Stefania Gialdroni (ed.), *Migrating Words, Migrating Merchants: Migrating Law*, Studies in the History of Private Law, Legal History Library, Leiden: Brill (expected 2018)

'Migrating Seamen, Migrating Laws'? An Historiographical Genealogy of Seamen's Employment and States' Jurisdiction in the Early Modern Mediterranean[1]

Maria Fusaro

In May 1646 the English ship *Margaret Constant* arrived in Venice. Like all foreign ships she did not dock in the *Bacino* of St. Mark, but instead in the small but heaving harbour of Malamocco, situated on the central of the three channels connecting the Venetian lagoon with the Adriatic Sea at the southern end of the Lido island. Her cargo was unloaded and the ship had some recaulking done in nearby Poveglia. Once this work was completed, 26 seamen demanded two months of their salaries in arrears, which Captain John Bondoch had promised them on arrival in Venice and, on his refusal, they abandoned ship. In the following days the dialogue between captain and crew broke down entirely; when the troops of the *Podestà* of Malamocco intervened to try and defuse the situation, a fight involving firearms erupted and caused the death of one of the seamen. Even by the standards of Malamocco, a notoriously rough place, this was an exceptional outburst of violence, and the Venetian authorities swiftly

[1] The original research for this essay was conducted thanks to funding from the European Research Council under the European Union's Seventh Framework Programme (FP7/2007-2013)/ERC Grant agreement No. 284340: LUPE – *Sailing into Modernity: Comparative Perspectives on the Sixteenth and Seventeenth Century European Economic Transition*. Further work was done when affiliated with another ERC project (FP7/2007-2013)/ERC Grant agreement No. 295868: ConfigMed – *Mediterranean reconfigurations. Intercultural trade, commercial litigation, and legal pluralism, XVth- XIXth centuries*.
I wish to thank Albrecht Cordes and Stefania Gialdroni for their invitation to participate in the workshop "Migrating Words, Migrating Merchants: Migrating Law" (Frankfurt, September 2016), and all other participants for stimulating questions and comments. I also would like to thank Guido Rossi and Francesca Trivellato for their comments and criticism to an earlier version of this essay. The usual disclaimers apply.

moved in to investigate. The seamen, at this point locked in the local keep, denounced the captain for breach of contract, claiming he had first promised and then refused to pay two months' worth of their wages in arrears.

Throughout June the two parties fought in the Venetian courts. Due to the severity of the episode, and the complex mix of civil and criminal charges involved, the case was delegated to one of the highest courts of the Republic, the *Avogaria di Comun*,[2] and it is for this reason that, rather exceptionally, two complete trials – a civil and a criminal one – have survived.[3] The defence of the captain was firmly centred on justifying his actions by reiterating English usage regarding the payment of wages:

> It is the fixed and unalterable usage [in England], that on signing up sailors leave the first five or six months' pay in the Captain's hands as a guarantee of continued service, and they cannot start receiving pay beforehand.[4]

On 28 June, however, Bondoch was condemned in a civil court to pay the sailors' full wages up to that day or, if they decided to come back on the ship, the equivalent of just the two months he had promised them, so they could also pay off the debts they had been running in town in the intervening time. In the criminal trial he was absolved, the Venetian court arguing, somehow in contradiction to the position held during the civil trial proceedings, that his acts were committed with the intention of preserving peace in the harbour, although I cannot help but think that the fact that he had just been transporting – for free – biscuit

[2] On the role of the *Avogaria* within the Venetian government see Cristina Setti, "La terza parte a Venezia: l'Avogaria di Comun tra politica e prassi quotidiana (secoli XVI-XVIII)," *Acta Histriae* 22 (2014), 127-144.
[3] Archivio di Stato di Venezia (henceforth ASV), *Avogaria di Comun*, *Civile*, busta (b.) 276, fascicolo (fasc.) 17; ASV, *Avogaria di Comun*, *Penale*, b. 353, fasc. 21.
[4] ASV, *Avogaria di Comun*, *Penale*, b. 353, fasc. 21, carte non numerate (cc.n.n.) (16 June 1646); on this rule see also Richard Blakemore, "The Legal World of English Sailors, c.1575-c.1729," in Maria Fusaro et al. (eds.), *Law, Labour and Empire: Comparative Perspectives on Seafarers, c. 1500-1800* (Basingstoke: Palgrave Macmillan, 2015), 100-120. All translations of original documents are mine.

(*biscotto*) to the Venetian Navy (*Armata*), at that time engaged against the Ottomans in the waters of Crete, might have had some influence on the court's decision.[5]

On the following 4 July the Venetian Senate promulgated a decree allowing foreign sailors to resort to the Republic's tribunals only to force their captains to respect the clauses of the original contract and the laws of their own country of origin. This was not carried out in practice, however, and until the end of the century Venetian courts continued to hear similar cases, notwithstanding the frequent republication of this prohibition.

These two trials were preserved as they contributed to the development of Venetian law, becoming the basis of substantial jurisdictional reforms regarding foreigners' ability to sue in the Republic's courts of justice. It is important to underline here how, within the idiosyncratic Venetian legal system, 'precedent' played a far more important role than in other continental systems; from this perspective therefore it is rather comparable with English common law'.[6] However, I would argue that the importance of this case went well beyond Venice, and it should be considered as marking an important stage in the development of European international commercial and private law.

The trials of the *Margaret Constant* provide us with a privileged view into the social, economic and political implications of maritime wage controversies. I have discussed these in detail elsewhere,[7] here I just want to start this essay by briefly focussing on one particular aspect of it: the differing points made by the English captain in his defence, and by the Venetian magistrates in their judgment. Bondoch focussed on the 'laws and customs' of England regarding seamen wages' disbursement, which he described in grossly simplified terms compared to the actual situation, a version which had the full support of other captains

[5] ASV, *Senato Mar,* filza (f.) 385, cc.n.n. (28 June 1646).
[6] More details in: Maria Fusaro, "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*, MEFRIM, 126/1 (2014), 139-160.
[7] Maria Fusaro, "The Invasion of Northern litigants: English and Dutch seamen in Mediterranean Courts of Law", in Maria Fusaro et al. (eds.), *Law, Labour and Empire*, 21-42; and in my forthcoming *The Making of a Global Labour Market, 1573-1729: Maritime Law and the Political Economy of the Early Modern Mediterranean*.

and merchants of the local English mercantile community in the testimonies they provided for the trials.[8] However, the Venetian magistrates did not question the nature of these English 'laws and customs', for them the crucial point did not lie in these or in their application, but on Bondoch breaking the promise to actually disburse his crew the sum equivalent of two months of wages, and on his attempts to stop his crewmen from accessing the courts of the Republic to enforce this promise. For the *Avogadori di Comun* his culpability was clear:

> You have been the cause and root of this evil, and if you had satisfied them of rightly owned wages, as you should have done, and had actually promised them; and if you had not lied about this to the *Camera dell'Armamento* about the unfolding of events in the run up to their abandonment of the ship, none of these troubles would have happened [the riot in Malamocco], and therefore you are culpable...[9]

The crew of the *Margaret Constant* appeared to have been fully made up of Englishmen, something rather rare in the seventeenth century Mediterranean, so in this particular case there was no issue about the existence of clashing national usages or about the application of different agreements. The issues at the core of this controversy were two: maintaining one's promise and not hindering access to justice. The reason why the case of the *Margaret Constant* should matter deeply to us is because it highlights the existence of two rather different attitudes towards the law, that it to say, of two different conceptions of justice in Venice and England.

[8] ASV, *Avogaria di Comun, Penale*, b. 353, fasc. 21, (6 June 1646); on this date three English captains and two merchants testified that wage payment usage was that described by Bondoch in his own declaration. On the uncertainty of the English rules regarding wage disbursement see Fusaro "The Invasion of Northern litigants".
[9] ASV, *Avogaria di Comun, Penale*, b. 353, fasc. 21, (9 June 1646).

From the last quarter of the sixteenth century Northern – English and 'Netherlandish'[10] – shipping had entered the Mediterranean, and quickly established themselves as important economic players in this area. This phenomenon, famously described by Fernard Braudel as a veritable 'Northern Invasion',[11] was for a long time understood in simple 'national' terms, assuming that these Northern ships were simply the expression of the expansion of their national economies. However, the documentation found in Mediterranean courts of law tells a less linear and rather more complex story, as what emerges is a maritime sector characterized by a considerable mix of capital investment and usually also by multi-national crews.

In other words, the Northern Invasion was neither a linear nor a uniform process, and its complexity has been severely underplayed by the classic narrative which linked it to a swift Northern takeover of Southern European economies. Over the last twenty years my research has focussed on delving deep into this phenomenon to try and understand the precise practical modalities of this transition. The investigation of the differences in traditional local customs, and in the laws increasingly promulgated in this period to support and facilitate maritime trade, has proven to be a fruitful way of approaching this topic. From the primary evidence in Mediterranean countries' courts of law a notably high rate of litigiousness between Northern captains and their crews has emerged, and this tallies with the comment of Ralph Davis who, in his classic analysis of the British shipping industry, pointed out how during the seventeenth century wage litigation in the London High Court of Admiralty was especially high amongst crews active within the Mediterranean. This was for him a rather

[10] In Venice 'Flemish' was the generic name used to indicate people from both the northern and the southern provinces, to avoid confusion here I shall borrow the expression 'Netherlandish', as used by Maartje van Gelder in her *Trading Places: The Netherlandish Merchants in Early Modern Venice* (Leiden and Boston: Brill, 2009), 1.

[11] Fernand Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II*, 2 vols. (Berkeley: University of California Press, 1995, 1st French edition 1949), i: 606.

puzzling issue, especially given that wages for crews active there appeared to be higher than those available for the same period in other areas of English shipping activities.[12]

Starting in the last quarter of the sixteenth century, in Genoa, Livorno and Marseille the Northerners were increasingly active not only on the maritime routes connecting the Mediterranean with the north of Europe, but became also important players in intra-Mediterranean trade. For Venice the situation was rather delicate, as in addition to their activities in those two maritime trade circuits just mentioned, English and Netherlandish shipping played also a fundamental support role for the *Armata* throughout the seventeenth century, when the Republic was embroiled in several naval conflicts, with the War of Candia (1645-1669) towering above them all due to its length and financial costs. This situation placed the Republic in a most difficult conundrum: English shipping was both its strongest competitor for maritime traffic and a necessary element to bolster Venetian naval strategy in the region. These two contrasting elements profoundly shaped all aspects of Anglo-Venetian interactions, and also influenced the practical administration of justice within the maritime sector, as clearly evidenced above in the case of the *Margaret Constant*.[13]

1. Socio-economic history and the law: an historiographical genealogy

The methodological peculiarity of my recently completed ERC-funded project *Sailing into Modernity*, was to make use of material produced by courts of justice to compensate for the scarcity of more traditionally 'economic' documentary evidence connected with maritime employment before the middle of the eighteenth century.

[12] Ralph Davis, *The Rise of the English Shipping Industry in the Seventeenth and Eighteenth Centuries* (London: Macmillan, 1962); on this issue see also: Richard Blakemore, "'Pieces of eight, pieces of eight': seafarers' earnings and the venture economy of Early Modern seafaring", *Economic History Review* 70 (2017), 1153-1184.

[13] A detailed analysis of this in Maria Fusaro, *Political Economies of Empire in the Early Modern Mediterranean: The Decline of Venice and the Rise of England 1450-1700* (Cambridge: Cambridge University Press, 2015), especially 188-195.

Over the last two decades, documentary material of this kind has been fruitfully used for the study of the Ottoman Empire to elucidate many issues related to socio-economic analysis, business organization and even economic growth; especially the records of the *khadi* courts have allowed scholars to compensate for the scarcity of extant primary evidence directly related to the economic sphere.[14]

This kind of approach is still relatively novel in its application to Western Europe's socio-economic history, however it echoes the approach pioneered by Italian historians at the end of the nineteenth and the beginning of the twentieth century, a group which came to be known as the 'economic-juridical school' ('*scuola economica giuridica*'). Its main representatives were Gaetano Salvemini, Gioacchino Volpe, Romolo Caggese and Gino Luzzatto, who championed an analytical approach "at the fertile crossroads between the historiography of institutions and that of society, the latter seen especially from its economic side".[15] The peculiarities of the Italian Middle Ages, with its impressive economic growth founded on flourishing urban middle classes, predisposed it for a historiographic approach focused on social conflict as a primary engine of economic and political change.[16]

Throughout the twentieth century this type of analysis evolved, forming something of a red thread within the Italian historiographical tradition, although it did not really cross national boundaries.[17] Given the wealth of international scholarship which has investigated the Italian Middle Ages, there are three major exceptions to this neglect within Anglophone

---

[14] See Timur Kuran (ed.), *Social and Economic Life in Seventeenth-Century Istanbul: Glimpses from Court Records*, 10 vols (Istanbul: Türkiye İş Bankası Kültür Yayınları, 2010-2013). For a synthetic introduction on the development of *khadi* courts see: Najwa Al-Qattan, "Inside the Ottoman Courthouse: territorial law at the intersection of state and religion," in Virginia H. Aksan and Daniel Goffman (eds.), *The Early Modern Ottomans: Remapping the Empire* (Cambridge: Cambridge University Press, 2007), 201-212, and bibliography therein quoted.

[15] "[...] punto d'incrocio fecondo fra storiografia delle istituzioni e studio della società, riguardata, quest'ultima, principalmente sotto il profilo economico": Enrico Artifoni, *Salvemini e il Medioevo. Storici Italiani fra Otto e Novecento* (Naples: Liguori, 1990), 13-14.

[16] For a subtle analysis of the development of these issues within Italian medieval studies see Enrico Artifoni, "Giovanni Tabacco storico della medievistica", in Giuseppe Sergi et al. (ed.), *Giovanni Tabacco e l'esegesi del passato* (Turin: Accademia delle Scienze, 2006), 47-62; Paolo Favilli, *Marxismo e storia. Saggio sull'innovazione storiografica in Italia (1945-1970)* (Milan: Angeli, 2006).

[17] Mauro Moretti and Ilaria Porciani, "Italy's various Middle Ages," in Robert J. Evans and Guy P. Marchal (eds.), *The Uses of the Middle Ages in Modern European States, History, Nationhood, and the Search for Origins* (Basingstoke: Palgrave Macmillan, 2011), 177-196.

scholarship, all connected more with the 'economic' than 'juridical' element: Philip Jones' close critical engagement with these authors on the vexed question of the 'transition from feudalism to capitalism'; Stephen Epstein's sharp revisionism, which engaged with both Italian and British historiographies; and Chris Wickham's active and critical engagement with the Italian debate on the connection between economic and political development.[18] In my view, this profoundly Italian approach to the interplay between economic development and politico/juridical institutions needs also to be considered as a silent intellectual ancestor to the New Institutional Economics approach, whose chronological focus from the late seventeenth century has meant it has just about ignored developments in earlier centuries.[19] There are of course exceptions, such as the work of Avner Greif, who cogently argued for the crucial role of medieval institutions and contract law in establishing the basis of Western European economic hegemony, but these studies concentrate, again, more on the 'economic' and less on the 'legal' side of the story.[20]

Another important influence to my methodological approach is Italian microhistory, not just because Giovanni Levi and Edoardo Grendi played an important role in my own intellectual development, but also because the analysis of the type of evidence on which this

---

[18] Philip J. Jones, *Economia e società nell'Italia medievale* (Turin: Einaudi, 1980); and his *The Italian City-State: from Commune to Signoria* (Oxford: Clarendon Press, 1997); Stephan R. Epstein, *An Island for Itself: Economic Development and Social Change in Late Medieval Sicily* (Cambridge: Cambridge University Press, 1992) and his *Freedom and Growth*: *The Rise of States and Markets in Europe, 1300-1750* (London: Routledge, 2000). A synthesis of some of these issues and debates in: Franco Franceschi and Luca Molà, "Regional states and economic development," in Andrea Gamberini and Isabella Lazzarini (eds.), *The Italian Renaissance State* (Cambridge: Cambridge University Press, 2012), 444-466. Chris Wickham has recently published a synthesis of his views on these issues in *Sleepwalking into a New World: The Emergence of Italian City Communes in the Twelfth Century* (Princeton: Princeton University Press, 2015).

[19] See especially Douglass C. North and Barry R. Weingast, "Constitutions and commitment: the evolution of institutions governing public choice in seventeenth-century England", *Journal of Economic History*, 49 (1989), 803–832; Daron Acemoglu and James A. Robinson, *Why Nations Fail: The Origins of Power, Prosperity and Poverty* (London: Profile, 2012).

[20] Paul R. Milgrom, Douglass C. North and Barry R. Weingast, "The Role of Institutions in the Revival of Trade: the Law Merchant, Private Judges, and the Champagne Fairs", *Economics and Politics*, 2 (1990), 1-23; Avner Greif, *Institutions and the Path to the Modern Economy. Lessons from Medieval Trade* (Cambridge: Cambridge University Press, 2006) and bibliography therein quoted. See also the critical considerations of Quentin Van Doosselaere in his *Commercial Agreements and Social Dynamics in Medieval Genoa* (New York: Cambridge University Press, 2009), 4-10; and those of M. Alejandra Irigoin and Regina Grafe, "Bounded Leviathan: Fiscal Constraints and Financial Development in the Early Modern Hispanic World," in D'Maris Coffman et al. (eds.), *Questioning Credible Commitment. Perspectives on the Rose of Financial Capitalism* (Cambridge: Cambridge University Press, 2013), 188-227.

research work is based – such as judicial and notarial material – has been the privileged playing field of this particular approach, which has defined and discussed at length its limits and possibilities for analysis. These have been tested and discussed across various national historiographies and sub-disciplinary approaches – economic, social and cultural – thus providing a stimulating example of a truly trans-national and trans-cultural approach.[21]

The complex history of Italy does not lend itself easily to a comparative approach. From the economic side, the traditional interpretation of the terminal decline of the various Italian states during the early modern period has certainly contributed to its absence from the bibliography and debates on early modern economic history. However, recent revisionist analyses have turned Italian decline from an 'absolute' to a 'relative' one, thus opening up the possibility of fruitful comparisons.[22]

If things are already rather complex from the economic side, the situation is possibly even more complex from the legal history side given the substantial, and substantive, differences between legal systems within Europe. Nearly twenty years ago Antonio Padoa-Schioppa commented that "the reader should always bear in mind that the comparative history of European law – a fascinating field of research for the wealth of perspectives that it opens up

[21] A recent synthesis on these issues, especially useful for the critical analysis of microhistorical methodological approaches towards primary evidence, is in Étienne Anheim and Enrico Castelli Gattinara, "Jeux d'échelles. Une histoire internationale", *Revue de synthèse*, 130 (2009): 661-677 and bibliography therein quoted. On the possibilities of microhistory to contribute to global history see also: Maria Fusaro, "After Braudel: a Reassessment of Mediterranean History between the Northern Invasion and the Caravane Maritime", in Maria Fusaro et al. (eds.), *Trade and Cultural Exchange in Early Modern Mediterranean* (London: I.B. Tauris & Co.), 1-22, 8-10 and Francesca Trivellato, "Is There a Future for Italian Microhistory in the Age of Global History?", *California Italian Studies*, 2.1 (2011) available at http://escholarship.org/uc/item/0z94n9hq (last accessed 7 June 2018).

[22] For Italy at large: Paolo Malanima, "When did England overtake Italy? Medieval and early modern divergence in prices and wages", *European Review of Economic History*, 17 (2013), 45–70 and his *La fine del primato. Crisi e riconversione nell'Italia del Seicento* (Milan: Mondadori, 1998); Sophus A. Reinert, *Translating Empire. Emulation and the Origins of Political Economy* (Cambridge (Mass.): Harvard University Press, 2011); for the Venetian state: Paola Lanaro (ed.), *At the Centre of the Old World: Trade and Manufacturing in Venice and the Venetian Mainland, 1400-1800* (Toronto: Centre for Reformation and Renaissance Studies, 2006).

on both past and present – is still for the most part unexplored country".[23] The situation has not really changed in the intervening time.

The history of legal systems, embedded within what can be generally called a New Institutional Economics interpretative framework, is truly a potentially most fruitful avenue of investigation.[24] In an essay dedicated to the relationship between maritime and global history, a few years ago, I encouraged maritime historians to "move in the same direction as the so-called 'new institutional' economic historians and commit themselves to work toward transcending national historiographies by exploring different approaches through the use of wide-ranging comparisons".[25] *Sailing into Modernity* was conceived and designed with this kind of approach in mind, and these issues are also at the centre of another ERC-funded project, *Mediterranean Reconfigurations: Intercultural Trade, Commercial Litigation, and Legal Pluralism (15th-19th centuries)*, under the direction of Wolfgang Kaiser.[26] What is particularly striking, and worth stressing, is that these projects have been conceived and designed completely independently by scholars with rather different intellectual genealogies and personal trajectories, and still they share a very similar approach based on the effort to overcome monocausal explanations through a strong comparative stance based on the active engagement with different methodologies and several national historiographies.

Mediterranean Reconfigurations utilises court practices to investigate how exchanges within actual commercial judicial cases constituted the foundations of a process of cross-fertilization among legal systems in the Mediterranean, something which does not emerge from the doctrinal and jurisprudential sides of the story. *Sailing into Modernity* employs a

---

[23] Antonio Padoa-Schioppa, "Preface", in Antonio Padoa-Schioppa (ed.), *Legislation and Justice* (Oxford: Clarendon Press, 1997), ix-xiv, xiv.

[24] On this see the considerations of Douglass C. North, "Law and economics in historical perspective", in Fabrizio Cafaggi, Antonio Nicita and Ugo Pagano (eds.), *Legal Orderings and Economic Institutions* (London-New York: Routledge, 2007), 46-53.

[25] Maria Fusaro, "Maritime History as Global History? The Methodological Challenges and a Future Research Agenda", in Maria Fusaro and Amélia Polónia (eds.), *Maritime History as Global History* (St John's (Newfoundland): International Maritime Economic History Association, 2010), 267-282, 279.

[26] ERC Advanced Grant, based at Paris 1- Sorbonne Panthéon, see: http://configmed.hypotheses.org/ (last accessed 7 June 2018).

similar approach; seeking to understand maritime trade and labour through cross-referencing the institutional and normative sides with their actual implementation in everyday disputes and diplomatic exchanges, in order to provide an alternative perspective on the actual development of different European legal systems.[27] Both these projects are positive signs of increased inter-disciplinary dialogue, especially through the involvement of young scholars with very different backgrounds. However there is still a lot that can be done to further foster these exchanges. It is rather telling that at the 2010 *Istituto Datini* conference on the subject of *Where is Economic History Going? Methods and Prospects from the 13th to the 18th centuries*, the session dedicated to 'Old and New Insights: relationships with other subjects' did not include any contribution to this burgeoning relationship between legal and economic history.[28]

These efforts at analysing economic development through a primarily qualitative and not quantitative approach are also meant to overcome the well-known limits of pre-modern evidence. When dealing with maritime litigation, the practical impossibility of a quantitative approach is even more evident; the ephemeral nature of pre-modern economic documentation is paired with the even more ephemeral nature of the material produced in pursuing maritime trade, especially log books and roll musters whose survival is exceedingly rare for the period before the eighteenth century. The archival situation in Venice is also particularly dire, as port books and other documentation connected with the management of the economy were deemed surplus to requirement and pulped when the archives were relocated after the fall of the Republic; the only 'economic' material that survived in a serially consistent manner being that produced from the 1750s onwards.[29]

---

[27] Interesting considerations on the interface between the learned legal literature and court practice in David Ibbetson, "Comparative Legal History: A Methodology," in Anthony Musson and Chantal Stebbings (eds.), *Making Legal History: Approaches and Methodologies* (Cambridge: Cambridge University Press, 2012), 131-145, especially 135-143.

[28] Francesco Ammannati (ed.), *Where is Economic History Going? Methods and Prospects from the 13th to the 18th centuries* (Florence: Firenze University Press, 2011).

[29] It is important to mention that documentary material produced by the courts of justice was regularly eliminated, when deemed too damaged or useless, as part of the archival reorganizations of the Republic, on this

Even if the socio-economic and legal sides are the two main pillars of this analysis, in the course of my research it became increasingly evident that the political dimension is an essential part of this story. On the one hand, maritime litigation ended up generating a wealth of diplomatic exchanges between the countries under investigation; and, on the other, domestic political developments in each state played an important role in shaping maritime employment throughout Europe and directly influenced both the production of legislation and the attitude of the courts of justice towards these issues.

Throughout the seventeenth century the role of consuls appears to be evolving from representatives of merchants to those of states, these developments were not linear and presented substantive local differences across Europe, as exemplified in a recent collection edited by Marcella Aglietti, Manuel Herrero Sánchez and Francisco Zamora Rodríguez.[30] I have discussed elsewhere how consuls played an accessory but important role within maritime wage controversies, usually by providing translation services when needed, and by liaising between local authorities and fellow countrymen.[31] However, if consuls were increasingly becoming expressions of state interests, merchants and seamen were not necessarily conducting their business along national lines. This had important consequences, especially when maritime controversies landed in the courts. Through the active engagement – or lack of – of 'national' consuls it is possible to evaluate states' involvement in the maritime activities of their own subjects.[32]

---

see Filippo de Vivo et al. (eds.), *Fonti per la storia degli archivi degli antichi Stati italiani* (Rome: Direzione Generale Archivi, 2016), 113, 160-161,168-169, 171-173. Massive losses specifically to the archives of the Venetian *Corti di Palazzo* were suffered in the 1770s during the tenure of Antonio Antelmi as their Custodian, for a detailed analysis of these losses, and their implications for the study of all Venetian history: Fusaro, "Politics of justice/Politics of trade" (footnote 6).

[30] Marcella Aglietti, Manuel Herrero Sánchez and Francisco Zamora Rodríguez (eds.), *Los cónsules de extranjeros en la Edad Moderna y a principios de la Edad Contemporánea* (Madrid : Ediciones Doce Calles, 2013).

[31] Fusaro, "The Invasion of Northern litigants", and *The Making of a Global Labour Market*.

[32] Two evocative examples of such issues, involving English and Venetian merchants and ships in Suraiya Faroqhi, "The Venetian Presence in the Ottoman Empire", *The Journal of European Economic History*, 15 (1986), 345-384, 374; and Daniel Goffman, *Britons in the Ottoman Empire, 1642-1660* (Seattle – London:

Following northern seamen's litigation within Mediterranean courts of justice allows us to trace the evolution not only of legislation itself, but also the changes in the balance of power between different states. By tracing the quantity and quality of consular involvement in these controversies, we can evaluate the development of more stringent 'national policies' about wages and employment, and the reach of soft power of various states. From a preliminary analysis it appears that throughout the seventeenth century consuls' jurisdiction within Europe was more tacit and informal then previously assumed. Whatever the status of consuls regarding the extent of their jurisdiction, the growing reality of international crews certainly acted as a practical limitation of their activities in this regard. Whatever the nationality of the ship and her master, a sailor with a differing nationality would have had absolutely no interest in appealing informally to the consul for the resolution of the controversy. A far better chance was to appeal to the local courts, especially in places where the protection of sailors' rights was stronger, as was clearly the case in Southern as opposed to Northern Europe.

Behind this type of litigation there were several important political and diplomatic issues to consider. In practical terms, one can sometime see how local authorities were actually sort of tacitly pleased when such controversies were handled by consuls, in the quiet privacy of their own homes instead of allowing these cases to clog up the courts. At the same time, there was a growing political and diplomatic debate as to how many of these controversies should legitimately be handled by consuls as all European states were concerned about not being seen to give up any of their own jurisdiction.[33]

University of Washington Press, 1998), 127. For an analysis of the later stages of this see Leos Müller, *Consuls, Corsairs, and Commerce. The Swedish Consular Service and Long-distance Shipping, 1720-1815* (Uppsala: Uppsala universitet, 2004).

[33] Andrea Addobbati has provided an excellent analysis of these issues for Livorno, see his essay "Until the Very Last Nail: English Seafaring and Wage Litigation in Seventeenth-Century Livorno," in Maria Fusaro et al. (eds.), *Law, Labour and Empire*, 43-60 (see footnote 4).

2. Legal History: Theory and Practice

Mario Ascheri once astutely commented that economic historians focus on merchants, markets and goods rather than on the legal institutional frameworks of mercantile activities, whilst legal historians concentrate on the doctrinal side of institutions: "doctrines last (and even today can be useful in the courts), institutions die and it is pointless to court them".[34] These divergent interests regarding the subject itself are among the factors which have historically hampered the dialogue between economic and legal historians. But now a closer collaboration is emerging between scholars of the two disciplines, and this volume is clear evidence of that;[35] this should allow us to better investigate the 'law' beyond its 'normative system' reality and instead study it as a social, economic and ultimately cultural practice along the lines suggested by Christopher Hill and Lawrence Friedman.[36]

However, the development of this fledging dialogue is being somewhat hindered by legal historians' lively internal debate on the exact terms of the relationship between the 'law' as an autonomous system and other social factors.[37] In a recent – and perceptively witty – analysis of the legal profession's prejudice against empirical research, Elizabeth Chambliss carefully discussed the development of this debate and the strength of those who "tend to view law as an independent discipline with its own theories and methods, and not simply a

[34] Mario Ascheri, *Tribunali, giuristi e istituzioni dal medioevo all'età moderna* (Bologna: Il Mulino, 1989), 28.

[35] See the work of the international research network behind it: *The Making of Commercial Law: Common Practices and National Legal Rules from the Early Modern to the Modern Period*, see: http://blogs.helsinki.fi/makingcommerciallaw/presentation/ (last accessed 7 June 2018).

[36] Christopher Hill, *Puritanism and Revolution. Studies in Interpretation of the English Revolution of the 17th Century* (London: Secker & Warburg, 1958), 28; Lawrence M. Friedman, *The Legal System: A Social Sciences Perspective* (New York: Russell Sage Foundation, 1975). See also the considerations of Antonio Hespanha in his "Early Modern Law and the Anthropological Imagination of Old European Culture," in John A. Marino (ed.), *Early Modern History and the Social Sciences: Testing the Limits of Braudel's Mediterranean* (Kirksville: Truman State University Press, 2002), 191-204, especially 201-204.

[37] For a good example of this debate see the considerations of Marie Theres Fögen, "Legal History – history of the evolution of a social system. A Proposal," available in English at: http://data.rg.mpg.de/rechtsgeschichte/rg01_abstracts.pdf and the critical response of Simon Roberts, "Against a Systemic Legal History," available at: http://rg.rg.mpg.de/en/article_id/3. For a more optimistic view of possible collaboration and developments, see the contributions in: Guillaume Calafat, Arnauld Fossier and Pierre Thévenin, "Droit et sciences sociales: les espaces d'un rapprochement," *Tracés. Revue de Sciences humaines* [on line], 27 (2014) URL: http://traces.revues.org/6040 and bibliography therein quoted (last accessed 7 June 2018).

parade ground for the social sciences".[38] She also highlighted the pitfalls and dangers intrinsic to this kind of investigation, which is necessarily cross-disciplinary and therefore potentially contentious. In Chambliss' words, the dangers are many and multifaceted, as "socio-legal scholarship is plagued by infighting between law and social sciences, the social sciences and the humanities, and competing perspectives within social sciences disciplines".[39]

Let me be absolutely clear on this, I come to these issues from what I can only describe as a 'robustly historical' perspective, which has been inspired by the conviction that it is possible to shed light on the socio-economic development of a society through the analysis of the evolution of its legal structures.[40] I have absolutely no illusion that the relationship between laws and the societies which generate them is anything but extremely complex and multilinear.

As an historian, I see law as a supremely social construct, and as a 'social and economic' historian I am convinced that it is essential to investigate, and take into full account, all the active constituents which contributed to its evolution.[41] This requires a collective effort at carefully disentangling the reciprocal influences at the basis of the interdependence between the evolution of legal norms and the development of societies and political systems. And for this reason, even with my empirical bias, I am convinced of the paramount importance of the more theoretical – jurisprudential – side of the story. However, my own research is firmly focused on the practice of the courts, as ultimately I am not interested in legal history *per se* but in the social and economic elements which emerge from the analysis of legal documentation. Concentrating on trying to reconstruct how actual events unfolded, and on the practice of the courts in confronting them, has allowed me to investigate

[38] Elizabeth Chambliss, "When do facts persuade? Some Thoughts on the Market for 'Empirical Legal Studies", *Law and Contemporary Problems*, 17 (2008), 17-39, 37 and 22.
[39] Chambliss, "When do facts persuade?", 21.
[40] See the monographic issues of *Annales HSS* "Histoire et droit", 52 (2002); and of *Tracés. Revue de Sciences humaines*, 27 (2014), "Penser avec le droit".
[41] For a recent analysis of these issues see Carlo Focarelli, *International Law as Social Construct. The Struggle for Global Justice* (Oxford: Oxford University Press, 2012)

the gap between the normative side (in this specific case of maritime law) that expressed governments' desires and aspirations, and its practical application on the ground. The problem with fully trusting treatises and manuals concerned with the law and its administration – of which there is an abundance for Italy (and Venice) for this period – is their (perfectly logical) reliance on jurisprudence at the expense of practice.[42] Ascheri warned scholars not to treat them as pure gold ('*oro colato*'), highlighting how their authors "interrogated the sources with questions different than ours, and thus obtained different answers".[43] Jurisprudence and practice did not always coincide,[44] and this was not a problem exclusive to *ius commune* countries; there was also a gap between doctrine and case law in common law, as Simon Deakin pointed out when discussing the evolution of labour law.[45]

3. Hierarchy of legal sources and procedure as political concerns

Had it been less politically charged, a wage case such as that of the *Margaret Constant* would have normally been tried with summary procedure in the court of the *Giudici del Forestier*; its criminal component would most likely have been dealt with directly by the *Podestà* of Malamocco. However, the particular circumstances of this case – such as the involvement of a foreign ship, especially one of those employed in the war effort against the Ottomans, and shedding of blood during the disturbance in Malamocco, with all the corollary concern about effective port policing – made it an especially sensitive one, causing its delegation to the

[42] For Venice the principals are: Filippo Nani, *Prattica Civile delle Corti del Palazzo Veneto* (Venice: Pier Antonio Zamboni, 1694); Francesco Argelati, *Pratica del Foro Veneto. Che contiene le materie soggette a ciaschedun Magistrato, il numero de' Giudici, la loro durazione, l'ordine, che suole tenersi nel contestare le cause, e le formule degli atti più usitati* (Venice: Agostino Savioli, 1737).

[43] Mario Ascheri, "Il processo civile tra diritto comune e diritto locale da questioni preliminari al caso della giustizia estense*", Quaderni storici*, 34 (1999), 355-387, 370-371.

[44] As elegantly argued by Guido Rossi regarding the medieval history of insurances: Guido Rossi, "Civilians and insurance: approximations of reality to the law," *Tijdschrift voor Rechtgeschiedenis*, 83 (2015), 323-364.

[45] Simon Deakin, "The Contract of Employment: A Study in Legal Evolution," Working Paper 203 'ESRC Centre for Business Research', University of Cambridge, available at: http://www.cbr.cam.ac.uk/fileadmin/user_upload/centre-for-business-research/downloads/working-papers/wp203.pdf (last accessed 7 June 2018).

Avogaria. This flexibility was peculiar of the Venetian pragmatic approach to the administration of justice, with both the choice of court and of procedure applied, being clear evidence of the political will behind the administration of justice.[46]

Another important element which warrants analysis is how the Venetian system of justice could be extremely flexible regarding the hierarchy of legal sources applied by the courts, and these variations provide an excellent means with which to appreciate the political economy of the Republic. Venice appears to be rather exceptional amongst early modern European states in claiming 'monopoly in law-making', which traditional legal theory attributes to 'modern states' and which implies the existence of a clear hierarchy of sources.[47] In the words of Silvia Gasparini:

> The only valid norms in Venice are those issued or sanctioned by Venetian legislators. The administration of justice is never delegated to a special class of jurists, and there is never any reference to a source of law external to the system. Both legislation and jurisdiction are the prerogative of a single political body, the patriciate.[48]

The *Giudici del Forestier* demonstrates how flexible the hierarchy of legal sources was. Within its wide jurisdictional remit, the two most important areas were civil cases involving foreigners as defendants (mostly commercial disputes), and all 'maritime' cases, such as those arising from the chartering of ships and controversies between ship-owners, captains and mariners. Procedure was summary in both these areas, but a fundamental difference existed in the hierarchy of legal sources. In trials involving foreigners, the first source were the pacts

[46] Fusaro, "Politics of justice/Politics of trade" (footnote 6).
[47] Jan M. Smits, "Plurality of Sources in European Private Law, or: How to Live with Legal Diversity," in Ulla Neergaard and Ruth Nielsen (eds.), *European Legal Method – in a Multi-Level EU Legal Order* (Copenhagen: Jurist- og Økonomforbundet Forlag, 2012), 71-86, 71.
[48] Silvia Gasparini, "I giuristi veneziani ed il loro ruolo tra istituzioni e potere nell'età del diritto comune," in Karin Nehlsen-von Stryk and Dieter Nörr (eds.), *Diritto comune, diritto commerciale, diritto veneziano* (Venice: Centro tedesco di studi veneziani, 1985), 67-105, 71.

made with the place of origin of the foreign defendant, if such pacts existed; in their absence, the judge was to refer to Venetian statutes, usage and, always last, his own *conscientia*. Exceptionally, international pacts, not statutes, were given pre-eminence here.[49] Conversely, in all cases involving ships, the hierarchy was more traditional; the judge was expected to first consider the statutes of Venice, then usage and, lastly, his own conscience.[50]

To summarise, the application of summary procedure to maritime cases was never questioned, conversely when the issue was distributing justice to 'foreigners' the granting of summary procedure was conceptualised in terms of 'privilege' and therefore it was a matter for political debate.[51]

Under 'normal' circumstances, both parties in a commercial/maritime controversy held an interest that a resolution was reached swiftly and cheaply,however this did not necessarily mean that resorting to consular arbitration was necessarily the preferred option of both parties, as it also needs to be considered how the business priorities of merchants and their partners was not necessarily aligned with the interests of their home states. In a time of profound structural transformation of the European economy, which between the sixteenth and seventeenth centuries was undergoing an important transition, the commercial game was particularly complex and trade did not necessarily move along national lines. It is therefore a mistake to assume that a full agreement existed between the interest of states and governments and that of their own subjects when acting as 'commercial operators'. It is in this

[49] "Item omnes et singulas causas, vertentes inter Venetos et Forinsecum vel forinsecum et forinsecum, audire et examinare et definire debeor et in eis procedere in formam pactorum et, si pacta non fuerit, in formam statuti, ubi statutum loquitur, et ubi statutum defecerit, secundum usum, et ubi usus mihi deffecerit [sic], secundum meam conscientiam, bona fide et sive fraude"; article five of the *Capitolare* of the *Giudici del Forestier*; for a full analysis of the implications of this see Fusaro "Politics of justice/Politics of trade".

[50] "Curam, et studium habebo omnes et singulas causas, et placita quæ pertinent ad rationem Navium, [...] audire et examinare, et definire pro citius potero bona fide sine fraude, et in eis procedere sub formam statutis, itu statutorum loquisi, et uti mihi statutum deffeceverit sub usum, et uti mihi deffecerit usus secundum meam conscientiam bona fide et sive fraude"; article four of the *Capitolare* of the *Giudici del Forestier*. Both in ASV, *Compilazione delle Leggi*, b. 210, cc. 619r-624r; also in Melchiorre Roberti, *Le magistrature giudiziarie veneziane e i loro capitolari fino al 1300*, 2 vols (Padua: Tipografia del Seminario, 1906-11), ii: 103-112.

[51] Fusaro, "Politics of justice/Politics of trade" (footnote 6).

close analysis of everyday disputes that the jostling between different interests and the interplay of proto-globalization started to be established.

4. 'Migrating Seamen, Migrating Laws'?

The Republic of Venice was most proud of the robust link between the administration of politics and the administration of justice, with the corollary legislative self-reliance which was also an essential element of the Myth of Venice.[52] This heightened awareness of the connection between laws and government was also reflected in the way the Republic's governmental bodies discussed other countries' legislation on maritime matters.

Reciprocity was the founding pillar of Venetian foreign policy, and as a result Venice would always defend its right to extend its jurisdiction over its own subjects.[53] This jealous defence of jurisdiction was one of the motives behind the many *parti* of the *Senato* that, starting with the case of the *Margaret Constant* in 1646, repeatedly stated that sailors' contracts needed to be judged – in Venice – according to the laws of the country where the original agreement had been stipulated. A watchful and proud awareness of the distinction between Venetian and foreign laws powerfully emerges from the entirety of the documentation produced by the Republic's governmental bodies.[54] Innumerable passages argue for the distinction between Venetian and English maritime laws, starting with the *Senato* decree of 1646:

[52] Fusaro, *Political Economies of Empire*, 2, 14 and bibliography therein quoted (footnote 13).
[53] Fusaro, "Politics of justice/Politics of trade" (footnote 6).
[54] For an authoritative introduction see: Gaetano Cozzi, "Autorità e giustizia a Venezia nel Rinascimento," in his *Repubblica di Venezia e Stati italiani. Politica e giustizia dal secolo XVI al secolo XVIII* (Turin: Einaudi, 1982), 81-145.

> For all vessels coming from the West, agreements between captains and seamen and *the laws of those countries* are to be respected, and [these pacts] cannot be altered by any [Venetian] magistrate under any circumstance.[55]

This type of formula is constantly repeated, usually referring to "the laws of England" (*leggi d'Inghilterra*),[56] sometimes tempering the expression, as in "the laws and customs of the English nation" (*per le Leggi, et consuetudini d'Inghilterra*),[57] other times specifying further, as in the "maritime laws of England" (*Leggi di marina d'Inghilterra*).[58] This recognition of normative differences was not limited to England. Diversity of legislation was clearly acknowledged for other states, such as the United Provinces, whose crews were almost as litigious as the English in Venice. The laws promulgated by Charles V and Philip II in the middle of the sixteenth century were well known in Venice, and a translated copy was available to the *Senato*.[59] However, the variety of foreign regional customary legislation was also acknowledged by the Venetian authorities, as in the complex case of the ship *Orso Nero*, where at the centre of the dispute were the specific customs of the city of Middleburgh, in Zeeland.[60] When the legislation of two countries was discussed jointly, the standard formula was "in conformity with the pacts, and the laws there valid".[61]

Until now only laws promulgated in Venice have been mentioned when analysing the language used in courts and, indeed, the *Consolato del Mare* is the 'elephant in the [court] room' in Venice. It was, of course, very well-known there, if nothing else as it had been

---

[55] ASV, *Senato Mar*, reg. 104, cc.146r/v (4-7-1646); another copy in ASV, *Cinque Savi alla Mercanzia*, b. 103 n.s., cc.n.n. (4-7-1646); the *Italic* is mine.
[56] ASV, *Cinque Savi alla Mercanzia*, b. 103 n.s., cc.n.n. (27-11-1694) and ASV, *Cinque Savi alla Mercanzia*, b. 81 n.s., cc.n.n. (24-5-1707); other common expressions are: "le leggi del proprio loro Paese": ASV, *Cinque Savi alla Mercanzia*, b. 103 n.s., cc.n.n. (28-11-1707); "li patti et le Leggi della Natione Inglese": ASV, *Cinque Savi alla Mercanzia*, b. 103 n.s., cc.n.n. (15-12-1712).
[57] ASV, *Cinque Savi alla Mercanzia*, b. 103 n.s., cc.n.n. (10-5-1679).
[58] ASV, *Cinque Savi alla Mercanzia*, b. 103 n.s., cc.n.n. (14-6-1679).
[59] ASV, *Cinque Savi alla Mercanzia*, b. 103 n.s., cc.n.n. (29-5-1682).
[60] ASV, *Cinque Savi alla Mercanzia*, b. 103 n.s., cc.n.n. (27-11-1683), this case is analysed in detail in Fusaro, *The Making of a Global Labour Market*, Chapter 4.
[61] "nella conformità dei Patti, e leggi da loro accostumati", as in: ASV, *Cinque Savi alla Mercanzia*, b. 81 n.s., cc.n.n. (24-5-1707).

printed in the city several times.[62] However its regulations were never incorporated into city statutes as had happened elsewhere in Southern Europe. Giorgio Zordan argued that some of its regulations were applied in Venice "through tacit consent" as norms pertaining to the general Mediterranean consuetudinary tradition.[63] 'Tacit' is the key word here, as amongst the extant primary evidence dealing with seamen's litigation the first direct mention by Venetian magistrates of the *Consolato* dates only from 1705 when, in response to the umpteenth petition from English merchants active in Venice, the *Cinque Savi alla Mercanzia* provided a list of all the commercial privileges which the 'English nation' enjoyed in the territories of the Republic. After listing those concerned with the currants trade and the import of dried fish, the *Savi* continued:

> Amongst the privileges is also that contained in the [*Senato*] decrees dated 4 July 1646, 14 June 1679, 30 May 1682, 24 August 1686, by power of which controversies between English captains and seamen are to be judged with the particular laws of England, and not otherwise either with those of the *Consolato del Mare* or with those of the Most Serene Republic.[64]

Mention of the *Consolato* in this context is initially rather surprising. The two most important collections of customary legislation in Europe were the *Rôles d'Oléron*, recognised in most of northern Europe, and the *Consolato del Mare* in the Mediterranean. Before this instance neither is mentioned in the Venetian documentation, given what is discussed above about Venice's jealous defence of its own laws and jurisdiction, it would have indeed been most

---

[62] The earliest printed editions are: *Lo llibre del Consolat*, Barcelona, 1484 (2nd edition 1494); *Capitoli et Ordinationi di Mare et di Mercantie*, Rome, 1519; *Libro del Consolato del Mare*, Venice, 1549 (2nd edition 1564).

[63] Giorgio Zordan, "Le leggi del mare", in *Storia di Venezia*, Alberto Tenenti and Ugo Tucci (eds.), vol. 12: *Il mare* (Rome: Istituto della Enciclopedia italiana, 1991), 621–662, 627.

[64] ASV, *Cinque Savi alla Mercanzia*, b. 81 n.s., cc.n.n. (28-5-1705), elaborated further in Fusaro, *The Making of a Global Labour Market*, Chapter 2.

surprising if this had been the case. Could it be that the *Savi* ignored the existence of the *Rôles d'Oléron* and their status as accessory customary law in the North of Europe? Possible, but unlikely; what is more likely in this case, centred as it was on seamen's wages, is that both Venetian legislation and the *Consolato* granted 'wages' the status of 'privileged credit',[65] and this was definitely not the case in the 'particular laws of England' or, indeed, in *Oléron*. Therefore it was actually pertinent for the *Savi* to mention Venetian laws and the *Consolato* in juxtaposition with the 'laws of England'. Indeed, if one was to compare *Oléron* and the *Consolato* on the topic of seamen's duties and their wages, substantial differences emerge, especially concerning employment agreements and the reasons for terminating them, the duties and rights of the parties on board, the rights of crewmen to participate in decision-making and, crucially, wages and their disbursement.[66]

There might be a further reason to explain why the *Consolato* was directly mentioned at this juncture. At the beginning of the eighteenth century, a time of profound judicial reform began in Venice and much of the rest of Europe; this stimulated a profound reconsideration of the relationship between the Venetian legal system, the *ius commune* and the various legal and customary traditions which characterised the different constituent parts of the Venetian state.[67] This effort at codification was to continue until the very end of the Republic, and within the maritime sector it culminated in the 1786 publication of the *Codice per la Veneta Mercantile Marina*, considered the crowning achievement of the Venetian Enlightenment, and one of the most comprehensive examples of early codification in Europe.[68]

---

[65] This issue is discussed at length in Fusaro, *The Making of a Global Labour Market*, Chapter 5.

[66] For a detailed comparison on the issue of wages see: Julia Schweitzer, *Schiffer und Schiffsmann in den Rôles d'Oléron und im* Llibre del Consolat de Mar – *Ein Vergleich zweier mittelalterlicher Seerechtsquellen* (Frankfurt am Main – Oxford: Lang, 2007), 41-59; on the status of crew's wages as privileged credit in the Consolato see Addobbati, "Until the Very Last Nail", 45 (see footnote 33).

[67] Gaetano Cozzi, "Fortuna, o sfortuna, del diritto veneto nel Settecento," in his *Repubblica di Venezia e stati italiani. Politica e giustizia dal secolo XVI al secolo XVIII* (Turin: Einaudi, 1982), 319-410; Claudio Povolo, "Un sistema giuridico repubblicano: Venezia ed il suo stato territoriale (secoli XV-XVIII)", in Italo Birocchi and Antonello Mattone (eds.), *Il diritto patrio fra diritto comune e codificazione (secoli XVI-XIX)* (Rome: Viella 2006), 297-353, especially 302-306 and bibliography therein quoted.

[68] Zordan, "Le leggi del mare," 630-632; Massimo Costantini, *Porto navi e traffici a Venezia* (Venice: Marsilio, 2004), 61-74. Many legal codes were planned in Venice, only two were actually produced: in 1780 the *Codice*

5. Laws, Legal Pluralism and Forum Shopping: a Conclusion

Medieval and early modern practitioners had no trouble navigating between laws and custom, or finding their way around the multiplicity of judicial venues, at home or abroad.[69] The situation is rather different for modern scholars. On the one hand, we need to engage with a traditional historiography which sees a linear progression from medieval customary rights to a supposedly novel early modern capitalist regime based on contractual relations. Recent scholarship is showing how this transition was substantially more nuanced in its actual developments, and how the issues of law and legal pluralism were central also to the colonial project.[70] Following the work of Lauren Benton, historians have focussed on early modern empires as a privileged stage for legal pluralism.[71] With the exception of Benton, scholars have tended to concentrate their attention on the interplay between different legal systems or on the relationship between the metropolis and its colonies within individual empires, and they have rarely moved beyond this. The exceptions are those proponents of *lex mercatoria*, or indeed of a pan-European 'maritime law', both currently hotly debated issues amongst

---

feudale della Serenissima Repubblica di Venezia (on this see: Gina Fasoli, "Lineamenti di politica e legislazione feudale veneziana in Terraferma", *Rivista di Storia del Diritto Italiano*, 25 (1952): 58-94; and Giuseppe Gullino, "I patrizi veneziani di fronte alla proprietà feudale (secoli XVI-XVIII). Materiale per una ricerca", *Quaderni Storici*, 15 (1980): 162-193). The second one was the *Codice per la Veneta Mercantile Marina* in 1786; for a modern critical edition see: Giorgio Zordan, *Il codice per la veneta mercantile marina*, 2 vols (Padua: CEDAM, 1981-1987).

[69] Edda Frankot highlights how bringing cases to court abroad was common since the Middle Ages, something facilitated in the cases she studied by the existence of the Hanseatic League, see her '*Of Laws of Ships and Shipmen' Medieval Maritime Law in Urban Northern Europe* (Edinburgh: Edinburgh University Press, 2012).

[70] Lauren Benton and Benjamin Straumann, "Acquiring Empire by Law' From Roman Doctrine to Early Modern European Practice", *Law and History Review*, 28 (2010), 1-38; Lauren Benton, *A Search for Sovereignty. Law and Geography in European Empires 1400-1900* (Cambridge: Cambridge University Press, 2010); Lauren Benton, "Historical Perspectives on Legal Pluralism", *Hague Journal on the Rule of Law* 3:1 (2011), 57-69; Alessandro Stanziani (ed.), *Labour, Coercion, and Economic Growth in Eurasia (17th-20th centuries)* (Leiden: Brill, 2012); Shaunnagh Dorsett and John McLaren (eds.), *Legal Histories of the British Empire: Laws, engagements and legacies* (Abingdon: Routledge, 2014).

[71] Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2002); also Lauren Benton and Richard J. Ross (eds.), *Legal Pluralism and Empire, 1500–1850 (*New York-London: New York University Press, 2013).

legal experts and historians.[72] However, these arguments are usually developed at the *supra*-national level, whilst I am developing my argument within a *trans*-national framework. This is an important difference.

On the other hand, the literature on modern legal pluralism is also voluminous and is primarily concerned with studying the effect of contemporary globalization on national laws.[73] Many of these contributions start with a quick sketch of historical antecedents, but legal experts have a tendency to ignore pre-modern developments (implicitly considering them to be antiquarian irrelevancies) and therefore posit their analyses on the atemporal existence of the 'nation-state' as a law-generating mechanism.[74] A consequence of this is to consider as a novelty the contemporary layering of different sources of legal authority, something quite familiar to scholars working on the pre-modern period, even more so for those engaged in transnational narratives. The field of labour history has been particularly receptive to blending national narratives so as to better understand their reciprocal influences. Directly tackling these issues, Silvana Sciarra provides a limpid synthesis:

> [Globalization] has forced states into transnational practices and trapped them into so many connections with supranational institutions that they have become less relevant as social actors and often less powerful as legislators. […] This has been described as the third period of post-modern legal pluralism […].[75]

---

[72] The literature on these issues is rather large, for a summary of these issues and bibliographical references see Fusaro, "Politics of justice/Politics of trade" (footnote 6).

[73] Since 1969 there is also a journal dedicated to its study: the *Journal of Legal Pluralism and unofficial law*. See also the growing literature on 'legal transplants' between different legal systems; for a sharp analytical introduction see Michele Graziadei, "Legal Transplants and the Frontiers of Legal Knowledge", *Theoretical Inquiries in Law* 10 (2009), 693-713.

[74] On this see the considerations in: J.M. Smits, "Plurality of Sources in European Private Law: or How to Live with Legal Diversity", in Roger Brownsword et al. (eds.), *The Foundations of European Private Law* (Oxford: Hart, 2011), 323-335.

[75] Silvana Sciarra, "How 'Global' is Labour Law? The Perspective of Social Rights in the European Union", in Ton Wilthagen (ed.), *Advancing Theory in Labour Law and Industrial Relations in a Global Context* (Amsterdam: North Holland, 1998), 99-116, 100-101. See also A.-J. Arnaud, "Legal Pluralism and the Building of Europe", in Hanne Petersen and Hendrik Zahle (eds.), *Legal Polycentricity: Consequences of Pluralism in Law* (Aldershot: Dartmouth, 1995), 149-169.

Legal pluralism is a complex concept, and some of the confusion in its analysis derives from the fact that it can be defined in two ways:

> The simultaneous existence – within a single legal order – of different legal sources applying to identical situations. In other words, when different rules can solve one case in various ways, we speak about pluralism. We also speak about *Pluralism* when dealing with the coexistence of a plurality of different legal orders with links between them.[76]

Maritime litigation provides us with evidence in support of both these definitions, on the one hand, even within a single state it was usually possible to chose between 'different legal sources' and, on the other hand, collections of maritime customs such as *Oléron* or the *Consolato* are perfect examples of the links connecting different legal orders.

A practical consequence of the above was the widespread use of 'forum shopping': "where certain individuals attempt to move tactically between judicial venues and negotiate their way through formal legal procedures in their own interests".[77] In other words, legal pluralism – as the possibility to choose between venues – was almost always available to seamen, as they could resort to different legal systems and *fora* to resolve their disputes.

In seventeenth-century Europe, forum shopping was the absolute norm: Dutch and English seamen took great advantage of these possibilities and did indeed bring their claims to various court. Whether crowding the High Court of Admiralty in London – "busier with instance litigation from 1630 to 1660 than it had ever been before or would ever be again"[78] – or the *Forestier* in Venice and the *Conservatori del Mare* in Genoa, seamen took advantage of

[76] The latter definition being "precisely what happens in the building of Europe [today]": in Arnaud, "Legal Pluralism", 150.
[77] Jeroen Duindam, Jill Harries, Caroline Humfress and Nimrod Hurvitz, "Introduction", in Eidem eds, *Law and Empire: Ideas, Practices, Actors* (Leiden: Brill, 2013), 1-22, 19.
[78] George F. Steckley, "Instance Cases at Admiralty in 1657: A Court 'Packed up with Sutors'", *Journal of Legal History*, 7 (1986): 68-83, 68.

different legislation in different countries. They were protagonists of the civil litigation boom which swept through sixteenth- and seventeenth-century Europe, a phenomenon which has attracted scholarly attention,[79] and which had profound social and cultural impact.[80] Richard Kagan called this period a "'legal revolution' – an age in which the formal adjudication of disputes was sharply and dramatically on the rise".[81] This increase in litigation engaged all levels of society. Its roots lay in the deep transformations of European society and economy, especially those connected with the evolution of social and labour relations due to the increase in credit and contractual relations.[82] As the maritime sector underwent structural changes on its way to becoming truly globalised, these phenomena took on a stark importance;[83] the analysis of the implications of this for maritime employment provide us with an important perspective on the conflicting social, economic and political conceptions of labour across Europe. All these elements converged to create rather different legal frameworks for labour, well beyond the maritime world, and this complex heritage not only underpins the history of European economic development and political interplay, but influences our daily lives even today.[84]

---

[79] For some classic texts see: Richard Kagan, *Lawsuits and Litigants in Castile, 1500-1700* (Chapel Hill: North Carolina University Press, 1981); and his "A Golden Age of Litigation: Castile 1500-1700", in John Bossy (ed.), *Disputes and Settlements: Law and Human Relations in the West* (Cambridge: Cambridge University Press, 1983), 145-166; C.W. Brooks, *Lawyers, Litigation and English Society since 1450* (London: Hambledon, 1988); and his "Interpersonal conflict and social tension: civil litigation in England, 1640-1830", in A. L. Beier, David Cannadine and James M. Rosenheim (eds.), *The first modern society: essays in English history in honour of Lawrence Stone* (Cambridge: Cambridge University Press, 1989), 360-7; Craig Muldrew, "Credit and the courts: debt litigation in a seventeenth-century urban community", *Economic History Review*, 46 (1993): 23-38; Julie Hardwick**,** *Family business. Litigation and the political economies of daily life in early modern France* (Oxford: Oxford University Press, 2009).

[80] For England, a good example is the amount of litigation presented on stage, such as in the plays of Shakespeare; for a sharp recent analysis see Quentin Skinner, *Forensic Shakespeare* (Oxford: Oxford University Press, 2014) and (massive) bibliography therein quoted; interesting material also in a recent exhibition at the Folger Library, see: http://www.folger.edu/press-release-age-of-lawyers-exhibition (last accessed 7 June 2018).

[81] Kagan, "A Golden Age of Litigation", 145.

[82] Craig Muldrew, *The economy of obligation. The culture of credit and social relations in early modern England* (Houndmills: Macmillan, 1998); Christian Wollschläger, "Civil litigation and modernization: The work of the municipal courts of Bremen, Germany, in five centuries, 1549-1984", *Law and Society Review*, 24 (1990), 261-282; Kagan, "A Golden Age of Litigation".

[83] Data on the increase of litigation in the Admiralty Court in George F. Steckley, "Litigious Mariners: Wage Cases in the Seventeenth-Century Admiralty Court", *The Historical Journal*, 42 (1999), 315-345, 317.

[84] Fusaro, *The Making of a Global Labour Market*, and Wolfgang Streeck, "Why the Euro divides Europe", *New Left Review*, 95 (Sept-Oct 2015), 5-26.