

Trials as Economic Opportunities? Foreign Merchants and Law Courts in the 17th century Western Mediterranean

Preliminary and incomplete

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During the early modern period, European law courts often were criticized by litigants for their complexity and extreme fragmentation. The overlapping and competition of different – feudal, sovereign, ecclesiastical, urban, guild – norms and jurisdictions could lead to several appeals and long delays of proceedings in different matters of law. In civil, commercial and maritime matters, debt trials, inheritance disputes, litigation about freight, letters of exchange or maritime loans and insurance could sometimes last several years, or even decades. The fragmentation of the early modern legal system is even more complex if one includes the legal and judicial world of merchants and traders whose activities regularly crossed political, religious and normative boundaries. In a short tract published in 1651 and addressed to the

¹ To the Economic History Workshop at Yale: this is the first draft of a work-in-progress which still needs a lot of work. The goal of this exploratory paper is to present several possible lines of inquiry for further research between legal history and economic history. I thank you in advance for your feedbacks, remarks, critics, insights.

Parliament of the Commonwealth, the London merchant Henry Robinson (1604-1664), who had served as a factor in the Low Countries and Tuscany in his early years, did not hesitate to compare the plurality and diversity of tribunals to the disorder proliferated by the Tower of Babel:

May You then please to let it be enquired into, whether the Multiplicity of Courts of Justice do not cause a more mischievous confusion in the World, than the Babilonian of Languages? That of Babel doth only estrange Nations to one another; but this variety of Courts of Justice in any Land or Nation, perplexes and confounds the People thereof among themselves; the proceedings in them are so various, as that it is above any one mans ability and strength to be experienced in more than one of them: so many severall Courts, so many severall hard Mysteries or Trades, above one whereof, no man though of the ablest parts, can be well skill'd in or practiced. And from hence proceeds it in part, that Lawsuits become both more lasting and chargeable.²

Arguing for far-reaching reform of the English legal system, Robinson was promoting, like most of the English merchant-writers of the early modern period, the implementation of a “speedy, cheap and equall” justice in England; in other words, a justice easily accessible to all litigants, including strangers (Robinson was also a defender of toleration, close to Milton).³

The model of that justice was based on “summary procedure” (*de plano, sine strepitu et figura iudicii*, i.e. “simply and plainly, without clamor and the normal form of procedures”) which had medieval and canon law origins.⁴ Positively connoted until

² Robinson, 1651, the Epistle Dedicatory.

³ Brenner, 1993; Zaller, 2007; Burset, 2016.

⁴ Lattes, 1884; Hespanha, 1983; Nehlsen-von Stryk, 1985; Nörr, 1987; Ascheri, 1989: 23-54 ; Cerutti, 2003. About the canon law origins: Pennington, 1993: 189; Chiffolleau, 2009: 340.

the middle of the eighteenth century, summary procedure was used in most of the merchant courts of the early modern period and addressed in particular to merchants, strangers, poor people and women, those who were weak or immobile, without any local relational resources.⁵ Theoretically, this procedure implied the absence of professional lawyers and procurators, a quick verdict and the irrevocability of sentences.⁶ Contrary to “ordinary procedure” founded on local statutes and learned law, judges examining disputes according to the summary procedure based their decisions on equity and natural law. In 1622 the English merchant Gerard Malynes, one of the most famous supporters of the autonomy and specificity of the so-called *lex mercatoria*, or law-merchant, wrote:

[Merchant courts] are to proceed summarily in all their actions, to avoid interruption of trafficke and commerce ; and they are to respect plaine and sincere dealings amongst Merchants, with a consideration to construe all things to be done *bona fide*, so that trust may be preserved amongst them; (...) and the trueth is hunted after, and all exceptions proceeding of lustice and Equitie to be considered of.⁷

Praise of summary procedure is a recurring theme of the early modern printed manuals for merchants, from Italy to England. Associated with commercial courts, this procedure was adopted by different civil magistracies as well, which promised to judge quickly and without excessive expenses.⁸ Ordinary procedure and summary procedure thus frequently could be activated within the same court. Sometimes there existed a clearer correlation between the procedure and the law court: in Marseilles, for example, the royal court of Admiralty was known for its long trials and formalities,

⁵ Cerutti, 2003.

⁶ Cerutti, 2003.

⁷ Malynes, 1622: 453. About Malynes and the “myth” of *lex mercatoria*, see: Cordes, 2003; Kadens, 2012.

⁸ Fusaro, 2014.

while the tribunal of commerce could judge “*sommairement et sans frais*” (“summarily and without any charges”) and was supposed to be more adapted to merchants.⁹ The adoption of the summary procedure by common law courts also was one of the stakes of the numerous English pamphlets published in the 1620s (including Malynes’ *Lex mercatoria*), defending the idea of an autonomous law merchant which previously had been provided by the court of Admiralty since the fourteenth century¹⁰.

Procedures and jurisdictions available to merchants thus are presented frequently as a sort of judicial market, often coined by scholars as “legal pluralism.” In order to keep in mind the hierarchy of norms and jurisdictions of the early modern period, I would rather speak of “jurisdictional pluralism” at different scales that offered a broad range of appeals to litigants, as well as different types of procedures, often associated with the specific “styles” (*stylus curiae*) of each magistracy. Styles referred indeed to the proper history (uses and customs) and way of proceeding (*modo*) of each particular court of justice. From this perspective, litigants – thought as “consumers of justice” – tried to find the most useful jurisdictions to meet their expectations.¹¹

Such practices are usually called “forum shopping” (to be more precise, we should also add the idea of “procedural shopping”). This kind of legal consumer behavior gave rise to antagonistic positions among scholars. On the one hand, forum shopping is considered as an analytical and heuristical tool to study the agency of merchants in open and pluralistic jurisdictional or normative spaces (the forum shopping would be, from this point of view, the behavioral counterpart of jurisdictional

⁹ Émérigon, 1783: II, 328.

¹⁰ Cordes, 2003; Gialdroni, 2008, 2009.

¹¹ Smail, 2003.

or legal pluralism).¹² On the other hand, forum shopping is perceived negatively as an abuse of jurisdictions, which favors the malicious and strategic dilatoriness of trials, to the detriment of effective justice and trading relationships.¹³ During the early modern period, this frenzied shopping of jurisdictions was called “chicanery” (or “*calunnia*” in Latin), in order to characterize this way of exhausting the opposing party by multiplying appeals and recourses. Chicanery generally functioned as an excellent indicator of the entanglement of jurisdictional competencies and the many conflicts of laws and jurisdictions of the early modern period.

Chicanery represented the dark side of jurisdictional pluralism and was considered as a vice.¹⁴ It created an uncertain legal environment that could be hostile to foreign merchants without local relational, informational and financial resources. Chicanery also appeared in lawsuits or petitions as an *accusation* against local quibbler or caviller plaintiffs who sought to artificially extend the length of trials. This dilatoriness of lawsuits calls into question the variety of commercial and maritime laws and jurisdictions from one place to another, and consequently the very efficiency of summary proceedings. In brief, why and how could merchant disputes last so long? This paper focuses on the access of foreign merchants to justice, understood as strangers, non-resident plaintiffs and subjects of separate political entities. This question of “forum and procedural shopping” is still a legal and political problem today, in particular in the fields of international arbitration and private international law, but also libel (the so-called “libel tourism”) or divorce.¹⁵ In other words, why did some merchants take the risk of going to foreign courts and jurisdictions, that could be potentially expensive and hostile? How could they orient

¹² Merry, 1988, 2013 ; Benton, 2002 ; Sartori and Shahr, 2012.

¹³ For nuanced positions: *Forum shopping reconsidered*, 1990; Petsche, 2011.

¹⁴ *Ruine de la Chicane*, 1649; Bonzèle, 1685: 477-88; *Law Quibble*, 1724.

¹⁵ O'Hara and Ribstein, 2009.

themselves in the plural and complex legal environment of the early modern period? What consequences did their lawsuits have on their business activities? And did the merchant courts view and judge these foreign litigants? The use of distant courts could take, as we shall see, multiple forms that depended both on the financial resources of litigants and on their economic expectations.

In this paper I am interested in the legal consciousness of merchants, understood by legal anthropologists and sociologists Patricia Ewick and Sally Merry as “the ways people understand and use law (...) expressed by the act of going to court as well as by talk about rights and entitlements.”¹⁶ In so doing, I hope to shed light on the legal knowledge of merchants and, more broadly, on the interactions between the legal and the mercantile worlds, about which we still know quite little.¹⁷ At the same time, I am interested in the response of the institutions to the plurality of requests, trajectories and socio-economical profiles of litigants. I try to understand the legal and procedural consequences of the mobilization of institutions by “foreigners.” I argue that lawsuits, and even long trials, were not necessarily considered by merchants as a waste of time. Trials could be an opportunity to establish business relationships and open new markets in other countries and cities; it was an opportunity for merchants to search for protectors, acquire legal skills and potentially rewarding information about the place in which the trial took place (Section I and IV). Sometimes also, the high degree of conflict between litigants could explain disputes and legal recourses that cannot be reduced only to the satisfaction of a favorable verdict (Section II, III and IV).

In this essay, my examples are essentially drawn from the Western Mediterranean region during the 17th century (mostly from the port cities of Marseilles

¹⁶ Merry, 1990; Pelisse, 2005.

¹⁷ Angiolini and Roche, 1995.

in the Kingdom of France and Livorno in the Grand-duchy of Tuscany). This region was indeed characterized by a strong entanglement of competing jurisdictions and sovereignties. Marseilles and Livorno were also important commercial and maritime hubs and crossroads of the 17th century, with the reputation of being two important Mediterranean “free cities.”¹⁸ Their policy towards strangers was quite different though: Marseilles defended the interests of local merchants and “*négociants*”, through its powerful Chamber of Commerce, while the new port city of Livorno was a welcoming outpost for foreigners and religious minorities.¹⁹ This region is an interesting observatory of institutional and jurisdictional changes for three main reasons: first of all, because the abundance of legal sources and notarial records offers important documentation that helps to better understand the multiple forms of access to courts during the early modern period; secondly, because the fragmentation of competing sovereignties, sometimes associated with strong political or religious antagonisms, creates a complex legal environment which questions the conditions for the possibility of distant legal recourses and mixed litigation (i.e. disputes between litigants of different origins); thirdly, the Mediterranean region was a very risky legal environment during the 17th century: no political or imperial entity was really in charge and the mosaic of overlapping of jurisdictions was complex during a time of uncertainty and economical and political transitions.²⁰

In the first section of this paper, I try to show how distant trials could be considered by plaintiffs as potential profitable journeys. In the second part, I show how lawsuits could circulate from one tribunal to another, from one jurisdiction to another, by focusing both on jurisdictional competencies of tribunals and the enforcement of commercial and maritime disputes. In the third part, I deal with useful

¹⁸ Roberts, 1638: ch. III, 25.

¹⁹ Trivellato, 2009 ; Tazzara, 2017.

²⁰ Revel, 1990; Greene, 2002.

types of sources, namely merchants' supplications and petitions which provide precious information on procedures and commercial and maritime litigation. Finally, in the fourth part of this essay, I deal with the presence of foreign poor and "miserable" plaintiffs before the courts, and the legal and procedural devices that allow the institutions to treat their cases.

I. Wealthy Plaintiffs: Request of Protection and Trading Transplants

In 1633, Henri de Séguiran, French general lieutenant of the Levantine seas, was commissioned by Cardinal Richelieu to inspect the fortifications of the coast of Provence. His report gives us a very detailed description of the Mediterranean context of his time, still marked by the violent plague of 1630-1631 and the endemic activities of Muslim and Christian corsairs. In this risky sea, the merchants of Provence (from Marseille essentially) traded with Ottoman North Africa (Tunis and Algiers) and the Levant (Alexandria, Aleppo and Istanbul). Operated to the detriment of Venetian interests, this trade was more and more seriously competed by the English, the Dutch and the Armenian merchants. Séguiran recalled the arrival of the latter in the Western Mediterranean. At the end of the 16th century, many Armenians from Persia were established in Aleppo, where they were selling silk to French traders working for companies from Marseilles, Lyons and Tours.²¹ However, these French agents from Marseilles contracted important debts in the Aleppo market and absconded to Provence without refunding them. Some Armenians from New Julfa, a suburb of Isfahan, decided to go to Marseilles to complain. They arrived in the port city of Provence in the early 1610s. Confronting the hostility of some local traders,

²¹ Séguiran, 1633, Aslanian, 2011: 75; Raveux, 2012.

they claimed the payment of their debts before the courts of the King, namely the two sovereign courts of the Admiralty of Marseilles and the Parliament of Aix.²²

Several reasons explain the use of these two courts, which judged according to the ordinary procedure in the presence of prosecutors and lawyers: first, the merchant tribunal, the consular jurisdiction of Marseilles, was then in the hands of prominent local families specialized in the Levant trade.²³ These families played a leading political role in the French port city and the Armenians could hardly claim their goods and debts in this biased jurisdiction ruled by local merchants. Second, foreign traders like Armenians sought the protection of central political powers against this high risk of collusion of local judges with defendants. The appeal or recourse of strangers to sovereign courts was based on a principle inherited from Roman law, according to which the litigant in a situation of social and relational fragility (the widow, the orphan, but also the poor or the stranger) could directly appear before the court of the prince to escape the “influence of powerful individual.”²⁴ Note that in the Ottoman Empire, mixed disputes (between French and Ottoman subjects) exceeding 4,000 aspres (a hundred piasters) were forced before the imperial Divan of Istanbul, that is the supreme authority.

The long journey to cross the Mediterranean and the large sums at stake probably explain why these Armenian merchants were not afraid of a lengthy trial. They had to be prepared for long-lasting proceedings while incurring substantial living expenses and did not necessarily seek a speedy resolution of their cases. Of course, it is difficult to scrutinize the deep intentionality of litigants. Nevertheless, it must be considered that trials did not have as their sole objective dispute resolution

²² Séguiran, 1633: 306-307.

²³ About French admiralty and consular courts in France: Bochaca, 2007.

²⁴ *Codex Iustinianus*, III, 14, lex “Quando Imperator”: *Quod si pupilli vel viduae alique fortunae iniuria miserabiles iudicium nostrae serenitatis oraverint, praesertim cum alicuius potentiam perhorrescunt, cogantur eorum adversarii examini nostro sui copiam facere.*

in itself.²⁵ Trials sometimes were meant to last; they served to initiate social and economic relations in the spot where the trials took place. In other words, legal disputes could ripen into social and economic interactions.²⁶ Contingency also could play a crucial role: during their trial in Aix, the French King came to the region; Armenian merchants went to pay homage to him and bend the knee in order to ask privileges to negotiate silk in France.²⁷

During trials, foreign litigants could look for powerful protectors. In a stratified society, such as the early modern one, access to justice indeed required the intervention of protectors and local middlemen that could lead to it. This search for protection did not only concern the outcome of the commercial and civil dispute before the court, but also trading opportunities. Throughout the 17th century, foreign merchants in Marseilles sought the protection of the King and his officers – such as Séguiran – in order to protect themselves against the hostility of local merchants. Séguiran also noted in his description that if the Armenians certainly competed with some local merchants, they were globally useful to the whole kingdom: “As the public is preferable to the particular (...) the whole State greatly benefits from the coming of Armenians in France and the good trad they are doing with their silk.”²⁸.

Nearly fifty years later, it is also in these terms that the intendant of Provence, the Secretary of State Colbert and the Parliament of Aix were favorable to the establishment of Sephardim Jewish merchants in the port of Marseilles, which was declared a “free port” in 1669. Thwarted by jealous local merchants represented by the Chamber of Commerce of Marseilles, the Jews Joseph Villareal and Abraham

²⁵ Abel, 1973; Cerutti, 2002.

²⁶ Abel, 1973: 289.

²⁷ Séguiran, 1633, 307 [« ayant appris que Sa Majesté (...) était en la ville d'Avignon (...) ils allèrent se jeter à ses pieds et obtinrent permission de négocier avec toute sorte de liberté dans la France »].

²⁸ Séguiran, 1633, ; See: Archives de la Chambre de Commerce de Marseille, HH1 “Coppie de commission de Mr l'Admiral en faveur des Arméniens”, quoted in Macler, 1922, III, p. 21.

Attias finally were expelled from the Provençal port in 1682.²⁹ Interestingly, however, Attias was allowed to return to Aix for three months to recover some debts. The merchants of Marseilles accused him of taking advantage of his return to resume his commercial activities. Almost two years later, Villareal sent a request to the King to return to Marseilles in order to collect outstanding credit from debtors in Marseilles, which amount to more than 50,000 pounds. The aim of his trial was not only to recover his debts, but to revive his lucrative trading activities with Provence, especially in the Senna trade.³⁰ Villareal justified his return by explaining that his trade also would enrich considerably the customs of the French King. In these cases, we can see how the lawsuits involving foreign merchants could sometimes lead to what we could call “trading transplants.” The time of litigation served both to assess commercial opportunities and to test the institutional and political environment of the marketplace. In other words, trials can become, for merchants in search of new markets, a good opportunity for a long and exploratory stay in the city, or even the area of the litigation.

Merchants’ time not only was dedicated to settling disputes, but other various calculated activities, as well, such as collecting debts, staying on site during the trial in an effort to establish acquaintances, procuring preliminary guarantees and, very often, soliciting the protection of the sovereign himself (at least during the time of the trial). In 1624, two Armenian merchants, recently arrived in the Tuscan port of Livorno, explained in a supplication that, if they were satisfied by Tuscan laws, “everywhere in the world, they could laud the good justice administrated in the States” of the Grand Duke and his ministers.³¹ Far from asking for a shortening of the

²⁹ Crémieux, 1908.

³⁰ Bibliothèque Nationale de France, Ms Français, 18979, f° 146-48 ; Crémieux, 1907: 142.

³¹ Archivio di Stato di Livorno [ASL], *Capitano poi Governatore ed Auditore* [CGA], “Atti Civili”, vol. 75, case 250: “che cosi in qualunque parte del mondo potranno lodarsi della buona iustitia amministratali

proceedings, they asked for an additional three years in order to be able to gather sufficient proofs and certificates (in Florence, Venice and the Ottoman Empire) to pursue their adversaries in court.³² Obviously, these three years not only were dedicated to gathering evidence for a favorable resolution of their dispute, but also to develop in Tuscany their silk and precious stones trade.³³ Of course, debts contracted by Armenian or Jewish traders implied prior contacts. By definition, the trial is never a “first encounter.” Long-lasting litigation offered not only an opportunity to enter a market, but also to learn about the legal, economic and political customs of a place. Not always was a risky investment indexed solely on the reliability and credit of the debtor, but potentially also on the business opportunities in case of fraud or deception. Certainly, I do not pretend to generalize this dimension to all credit relationships pertaining to long-distance trade or cross-cultural trade. Here, for example, Armenian and Jewish traders belonged to diasporic and stateless communities.

However, diplomatic relations between two hostile political entities (sometimes geographically close but with different normative systems) could arise from a trial for large debts, shipwrecks or captures at sea – the kinds of disputes generally settled in the highest courts, or even by the sovereign himself. In 1624, Mur•d Bey and Ust• Mur•d, two prominent merchants and political leaders in Tunis, sent procurators and agents to represent them to recover debts in Livorno against several Corsican merchants. At the same time, they sent several letters to the Tuscan rulers to establish good diplomatic relationships while explicitly attempting to influence the outcome of the trial by requesting the Grand Duke’s direct intervention during the

da VAS e suoi ministri”.

³² Archivio di Stato di Pisa [ASP], *Consoli del mare* [CDM], “Suppliche”, 974, f° 65.

³³ Calafat, 2015b.

proceedings.³⁴ Yksuf Dey, another Tunisian merchant and ruler, also wrote to the Tuscan sovereign in 1627 about arresting two Genoese debtors to be judged “*sotto buona fede*” (under good faith): the Tunisian ruler recommended for the protection of the Tuscan sovereign four agents – procurators – which he sent to Livorno (two Muslims including a certain Hassan Odobachi and two Christians) to try and recover a large debt of 29,604 pieces of eight reals.³⁵ The good reception of the agents was supposed to guarantee the maintenance of good relations between the Ottoman province of Tunis and Tuscany in the future.³⁶ We can observe, in this respect, the close correlation between the trial and the search for sovereign protection, which was not thought to be contradictory. It shows that recourse to legal institutions sometimes could intervene after obtaining certain guarantees of partiality. This point is important, because it demonstrates that the good functioning or the so-called efficiency of an institution was not automatically indexed on its neutrality.

II. Finding Defendants: the Pursuit of Enforcement

Yksuf Dey's letter to the Grand Duke of Tuscany seeking to arrest his debtors highlights the difficulty of locating merchants or captains. The prosecution could necessitate a physical pursuit of the defendant – when it was worth it, according to criteria that presumably depended on the amount involved in the litigation, the plaintiff's pleas and the expected gains. These gains, as we have seen, could be economic, social, political or diplomatic, and not just verdict-oriented. Added to the fragmentation of jurisdictions, the mobility of merchants and the circulation of goods, as well as the difficulty of identification, greatly complicated litigants' use of civil,

³⁴ ASL, CGA, “Atti Civili”, 56 and 73-75 ; ASP, CDM, “Atti Civili”, 63, 64, 67, 125, 128; Archivio di Stato di Firenze [ASF], *Mediceo del Principato [MDP]*, 4279, f° 142, 145, 148, sq.

³⁵ ASF, *MDP*, 4279, f° 178, February 8th 1626/1627 ; and f° 1.

³⁶ Explicit in ASF, *MDP*, 4279, f° 1

commercial or maritime courts. In principle, according to the maxim inherited from Roman law *Actor sequitur forum rei* the plaintiff had to bring his dispute before the court of the defendant.³⁷ Beyond the question of the geographic location of the trial, the main issue of this maxim was to protect the rights of the defendant, but also to decide the competent jurisdiction to deal with the trial (this is precisely the meaning of the word *forum* which signals both a court and a jurisdiction). The adage *Actor sequitur forum rei* is used nowadays, in both common law and civil law countries, to fight against abusive practices of “forum shopping.” In practice, however, it was legal and common use to prosecute a debtor in the place of the contract (*forum contractus*), the place of injury (*forum rei sitae*) or at his/ her place of residence (*forum domicilii*).³⁸

In order to avoid an expensive and uncertain search, some creditors could agree to give debtors guarantees to go before their own courts. For example, the Greek merchant Stamati Cailla, a resident of Tunis, agreed to come and pay debts he had with his brother Dimitri in Livorno, after having received assurance from the Governor of the city that he would not be “molested.”³⁹ In 1627, eighteen (Tuscan, Dutch, English, Corsican and Jewish) merchants from Livorno, all creditors of “Dr. Salamon Isdrael” pledged not to ask for the arrest of the debtor, who could come to settle his accounts “freely” during four months; put differently, they promised not to use imprisonment for debt, which was in force to punish the insolvent debtor.⁴⁰ As this process was still very much used to accelerate the repayment of creditors, some

³⁷ Codex, 3, 19, 3: *Imperatores Gratianus, Valentinianus, Theodosius* . Actor rei forum, sive in rem sive in personam sit actio, sequitur. Sed et in locis, in quibus res propter quas contenditur constitutae sunt, iubemus in rem actionem adversus possidentem moveri

³⁸ Straccha, 1553 ; Malynes, 1622 ; Toubeau, 1682; Savary, 1688.

³⁹ ASL, CGA, “Suppliche”, 2603, f° 192.

⁴⁰ ASL, CGA, “Suppliche”, 2602, f° 472; Claustre, 2007

litigants could request the so-called *cedobonis* (the debtor agreed to give all his property) to claim their release.⁴¹

All the plaintiffs, however, failed to attract the defendant into their own courts of justice; likewise, not all of them had an agent or could afford to deputize a procurator to claim payment or compensation abroad. It was therefore necessary to sometimes indulge in a lengthy and tedious pursuit of the defendant. From 1621 to 1625, Simone Francesco Franchi, a merchant from Bastia established in Tunis, took legal action against a former partner, Anton Marco Pietro in five different courts, in Tunis, Bastia (according to the principle *Actor sequitur forum rei*), Genoa, Livorno and Pisa.⁴² Dissatisfied with the sentences, dismissed in Corsica, where a conflict of competencies arose between two local jurisdictions, he even appealed to the merchants' court of Florence, the *Sei della Mercanzia*.⁴³ Franchi, however, was in a very difficult financial situation: he was described in a libel as "in miseria, senza denari" (in misery, without money). The 2,000 piasters he sought to recover would allow him to recoup his losses after his misadventures in North Africa and his various trips in an attempt to get judicial satisfaction. The degree of conflictuality between these two litigants was also very high, and showed a gradual increase in verbal aggressiveness and even the intimation of physical violence.⁴⁴ On the one hand, Pietro accused Franchi of wanting to "exhaust" him (*defaticare*): he pointed out the numerous complaints and considered that Franchi was pursuing abusive procedures against him. On the other hand, Franchi explained that Pietro's defense was "vain, vague, varied, doubtful, obscure, uncertain and poorly formed" (*vana, vaga, varia,*

⁴¹ ASP, *CDM*, 971, n. 58.

⁴² Grandchamp, 1920-1933, vol. III: 368 ; Archives départementales de Corse du Sud [ADCS], *Governatore*, 9FG43 ; ASL, *CGA*, 73-75, n. ; ASP, *CDM*, . In Genoa, the jurisdiction was probably that of the *Conservatori del mare* or the Rota Civile, but I could not find evidence.

⁴³ ASP, *CDM*, "Suppliche", 128, n. 29.

⁴⁴ Moore, 1978; Felstiner, Abel and Sarat, 1981; Tyler, 1998; Calafat, 2013.

dubia, oscura, incerta e mal formata). These accusations were quite violent and disruptive in acts and proceedings that usually favored consensus, agreement and undepinnings of good faith. They reflect two aspects: first, the emotional dimension that must not be neglected for merchant litigation.⁴⁵ The law court is also a place where hatreds and acts of vengeance could be expressed. In the Franchi vs. Pietro case, the former partners testified to a mutual detestation, accentuated by the asymmetry of their social positions. Franchi was in prison and had exhausted all his money in the pursuit of his adversary. Pietro was supported by Corsican and Genoese merchants living in Livorno; recently arrived in the Tuscan port, he already had a beautiful house on the main street of the city. The end of the cooperation between the two men was expressed in a violent way. Second, these possible insults had economic consequences, since they could taint the reputation of the litigant in the marketplace and, subsequently, jeopardize potential associations or future credits.⁴⁶ Franchi did not simultaneously mobilize the legal institutions, but he summoned them in succession, trying several appeals on the grounds that he had proffered new evidence. As Gerard Malynes explained in his *Lex Mercatoria*, it was theoretically forbidden to initiate a lawsuit in two different jurisdictions, under penalty of an expensive fine.⁴⁷

Like the Franchi vs. Pietro case, many disputes could circulate between Europe and North Africa, in one way or another. For example, it is frequent to find documents and proceedings produced by the chancery of the French consulate of Tunis or Algiers can be found frequently in other European commercial courts.⁴⁸ The chanceries of the French consulates also certified pieces produced in *qadi* courts of

⁴⁵ Smail, 2003; Cummins and Kounine, 2017.

⁴⁶ Montenach, 2009.

⁴⁷ Malynes, 1622, p. 452.

⁴⁸ For example ASL, CGA, "Atti Civili", 73, n. 90 and n. 140 ; ASP, CDM, "Atti Civili", 63, n. 59.

the Ottoman Empire against payment. This circulation of acts and procedures – which involved certified translations (and the growing use of specialized translators) – had the effect, in spite of the different procedural “styles,” of creating a kind of commercial, legal and notarial *lingua franca* in the Mediterranean.⁴⁹ Insurance claims for accidents at sea had an early standardized form (in particular because of the widespread circulation of the customary maritime law of the Catalan *Consolat de Mar*). Captains drafted these insurance claims in ports of call to protect themselves against insurers, shipowners or charterers. Copies of such documents also had a cost, especially if one had to copy entire proceedings as well as receipts, contracts, warrants, certificates, and so forth. During his trial, Simone Francesco Franchi complained that he no longer had enough money to be able to copy the necessary documents and pay his three lawyers.⁵⁰

These itinerant trials, which could give rise to successive sentences in different courts, highlight the frequent transactions between France, the Italian states and the Ottoman provinces of North Africa at the beginning of the 17th century. They testify, more fundamentally, to the difficulty of enforcing sentences in maritime and commercial matters – a difficulty which partly explains the appeals to different jurisdictions (*forum contractus*, *forum rei*, *forum rei sitae* or *forum domicilii*).

This jurisdictional uncertainty is not peculiar to the 17th century: firms and companies during the 18th and 19th centuries continued to send agents, clerks (salesmen, proxies) or to plead in person to try to recover debts.⁵¹ The pursuit of enforcement explains the potential dilatoriness of civil, commercial or mixed litigation (both civil and commercial). It encourages us to take into account the multi-sited and multi-jurisdictional dimension of merchants’ disputes, even if this enforcement is

⁴⁹ Wansbrough, 1996: 136-37.

⁵⁰ ASL, CGA, 73, f° 1264.

⁵¹ Bartolomei, Lemercier and Marzagalli, 2012.

difficult to grasp in our documentation, including notarial deeds. Some effective techniques existed, however, that allowed for the payment of the injured party: the payment of a bail or surety (including the costs of the procedure), prior to trial, by the parties; the designation of a resident solvent guarantor; the impoundment of the remaining goods of the defendant; sometimes, the court of justice auctioned off the goods of the culprit to reimburse the injured party.⁵² The English merchant-writer Thomas Mun, described also the practice in Italy of replacing specie by other devices in the settlement of debts.⁵³ One can also imagine – but I did not see any document in notarial deeds that could certify it – that transactions to request an extension of time for payments were also possible after sentences.⁵⁴ This is certainly the case when some litigants promised, under oath, to pay what they owed (the so-called *cautione iuratoria*).⁵⁵ In port cities, where it was feared that foreign debtors might be more inclined to flee, the statutes provided that the debtor had to give sufficient guarantees and sureties to submit to judgments and pay the costs of the proceedings.

III. Claiming Procedures : Foreign Merchants' Supplications

Some of the best sources for studying the legal consciousness of litigants are undoubtedly petitions and supplications sent to sovereigns. Generally short, these texts effectively summarized the stakes of disputes.⁵⁶ They explained, indeed, the procedural course of litigants and their expectations vis-à-vis the institutions. These supplications obeyed a very standardized format during the early modern period,

⁵² ASP, CDM, "Atti Civili", 67, n. 34; ASL, *Asta Pubblica*, 2.

⁵³ Mun, 1664: 17 ; de Roover, 1944: 381-407, p. 381.

⁵⁴ Lemerrier, 2012: 446-447; ASL, CDM, 975, n. 166: « pro rata in tre anni futuri ».

⁵⁵ ASP, CDM, "Atti Civili", 246, n. 25 ; ASP, CDM, "Suppliche", 991, n.263.

⁵⁶ Cerutti, 2010; Shaw, 2012; Calafat, 2015.

which supposedly involved an auxiliary of justice, a notary or a procurator. We must not hope, thus, to find in these documents the supposed “voices” or “legal culture” of merchants. Nevertheless, they are very valuable documents to understand the work of the courts and merchant litigation. The civil, commercial and maritime court of the Consuls of the Sea of Pisa, of corporate origin, appellate court for commercial and maritime cases prosecuted in first instance in Livorno, keeps hundreds of petitions, which concern tax exemptions, graces, safe-conducts and privileges, and so forth.⁵⁷ Almost 15% of these supplications also dealt with appeals, recourses to other institutions or requests for changes of procedures. Supplications to the prince were considered as a fundamental step of litigation, likely to accelerate as to shorten the time of the trial, while it distributed the competencies of the courts of the Grand Duchy of Tuscany.⁵⁸ Did foreign litigants, however, tend to request more frequently an acceleration of the procedure?

When making long journeys to court, some litigants did not fail to complain about the damages they suffered. For example, the English merchant Christopher Web, from Bristol, complained in 1609 to the Grand Duke of Tuscany that he was renting a room at an inn for a year, between Livorno and Pisa, to try to recover debts (in this precise case, undelivered goods) from two English merchants based in Livorno, agents of the Humphrey Rastel’s Company of Bristol. The sum at stake was very important and amounted to 8,250 piasters. To obtain this sum, it seemed necessary to go to the spot despite the distance – as was still frequently the case at the beginning of the early 19th century.⁵⁹ Web described himself as “foreigner” (*forestiero*) and explained that he was “suffering” because of his long stay in Tuscany. He asked for a quick decision in his favor. However, the Consuls of the Sea

⁵⁷ ASP, CDM, “Suppliche”, 969-993.

⁵⁸ Calafat, 2015.

⁵⁹ Bartolomei, 2012.

of Pisa explained that they were waiting for the imminent arrival of a ship from Spain that was supposed to provide additional evidence to enable them to make their decision. They added that Web did not stay a whole year in Tuscany only for this trial, but for other businesses and disputes he had in Livorno and Pisa.⁶⁰ In their explanation (*informazione*), the Pisan judges added that they were always careful to “render their verdict promptly,” especially when the case involved foreigners.⁶¹ The latter had several procedural advantages provided by the statutes, which guaranteed summary justice and limited the length of trials (depending on the sums at stake in disputes).⁶² The explicit goal was to minimize the cost of the stay and living expenses related to the trial. This point confirms that the nature of the case mattered less than the financial means of the litigants. If the amounts involved were high, the institution felt that the litigants involved could afford long stays and face the costs of the trial. Note also that the revocability thresholds increased in proportion to the price increase of the 17th century. The irrevocability and the expeditious nature of sentences thus theoretically related to small sums (and these disputes were very numerous). The word “summary” referred to a form of legal reasoning, not necessarily to a speed justice. Merchants agreed to show their account books and correspondence to judges. The judges promised in return to protect the mercantile secret, that required not to reveal in the marketplace merchants or firms’ financial positions.⁶³

As the case of Christopher Web shows, it was rare for judges and all parties to agree to speed up trials when they involved large sums. In other words, as soon as the sums at stake were high, litigants had to expect lengthy proceedings. That is why

⁶⁰ ASP, CDM, 970, 104, Rescript : 8 mai 1609

⁶¹ *Ibid.* : « è stato sempre solito spedire le cause con ogni prestezza, et massime quando si tratta di forestieri ».

⁶² ASF, ASR, 116, § 187, f° 48 : *Le cause importanti fino in [scudi] XXV fra termine di XV di utili dal di della prima citatione. Da [scudi] XXV in cento fra venti di come di sopra. Da [scudi] cento in [scudi] 300 fra trenta di come di sopra. Da scudi 300 in su per ogni somma fra 45 di come di sopra.*

⁶³ ASF, *Consulta, poi Regia Consulta*, Prima Serie, 462, “Filza 9^a di Archivi di Tribunali Foranei. P.”, f° 302v.

they sometimes preferred compromises or extra-judicial transactions, as evidenced by merchant letters.⁶⁴ Unfortunately, court records rarely explained what foreign merchants or agents did outside the time they spent in court. They could meet people, make friends, visit the cities where they were on trial, as evidenced by some cross-examinations or travel journals left by commercial agents.⁶⁵ Certain litigants (in person or mandated), like the Armenians in Marseille, could settle in the place for a long time, but it is hard to decide, as we have seen, if the trial is the cause or the pretext of this sojourn.

The best sources for assessing extra-judicial activities during long trials are merchant letters.⁶⁶ For example, a Corsican merchant of Bastia, Leone Gentile, corresponded with his brother-in-law living in Livorno, Carlo di Lorenzo, whom he represented in Genoa for a case of inheritance pleaded before the Genoese supreme civil court of the Rota Civile (letters go from May 18, 1630 to September 12, 1631). The brother-in-law readily mentioned the expenses of the stay (even if he returned frequently to Corsica), and in particular the exorbitant price of inns in Genoa; he detailed the prices requested by prosecutors, lawyers and “doctors” (more than 100 doubloons of Spain). Facing a long-lasting trial, he said nevertheless he was confident of a favorable outcome, thanks to his reassuring Genoese lawyers (he interestingly added that Genoese lawyers were better than Tuscan lawyers). Nevertheless, at the end of the sentence passed in early September 1631, he announced that the trial certainly will be appealed in another civil court.⁶⁷ Of course, we must make a distinction between the agent or the prosecutor, who tried to recover debts for a third party or a principal, and the merchant who went in person to court.

⁶⁴ *The Letters of John Paige*, 1984.

⁶⁵ Trivellato, 2009, ch. 10; Calafat, 2015a.

⁶⁶ Trivellato, 2007.

⁶⁷ ADCS, *Civile Governatore*, 364, f° 200-12.

The former might be suspected of liking lengthy procedures. They could also find a direct interest in the trial, since they were usually paid and housed for it and they could expect to get a reward in the event of a favorable outcome. From this point of view, we understand the interest some foreign merchants had in going to court in person when the sum was significant: they could in this way check the good conduct of the proceedings; they also could establish business relations on the spot; and finally, the procedures were supposedly faster for foreigners and it was a potential argument they could utilize at trial.

Early modern supporters of the *lex mercatoria*, such as Gerard Malynes and Henry Robinson, generally explained that merchants and foreigners unanimously sought “speedy” and “cheap” justice, which implied the absence of lawyers and prosecutors. It should be pointed out, however, that legal doctrine drew a clear distinction between “summary justice” and “very summary justice”: the former certainly did not impose the formalities of the “ordinary” procedure and aimed to speed up the trial, but it did not prohibit a phase of instruction with written documents and evidence, multiple appearances, examination of witnesses and interrogation requests.⁶⁸ In addition, the “summary” or “de plano” procedure did not theoretically prohibit the presence of lawyers, solicitors and procurators, if they were requested by the litigants. The “very summary” procedure, by contrast, effectively banned the intervention of lawyers, limited the number of judges and gave precedence to a “grammar of equity” based on the search for “matter of facts” and “nature of things”.⁶⁹ Tuscan statutes called this “very summary” procedure “the law of the poor” (*la legge de’ poveri*).⁷⁰ “Summary justice” had a dual nature. For example, the Consuls of the

⁶⁸ ASF, *Auditore poi Segretario delle Riformazioni*, 116, ff° 48-48v, § 187.

⁶⁹ Lattes, 1886: 3-4 ; Cerutti, 2003: 152-205.

⁷⁰ ASF, *Auditore poi Segretario delle Riformazioni*, 116, § 261 ; « *somarissima giustizia conforme alla legge de poveri* » (ASP, CDM, 980, n. 316).

Sea of Pisa, two noble Florentine merchants with legal training, appointed by the sovereign, judged every day, after lunch, the so-called “pectoral” legal cases (*pettorali*), that is to say trials for very small amounts and without judicial aids. The verdict was made the same day or, at the latest, the next day. For maritime trade cases, which generally involved larger sums, these same judges consulted not only the chancellor of the court, a doctor of law who kept the memory of the magistracy and its “style,” but also a “legal assessor”, professor of law and jurisprudence at the University of Pisa. The procedure remained nonetheless formally “summary.” Nevertheless, the court had precisely mixed jurisdictions, at the same time civil, commercial and maritime. It was so able to work on complex cases and litigants had a wide range of procedures at their disposal.

IV. “Miserable” Plaintiffs, Foreign Privileges and the Problem of Local Chicanery

Contrary to the postulates of the supporters of the autonomy of *lex mercatoria*, the presence of lawyers and jurists in commercial courts often was demanded by the merchants themselves.⁷¹ Of course it would be anachronistic to think of the institutions of the early modern period in terms of impartiality: early modern societies were stratified according to statutes and privileges and structured around the question of the organization of inequality. This supposed a subtle alchemy between the privileges granted to foreigners and the rights of the defendants. The field of maritime law and, more broadly, port city justice was, from this point of view, particularly revealing. It pragmatically tests the tension between the imperatives of trade (which imply in particular a rapid settlement of disputes so that ships can continue their navigations and perishable goods do not go bad) and the imperatives

⁷¹ Cerutti, 2003; De Ruysscher, 2012; Fusaro, 2014.

of justice (which sometimes require a careful examination of the evidence). This tension is constitutive of commercial law and was at the heart of medium-distance and long-distance trade during the early modern period.

One of the major fears of commercial courts was debtors' flights. When a captain or crew was involved in a case, the usual practice was to remove the rudder and sails from the ship. It was mandatory for the captain to find a guarantor (*fideiussore*) so that he could go back to sea (and thus not multiply the expenses related to the stipend of the crew, the stay in the port, or even the expiry of merchandise). The insurers also had to pay the captain and the merchants before launching a lawsuit – according to the principle *solve and repete* (*pay first, litigate later*) promoted by the Tuscan Statutes of the Insurance (*Statuti di Sicurtà*).⁷² The merchant navies that could count on an organized system of guarantors were very advantageous: the networks of consuls (especially the Venetian, French, English and Dutch ones in the 17th century) played a fundamental role in the Mediterranean, in a space where courts and sovereignties were numerous. The asymmetry of consular institutions (notably the absence of Ottoman consuls until the middle of the 18th century) could explain the strong difficulty for Ottoman merchant ships to approach in some Western European ports and to play a greater role in Mediterranean sea freight.⁷³

Some merchants interested in the ship also could act as guarantors for the ship captain, such as the Dutch merchant Philips Caffart, who served as guarantor for the captain Arjien Simons, captain of the *King David*, brought before the courts by the French merchant and charterer Jean Marin in Livorno. The trial lasted from July 1653 to October 1660, i.e. more than seven years. It passed through three different

⁷² Addobbati, 2007: 118-122.

⁷³ Kuran, 2011: 254-76.

jurisdictions in Tuscany: the Governor of Livorno, the Consuls of the Sea of Pisa, then it was judged on appeal three times before the supreme civil court of Tuscany, the court of the *Ruota Civile* of Florence. The case was complex: after leaving Lisbon, the captain refused to go to Crete, which was the initial destination according to the bill of lading. Simons decided to stop at Livorno where the trial took place: when a dispute occurred at sea, the port of arrival of the ship was generally considered as the competent jurisdiction.⁷⁴ The charterer was hoping for big profits because Crete was at war at that time and its resupplying could be very lucrative. The whole affair deals, at first, with the question of compensation due by the captain to the charterer; in a second time, the trial concerned damages. For seven years, the French merchant Jean Marin pleaded in Livorno and in various courts in Pisa and Florence. As he explained before the tribunals, the cargo ship was all he had left. Arguing his poverty, he even got paid for food during the duration of the trial.⁷⁵ Some observers mocked the potential lengthy duration of these lawsuits: the French consul of Livorno, Gibercourt, at the end of the 17th century, explained that “there are sometimes so many quibbles that it happens quite often that the parties do not live long enough to see the end of their trials.”⁷⁶

Chicanery tested the asymmetry of litigants’ social positions: on the one hand, foreign merchants, without relational resources and institutional knowledge, sometimes far from home, did not master the local language, nor the uses and customs; on the other, local merchants, at home, knew the various procedural and legal mechanisms. The fear of the expiry of the proceedings was strong among judges and magistrates who, in these cases, readily admitted the stubbornness of litigants and qualified it as “chicanery.” What happened, however, when foreign and

⁷⁴ Padoa Schioppa, 2015: 379.

⁷⁵ ASP, *CDM*, 246, 28; Ombrosi, 1767-1787, vol. 3, IV, V, VII.

⁷⁶ ASF, *MDP*, 1815, « Mémoire de l’état présent de Ligourne et de son commerce », f° 9.

poor litigants arrived in port cities to claim goods or debts? Three emblematic cases, mentioned in a supplication of 1740, provides information on the question of “miserable” foreigners, explicitly understood in these trials as merchants without local resources, without knowledge or money, reduced to a state of quasi-begging.⁷⁷

In 1619-1620, a merchant of Marseilles, Jean Bernard, arrived in Livorno. He returned from six months of captivity in Morocco and the ship on which he was embarked had been shipwrecked. He was penniless and accused a former partner, the captain André Brémont, of abandoning him on a Moroccan beach and arrogating the goods and cargo. In 1683, a Greek merchant from Chios, an Ottoman subject of Catholic faith, Fabiano Soffietti, opposed a Tuscan corsair of Corsican origin who, four years earlier, had unjustly captured in the Cyclades a ship on which Soffietti had loaded rice and linen. This type of appeal from Greek merchants and captains, victims of Christian (Tuscan, Maltese, Savoyard) corsairs, was commonplace in the 17th century Mediterranean.⁷⁸ Finally, in 1739, a Muslim Egyptian merchant of Damietta, Ramadan Fatet, was opposed to an English captain, John Jucker, whom he accused of arbitrarily retaining his belongings on board. These disputes have several points in common, emphasized by the Tuscan magistrates: they pitted merchants against captains who hated each other (the vocabulary in the proceedings is very aggressive); litigants had traveled long distances to go to court; the first two plaintiffs (Bernard and Soffietti) suffered a lot of humiliation and violence; finally, the judges did not know the plaintiffs.

The reaction of the courts to these complaints is interesting. Firstly, the Tuscan judges agreed to derogate from the rule of *fideiussore*, guarantor and surety in the first two cases: the status of “miserable” could guarantee not only the summary

⁷⁷ ASP, CDM, 1007, n. 265..

⁷⁸ Greene, 2010.

procedure, but allow plaintiffs to claim financial assistance and food, during the trials in Livorno and Pisa. The principle of hospitality and charity for the miserable explains the help provided for litigants, who had little or no local resources.⁷⁹ This principle helps also to explain the material conditions of these long journeys: it was necessary to advance to miserable plaintiffs the living expenses and the cost of their voyages. That explains also why these miserable plaintiffs were sometimes mistrusted bas on a fear of impostors.⁸⁰ Suspicious, the unknown stranger was usually calumniated (that's the same etymological root as "calunnia", which means chicanery). Strict processes of identifications usually were made which required the production of witnesses (which could considerably temporally extend the proceedings) because, in these three cases, the written records hardly gave any idea of the disputes and the reasons of the parties. This evidential dimension of the testimony in person and under oath was important to understand the necessity of making a long journey to go to court. The Egyptian merchant Ramadan Fatet, who swore an oath on the Quran and in the name of Allah, found in Livorno a prosecutor in the person of Yuhann• Bukt†, a powerful Melkite merchant in Tuscany: a same spoken language (Arabic) but, even more, the commercial interests of Bukt†s partnership in Egypt can explain this cooperation. The question of the status of Ramadan – and therefore the good *forum* and jurisdiction – however was posed during the trial: was he a merchant (and, in general, what *is* a merchant)?⁸¹ was he an apprentice? a domestic? or even a porter (*facchino*), as the English captain Jocker accused?⁸²

These three cases mentioned by the Tuscan magistrates questioned, each in their own way, the fundamental problem of the distinction between *ratio personae*

⁷⁹ Cavallar, 2002.

⁸⁰ Eliav-Feldon, 2012.

⁸¹ Cerutti, 2002 ; Herzog, 2014.

⁸² ASL, CGA, 781, n.218, 28 January 1739.

(the status of the individual determined the *forum*) and of the *ratio materiae* (the matter of the dispute determined the *forum*). Officials in Tuscany tended to favor more and more, throughout the 17th century, *ratio materiae* in the distribution of jurisdictions. The reasons are quite logical: how to judge according to the “quality” and status of people when one does not know the litigants? The argument is simple but decisive: in a port city visited by many merchants and seamen of various origins, it was preferable to favor a justice system based on the matter and the object of the dispute, rather than on the status of the litigants.⁸³ Similarly, in a place where many foreigners went to court, merchant justice carried with it the specter of potential collusion with local traders and debtors.⁸⁴ Foreign merchants required the knowledge of legal professionals, less suspicious to plaintiffs, not interested in the case and more prepared to the seductive eloquence of lawyers.⁸⁵ The presence of lawyers and non-corporate jurisdictions were thus an option often selected by merchants themselves to decide their dispute.⁸⁶

Conclusion: Equitable inequalities

Foreign litigants tested the equity and fairness of commercial courts during the early modern period. This equity before the courts supposed various mechanisms of organized inequality of litigants before the statutes and the law: the protection of the sovereign and privileges, notably by means of petitions and supplications; the principles of charity and solidarity vis-à-vis “miserable” plaintiffs; and finally, an inclination to resort to State courts rather than merchant courts. These processes explain, among other things, the significant presence of legal professionals and

⁸³ ASP, *CDM*, 1007, n. 265.

⁸⁴ Baggiani, 1992.

⁸⁵ ASF, *Consulta, poi Regia Consulta*, Prima Serie, 462, f° 303.

⁸⁶ *Ibid.*

university-trained lawyers in the commercial and maritime trials of the early modern period. Far from being absent from the courts, notaries, lawyers, prosecutors, assessors, chancellors, and secretaries – in brief, auxiliaries of justice – participated very directly in the administration of mercantile and maritime justice. This does not mean that merchants and traders did not take part in this justice: if their place necessarily was limited for enforcement, their role as legal consultants and experts, however, was recognized. In addition to the negotiation of procedures, some local merchants, accustomed to the tribunals and courts, advised foreign merchants. Some of these legal experts gradually became prosecutors. Their reputation had a legal meaning: they were not only men of credit, but recognized by the court itself as *boni viri*, i.e. “good men,” experts who directly participated, for example, in the estimation of transport damages or the examination of account books.⁸⁷ In brief, we should keep in mind that reputation, *fama*, was a legal status.⁸⁸ These merchant-experts also were called before the court to give legal advices or *pareri* regarding the legal peculiarities of their places or about the foreign places with which they traded. This legal advice also had an institutional dimension that played a very important role during the 18th century, namely the establishment of consulates of foreign nations, which provided legal counsels for merchants or mariners of their own “nation.”⁸⁹ The legal work of merchants would deserve, from this point of view, a more in-depth study, in order to better measure the economic significance and remuneration related to this legal consulting.

⁸⁷ Calafat, 2010.

⁸⁸ Théry, 2003.

⁸⁹ Bartolomei, Calafat, Grenet and Ülbirt, 2017.

References

- Abel Richard L., "A Comparative Theory of Dispute Institutions in Society", *Law & Society*, vol. 8, n. 2 (1973): 217-347.
- Angiolini Franco and Roche Daniel (ed.), *Cultures et formations négociantes dans l'Europe moderne* (Paris: 1995).
- Ascheri Mario, *Tribunali, giuristi e istituzioni dal Medioevo all'età moderna* (Bologna, 1989): 23-54.
- Aslanian Sebouh David, *From the Indian Ocean to the Mediterranean: The Global Trade Networks of Armenian Merchants from New Julfa* (Berkeley, 2011).
- Baggiani Daniele, "Tra crisi commerciali e interventi istituzionali. Le vicende del porto di Livorno in età tardo medicea (1714-1730)", *Rivista storica italiana*, vol. 104, n. 3 (1992): 678-729.
- Bartolomei Arnaud, "Commerce à distance et voyage d'affaires. Les missions a Gênes et à Cadix de Jean-Joseph Leydet, un commis qui voyage (1803-1804)", *Entreprises et histoire*, vol. 1, n. 66 (2012): 79-102.
- Bartolomei Arnaud, Calafat Guillaume, Grenet Mathieu and Ulbert Jörg (ed.), *De l'utilité commerciale des consuls. L'institution consulaire et les marchands dans le monde méditerranéen (XVIIe-XIXe siècle)* (Rome, 2017) [Online : <http://books.openedition.org/efr/3253>].
- Bartolomei Arnaud, Lemercier Claire and Marzagalli Silvia, "Les commis voyageurs, acteurs et témoins de la grande transformation", *Entreprises et histoire*, n. 66 (2012): 7-21.
- Benton Lauren, *Law and Colonial Cultures. Legal Regimes in World History, 1400-1900* (Cambridge: 2002)
- Bochaca Michel, "Les juridictions bordelaises compétentes pour 'fait de marchandises'", *Histoire de la Justice*, special issue "Les tribunaux de commerce", vol. 17, n. 1 (2007): 37-43.
- Bonzèle J.-B. de, *La guerre aux vices, où l'on fait voir les caractères particuliers de malignité & de laideur qui se trouvent dans chaque Vice: ceux qui s'en rendent coupables, avec les moyens de nous en deffendre*, 3rd edition (Lyons: 1685).
- Brenner Robert, *Merchants and Revolution. Commercial Change, Political Conflict and London's Overseas Traders, 1550-1653* (Cambridge, 1993).
- Burset Christian R., "Merchant Courts, Arbitration and the Politics of Commercial Litigation in the Eighteenth-Century British Empire", *Law and History Review*, vol. 34, n. 3 (2016): 615-647.
- Calafat Guillaume, "Expertises et tribunaux de commerce. Procédures et réputation à Livourne au XVII^e siècle", *Hypothèses* (2010): 141-54.
- Calafat Guillaume, "Ramadam Fatet vs. John Jucker. Trials and Forgery in Egypt, Syria and Tuscany (1739-1740)", *Quaderni Storici*, vol. 2 (2013): 419-40.
- Calafat Guillaume, "La somme des besoins : rescrits, informations et suppliques (Toscane, 1550-1750)", *L'Atelier du Centre de recherches historiques*, vol. 13 (2015a): 73-102 [Online DOI: <https://acrh.revues.org/6558>]

- Calafat Guillaume, "Osmanlı-Speaking Diasporas : Cross-Diasporic Relations and Intercommunity Trust between Marseilles, Tunis and Livorno (1600-1650)", in Georg Christ, Franz-Julius Morche, Roberto Zaugg, Wolfgang Kaiser, Stefan Burkhardt and Alexander D. Beihammer (ed.), *Union in Separation. Diasporic Groups and Identities in the Eastern Mediterranean (1100-1800)* (Rome: Viella (Viella Historical Research, 1), 2015b): 613-24.
- Cavallar Georg, *The Right of Strangers. Theories of International Hospitality, the Global Community and Political Justice since Vitoria* (Aldershot, 2002).
- Cerutti Simona, "Nature des choses et qualité des personnes. Le Consulat de commerce de Turin au XVIII^e siècle", *Annales, Histoire, Sciences sociales*, vol. 57, n. 6 (2002): 1491-520.
- Cerutti Simona, *Giustizia sommaria. Pratiche e ideali di giustizia in una società di Ancien Régime (Torino XVIII secolo)* (Milan, 2003).
- Cerutti Simona, "Les 'misérables' en droit italien au XVIII^e siècle", in Claudia Moatti and Wolfgang Kaiser (ed.), *Gens de passage en Méditerranée de l'Antiquité à l'époque moderne : procédures de contrôle et d'identification* (Paris, 2007): 223-42.
- Cerutti Simona, "Travail, mobilité et légitimité. Suppliques au roi dans une société d'Ancien Régime (Turin, xviii^e siècle)", *Annales. Histoire, sciences sociales*, vol. 65, n.3 (2010): 571-611.
- Chiffolleau Jacques, "Le procès comme mode de gouvernement", in *L'età dei processi. Inchieste e condanne tra politica e ideologia nel '300* (Rome, 2009): 317-48.
- Claustre Julie, *Dans les geôles du roi: l'emprisonnement pour dette à Paris à la fin du Moyen âge* (Paris: 2007).
- Cordes Albrecht, "The search for a medieval Lex Mercatoria", *Oxford University Comparative Law Forum*, 5 (2003) [Online: <http://ouclf.iuscomp.org/the-search-for-a-medieval-lex-mercatoria/>]
- Crémieux Adolphe, "Un établissement juif à Marseille au XVII^{ème} siècle", *Revue des études juives*, vol. LV (1907): 119-145 and LVI (1908): 99-123.
- Cummins Stephen and Kounine Laura, *Cultures of Conflict Resolution in Early Modern Europe* (London, 2017).
- de Roover Raymond, "Early Accounting Problems of Foreign Exchange", *The Accounting Review* (1944): 381-407.
- De Ruyscher Dave, "From Usages of Merchants to Default Rules: Practices of Trade, Ius Commune and Urban Law in Early Modern Antwerp", *The Journal of Legal History* vol. 33, n. 1 (2012): 3-29.
- Eliav-Feldon Miriam, *Renaissance impostors and proofs of identity* (Basingstoke, 2012).
- Émerigon Balthazard-Marie, *Traité des assurances et des contrats à la grosse* (Marseille, 1783), 2 vol.
- Felstiner William, Abel Richard et Sarat Austin, "The Emergence and Transformation of Disputes : Naming, Blaming, Claiming...", *Law and Society Review*, vol. 15 (1981): 631-54.

Forum Shopping Reconsidered, special issue, *Harvard Law Review*, vol. 103, n.7 (1990): 1677-96.

Fusaro Maria, "Politics of justice/Politics of trade: foreign merchants and the administration of justice from the records of Venice's *Giudici del Forestier*", *Mélanges de l'École française de Rome - Italie et Méditerranée modernes et contemporaines* 126, 1 (2014) [Online: 10.4000/mefrim.1665].

Gialdrone Stefania, "Gerard Malynes e la questione della lex mercatoria", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung*, vol. 126 (2009): 38-69.

Gialdrone Stefania, "Il *law merchant* nella storiografia giuridica del Novecento : una rassegna bibliografica", *Forum Historiae Iuris* (2008) [Online: <http://fhi.rg.mpg.de/articles/0808gialdrone.htm>].

Grandchamp Pierre, *La France en Tunisie de la fin du XVI^e siècle à l'avènement de la dynastie hassinite* (Tunis, 1920-1933), 11 vol.

Greene Molly, "Beyond the Northern Invasion. The Mediterranean in the Seventeenth Century", *Past and Present*, n. 174 (2002): 42-71.

Greene Molly, *Catholic Pirates and Greek Merchants. A Maritime History of the Mediterranean* (Princeton: 2010).

Herzog Tamar, "Merchants and Citizens: On the Making and Un-making of Merchants in Early Modern Spain and Spanish America", *Journal of European Economic History*, vol. 52 (2014): 137-63.

Hespanha Antonio Manuel, "Savants et rustiques. La violence douce de la raison juridique", *Ius Commune*, vol. 10 (1983): 1-47.

Hoock Jochen, Jeannin Pierre and Kaiser Wolfgang (ed.), *Ars Mercatoria. Eine analytische Bibliographie. Band 3 : Analysen (1470-1700)* (Paderborn: 2001).

Jeannin Pierre, *Marchands d'Europe. Pratiques et savoirs à l'époque moderne* (Paris: 2002).

Kadens Emily, "The Myth of the Customary Law Merchant", *Texas Law Review*, 90 (2012): 1153-206.

Kuran Timur, *The Long Divergence. How Islamic Law Held Back the Middle East* (Princeton, 2011).

La Ruine de la chicane, ou la Misère des advocats, procureurs, greffiers, notaires, huissiers, clerks, praticiens et autres et de leurs femmes (Paris: 1649).

Lattes Alessandro, *Il Diritto commerciale nella legislazione statutaria delle città italiane* (Milan, 1884).

Lattes Alessandro, **Studi di diritto statutario : 1. Il procedimento sommario o planario negli statuti; 2.: Nuovi esempi d'identità statutaria** (Milan, 1886).

Law quibbles, or, A treatise of the evasions, tricks, turns and quibbles, commonly used in the profession of the law, to the prejudice of clients, and others: necessary to be perus'd by all attornies, and those who are or may be concern'd in law-suits, trials, &c., to avoid the many abuses, delays, and expences, introduc'd into practice : with an Essay upon the amendment and reduction of the laws of England (London, 1724).

Lemercier Claire, *Un modèle français de jugement des pairs. Les tribunaux de commerce, 1790-1880*, mémoire inédit d'habilitation à diriger des recherches, Université Paris VIII (Vincennes-Saint Denis, 2012).

Macler Frédéric, "Notices de manuscrits arméniens ou relatifs aux Arméniens vus dans quelques bibliothèques de la Péninsule Ibérique et du Sud-est de la France", *Revue des études arméniennes*, vol. 2 (1922): 7-64.

Malynes Gerard, *Consuetudo, vel Lex mercatoria ; or the Ancient Law-Merchant, divided into three parts, according to the essential parts of trafficke, necessarie for all statesmen, judges, magistrates, temporal and civile lawyers, mint-men, merchants, marriners, and all others negotiating in all places of the world* (London, 1622).

Merry Sally Engle, "Legal Pluralism", *Law & Society Review*, vol. 22, n.5 (1988): 869-96.

Merry Sally Engle, *Getting Justice and Getting Even, Legal Consciousness among Working-Class Americans* (Chicago, 1990).

Merry Sally Engle, "Legal Pluralism in Practice", *McGill Law Journal*, vol. 59, n.1 (2013) : 1-8.

Montenach Anne, *Espaces et pratiques du commerce alimentaire à Lyon au XVII^e siècle. L'économie du quotidien* (Grenoble, 2009).

Moore Sally Falk, *Law as Process : an Anthropological Approach* (London, 1978).

Mun Thomas, *England's Treasure by Forraign Trade* (London, 1664).

Nehlsen-von Stryk Karin, "Ius commune, consuetudo e arbitrium iudicis nella prassi giudiziaria veneziana del Quattrocento", in Karin Nehlsen-von Stryk and Dieter Nörr (ed.), *Diritto comune, diritto commerciale, diritto veneziano* (Venice, 1985): 107-39.

Nörr Knut Wolfgang, "Procedure in Mercantile Matters : some Comparative Aspects", in Vito Piergiovanni (ed.), *The Courts and the Development of Commercial Law* (Berlin, 1987): 195-201.

O'Hara Erin and Ribstein Larry E., *The Law Market* (Oxford: 2009).

Ombrosi Giovanni Paolo, *Selectarum Rotae Florentinae decisionum thesaurus, ex bibliotheca Johannis Pauli Ombrosi – Thesaurus decisionum selectarum Rotae Florentinae in compendium redactus et ad modum indicis in singulas materias distributus... cui praecedit elenchus dictarum decisionum in duodecim volumina compraeensarum, ordine chronologico per dioceses dispositus* (Florence, 1767-1787) 13 vol.

Padoa Schioppa Antonio, *Giustizia medievale italiana. Dal regnum ai comuni* (Spoleto, 2015).

Pélisse Jérôme, "A-t-on conscience du droit? Autour des *Legal Consciousness Studies*", *Genèses*, vol. 59, n.2 (2005): 114-30.

Pennington Kenneth, *The Prince and the Law, 1200-1600: Sovereignty and Rights in the Western Legal Tradition* (Berkeley-Oxford: 1993).

Petsche Markus, "What's Wrong with Forum Shopping? An Attempt to Identify and Assess the Real Issues of a Controversial Practice", *The International Lawyer*, vol. 45, n.4 (2011): 1005-1028.

Rapport Séguiran sur le commerce et la défense des Côtes de Provence (1633), in Nicolas Claude Fabri, Seigneur de Peiresc, *Abrégé de l'histoire de Provence et autres textes inédits* (Avignon, 1982): 288-320.

Raveux Olivier, « Entre réseau communautaire intercontinental et intégration locale : la colonie marseillaise des marchands arméniens de la Nouvelle-Djoulfra (Ispahan), 1669-1695 », *Revue d'histoire moderne et contemporaine*, vol. 59, n. 1 (2012): 83-102.

Revel Jacques, "Au xvii^e siècle : le déclin de la Méditerranée ?", in Irad Malkin (ed.), *La France et la Méditerranée : vingt-sept siècles d'interdépendance* (Leiden, 1990): 348-62.

Roberts Lewes, *The Merchants Mappe of Commerce Wherein the Universall Manner and Matter of Trade is compendiously Handled. The Standard and Currant Coines of Sundry Princes, observed. The Reall and Imaginary Coines of Accompts and Exchanges, expressed. The Naturall and Artificiall Commodities of all Countries for Transportation declared. The Weights and Measures of all Eminent Cities and Townes of Traffique, collected and reduced one into another ; and all to the Meridian of Commerce practised in the famous Citie of London. (...) Necessary for all such as shall be employed in the Publique Affairs of Princes in Forreigne Parts ; for all Gentlemen and others that travell abroad for Delight or Pleasure, and for all Merchants or their Factors that Exercise the Art of Merchandizing in any part of the habitable World* (London: 1638).

Robinson Henry, *Certain Considerations in order to a more speedy, cheap and equall distribution of Justice throughout the Nation. Most humbly presented to the High Court of Parliament of the most hopeful Commonwealth of England* (London, 1651).

Sartori Paolo and Shahar Ido, "Legal Pluralism in Muslim-Majority Colonies: Mapping the Terrain", *Journal of the Economic and Social History of the Orient*, vol. 55 (2012): 637-663.

Savary Jacques, *Parères, ou Avis et conseils sur les plus importantes matières du commerce* (Paris, 1688).

Shaw James E., "Writing to the Prince: Supplications, Equity and Absolutism in Sixteenth-Century Tuscany", *Past and Present*, n° 215 (2012): 51-83.

Smail Daniel Lord, *The Consumption of Justice : Emotions, Publicity and Legal Culture in Marseille, 1264-1423* (Ithaca: 2003).

Straccha Benvenuto, *Tractatus de mercatura seu mercatore* (Venice: 1553).

Tazzara Corey, *The Free Port of Livorno and the Transformation of the Mediterranean World, 1574-1790* (Oxford, 2017).

The Letters of John Paige, London Merchant, 1648-58, ed. G. F. Steckley (London, 1984).

Théry Julien, "Fama : l'opinion publique comme preuve judiciaire. Aperçu sur la révolution médiévale de l'inquisitoire (xii-xiv^e siècles)", in Bruno Lemesle (ed.), *La preuve en justice de l'Antiquité à nos jours* (Rennes, 2003): 119-47.

Toubeau Jean, *Les Institutes du droit consulaire, ou la Jurisprudence des marchands* (Paris, 1682).

Trakman Leon E., "The Twenty-First-Century Law Merchant", *American Business Law Journal*, vol. 48, n.4 (2011): 775-834.

Trivellato Francesca, "Merchants' Letters across Geographical and Social Boundaries", in Francisco Bethencourt and Florike Egmond (ed), *Correspondence and Cultural Exchange in Europe, 1400-1700* (2007): 80-103.

Trivellato Francesca, *The Familiarity of Strangers : the Sephardic Diaspora, Livorno and Cross-Cultural Trade in the Early Modern Period* (New Haven: 2009).

Tyler Tom R., "Justice and Power in Civil Dispute Processing", in Bryant G. Garth and Austin Sarat (ed.), *Justice and Power in Sociological Studies* (Evanston, 1998): 309-345

Wansbrough John, *Lingua Franca in the Mediterranean* (Richmond, 1996).

Xifaras Mikhail, "The *Global Turn* in Legal Theory", *Canadian Journal of Law & Jurisprudence*, vol. 29, n.1 (2016): 215-43.

Zaller Robert, "Robinson, Henry (*bap.* 1605, *d.* 1673)", *Oxford Dictionary of National Biography*, 2007 [Online: <http://dx.doi.org/10.1093/ref:odnb/23841>].