

From «util y combeniente, y aun necesario» to «perjudicialissimas, injustas, y contra todo fundamento legal»: redefining municipal debt restructuring in the Spanish Crown of Aragon (1732-1742)

1. Introduction

On the 27th of September 1738, the *procurador mayor* (chief presbyter) of the Brotherhood of Saint Peter and Saint Bernard of Palma de Mallorca convened an extraordinary council of the brothers. He informed his colleagues that King Felipe V had granted Palma's alderman Joan de Sales i Berga a six-month moratorium during which he would be protected from harassment by his creditors, among whom the brotherhood was a notable party. Furthermore, the town councillor and his creditors would have to enter negotiations of «the *concordia* customary in the Crown of Aragon», a debt restructuring agreement in which the *regente* of the Real Audiencia de Mallorca -the high royal court in the kingdom- would act as a mediator. The *procurador mayor* of the brotherhood was strongly opposed to this type of pact, which had never been used in Majorca, deeming it contrary to the kingdom's laws, as well as highly detrimental to the brotherhood's finances. Following the advice of the chief brother, the presbyters decided to join forces with the other creditors to persuade the monarch and the *regente* of the Majorcan Audiencia that such agreements were alien to the kingdom's legal traditions.¹

The reaction of the Majorcan presbyters points to several crucial issues during the first half of the eighteenth century. Since theirs was a world of debts in which financial trouble was frequent, instruments to manage overindebtedness and insolvency were continuously used. This paper delves into the *concordia*, an instrument for debt restructuring that was peculiar to the Spanish Crown of Aragon. More specifically, the article examines the conflicts, ideas, and negotiations around *concordias* and the subsequent transformation of the normative framework for municipal debt restructuring in the four kingdoms of the Spanish Crown of Aragon -Majorca, Valencia, Catalonia, and Aragon- in the 1730s and early 1740s. Debt restructuring pacts were the main alternative to bankruptcy and litigation, but, due to the solvency problems caused by municipal overindebtedness, the disputes about the negotiation and approval of *concordias* intensified and obliged royal ministers to intervene. The redefinition of the normative framework for debt restructuring is thus examined through the scope of conflict and bargaining between actors in different centres of power. Notions of public good and private interest, competition between

¹ Archivo Capitular de Mallorca (ACM), *Actas de la Cofradía de San Pedro y San Bernardo*, SPSB00012, council meeting of 27-IX-1738.

jurisdictional powers, and the political dimensions of debt are examined jointly to shed light on how the negotiation of the *concordias*, the main instruments for debt restructuring, changed throughout the 1730s and 1740s.

To explore this transformation, the article is divided into six sections. Following this introduction, section 2 provides information about the context in which the redefinition of the normative framework took place and the place of this paper within historiography. The description of the situation of the Aragonese municipalities of the Spanish monarchy in the first half of the eighteenth century, their finances, and the instrument of the *concordia* is mainly based on secondary sources. Sections 3, 4, and 5 analyse the conflicts and negotiations around the *concordias* diachronically. The main archival reference for these sections is a voluminous *legajo* of the Spanish Archivo Histórico Nacional that, to the best of my knowledge, has never been used before for research purposes. The source revolves around two broad and connected questions, municipal taxation and debt, and contains different types of documents, ranging from reports and letters of the judges of the Aragonese courts to the testimonies of the clergymen, and the verdicts of the *fiscales* of the royal supreme court. Conclusions follow.

2. Town councils on the brink of bankruptcy

One of the main problems of the municipalities of Southwestern Europe from the Late Middle Ages to the early nineteenth century was overindebtedness. The town councils of the mainland Crown of Aragon (Catalonia, Valencia, and Aragon) began to issue redeemable annuities called «censals» («censos» in Castilian Spanish) in the mid-fourteenth century to fund the military campaigns of the monarchs and their own urgent needs. Through this instrument, the creditor earned an annual pension that was secured against a piece of real estate or any source of revenue, for instance, municipal taxes.² Together with ingenious institutional arrangements, the issuance of annuities gave rise to a sophisticated fiscal and financial system, thus triggering a process that some historians characterised as a financial revolution (García Marsilla 2002; Ortí Gost 2007). Institutional arrangements allowed town councils to borrow at low interest rates, and to better reconcile their necessities with those of the kings (Sánchez Martínez et al. 2008).³

In the second half of the fourteenth century, municipalities started experiencing solvency problems, so local and royal authorities devised different mechanisms to tackle them (Verdés Pijuan 2015; Ortí Gost and Verdés Pijuan 2016). While some town councils opted to raise taxes and create excises to get surpluses which could be invested in redeeming annuities, others hired local merchants who cancelled the debt and, in exchange, obtained the leasing of municipal revenues (Sesma Muñoz and Laliena Corbera 1999, 155-56; Abella Samitier 2009, 60; Lafuente Gómez 2014). Other municipalities -and also the deputations of the kingdoms- took advantage of the

² Clavero Salvador (1977), Placanica (1982), and Fiestas Loza (1993) have studied *censi* from a markedly legal perspective; Rico Callado (2020) examined the instrument using notarial records.

³ This fits the scheme proposed by Stasavage (2011), although he does not mention the Crown of Aragon as an example (Furió 2015).

lowering of the interest rates and refinanced old annuities with new ones signed at lower rates (Sesma Muñoz 2015). In 1401, the town council of Barcelona introduced an important innovation. It created a municipal deposit bank, the *taula de canvi*, which allowed the municipal authorities to cushion the financial crises: instead of raising cash to pay its creditors, the municipal corporation could order a transfer from the account of the town council to that of the debtholders. Furthermore, the town councillors could borrow cash from the *taula*, although in the long term they had to cut their expenses and elaborate a budget to reduce indebtedness with the municipal bank (Ortí Gost 2007; Roberds and Velde 2016; Ugolini 2017, 45-51).

There was another mechanism that has received much less historiographical attention but was frequently used by town councils. In the late-fourteenth century, debt renegotiation progressively became a widespread procedure, while an instrument started gaining momentum: the *concordia*. This was a type of compromise agreement that existed far before debt restructuring. It was signed by two or more parties to settle a dispute between them. Conflicts solved through this kind of pact could be criminal offences, dividing an inheritance, or exploiting pastures, just to cite a few examples. *Concordias* were neither according to the law nor against it. Parties renounced any other law and agreed to stick to the covenants of the pact, which they themselves bargained (Gómez de Valenzuela 2012).

In the case of indebted municipalities, instead of declaring bankruptcy and going to trial, town councillors tried to persuade municipal creditors to reduce the interest of their annuities and to defer the payment of the annual pensions. The debtholders, in exchange, gained control over the municipal resources. Although there were some cases of default and subsequent foreclosure, in general, municipal authorities and creditors signed *concordias* to reduce the burden of debt service and to transfer the control of the municipal treasuries to the debtholders. In some cases, the mediation of the Aragonese monarchs proved crucial to convincing the creditors to come to terms with the town councillors. Cities and towns like Calatayud, Montblanc, Tarragona, Berga, and Fraga enjoyed the royal assistance during the negotiations with their lenders (Morelló i Baget 2002; Abella Samitier 2009; Ortí Gost and Verdés Pijuan 2016). Through the *concordias*, both town councillors and municipal debtholders saved time and money, as trials to establish the priority of the creditors were expensive and slow. Since the parties involved had few constraints to devise the pacts according to their own necessities, *concordias* represented an ideal instrument for debtors and creditors to create tailored regimes of debt service. Compromise agreements were the epitome of a political world in which there were no clear hierarchies, in which autonomous corporations had great leeway to articulate their political life.

Concordias and other debt-rescheduling instruments allowed municipalities to overcome solvency crises, put their finances in order, and borrow again, thus restarting the cycle. After a period of intense borrowing in the sixteenth century, financial trouble reappeared more intensely in the mid-seventeenth century (Andrés Robres 1987; Ferrer i Alòs 2014; Salas Ausens 1992). Town councils resorted to the same mechanisms as two centuries earlier, but the context was different. The bulk of municipal annuities had passed to religious institutions, usually via donation, and the attitude of the clergy towards debt was not the same as the merchants'. Annuities endowed pious works, and ecclesiastical debtholders were reluctant to have their

censos redeemed. Furthermore, the legal and political context in which *concordias* were bargained and approved changed in the early eighteenth century. Traditionally, some agreements were approved by the Consejo de Aragón, the supreme council for the affairs of the Crown of Aragon. During the War of the Spanish Succession (1701-1714), the council was suppressed as a punishment of the king to the Aragonese subjects, while its prerogatives were transferred to the Consejo de Castilla. Since *concordias* were not laws, they were not affected by the Decretos de Nueva Planta (1707-1716), a series of royal decrees that abolished the traditional institutions and laws of the Aragonese kingdoms to different degrees (Ena Sanjuán 2022, 73-252).

Concordias were so frequent in the Kingdom of Aragon that it is hard to find a village, no matter how remote or small, that did not sign one (Abadía Irache 2020). In Valencia, debt-rescheduling agreements were not as widespread as in Aragon, but it was probably more common than in Catalonia (Giménez Chornet 2002, 168-70, 246-247; Giménez López 2015, 152; Peset Reig and Graullera Sanz 1986, 122-27). Broadly speaking, it can be tentatively argued that *concordias* and the transfer of municipal treasuries to creditors was less common in Catalonia than in the rest of the Crown of Aragon. It also seems that *concordias* were rarely examined and ratified by the Consejo de Castilla or the Real Audiencia (Ferrer i Alòs 2014, 72-75; Gifre i Ribas 1995).

While the originality of the Aragonese financial developments has repeatedly been emphasised by the historiography, this paper examines a lesser-explored dimension of the municipal finances of the Crown of Aragon, namely, how town councils conceived and utilised effective debt restructuring mechanisms for centuries. The sophistication and peculiarity of those tools do not equate to exceptionalism; rather, they position the municipalities of the Crown of Aragon alongside other European city-states such as the Republic of Genoa or the Dutch Provinces (Fritschy and van der Voort 1997; Fratianni 2006; Taviani 2022). In fact, the *concordia* system is yet another example -perhaps the epitome- of the pluralistic, jurisdictional, and polycentric nature of pre-modern societies (Ena Sanjuán 2022). These features were also evident in the evolution of the legal framework for municipal debt restructuring. Given the entanglement between municipal and royal finances, debt rescheduling connected municipalities and kings, though the link between the two was indirect: monarchs did not intervene *motu proprio*, but at the request of one of the parties involved. That was also the case in the 1730s.

3. The first batch of reports (1732)

In the aftermath of the succession war, the Consejo de Castilla approved dozens of *concordias*. To the councillors, passing agreements was almost routine.⁴ It is almost certain that the complaints from the ecclesiastical estate of the northern area of the Kingdom of Aragon triggered the inquiry ordered by the supreme council regarding the *concordias*. In northern Aragon, religious institutions such as the Cathedral Chapter

⁴ Several examples of these *concordias*, mainly from the Kingdom of Aragon and to a lesser extent from the Kingdom of Valencia, can be found in Archivo Histórico Nacional (AHN), *Consejos*, libro 3.189.

of Jaca were almost ruined, as their income had fallen dramatically due to the signing of *concordias* approved by the Real Audiencia. In May 1728, the canons of Jaca sent a letter to the bishop who presided at the Consejo de Castilla, to protest against the *concordia* signed with the municipality of Jaca «and the others granted in the Real Audiencia with the most serious harm to the Church». Although the bishop offered his protection to the cathedral chapter, the clergymen had to accept new *concordias* in which the *oidores* (judges) of the Aragonese Audiencia intervened. In February 1729, the canons resolved to send a memorandum to the king, his confessor, and the Consejo de Castilla in which they represented the harm caused by the *concordias*, especially those signed with the intervention of the Audiencia. They also decided «that a letter be written to the other Churches to involve them, as it is a common cause». Although the Metropolitan Chapter of Saragossa accepted to join efforts, the clergymen of Jaca did not manage to solve the problems with the *concordias* immediately. In August 1730, they resigned themselves to collect municipal annuities according to the agreements that decimated their revenues «until God provides another remedy due to the extreme necessity to which the Church is reduced».⁵

Yet the voice of the Aragonese ecclesiastical estate was heard in the royal court. In 1732, Alonso Rico Villarroel, a *fiscal* of the Consejo de Castilla, brought to the high councillors the issue of debt-restructuring pacts. He proposed asking the Reales Audiencias of the Crown of Aragon -the high royal courts in the kingdoms of Aragon, Valencia, Majorca, and the principality of Catalonia- for reports on the composition, signing, and approval of *concordias* between town councils, noble families and private individuals on the one hand, and their creditors on the other. The *fiscal* thought that the Consejo would need further information about the exact procedure and juridical nature of the agreements, so he raised some questions about the process of negotiation and approval. Among other questions, Rico Villarroel wanted to know what the origin of the *concordias* was, by virtue of what privilege or custom they were allowed, whether distinctions between types of creditors were made, what the procedure to arrange the agreements was, whether the pacts could be approved without the consent of creditors, if dissenters had legal protection, and whether municipal *censos* borrowed by private individuals were included in municipal *concordias*. The councillors accepted his proposal and sent an order to every Audiencia, asking for a detailed report.⁶

The first court to reply was the Real Audiencia de Aragón. The *oidores* said that they usually took turns to process the *concordias*. They did it by virtue of a law from 1626, in which the procedure was defined. The law had been approved after the expulsion of the *moriscos* (Muslims who had converted to Christianity), when many towns had suddenly lost most of their population and could not pay their debts. Originally, the president of the Audiencia appointed a judge to mediate between debtors and creditors, and the practice had persisted. There had also been, and still were, agreements between guilds, secular brotherhoods, and noble families on the

⁵ Archivo Diocesano de Jaca (ADJ), archives of the cathedral chapter, *De gestis*, 4, libro 1, meetings of the chapter of 24-V-1728, 11-II-1729, and 26-VIII-1730.

⁶ AHN, *Consejos*, leg. 22.444, n° 10, pieza 1, proposal by the *fiscal* and approval of the Consejo de Castilla, Madrid, 8-VIII-1732.

one hand, and their creditors on the other. The procedure was rather simple: town councils resorted to the Real Audiencia when their creditors harassed them. Then, a judge convoked both parties and they negotiated how to restructure debt. If creditors did not attend the meetings, or debtors did not accept the terms of the pact while debtholders agreed, the *concordia* could be approved «de oficio», i.e., because the judge considered it reasonable and appropriate.

The ministers of the Audiencia said that no distinction was made between creditors for two basic reasons. First, the old municipal annuities were secured on the entire estates of both the municipality and its *vecinos*, so all the debtholders had the same security and, consequently, no distinction could be made between creditors. Secondly, any modern annuity with specific security was necessarily illegal, as the issuance of new *censos* was forbidden after the Nueva Planta decrees. Modern annuities were thus redeemed for a lower price with the consent of the rest of the creditors. Regarding the annuities created by *vecinos* but used by municipalities, they were generally included in the *concordias* under the condition that they were the first to be redeemed. Actually, as a general rule, modern annuities had priority over old ones if most creditors agree. The *oidores* informed that pacts were negotiated even when the assets of the municipality were under sequestration. They finally asked for a reduction of the maximum interest rate of the *censos*, to relief the Aragonese town councils.⁷

The Real Audiencia de Valencia submitted two reports. The first was a copy of a previous report on the tax systems of the Valencian towns. The *oidores* explained that before the Nueva Planta, the municipalities used to borrow without royal permission, securing the annuities both against the municipal assets and the estates of the *vecinos*. After the war, due to the non-payment of the annuities, creditors resorted to the Real Audiencia, demanding the sequestration of municipal assets first, and of private ones later. In general, the problem was that most municipal taxes had ceased with the Nueva Planta, and either the cities had not tried to renew them or the Consejo did not authorise the raising of new ones, so debt could not be serviced. Creditors attempted to foreclose collateralised assets, but since there was no specific mortgage, conflicts over priority started. *Vecinos* and municipal authorities often hindered legal proceedings against them as much as they could. They also took advantage of divisions among creditors, offering advantageous conditions to some lenders, normally local ones, and exploiting the law by which a maximum of 9.5 ar-rears could be demanded. Eventually, *concordias* were the lesser of two evils for the creditors, who had to accept considerable reductions in what they were owed to recover a part of their money (Andrés Robres 1987, 33-87)

In the second report, the *oidores* informed the Consejo that there was a Valencian law that prevented judges from forcing creditors to accept the *concordias*, although there was no norm to regulate the pacts. Debtholders resorted sometimes to the extinct Consejo de Aragón, which assessed the convenience of including every annuity in the agreement. Only the royal council could oblige creditors to accept the deals. The *concordias* did not prioritise any specific annuity and reduced the interest rate at which annuities were paid. The judges of the Audiencia considered the

⁷ AHN, *Consejos*, leg. 22.444, n° 10, pieza 1, report from the Real Audiencia de Aragón, Saragossa, 2-IX-1732.

agreements to be positive both for the municipalities and their creditors, as the latter got their pensions paid, and the former could amortise debt. The *oidores* justified the submission of the other report by saying that the approval of *concordias* had to be done together with a concession of *arbitrios*, to ensure the payment of interests and the progressive reduction of debt. They ended the report reminding the councillors that, even if there might have been any specific law in Valencia regulating *concordias*, by that time the Castilian laws operated throughout the kingdom due to the abolition of the old regime.⁸

The Real Audiencia de Mallorca sent its report to the Consejo de Castilla in December 1732. The *oidores* of the Majorcan Audiencia informed that there was no specific law or custom in Majorca regarding the *concordias*. When it came to address any issue regarding the pacts, they resorted to the Roman *ius commune*. They also narrated the history of the kingdom and its capital, Palma, a history defined by debt. From the Middle Ages, they borrowed great amounts of money and serviced debt through trade and consumption duties. The kingdom's treasury -which was also the treasury of the municipality of Palma- was ceded to the creditors in 1405, but financial trouble did not cease. New taxes were levied in the seventeenth century to issue more annuities. The most recent *concordia* had been approved by the pope and King Carlos II in 1697, and ratified by Felipe V in 1716. The treasury of Majorca and Palma was ceded again to an assembly of creditors, which serviced debt and managed taxation. The other towns of the island had also secured annuities on the municipal estate and the assets of the *vecinos*. They serviced their debt by apportioning taxes, by virtue of a law from 1614. Neither town councils nor private individuals had resorted to the Audiencia to ask for a *concordia*, but the *oidores* insisted that any trial regarding debt-rescheduling agreements and/or seniority would be judged according to Roman law.⁹

The last court to submit its report was the Real Audiencia de Cataluña. The judges sent a paper attached where they enumerated the pacts and conditions under which *concordias* could be approved. First, creditors had to send a list of capitals and arrears. Once the deal was sealed, representatives of the town council and the creditors started managing the resources of the municipality to service pensions and cancel annuities. If there were surpluses in the municipal treasuries, extra income should be spent on cancellations. A lottery was drawn to determine what *censos* would be redeemed first. Arrears had to be paid when the annuity was eventually cancelled. The municipal treasury was under the control of the creditors, who could lease or directly administer it. The *taules de canvi* played an important role in the process, as the money produced by municipal administrations had to be deposited there. Lastly, once a *concordia* was approved, creditors had to retire every lawsuit against municipalities. If a town council complied with the agreement, its creditors had no right to sue it.¹⁰

⁸ AHN, *Consejos*, leg. 22.444, n° 10, pieza 1, reports from the Real Audiencia de Valencia, Valencia, 18-X-1729 and 24-IX-1732.

⁹ AHN, *Consejos*, leg. 22.444, n° 10, pieza 1, report from the Real Audiencia de Mallorca, Palma, 22-XII-1732.

¹⁰ AHN, *Consejos*, leg. 22.444, n° 10, pieza 1, "Pactos y condiciones con que se han de concebir y arreglar las concordias de las Universidades, con sus Acrehedores", non-dated paper attached to the report of the Audiencia de Cataluña.

Tab. 1. Summary of the Aragonese Audiencias' reports on the concordias

	Norms that regulate <i>concordias</i>	Procedure to arrange the pacts	Distinction between creditors	Creditors could be forced	Including private <i>censos</i> in municipal <i>concordias</i>
Kingdom of Aragon	Law (1626), after the expulsion of the <i>moriscos</i>	Pre-Bourbon Audiencia: the president appointed an <i>oidor</i> to mediate Bourbon Audiencia: creditors and debtors negotiated with the mediation of an <i>oidor</i>	None, all the <i>censos</i> had the same mortgage. Post-Nueva Planta annuities issued without royal consent were illegal	<i>Concordias</i> could be approved “de oficio”, that is, because the judge considered it appropriate (hence obliging creditors or debtors to accept them)	Yes, generally under the condition that they were the first to be redeemed
Kingdom of Valencia	None Castilian law operated after the Nueva Planta	Due to non-payment of the debt provoked by the lack of revenue, creditors resorted to sequestration of municipal and private assets; negotiations to sign a <i>concordia</i> started then	None	Law that protects creditors from being forced to accept the pacts. Only the Consejo de Aragón could oblige them to abide by the agreements	-
Kingdom of Majorca	Only the Real y Pontificia Concordia	-	Different types of creditors	-	-
Principality of Catalonia	Medieval laws	Creditors sent a list of capitals, the pact was signed, and all lawsuits had to cease	None, all the debtholders were treated equally	Medieval laws which prevented creditors from being forced to accept. Extraordinary situations in the early Modern period allowed the judges to approve it against the will of a majority of creditors (in the case of the municipalities)	As a rule, they were not included

Source: my own elaboration based on the sources cited in the text.

The Catalan Audiencia informed that there were some laws of the principality that established that the debtholders could not be compelled to sign a *concordia*, not

even by the king himself.¹¹ Nevertheless, from the mid-sixteenth century the situation of many Catalan town councils, afflicted by wars, plagues, and debt, had forced the Audiencia to refuse creditors' demands of seizure of municipal and *vecinos'* assets, and to accept *concordias*, even when most lenders dissented. All creditors had been treated equally and all the agreements had been approved under the conditions expressed in the abovementioned paper. The seventeenth-century *oidores* considered that the «public common good [...] must take precedence over any private interest and must always be understood as an exception to the provisions of the law». The eighteenth-century judges asserted that the alternative to the *concordias* would have been the depopulation of many towns and cities. They argued that debt-restructuring agreements had benefited not only debtors, but also creditors, who ensured at least that their annuities were serviced. The *oidores* underlined that only municipal creditors could be forced to accept the *concordias* on the pretext of public good. Neither private individuals nor noble families' debtholders could be compelled to sign agreements, even though sequestration proceedings could take a long time. As a rule, annuities borrowed by private individuals to assist town councils were not included in the *concordias*.¹²

In view of the reports submitted by the Audiencias of the Crown of Aragon, the opinion of the *fiscal* of the Consejo de Castilla was that *concordias* should not cease, since they were «a resource so useful, convenient, and even necessary». He summarised that, although the pacts were similar in the four kingdoms, only in Aragon did they have a legal foundation. Anyway, the agreements had continued after the derogation of traditional laws. Indeed, the *fiscal* said that the *concordias* had «neither been practiced nor should they be practiced according to rules of law and justice, but rather based on equity and pressing necessity, which must prevail». *Concordias* might be harmful to creditors, but depopulation, misery, and the annihilation of the realm had to be avoided at any cost. The *fiscal* thought that maintaining restructuring agreements would be positive, although they should be approved by the Consejo de Castilla, once the Consejo de Aragón had been suppressed, after receiving the corresponding reports from the Reales Audiencias.¹³ Creditors could be forced to accept the conditions of the town councillors and/or the mediator judges by invoking public good. In theory, no difference could be made between debtholders, as they had all been given general security; in practice, however, municipal authorities favoured some creditors, generally local ones, to divide the group of debtholders and obtain more advantageous conditions in debt service and redemption. *Concordias* benefited the debtors rather than the creditors, but the Consejo de Castilla decided not to intervene for the sake of the public good.

¹¹ The law was promulgated by Pedro IV in the Cortes de Monzón in 1363, so it operated in the kingdoms of the Iberian and Balearic Crown of Aragon, together with the prohibition of issuing more annuities without the royal consent (Verdés Pijuan 2015, 265–267).

¹² AHN, *Consejos*, leg. 22.444, n° 10, pieza 1, report from the Real Audiencia de Cataluña, Barcelona, 27-III-1733.

¹³ AHN, *Consejos*, leg. 22.444, n° 10, pieza 1, verdict of the *fiscal* Rico Villarroel, Madrid, 3-VIII-1733.

4. The offensive of the clergy of the Kingdom of Aragon (1734-1738)

Despite the verdict of the *fiscal* of the Consejo de Castilla, the Aragonese ecclesiastical estate continued suffering the effects of the *concordias*. In July 1733, the Cathedral Chapter of Jaca sent two proxies to Madrid to inform the king about the harm caused by the agreements. Two months later, a canon travelled to Saragossa, to participate in a meeting summoned by the Metropolitan Chapter. There, the representatives of all the cathedral chapters of the Kingdom of Aragon resolved to send a canon of Saragossa to the royal court, to persuade King Felipe V and his advisors of the damage caused by the *concordias* on the ecclesiastical finances.¹⁴

In the memorandum they submitted, the clergymen argued that they had lent money to the municipalities because the contracts offered legal security. The deeds of the annuities included the clause that the assets of private *vecinos*, both present and future, were committed to the payment of the pensions. Consequently, their private properties had been given as collateral, so they could be sequestrated in case of non-payment. After the war, municipal councils and noblemen in financial trouble appealed to the Real Audiencia, which offered them advantageous conditions to restructure their debt, so they were not willing to negotiate with their creditors. The *oidores* imposed two- and three-year cycles of payment and redemption that had deleterious effects in the ecclesiastical treasuries. Religious institutions had to change their investments. Real estate was their only alternative; however, administering it required someone to manage it, forcing clergymen to abandon their prayers to manage fields and houses. They denounced that in many cases the annuities had been reduced to 2, 1, and even 0.5%, and said that redemptions never took place, because the funds allocated to cancelling annuities were diverted into other ends, under the auspices of the judges of the *concordias*. Furthermore, private annuities had been included in the agreements as municipal annuities, arguing that they had been used for paying royal taxes. The consequences were that ecclesiastical people had to beg for money because the revenue they got from their respective institutions was not enough to reach the *congrua* (minimum ecclesiastical stipend), so they had to complement it with personal funds.¹⁵

To underpin their arguments, the representatives of the Aragonese ecclesiastical estate submitted several *concordias* together with testimonies of clergymen from all over the kingdom about the pernicious effects of the agreements. The priests had to answer a fourteen-point questionnaire under oath before notaries. The testimonies of two presbyters from Huesca, Francisco Alandín and Agustín Dex y Sada, priests in the cathedral and the Chapter of San Lorenzo respectively, illustrate how pernicious *concordias* were for the finances of the religious institutions. Both clergymen asserted that the Audiencia had approved *concordias* without the consent of the creditors. On the pretext of paying salaries and ordinary expenses, annuities had been

¹⁴ ADJ, *De gestis*, 4, libro 1, meetings of the chapter of 23-I, 4-VII, 25-IX, and 6-XI-1733, and 12-III-1734. The representative of the Aragonese clergy also dissuaded the king and the royal ministers of lowering the maximum interest rate of the censos (Ena Sanjuán 2023; Agüero Díez and Giménez López 2024).

¹⁵ AHPZ, *Real Acuerdo*, 1146/3, ff. 1r-13r.

reduced to 2, 1, and even 0.5%. The priests asserted that town councils that paid their annuities in kind overestimated the price of grain, and that, due to the high cost of transport, ecclesiastical institutions had ceased to collect those annuities, as it was unprofitable. Both clergymen gave some examples of cycles of payment and cancellation of annuities, and of *censos* that were redeemed when the creditors gave up a large part of the principals and arrears. They declared that municipalities diverted income from servicing debt into other expenses, and cited some *concordias* that included private annuities as if they were municipal. The presbyters also reported the signing of addenda without the consent of the creditors and periodical suspensions of debt service.

Dex y Sada and Alandín concluded their testimonies by explaining how *concordias* affected the daily life of their chapters. The number of religious people had fallen dramatically, and so had their revenue. In the cathedral, there were 81 ecclesiastical benefices before the signing of *concordias*. By the time of the testimonies, the Aragonese see had only 46 clergymen holding those benefices. Presbyters and canons celebrated three or four masses every month, whereas before the *concordias*, they used to celebrate twelve and even more services a month. Furthermore, many masses and anniversaries were owed. A similar situation unfolded in San Lorenzo: before the agreements, the *congrua* for every priest was around 200 *libras* a year, but by the early 1730s even the best benefices had only 60 *libras* each. San Lorenzo had also lost priests, and, regarding the rents, the number of anniversaries per day had fallen from three to one or simply none. Many prayers were suspended, and eight years of arrears were owed. Alandín explained that some convents had fallen into debt to attend their necessities, and the priest of San Lorenzo said that his chapter was purchasing real estate, «as they [the clergymen] do not dare to buy annuities, because the annuities are very exposed».¹⁶

The *oidores* of the Real Audiencia de Aragón sent another report to the Consejo de Castilla, defending their intervention in the signing of *concordias*. They said that the involvement of judges in the pacts had happened at least since 1626, when the law that enabled them to intervene had been approved by the Aragonese parliament - hence by the ecclesiastical estate too. Rescheduling agreements were neither new nor illegal, as the clergymen said. The judges of the Aragonese high court defended that they intervened when municipal authorities but also creditors demanded it, trying to eradicate abuses and frauds. They insisted that justice and equity had been the basis on which *concordias* had been signed.¹⁷

Despite the report of the Aragonese Real Audiencia, in 1736 the *fiscal* of the Consejo de Castilla gave a verdict which demolished all the arguments of the *oidores*. He emphasised the lack of protection for the creditors, citing examples of agreements signed by town councils and noble houses, and the harmful consequences of the procedures for the approval of *concordias* in the Audiencia. The *fiscal* said that the judges of the Aragonese court had transformed the agreements into «judicial»

¹⁶ AHN, *Consejos*, leg. 22.444, n° 10; the testimonies of the Aragonese clergymen are separated from pieza 1.

¹⁷ AHN, *Consejos*, leg. 22.444, n° 10, pieza 1, report from the Real Audiencia de Aragón, Saragossa, VII-1734.

contracts, thus transforming their legal nature. He questioned the foundations of the arguments of the *oidores*, saying that the law of 1626 that authorised the mediation in the negotiation of *concordias* did not establish that the judges had to intervene, but that they could be required to mediate only by mutual consent of creditors and debtors. He gave some examples of seventeenth-century *concordias* and argued that those agreements were like the ones signed in Catalonia and Valencia, where the pacts were negotiated between both parties without the mediation of the *oidores*. He concluded that the *concordias* approved by the Aragonese judges were «extremely harmful, unjust, and contrary to all legal foundations», and proposed the Consejo de Castilla to abrogate all the pacts, as they suffered «from nullity due to the lack of legitimate authority in those who authorise and execute them».¹⁸

Before the councillors gave their advice to the monarch, the *fiscal* of the Real Audiencia de Aragón, Pedro Benítez Cantos, had one last shot. In a report he explained that municipal creditors had foreclosed the private assets of *vecinos*, following an ancient custom. That practice, however, was allowed neither by the Aragonese law nor by the contracts of the annuities. He recognised, however, that the deeds had a clause of general obligation by which present and future *vecinos* committed to pay the debt. The *fiscal* of the Audiencia asserted that everybody in cities and towns was afraid that the municipal creditors sequestered their assets. The *concordias*, he said, were the only protection of individual *vecinos* against harassment from municipal debtholders. He insisted that foreclosures were illegal, especially after the promulgation of the Decretos de Nueva Planta that abolished the Aragonese laws and replaced most of them with Castilian ones. The *fiscal* finished his report begging the monarch to end the practice of foreclosing the private assets of *vecinos* because of the non-payment of municipal annuities' pensions.¹⁹ Nonetheless, in December 1738, Felipe V took the advice of the *fiscal* and the members of the Consejo de Castilla, and promulgated a Real decreto by which he forbade the signing of *concordias* in the Real Audiencia and derogated all the pacts that had not been approved by the supreme council.²⁰ From that moment, no *oidor* of the Aragonese court mediated between the town councillors and the creditors, as they used to do, unless both parties mutually consented.

The decision of Felipe V seemed firm, so the *fiscal* of the Audiencia turned to the other side of municipal debt, namely, municipal taxation. Replicating a debate that had taken place in the Real Audiencia of Catalonia, the *fiscal* of the Aragonese high court, supported by a few *oidores*, started an inquiry into the harmful consequences of municipal taxation and the capacity of town councils to levy taxes -which was a form of questioning the legitimacy of municipal debt. After the Decretos de Nueva Planta, no municipality was entitled to create new taxes or annuities without the authorisation of the monarch, but it was not so clear if explicit royal permission was necessary before the early eighteenth century. By emphasising the onerous burden that

¹⁸ AHN, *Consejos*, leg. 22.444, n° 10, pieza 1, verdict of the *fiscal* of the Consejo de Castilla, Madrid, 7-VII-1736.

¹⁹ AHN, *Consejos*, leg. 22.444, n° 10, pieza 1, report from the *fiscal* of the Real Audiencia de Aragón, Saragossa, 16-VI-1738.

²⁰ The law can be found in the *Novísima Recopilación de las Leyes de España*, in libro X, título XV, ley X.

municipal taxation represented, as well as the lack of legitimacy and legality of the deeds of the annuities, the *fiscal* tried to persuade the king that municipal debt should be declared null and void.²¹

5. The second batch of reports (1742)

The decree of annulment had consequences in the other territories of the Spanish Crown of Aragon. Two months before prohibiting the *oidores* of the Aragonese Audiencia to intervene in the *concordias*, King Felipe V had granted the abovementioned Majorcan nobleman Joan de Sales i Berga a debt moratorium for six months and the possibility of negotiating an agreement with his creditors to reschedule his debts with the mediation of the *regente* of the Real Audiencia de Mallorca. The Sales i Berga were one of the most prominent families on the island. Some of its members were aldermen and canons, and were related to other notable families of Majorca. Joan de Sales had received a *fideicomiso* (entailment) many years ago, after many lawsuits.²² The *fideicomiso* was intended to prevent the disaggregation of the patrimony of the noble families.²³ The decision of maintaining the *fideicomiso* should be interpreted as a reward of the king for the loyalty of the Majorcan noble families during the war. Many aristocrats argued that they had fallen into debt to support the cause of the Bourbon pretender, so Felipe V maintained an institution through which the noblemen could manage their patrimony more freely and pay their debts more easily (Morey Tous 2018). Alderman Joan de Sales i Berga was exactly the kind of nobleman who had been loyal to the Bourbon candidate during the succession conflict. By 1738, he was experiencing serious financial trouble as he could not pay his creditors but, instead of asking them for a *concordia*, he resorted to the king, who gave him the abovementioned moratorium and the mediation of the *regente* of the Audiencia.

One of his main creditors was the Cathedral Chapter of Palma. On the 30th of September 1738, the chapter vicar summoned the priests to an extraordinary council. When the dean and canons were seated in the chapterhouse, the vicar instructed the subarchivist of the chapter Andreu Vallés to enter the room and present the case of town councillor Joan de Sales. The chapter decided to initiate legal actions against the alderman and join forces with other creditors, such as the Brotherhood of Saint Peter and Saint Bernard mentioned at the beginning of this paper. There were negotiations with the mediation of the *regente*, but the parties reached no consensus. Two canons of the cathedral, Gabriel and Nicolau, were brothers of the alderman and interceded with the chapter on his behalf. They explained that their brother had tried to sell and lease the entailed property, but all attempts had been in vain. The Sales

²¹ While this article examines the renegotiation of debt, I explore municipal taxation, the other dimension of this debate, in a chapter of the forthcoming collective book *Taxation and Public Finance in the Spanish Empire: 1550-1750*, edited by Ramón Lanza García, José Ignacio Andrés Ucendo, and Xabier Lamikiz.

²² Arxiu del Regne de Mallorca (ARM), *Real Audiencia*, leg. XX, doc. 1820; ARM, *Clero*, 1469/2.

²³ The institution was similar to the Castilian *mayorazgo*, but more flexible. Felipe V decided to maintain the *fideicomiso* at the request of an alderman of Palma in 1736; in ARM, *Real Audiencia*, leg. CXI, doc. 27.

brothers argued that a trial to determine seniority of the creditors would be expensive and harmful for the chapter and the other debtholders, so they suggested their colleagues to suspend legal actions against their brother. They also offered to pay from their personal revenues what their brother Joan could not, to maintain the religious services endowed with the entailed property, but the chapter declined the offer in order to avoid legal and canonical problems.²⁴

The issue was far more important than just the specific case of the *fideicomiso* of Sales i Berga. The minutes of the Brotherhood of Saint Peter and Saint Bernard demonstrate that the debtholders were deeply concerned about the possibility of the intervention of the Audiencia in debt restructuring, as it could set a fatal precedent: the presbyters of the brotherhood thought that «if this *concordia* were to be put into execution, it would result in very serious consequences». They accused alderman Joan de Sales of having obtained the grace from the king «subreptitiously and obreptitiously, not only in Mallorca but also in Madrid». They decided to oppose the procedure both in Palma and the royal court, joining the rest of the creditors and a relative of the alderman to make a common cause.²⁵ It is likely that, similar to the first batch of reports requested by the Consejo de Castilla in 1732, the second round of reports was provoked by the complaints of the ecclesiastical estate, this time of Majorca, against the mediation of royal officers in the negotiation of debt restructuring agreements. In August 1742, the Consejo de Castilla accepted the proposal of its *fiscal* Pedro Colón de Larreátegui to ask the Reales Audiencias of the Crown of Aragon for a new batch of reports on the signing of *concordias*.²⁶

The Real Audiencia de Cataluña resubmitted the report from 1733, together with the attached paper. Only at the end of their response did the *oidores* stress that *concordias* were no harmful, but «oriented towards public good». The judges said that deals had achieved the greatest benefit both of creditors and municipalities, and pointed out that they had supervised the enforcement of the agreements, so «creditors enjoy what has been stipulated with no detriment of their rights and pacts». ²⁷ Like their Catalan counterparts, the *oidores* of the Valencian Real Audiencia sent the two reports they had submitted ten years before. At the end of their account, the judges differentiated themselves from the Aragonese *oidores*. In Valencia, no *concordia* had been approved by a judge without the consent of creditors. Actually, their intervention had been so minimal that they could assert that they knew about *concordias* «the same as the Consejo, since [the Real Audiencia] has no inspection of the issue unless they had to inform the Consejo about the municipalities' requests of taxes». ²⁸ As for the Real Audiencia de Mallorca, the *oidores* did not send the same account as one decade

²⁴ ACM, *Actas del Cabildo de la Catedral (ACA)*, 1650, chapter meetings of 20-X and 10, 15, and 18-XI-1738.

²⁵ ACM, *Actas de la Cofradía de San Pedro y San Bernardo*, SPSB00012, council meeting of 27-IX-1738.

²⁶ AHN, *Consejos*, leg. 22.444, n° 10, pieza 3 («Expediente promovido a instancia del sor. Fiscal sobre el modo con que se ejecutan las Concordias en la Corona de Aragon»), petition of the *fiscal* and order of the Consejo de Castilla, Madrid, 1-VIII-1742.

²⁷ AHN, *Consejos*, leg. 22.444, n° 10, pieza 3 report from the Real Audiencia de Cataluña, Barcelona, 13-X-1742.

²⁸ AHN, *Consejos*, leg. 22.444, n° 10, pieza 3 report from the Real Audiencia de Valencia, Valencia, 12-XI-1742.

before, but a very short report in which they explained the case of Sales i Berga, whose request of a *concordia* had been eventually rejected by the Consejo de Castilla «on the grounds that there was neither precedent nor practice of it in this kingdom». The Audiencia emphasised that «in this Kingdom of Mallorca, the *concordias* customary in the Kingdom of Aragon are not practiced by either the municipalities or individuals».²⁹

Judging by the minutes of the brotherhood of presbyters, the judges of the Majorcan Audiencia did not force the creditors to accept the terms of an agreement. The entailed property of Sales i Berga was managed by an administrator, who also had to service debt. The conflict between the alderman and his debtholders persisted at least until 1750, when the presbyters joined forces with other creditors and the heir of the relative who had appealed the decision of the Majorcan Audiencia regarding the administration of the entailed property. Crucially, the creditors eventually prevented the judges from imposing a *concordia* upon them.³⁰

The episode of Sales i Berga and his creditors, set against the background of the transformation of the legal framework for municipal debt restructuring, is indicative of the nature of the political regime of the Spanish monarchy until the mid-eighteenth century. The intervention of the king and the royal officers in the signing and approval of debt restructuring agreements only occurred at the sole request of the creditors. The allegedly absolutist, unifying character of King Felipe V, broadly debated by historians, contrasts with the prudent approach of the monarch regarding the intervention of his own officers in resolving debt solvency problems. Practical outcomes, rather than grand ideological claims, inspired the decisions and actions of the monarch and his officers.

6. Coda: the beginning of the end of the *concordias*

In the second half of the eighteenth century, the royal officers who started supervising and managing the municipal treasuries were extremely critical of the *concordias* and the *oidores* of the Audiencia. In a letter addressed to King Carlos III, the intendant of Aragon argued that municipal funds were no longer squandered with the new administration and that, within a few years, the intendency officers had managed to redeem more municipal annuities than the system of the *concordias* had done throughout the preceding century. The intendant described the *concordias* as «useless» and recalled Felipe V's decree that prohibited the mediation of the Audiencia.³¹ The reply of the *oidores* of the Aragonese high court was caustic:

The Audiencia would gladly condone the boastfulness with which they [the officers of the intendency] assume [...] that the cancellation of annuities made since the management of the municipal treasuries was entrusted to them has

²⁹ AHN, *Consejos*, leg. 22.444, n° 10, pieza 3 report from the Real Audiencia de Mallorca, Palma, 11-IX-1742.

³⁰ ACM, *Actas de la Cofradía de San Pedro y San Bernardo*, SPSB00013, council meeting of 5-I-1750.

³¹ AHN, *Consejos*, leg. 22.678, pieza 6, from intendant vizconde de Valloria to Carlos III, Saragossa, 24-X-1769.

exceeded those made during the century in which the *concordias* overseen by the *oidores* flourished, provided that, in the calculation made for this purpose, the origin of this benefit is attributed to the reduction of pensions and the provisions of the Consejo de Castilla previously cited. Nevertheless, if this increase is considered a result of their superior administration, the Audiencia may counter that, although only one of its current members witnessed that period, at no time, before or after, could the judges be accused of the slightest collusion, overreach of their powers, or any other fault.³²

The long procedure that began in 1732 with the complaints of the clergy of Northern Aragon represented, in fact, the swansong of the *concordia* system that emerged in the late medieval period and allowed local actors to address the insolvency, potential bankruptcy of municipal treasuries, and subsequent foreclosing. The practice of *concordar* -that is, bargaining and reaching an agreement- was employed for centuries whenever a municipal council faced financial distress. *Concordias* were contracts that neither contradicted the laws of the kingdoms nor fully aligned with them; as the *fiscal* of the Consejo de Castilla put it, they were non-judicial norms. The parties involved, in this case creditors and debtors, had the freedom to design their agreements, incorporating whatever covenants they deemed appropriate. From the late medieval period, the intervention of non-municipal actors such as monarchs, royal officers, or judges in debt-restructuring agreements depended on the will of the parties. While the principal cities of the Crown of Aragon sought royal confirmation for their *concordias* -as was the case in Palma de Mallorca- agreements in smaller towns and villages were typically concluded between municipal councils and their creditors without external interference.

The last half of the seventeenth century and the early eighteenth century, however, marked a shift. Creditors were no longer merchants but clergymen and women, and their financial strategies changed accordingly. Ecclesiastical finances were heavily dependent on town council annuities, making municipal insolvency and default a critical concern. As town councils struggled to service their debts, *concordias* once again became essential. Yet this time was different. The *oidores* of the Reales Audiencias in the mainland Crown of Aragon became more actively involved than before. Overindebtedness was particularly severe in the municipalities of the Kingdom of Aragon, prompting the judges of its Real Audiencia to intervene more actively, even compelling municipal creditors to accept the terms of a *concordia*. The repeated complaints of the Aragonese clergy pressured the *fiscal* of the Consejo de Castilla and the supreme councillors -ultimately influencing the king- to change their stance. Initially, *concordias* were considered «useful, convenient, and even necessary» for the preservation of the realm. However, following the efforts of the Aragonese ecclesiastical estate, they came to be seen as «extremely harmful, unjust, and contrary to all legal foundations».

This jurisdictional conflict -spanning from town councils and municipal assemblies of creditors to the Reales Audiencias and the Consejo de Castilla- frequently

³² AHN, *Consejos*, leg. 22.678, pieza 6, from the Real Audiencia de Aragon to Carlos III, Saragossa, 30-VII-1770.

invoked notions of public good, private interest, justice, and equity. At the outset, royal ministers prioritised the public good, which they understood as preventing the depopulation and ruin of towns, over the private interests of municipal creditors. However, the considerable influence of the Aragonese lobby at the royal court shifted the terms of the debate. From 1736 onwards, royal ministers no longer saw the intervention of the *oidores* in the negotiation and signing of *concordias* as merely detrimental to creditors; they also deemed it contrary to the very nature of the agreements, which were, by definition, non-judicial. Thus, the allegedly absolutist and tyrannical King Felipe V curtailed the power of his own officers, prohibiting them from interfering in the negotiation and signing of *concordias*, reaffirming them as agreements between two parties.

Yet, Felipe V's decision did not resolve the broader debates surrounding the legitimacy of annuities and the taxes that financed them, nor the burdens these financial mechanisms placed on towns and villages. These disputes persisted until the 1750s, when the *concordia* regime began its decline. The global wars of the mid-eighteenth century forced the Spanish monarchs to deploy extraordinary tax measures, such as the *valimiento de arbitrios*. This fiscal formula, by which more than half of those municipal taxes were transferred to the royal treasury, triggered new conflicts in the local arenas regarding the management of the municipal treasuries. From the early 1740s, many agreements signed in the first half of the eighteenth century expired, while the conflicts that erupted in almost every city, town, and village of the Spanish Crown of Aragon -and beyond- made consensus to sign new *concordias* impossible. The collapse of the agreements marked not only the end of the Aragonese financial model that had emerged in the Middle Ages. It also represented the beginning of the end of a political world in which individuals and corporations could autonomously manage their affairs and resolve disputes. A new approach to managing insolvency emerged, yet local actors had diminishing control over the handling of municipal debt.

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