga capital*. For 1764, see *libros* 2472, 2492, 2626, 2709, 2773, 2854, 2872, 2895, 2908, 2950, 2953, 2997, 3009, 3032 and 3081. For 1784, see *libros* 2859, 2914, 3006, 3027, 3047, 3049, 3050, 3136, 3150, 3160, 3167, 3174, 3195, 3236, 3256, 3269, 3306, 3323, 3331, 3338, 3356, 3365, 3383, 3390 and 3392.

³¹ 51.1 per cent of obligation contracts drawn up by notaries of Malaga in 1784 and 30.4 per cent of the total amount were used to finance agricultural activities.

³² The other credit modalities drawn up by notaries in Malaga in 1784 were insignificant: debt transfers (9), protests (2) and repurchases (1).

in Castile, annuities were always supported by special mortgages, whereas obligations were not always supported by specific assets. As I want to measure the impact of special mortgages on credit conditions before and after the 1768 reform, I need to compare general mortgage and special mortgage contracts of the same kind. Second, the number of obligation contracts is much higher. For example, obligations constituted 22.8 per cent of the notarial deeds written in Malaga in 1784, whereas annuities accounted for only 1.4 per cent (Table 4). This is not a particularity of Malaga: from the mid-18th century, obligations replaced annuities as the main credit contract in many areas of Spain including Murcia (Pérez Picazo 1987), León (Rubio 1989), Alicante (Cuevas 1999), Madrid (Sola 2000) or Almería (Díaz López 2001), and the same process also occurred in other countries, such as France (Hoffman *et al.* 2019, pp. 62-66). Of course even in these areas obligations would only appear more frequent in terms of flow. Because annuities had much longer lifetimes and the loaned amounts were usually larger, they were superior in terms of stock until well into the 19th century (Milhaud 2018, pp. 20-23).³³

Ideally, I would like to verify whether special mortgage contracts were effectively registered. However, the mortgage registry books for the judicial district of Malaga were destroyed during the Spanish Civil War (1936-1939) (Cabrillana 1984, p.84). Nonetheless there is evidence that a public mortgage registry was indeed created. On 2 December 1774, Lorenzo Ramírez, the oldest town hall notary in the city, paid a bail bond to rule the registry in the city. He mortgaged his office, valued at 16,500 r.v. and three houses valued at 30,500 r.v. This is a very large amount, taking into account the fact that the Council of Castile had only requested the mortgage of the office and additional assets valued at 11,000 r.v. (*Archivo Histórico Municipal de Málaga, caja 343, expediente 2*). There is also evidence that the information in the registry was used by tribunals to solve litigation. For example, in 1784, in a court case between Manuel Gordon and Alonso García, Gregorio Martínez de la Ribera, the oldest town hall notary and the person responsible for the mortgage registry, was summoned to provide evidence about the property García had included as a special mortgage in the contract that the two parties had signed 1 year earlier (AHPM, *libro 3136*, pp. 214r-217v). Finally, in 1784,

³³ Several reasons have been put forward to explain this: the reduction of the cap on annuities' interest from 5 to 3 per cent in the Crown of Castile in 1705 and in the Crown of Aragon in 1750 (Peset 1982; Fernández de Pinedo 1985); the incompatibility of annuities in the new capitalist context (Fernández de Pinedo 1985); recurrent defaults of municipal debts financed via annuities in the first half of 18th century (Andrés 1987); the strike against tithes, land rents and perpetual mortgages rents during the crises of the *Ancien Régime* (Robledo 1991; Tello 1994); and the crowding-out effects generated by the war period initiated in 1779 (Milhaud 2018). Of course, there were other areas where annuities maintained an important role during the second half of the 18th century and even the first half of the 19th century. See Tello (2007).

TABLE 4.
NOTARIAL RECORDS DRAWN UP BY NOTARIES OF MALAGA IN 1784

Categories	Number	%
Annuities	74	1.4
Annuity redemptions	27	0.5
Apprenticeship contracts	34	0.6
Bail bonds	248	4.8
Debt and land transfers	24	0.5
Dowries	50	1.0
Leases	798	15.4
Obligations (credit)	1,181	22.8
Obligations (others)*	184	3.5
Payments	375	7.2
Powers of attorney	1,438	27.8
Sales	202	3.9
Wills	180	3.5
Other	372	7.2
Total	5,187	100.0

*Note: this category includes marriage and alimony obligations, concession and tax farming contracts, recognitions of tax and ecclesiastical debts and smugglers' pardons.

Source: see footnote No. 30.

all those contracts that incorporated a mortgage on lands, real estate, offices or annuities included a clause that forced the contracting parties to go to the registry and register the mortgage.

4. IMPACT OF PUBLIC MORTGAGE REGISTRIES ON NOTARIAL CREDIT MARKETS

In order to evaluate the effects of public mortgage registries on Malaga's notarial credit market, I compare obligation contracts that secured the capital with all present and future assets of the debtor (general mortgages) and contracts that added specific property as collateral (special mortgages) in 1764 and 1784. Before 1768 neither general nor special mortgage contracts written in the city of Malaga were recorded in a mortgage registry.³⁴ As a result of the 1768 law, a public mortgage registry was

³⁴ There is no evidence of any registry in Malaga before 1768. Furthermore, none of the special mortgage contracts written in 1764 included a clause making their registration compulsory.

created in the city, and it became compulsory to register contracts with special mortgages on certain assets (lands, real state, offices and annuities). If the registry enhanced the legal protection of creditors' property rights, I should observe improved conditions for debtors in special mortgage contracts after the creation of the registry but not earlier. In other words, contracts with special mortgages should have similar conditions to contracts with general mortgages in 1764, but they should have significantly better conditions in 1784.

To assess whether public mortgage registries had an impact on contracts, I estimate the following model, using ordinary least squares (OLS):

$$\text{CAPITAL}_i = \alpha + \beta_1 \text{Year}_i + \beta_2 \text{Mortgage}_i + \beta_3 \text{Year}_i \times \text{Mortgage}_i + \beta_4 \text{Status}_i + \epsilon_i$$

CAPITAL_{*i*} denotes the size of the contract in r.v. I have removed contracts that did not mention any amount and I have adjusted contracts written in 1784 for the inflation accumulated since 1764.³⁵ Why is the size of the contract chosen as the dependent variable instead of using the interest rate? It has certainly been suggested that interest rates in capital markets are the best measure to evaluate the efficiency of the institutional framework (North 1990, p. 69).³⁶ However, variations in interest rates were insignificant in credit markets characterised by a high degree of information asymmetries, for example, urban credit markets during the Middle Ages and in the early modern period. As price measurement was costly, lenders would not change interest rates but would discriminate among potential borrowers using other variables instead, such as the quality of the collateral or the reputation of the borrower (Hoffman *et al.* 2000, p. 300; Van Zanden *et al.* 2012, p. 19). This point is crucial for early modern Spain, where obligation contracts rarely included interest rates.³⁷ Most contracts stated that the amount was being provided «at the mercy of the lender». As has been suggested, lenders may have included the interest in the amount supposedly given by the creditor to avoid the usury laws (Tello 1994, p. 14; Zegarra 2017b, p. 81).³⁸ For this reason, I estimate the impact of special mortgages by looking at changes in loaned amounts.

³⁵ I used data on prices for Andalusia, the Spanish region to which Malaga belongs, estimated by Hamilton (1947, p. 155).

³⁶ For an application of this model, see Reis (2010).

³⁷ Only 0.8 per cent of the obligation contracts written in 1784 included the interest rate.

³⁸ Official laws established interest rate ceilings for credit contracts. For example, at the end of the 18th century, the legal maximum interest rate was 3 per cent for annuities and 6 per cent for obligations. These laws are included in the *Libro X* of the *Novísima Recopilación de las Leyes de España* (1805): *Título XV, Leyes VIII-IX* (for annuities); and *Título VIII, Ley V; Título XI, Leyes XII-XIII; Título XIII, Leyes XIV, XVII-XVIII* and *XXI* (for obligations). This regulation did not

Year_{*i*} is a dummy variable that takes value 1 if the contract is from 1784, and equals zero otherwise, to account for temporal trends. Mortgage_{*i*} is a dummy variable that takes value 1 if the contract includes a special mortgage and equals zero otherwise. Contracts rarely mentioned the value of the mortgaged assets—which does not mean that lenders had no knowledge of it—so the effect of special mortgages on capital is measured in accordance with whether or not this guarantee was present. I have removed contracts that included non-registrable collateral according to the 1768 law (cattle, harvest, tools, devices, boats and cargoes). Thus, the regression includes only general mortgage contracts and registrable special mortgage contracts. It should be noted, however, that general mortgage and special mortgage clauses were complementary: contracts could include both clauses, only one or neither of them. However, in early modern Spain, it became increasingly common for all notarised contracts to include general mortgages, so negotiations revolved around the inclusion of an additional special mortgage over a specific property (Serna Vallejo 1995, p. 167).³⁹ The main advantage of special mortgages was that they linked contracts to specific assets. This link was maintained until repayment. Thus, a debtor could sell the properties used as special mortgages, but, in case of default, the creditor had stronger rights over those properties than the new owner. In contrast, if the contract was supported with a general mortgage only, the properties of the debtor could be sold without that lien and the creditor did not have any rights over them (Sigüenza 1767, pp. 40-41; *Diario de México* 1808, pp. 126-127 and 133-136). All the contracts in my database included a general mortgage, but just over half of them added a special mortgage. The percentage of contracts supported by special mortgages differs widely in these two years: 84.1 per cent in 1764 and 23.9 per cent in 1784. In 1764, the majority of contracts included this clause, while in 1784, its presence appears to be correlated with the amount loaned: the larger the capital, the higher the chance of a contract including a special mortgage (Table 5).

Year_{*i*} × Mortgage_{*i*} is an interaction variable that appears only when the year is 1784 and a special mortgage is included, in order to measure the incidence of special mortgages in the presence of a public mortgage registry. If my hypothesis is correct, neither the year nor the inclusion of a special mortgage should be significant by themselves. It is only their interaction that should be statistically significant, as it is only after the

apply to all credit modalities: in sea loans, for example, contracting parties could set interest rates freely (Bustos Rodríguez 2005, pp. 425-427).

³⁹ In meetings of creditors, mortgage contracts had preference of payment over non-mortgage contracts, so notaries included general mortgages as prevention clauses (Febrero 1786, pp. 623-738).

TABLE 5.
PERCENTAGE OF CONTRACTS AND AMOUNTS SUPPORTED WITH SPECIAL MORTGAGES IN 1764 AND 1784

Range (<i>reales de vellón</i>)	1764		1784	
	Contracts (%)	Amounts (%)	Contracts (%)	Amounts (%)
Up to 500	76.5	77.6	5.9	7.3
500-999	86.1	85.5	12.2	12.3
1,000-4,999	88.7	89.2	27.9	29.8
5,000-9,999	86.1	86.7	36.2	37.4
10,000-49,999	82.1	84.9	58.2	59.4
50,000-99,999*	50.0	51.3	100.0	100.0
Over 100,000**	–	–	0.0	0.0
Unspecified	26.0	–	30.2	–
Total	84.1	85.3	23.9	39.3

*Note: this range only includes two contracts in 1764 and three contracts in 1784.

**Note: this range does not include any contract in 1764 and only two contracts in 1784.

Source: see footnote No. 30.

creation of a public mortgage registry that special mortgages should have an effect on amounts loaned.

Status_{*i*} is a dummy variable that takes value 1 if the contract includes the status of the debtor and equals zero otherwise. As noted above, Hoffman *et al.* (2000) and Van Zanden *et al.* (2012) consider reputation to be—along with collateral—the main variable used by lenders to discriminate between potential debtors. The reputation of debtors cannot be established from contracts directly, but its impact can be approached by looking at whether the status of the borrower was mentioned or not. Only 5.26 per cent of the contracts in my database included such a mention.⁴⁰ This could be motivated by the need of some groups, such as the military or the Church, to confirm or renounce their corporate privileges. Alternatively, debtors might have wanted to emphasise their material capacity to repay the loan, in which case mentioning their status could serve as a signalling mechanism. The majority of debtors who mentioned their status were of high or medium social rank and had regular rents from lands, real estate, annuities or tithes (priests, ecclesiastical institutions

⁴⁰ The next statuses are quoted: military (30), priests and religious institutions (24), craftsmen (23), shipmasters (18), aldermen (7), attorneys (4), merchants (4), carters (3), farmers (3), municipal officers (3), notaries (3), royal officers (3), trading houses (2), grocers (1), managers (1), mayors (1) and nobles (1).

and aldermen), high public salaries (army and royal officers) or large trading profits (merchants and trading houses). Additionally, many of them belonged to organisations and corporations that could support them in case of default (the army, guilds, professional associations, etc.). Having the means to repay a loan is obviously not the same as having the intention to do so, but there was an indisputable element of prestige in both cases. Therefore, I expect status to have a significant effect on the amount of the contract. Finally, epsilon is the error term.

Table 6 shows the main results. As I expected, the year variable and the special mortgage variable are not significant by themselves. However, the interaction term that combines both variables has a significant impact on the size of capital. This suggests that the mere introduction of a special mortgage did not have noticeable effects over loaned amounts. It was only when the effectiveness of this clause became guaranteed by a well-performing registry that debtors received larger amounts. Thus, special mortgage contracts drawn up after the creation of the public mortgage registries received, on average, around 3,000 r.v. more than general mortgage contracts (drawn up in 1764 or 1784) and special mortgage contracts drawn up before 1768. In 1784, contracts with special mortgages on registrable assets were more than twice the size of contracts with a general mortgage only. In 1764, in contrast, there were no significant differences in the amounts loaned through different type of contract (see Appendix 2).⁴¹ This is consistent with the hypothesis that the reform of 1768 had a positive impact on the allocation of credit resources.

Before 1768, the absence of public mortgage registries made it difficult to determine whether the collateral had already been mortgaged or not. Consequently, although creditors demanded the introduction of this clause as a preventive mechanism, it had no impact on loaned amounts. After 1768, new special mortgages began to be registered and trust in their effectiveness increased. This new institution helped clarify the seniority of lenders, improving the functioning of the market. The creation of a public mortgage registry did not increase the number of contracts with special mortgages in the short term, but rather the opposite, as evidenced by the fact that they decreased from 84.1 per cent of all contracts in 1764 to 23.9 per cent in 1784.⁴² However, public mortgage registries ensured a better

⁴¹ Similar results are obtained by Peña-Mir (2016, p. 136) in his analysis of agricultural obligation contracts in Malaga between 1779 and 1794: contracts supported with a general mortgage only—87.9 per cent of the sample—received an average amount of 1,685 r.v. and contracts supported with a special mortgage—12.1 per cent of the sample—received an average amount of 4,012 r.v.

⁴² Data for the city of Alcoi support this hypothesis. There, the creation of the registry did not lead to an immediate proliferation of special mortgage contracts. In the 1770s, immediately after the creation of the public mortgage registry, only 7.01 per cent of the credit contracts included special mortgages. By the 1780s, this share had increased to 29.41 per cent and in the 1810s almost half of all contracts included them (45.30 per cent). After two decades of stagnation, the share of

TABLE 6.
OLS REGRESSION RESULTS: IMPACT OF THE MORTGAGE REGIME AND THE
STATUS OF THE BORROWER ON THE CAPITAL

Dependent variable	CAPITAL
Year	151.4 (0.28)
Mortgage	124.7 (0.30)
Year × Mortgage	3,090.6*** (4.16)
Status	6,321.5* (1.88)
Constant	1,675.6*** (3.83)
R^2	0.03
N	2,250

t-statistics in parentheses.

Significance levels: * $P < 0.1$, ** $P < 0.05$, *** $P < 0.01$.

Source: see footnote No. 30.

use of special mortgages. Debtors who wanted large amounts were required to include them, whereas general mortgages were enough for those who borrowed smaller amounts. Probably one of the main consequences of the creation of the public mortgage registry in the short term was a major segmentation of the notarial credit market. A huge number of debtors would become indebted through several small- and medium-value general mortgage contracts. A small percentage would continue using special mortgage contracts, but in smaller numbers and for larger amounts.⁴³ These results suggest that, contrary to traditional historiography, public mortgage registries helped to improve the protection of property rights in early modern Spain.

contracts that included special mortgages rose to 59.78 in 1840s and, finally, to 96.25 per cent in the 1880s (Cuevas 1999, p. 197).

⁴³ The decrease in the number of obligation contracts with special mortgages cannot be explained by an increase in the notarial fees paid for them. According to the official fees laid down in 1722, in 1764 the fee for an obligation contract with a special mortgage was 30 r.v. and 12 r.v. without it (*Los Códigos Españoles Concordados y Anotados, Tomo XII, Libro II, Título VIII, Auto XIV*, 1851, p. 53). According to the official fees laid down in 1782, in 1784 each «sheet of paper» in an obligation contract with a special mortgage generated a fee of 30 r.v., while that for an obligation contract without a special mortgage was also 30 r.v. (Martínez Salazar 1789, p. 285). Of course, as noted above, it is possible that, after the creation of the registry, notaries started to demand higher fees for recognising property titles. The quality of their services would be higher but too expensive for small-value contracts.

Finally, the status dummy has a large positive effect on the capital of the contract. Contracts that mentioned the status of the borrower were 6,300 r.v. larger than those that did not. Since this variable includes both 1764 and 1784 contracts, it shows that high- and medium-ranked members of the community could rely on their status to obtain larger amounts during the entire period.⁴⁴ This emphasises the importance that these types of mechanisms played in the absence of more sophisticated institutions, such as registries. It also suggests that the creation of the public mortgage registry helped to encourage more impersonal financial transactions. Once the debtors were able to strengthen their position as property owners, they could sustain their credit relationships on the basis of the quality of their collateral, becoming less dependent on their status. This would be especially helpful for low-status debtors. In this regard, registries were surely not enough to create a purely impersonal credit market, but they were probably a step forward in this direction. Notwithstanding the above, the number of observations is low and the statistical effect is not highly significant, so further research is needed to confirm this hypothesis.

5. CONCLUSIONS

This article has examined the degree of protection given to creditors' rights in Spanish notarial credit markets at the end of the early modern period. I have focused on the role played by public mortgage registries in order to explore the extent to which formal institutions fostered a high level of contractual compliance in these markets. The creation of mortgage registries was a long and contested process that began in the 16th century and was characterised by constant breaches of the law and clashes between the monarchy and the municipalities over their control. Ultimately, in 1768, a network of accessible public registries was created in many Spanish areas. This change was favoured by better organisation of the registries, greater awareness of their importance and the fact that the monarchy renounced its control of the institution. Although these registries experienced many problems until they were replaced by public land registries in the second half of the 19th century, their creation in the late 18th century improved the allocation of credit resources.

To test this hypothesis, I have relied on a sample of almost 2,500 obligation contracts drawn up in the city of Malaga, before and after the creation of these registries. My analysis shows that, before the creation of

⁴⁴ The same effect is present for those contracts that were supported by non-registrable assets (excluded of the OLS model): non-status contracts received, on average, 1,737 r.v., whereas those that included it received 14,912 r.v.

public mortgage registries, contracts that included special mortgages on lands, real estate, offices and annuities received the same amounts as contracts that only included general mortgages—whose guarantees were theoretically weaker. After the creation of the public mortgage registries, however, contracts with special mortgages on those assets received more than twice as much as those that only included a general mortgage. Once special mortgages began to be registered regularly, they started to have real effects on credit conditions. Although initially the creation of a public mortgage registry did not increase the number of contracts with special mortgages, from that moment this clause helped debtors to obtain larger loans.

The results also suggest that public mortgage registries could have helped to create more impersonal markets. Debtors whose status was included in the contract—usually individuals of high and medium social rank who enjoyed regular incomes and/or who belonged to large organisations—received higher amounts than non-status debtors both before and after the creation of the mortgage registry. For these individuals, the creation of the registry was not so important because their social position helped them mitigate the reluctance of creditors to give them larger loans. For other debtors, however, other institutional arrangements were required, and the creation of the registry could have been one of them. Nevertheless, since the sample of observations that mention the status is small and the statistical effect is not highly significant, further research is needed in order to confirm or discard this hypothesis.

As my results refer to a single city, they must be interpreted with caution. This is especially relevant in a context of jurisdictional fragmentation characterised by a high degree of political autonomy on the part of the municipalities. Thus, the introduction and impact of public mortgage registries could have been conditioned by the economic needs of each judicial district, as well as by the degree of support for them among the elites, the notaries and the local judicial system.

ACKNOWLEDGEMENTS

Received 31 October 2018. Accepted 11 February 2020.

I thank the financial support provided by the Spanish Ministry of Education. I also want to thank Blanca Sánchez Alonso, the editor of *Revista de Historia Económica—Journal of Iberian and Latin American Economic History*. I am particularly indebted to my supervisors Yadira María González de Lara Mingo and Yolanda Blasco-Martel, without whose suggestions and support I would never have been able to write this paper. I have benefited from many comments by two anonymous referees as well as those of Carles Sudrià Triay, Alfonso Herranz-Loncán,

María Alejandra Irigoin, Oscar Gelderblom, Germán Forero-Laverde, Pablo Fernández Cebrián, Nicolás Nogueroles Peiró and Antonio Carmona Portillo. I gratefully acknowledge comments by Anne Murphy, Tim Van Der Valk and the rest of the participants at the residential training course organised by the Economic History Society (Manchester, December 2017). Very special thanks are due to Pau Belda-i-Tortosa and Xabier García Fuente for their help and support. The usual disclaimers apply.

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APPENDIX 1

LIST OF REGISTRIES CREATED IN SPAIN BEFORE 1768*

Municipality	Area	Date of creation
Santa María de Nieva	Kingdom of Castile	1514**
Sepúlveda	Kingdom of Castile	1515**
Seville	Kingdom of Seville	1541***
San Cristóbal de la Laguna	Canary Islands	1543**
Albacete	Kingdom of Toledo	1574**
Madrid	Kingdom of Toledo	1589
Écija	Kingdom of Seville	1590
Santa Cruz de Tenerife	Canary Islands	1615**
Cáceres	Kingdom of León	1622**
Órgiva	Kingdom of Granada	1626**
Madrid	Kingdom of Toledo	1646
Seville	Kingdom of Seville	1646
Alcalá de Henares	Kingdom of Toledo	1646
Cádiz	Kingdom of Seville	1647
Santa Fé	Kingdom of Granada	1678**
Valencia de Alcántara	Kingdom of León	1738**
Vallecas	Kingdom of Toledo	1745**
Almodóvar del Campo	Kingdom of Toledo	1751**
Salamanca	Kingdom of León	1753**
Zamora	Kingdom of León	1759**
Lillo	Kingdom of Toledo	1760**
Sanlúcar de Barrameda	Kingdom of Seville	1760
San Sebastián	Province of Guipúzcoa	1760**
Antequera	Kingdom of Seville	1761**
Ocaña	Kingdom of Toledo	1762**
Ponte Caldelas	Kingdom of Galicia	1764**

APPENDIX (Cont.)

Municipality	Area	Date of creation
A Cañiza	Kingdom of Galicia	1766**
Lalín	Kingdom of Galicia	1766**

*Note: I have evidence for other places, but have not been able to find the date of creation: Molina, Nájera, Ciudad Rodrigo, Palencia—all of them at the end of the 16th century, San Fernando, Toledo and Carmona (Serna Vallejo 1995, pp. 239, 272 and 276). In Zamora and Cádiz, other registries were created (Serna Vallejo 1995, p. 239 and pp. 245-246).

**Note: the archive catalogue does not state that the registry was created in that year, but the first preserved document corresponds to that year.

***Note: 1541 is the year in which Seville received the second and last order to create the registry (Porras Arboledas 2004, p. 252).

Sources: catalogues of Archivo Histórico de Protocolos de Madrid, Archivo Histórico Provincial de Albacete, Archivo Histórico Provincial de Cáceres, Archivo Histórico Provincial de Ciudad Real, Archivo Histórico Provincial de Gipuzkoa, Archivo Histórico Provincial de Granada, Archivo Histórico Provincial de Málaga, Archivo Histórico Provincial de Pontevedra, Archivo Histórico Provincial de Salamanca, Archivo Histórico Provincial de Santa Cruz de Tenerife, Archivo Histórico Provincial de Segovia, Archivo Histórico Provincial de Toledo, Archivo Histórico Provincial de Zamora and Archivo Municipal de Écija. See also Serna Vallejo (1995, pp. 232, 246-248 and 258); Cerdeña (2003, p. 420); Porras Arboledas (2004, p. 252).

APPENDIX 2

VARIATIONS OF AVERAGE CONTRACTS ACCORDING TO TYPE OF MORTGAGE IN 1764 and 1784 (GENERAL MORTGAGE = 100)

Kind of mortgage	Number of contracts (1764)	Average contract (1764)*	Number of contracts (1784)	Average contract (1784)*
1.General mortgage	208	100.0	898	100.0
2. General mortgage + special mortgage (all)	1,103	101.5	283	208.2
2.1. Registrable	991	99.3	215	227.8
2.1.1. Real property (lands and real estate)	985	99.1	212	229.9
2.1.1.1. With public annuity	277	87.4	51	180.6
Censo de Población**	275	86.2	42	142.9
Others	2	248.5	8	357.1
Both	–	–	1	349.9

APPENDIX (Cont.)

Kind of mortgage	Number of contracts (1764)	Average contract (1764)*	Number of contracts (1784)	Average contract (1784)*
2.1.1.2. With private annuity	220	96.2	81	274.0
2.1.1.3. With public and private annuity	45	184.0	10	308.4
Censo de Población**	44	156.1	8	334.3
Others	–	–	2	204.7
Both	1	1414.1	–	–
2.1.1.4. Unspecified	10	88.4	5	418.7
2.1.1.5. Free property	433	99.5	65	190.2
2.1.2. Personal property (offices and annuities)	5	110.8	2	68.2
2.1.3. Real and personal properties	1	162.1	1	115.4
2.2. Non-registrable	112	122.0	68	149.0
2.2.1. Cattle	72	57.8	54	70.3
2.2.2. Cattle and others	–	–	4	360.4
2.2.3. Others (harvest, tools, devices, boats and cargoes)	40	237.2	10	481.5

*Note: contracts whose amount is not specified are excluded.

**Note: emphyteutic contract between the king and the Christian families who repopulated the Kingdom of Granada after the deportation of the *moriscos* (Spanish Muslims who were forced to convert to Christianity) to other kingdoms under the Crown of Castile in 1571. According to this contract, the king would receive an annual rent until the settler decided to redeem the charge by buying the property from the king. See Campos Daroca (1984-85).

Source: see footnote No. 30.