Describing Spain’s consular service as ‘an institution in its own right’, can seem a somewhat presumptuous title. Yet, the justification for such temerity is simply provided by history: For centuries, Spain has contributed to the development of consular law and practice in ways that have not always been given due credit and which we shall attempt to examine in this chapter, which analyses the development and influence of the Spanish Consular Service since the Visigotic period until today. From the early Middle Ages with the Euricus Codex, passing by the widening of the consular commercial and maritime functions and the Catalonia’s expansion across the Mediterranean, to the Book of the See Consulate in the 15th century, and the new situation created under the Catholic Sovereigns and the Habsburgs, Spain has played a significant role in the building-up of the consular institution and has had a decisive influence in the codification of consular law. In modern times, the regulatory measures and frenetic activity in treaty-making during the XIX century has to be added. It examines also the contemporary development of the Consular institution, addressing, in particular, its transformation in the face of events such as the ‘diplomatization’ of the consular functions, the transition to democracy or the accession to the European Communities in the 1980s. The chapter ends with a reflection on the need to recover all the traditional functions of the Spanish consular institution, such as the commercial one (victim of the alleged ‘diplomatization’) as a means to face the contemporary challenges of international society.

The Telonarii Hosted by the Visigoths

Many authors have stressed the analogy between Consuls and magistracies for foreigners, such as the Greek proxenei and the Roman praetor peregrinus. However, the latter lacked the continuity Medieval consuls had. There is thus a need to seek closer forerunners, which are to be found at the beginning of Middle Ages, just in the laws of
the Visigoths, who established their initial kingdom between southern France and northern Spain, with its capital in Toulouse.

The oldest written law ruling the Consular office is a lex from Euric’s oldest Codex,1 or perhaps from Liuvigild’s subsequent Codex Revisus, (from around 568), contained in Recceswinth’s Liber ludicio-rum (654) entitled ‘De Transmarinis Negotiatoribus’, which governs the existence of non-Visigothic telonarii who were allowed to live under ‘their own’2 laws, since the foreigners’ judge need not be ‘de sedibus nostris’, or of our domains. In his study ‘Los transmarini negotiatores en la legislación visigótica’ (The transmarini negotiators in Visigothic legislation),3 Alvaro D’Ors pointed out that this period was one of vigorous sea trade, inherited from the former Roman Empire, with the North of Africa and along the extensive commercial routes that had already been opened with the Eastern Mediterranean and Atlantic. The traders were in the main Syrians and Jews. At that time, the telonarii combined the jurisdictional nature of the consul with that of the gatherer of the teloneum or tax on the trade of goods. They were the first overseas consuls in the strict sense of the words. Unfortunately, we are not in possession of any document that might allow us to ascertain who carried out this fascinating role. In any case, this precept laid the foundations for their subsequent existence, since there is continuity between it and later periods, given the existence of the Lex Visigothorum in Septimania and Catalonia in the Early Middle Ages and of its translation, the Fuero Juzgo, in Castile in the High Middle Ages.

Catalonia’s Expansion across the Mediterranean

For Spain, the recovery in international trade after the end of the first millennium was not due to the Crusades but was instead mainly a consequence of the consolidation of the so-called reconquista (‘reconquest’) of territory from the Arab invaders with the creation of new cities, which attracted traders back to the Iberian Peninsula. This view

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1 "The Codex Eurianus must have been promulgated between 466 and 481, perhaps around 475." Valdeavellano, Historia de España (Madrid, 1963), Part One, p. 274.