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Justice without judges. Commercial courts between law and market in the 19th century Europe.

How to settle merchant disputes? In the European tradition, merchant courts are supposed to interpret legal rules and to mediate between interests. The 19th codification changes the relationships between state and law. It implies new charges about commercial justice and market requirements. Is the market the driver of these changes, or it undergoes these changes? All changes in order that nothing really changes?
Napoleon's Commercial Code introduced almost throughout continental Europe the model of Commercial Courts made up solely by merchants. This Code is a synthesis of ancient *ordonnances* but introduces important novelties: exclusivity of State law; hierarchy of sources; State Courts. In continental Europe, starting from the Restoration, this kind of commercial jurisdiction sheds light very effectively on the friction with traditional customs and systems for a number of reasons: 1) speciality of Commercial Courts; 2) composition of Commercial Courts (made up only by merchants); 3) hierarchy of sources and role of State legislation; 4) Commercial Courts as places of solution or transaction of commercial cases (costs, representation of interests, interaction of social categories and groups). In a large part of Europe the French model is only apparently followed. The are many and significant differences. Italy's example can be considered (with its seven states prior to national unity in 1861 and following reforms) a microcosm of the European debates and reforms. In Italy the Commercial Courts were abolished especially on the basis of technical-institutional reasons and not for political contingencies as elsewhere. The paper addresses the Italian case during the 19th century comparing it to other European nations showing: the relevance of comparisons among European countries for what concerns the problems linked to commercial jurisdiction; the importance of the principle of application of commercial law to unilateral commercial acts for the preservation of a special commercial jurisdiction; interaction between instances of national identity and instances of commercial freedom and equality.

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From the Law Merchant to trade regulation: The French 18th century experience and the '*Députés du Commerce*'

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Abstract

The process whereby the largely customary, late-medieval Law Merchant has been written into state law is one of the most problematic topics in legal history. A degree of ideological investment may be a cause of confusion, but another one arguably derives from the English-centred character of most of the literature. Limits to generalization then derive from i.a. the relatively peripheral character of England's economy until the late 16th century, or from the unique characters of the Common law. Conversely, on the Continent, the whole theme of the Law Merchant appears much less mobilising, or problematic. And it is true as well that the experiences of Italy, Flanders or France, as the related, local academic literature rarely surface in English-language writings.

In this contribution we discuss the process whereby in France the central, meritocratic bureaucracy used to co-opt members of local trading communities as advisors on either specific disputes, or broader regulatory issues. This way the (indeed tiny) bureaucracy could actually "discover" practices, and then formalize them, via more or less general edicts. This experience then neatly contrasts with the English approach, where the courts, especially the upper courts, guided by the likes of Holt or Mansfield, did most of the job, though they also relied on ad hoc informants, or wise men, or representatives.

The best example of the (French) cooptative bureaucratic approach is probably given by the 1673 *Ordonnance sur le Commerce*, prepared under the authority and keen attention of Colbert, though by merchants. But it is definitely not unique. In fact, local regulations of markets and traders' court had been confirmed in a similar way, since decades. One remarkable example is the Lyons' court, which had inherited the statutes of the Champaign fairs, and which local rules have been regularly adjusted and re-confirmed by the king since the sixteenth century.

Here, we look more specifically at the comparatively late and formal institution of the elected *Députés du Commerce*, who worked at the *Bureau du Commerce* in Versailles, and advised technocrats on a daily basis, during the whole 18th century and until 1791. The experience of the *Bureau* has been explored before by Bonnassieux (1900), then by Lafon (1979), Kessler

(2007), or Seuron (1995) among others. Yet it is not being unfair with these authors to say that the large archives of the *Bureau* have not yet been fully explored. In fact, we certainly do not intend either to explore them fully. We are even not interested in the largest part of the *Députés'* agenda which dealt with the top-down "micro-management" of local problems and conflicts: that is, case-by-case decisions that represent a distinctly discretionary, hence despotic mode of government – though not necessarily a very oppressive one. What we look at are the more generic decisions then taken, those that actually shaped the regulation in a more anonymous, modern, forward-looking perspective. In other words, we look at what would best reflect both the "discovery" of existing trade practices by the bureaucrats and the foreshadowing of modern policy-making.

With that aim, we first rely on Bonnassieux's 1900 inventory of the *Conseil*'s decisions, so as to select those cases that interest us, and we then go to the specific files. And from there we build a body of cases from which we shall derive a data-base that describes each one: how did the case end up in Versailles? Had a local court already had a say, or a Parlement? Which Députés addressed the problem? Does he quote any *coutume du commerce* or does he rely on straightforward, pragmatic principle? Is his opinion followed by the Minister? Etc. In so doing, our aim is eventually to obtain a precise description of decision-making at the *Bureau*, as of the underlying principles and arguments that were mobilized by the parties as they tried to reform the law of commerce in the kingdom.

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Paper Proposal- Zülâl Muslu

The conflict of laws before ottoman mixed commercial courts in the late 19th century: the precariousness of the *lex fori*

In the 19th century, shared between the desire to build up its law according to European influences and the safeguard of its deliquescent sovereignty and territory, the Ottoman Empire starts a deep modernization process, with the Tanzimat era (1839-1876). These liberal reforms also allowed the Empire, called in the European concert, to send strong signals to the West. And precisely this reorganization was also the occasion to codify some usages, such as the mixed conflicts resolution, by which a mixed commercial court was first created in 1847 in Istanbul. This new court was composed of both Ottoman and foreign judges responsible for handling litigations between Ottomans and foreigners, which were so far mostly settled in a diplomatic way.
The question of jurisdiction to which foreign litigants in the East belong to is one of the most complexes. While in the West the concept of sovereignty and a law strictly undivided for the same territory reigned from now on, the maxim *locus regis actum* quickly dominated any remnant of the old "*personnalité des lois*", which became unacceptable or even inconceivable, in the East the territorial sovereignty has been transposed much more slowly, also because of the persistence of the Capitulations, which became after the Charî'a and the Kânûn, the third most important legal source of the Ottoman law.
That is precisely why the mixed commercial Courts seem to some extent to materialize the *Zeitgeist* of a declining Empire in a context of European expansionism. Were they a place of the Ottoman identity and law preservation or were they the modern lengthening of the Capitulations?