1 Politics and Economy: Nationalizing Economics

The Constructive Power of Non-Knowledge

The British and French Empires in the Mediterranean were trade empires. They were mercantilist empires. On the one hand, this is obvious. On the other hand, however, to describe a form of prevailing economics as "mercantilist" does more to start a series of questions than to clarify matters. Without entering into the ongoing and renewed debate about the term "mercantilist" itself and its usefulness, I will define it here as the "nationalization of economics."[1] And I will treat the question of nationalization as an epistemic one: It is the crystallization and hardening of the distinction between "internal" and "external" that defines this form of economics. But while most research on mercantilism concentrates either on trading practices or, within the history of ideas, on theoretical treatises that discuss matters such as bullionism or the balance of trade, here I take a step backwards. I first start with the central perceptional structure organizing all mercantilist communication, the distinction between the trade of "our" nation and that of others. Without that, Thomas Mun could never have calculated a balance of trade, nor could any import/export regulation have functioned. The hardening of that distinction, and its exposition in everyday trading communication, is a distinctive phenomenon of the period, as comparison with the Middle Ages will demonstrate. Only in the second stage, will I address ideas and discourses, investigating the general frames of thought of Empire that governed and directed the

[1] For classical works on "mercantilism," cf. Heckscher, *Mercantilism*; Cole, *Colbert*; Cole, *French mercantilist doctrines*. For the current renewal of the discussion cf. the special issue of *The William and Mary Quarterly* 69, 1 (January 2012); Isenmann (ed.), *Merkantilismus;* Stern and Wennerlind (eds.), *Mercantilism reimagined*. Here, Sirota, "The church," 197, has already pointed to the concept of "nationalization." More strongly concentrated on economic language and ideas are Magnusson, *Mercantilism*; Finkelstein, *Harmony*, but the question of the "national" does not play a role in that literature and the link to practice is missing.

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differing French and British conceptions of rule in and of the Mediterranean. In so doing, I follow the heuristic assumption that those empires themselves emerged via a bottom-up process that involved the continual specification of "nation non-knowledge," through asking and answering questions about the national. This happened in an osmotic relationship with framing and circumferential imperial discourses, but this imperial thought was changing more slowly and it remained detached from everyday practice.

The national form of distinction that began to dominate Mediterranean trade was a question of operative (non-)knowledge, while imperial discourse was moving toward epistemic knowledge. On a very basic level, one had to know the nation to which a given ship, sailor, passenger, cargo or captive being ransomed by pirates belonged. The nationalization of economics meant, first of all, the transformation of something that had hitherto been in a state of nescience into a specified unknown. From the highest level of imperial bureaucracy – the royal courts, the admiralties – to the London port officers and the *Chambre de commerce* in Marseille, the question "what nation is he or it from?," was a constant traveling companion for each man on a ship and each consul in the Mediterranean port cities, and it dictated everyday decision-making and politico-economic planning. The British and French did not ask about the national in the same way, however, and that national distinction was embedded in different general frames of thought. In the following, I compare both trade empire mercantilisms from the perspective of "non-knowledge about the national." This is an approach different and complementary to macro- *and* microhistorical research on imperial economics in general and on Mediterranean commerce in particular. Macro-historical approaches tend to presuppose the category of the nation in their narratives: "The Dutch," "the French" and "the English" conduct trade; but how those categories were themselves new, and to some extent arbitrary, and how they created paradoxes and were an object of continual discussion and interrogation, is not taken into account.[2] Microhistorical works, on the other hand,

[2] To give just one prominent example: the category of the nation is a blind spot in the narratives of Jonathan Israel, where the nation is a preformed category and not an object of historical investigation itself (cf. Israel, *Dutch primacy*; Israel, *Conflicts of empires*). For research more considerate of the dimensions of intellectual history cf. Hont, *Jealousy of trade*; Cheney, *Revolutionary commerce*; Reinert, *Translating empire*.

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are familiar with how to look into the concrete realities of investigation into the national, but they are usually less interested in administrative standards and practices in addition to the overarching imperial concepts that were still the rules of the game. Even for a single actor, "the national" was intrinsically important in a myriad of interactions. The emphasis is put here on the osmotic relationship between practice *and* theory. I combine the macro and the micro, and focus on the mercantilism of empires. Because of that, other figures, groups and institutions play a minor role here, even if, in purely economic terms, they were very important. For example, the Greek, Jewish and Armenian trading diasporas (among others) were many things, but not imperial actors. There were no mercantilist norms, ports, or institutions that inquired in a comparable form into, say, Greek nation-non-knowledge in the Mediterranean.[3] What one may hope to learn by this third approach beyond the micro/macro opposition is, at first, somewhat tautological. It is how these empires, by defining and searching for the unknown national, were searching and finding themselves by defining what they are. I am interested in the constructive power of non-knowledge, something that might seem to be a paradox. The void of unknowns seems to be the least firm ground to build an empire upon. Yet it was precisely through the continual consideration of the question about the national and the nation abroad that the limits of the empires in question became visible at all. In addition, we must also consider the extent to which the category of "state" was connected to those of "nation" and of "economy."

This has to be seen within what one can define as a two-level system of Mediterranean trade. On the first level, European merchants were, and saw themselves as, competing against each other. The second is the parasitic corsair economy. As the corsairs gained most of their whole societies" wealth from piracy or its functional equivalent, maintaining the threat of piracy but allowing its replacement by regular payments according to international peace treaties, states started to protect "their" merchants in different ways against their European and corsair competitors. The protection of merchants – in the Mediterranean cities as well as at sea – was thus an important economic factor on the first level, a transaction cost, shared between the merchants themselves and

[3] Cf. Trivellato, *Familiarity*; Eldem, *French trade*; Aslanian, *From the Indian Ocean*; Greene, *A shared world* and Greene, *Catholic pirates*.

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the states. It was also possible to borrow or "buy" a nation's flag, or even use it without formal permission, and therefore take advantage of a given nation's protection. This was actually in the interest of the states themselves because they obtained valuable duty payments from each shipowner or captain flying their nation's flag. This could also be detrimental for a state, however, if there was abuse or the unauthorized use of a nation's protection. From this, we see that the two-level system was transforming into a three-level system: competing European merchants, competing states/nations, parasite corsairs. How these various circles interacted with each other will be seen in the following.

Norms as Specifiers of National Non-Knowledge

In theory and in practice, the English normally distinguished between the particular interests of merchants and a general interest of "the nation," while the French usually used "the state" in that second position.[4] That seemingly small, but fundamental difference in wording ("nation" vs. "state") has to be kept in mind when studying the meaning of the national in the Mediterranean Empires' trade organization and competition. The French increasingly conceived of their trading houses in the Mediterranean, protected by their consuls, as a part of

[4] Cf. as examples for the English case: Petty, *Britannia languens* (1689), 10f: "Trade is either National or Private . . . Private Trade hath regard to the particular Wealth of the Trader, and doth so far differ in the scope and design of it from the National, that a private Trade may be very beneficial to the private Trader, but of hurtful, nay of very ruinous Consequence to the whole Nation"; Cary, *Essay* (1695), 1: "It being possible for a Nation to grow Poor in the Main whilst private Persons encrease their Fortunes"; Praed, *Essay* (1695), 51. Cf. in contrast to the French case: Éon, *Commerce honorable* (1646), 3: "le commerce est une des principalles & des plus essentielles parties de l'État. Car comme l'État consiste dans l'assemblage de diverses personnes, le Commerce & le Gouvernement sont les deux parties qui le composent."; Pottier de La Hestroye, *Restablissement* (1715), 117: "il faut scavoir demesler l'interest général qui s'accorde toujours avec l'interest de l'État et l'interest particulier qui est presque toujours opposé à celuy de l'État." Because the French production of more general treatises starts only later in the eighteenth century (aside from Montchrestien etc.), the *state* centered perspective is obvious in all prior publications such as the *Advis*, the *Testaments politiques*, the state finance projects like that of Vauban or Gueuvin de Rademont, and in the texts of John Law (*Œuvres*). Pierre de Boisguilbert, for example, always used "la France," "l'État," "le roi" as point of reference in his late seventeenth- and early eighteenth-century texts, but nearly never "nation." I checked virtually all works before the physiocracy 1750 watershed as listed in *Économie et population*.

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the state's extensions overseas. The internal/external distinction took the form of an invisible appendage of state borders abroad. The English mercantilist conception of trade did not subordinate merchants' activities to the *state* as much, but it did integrate forms of state power into their commercial network. English merchants acted more as agents of their nation than their state. While this is a difference encountered throughout all sources in the following, in a striking parallel the fundamental guiding standards emerged for both England and France around 1650/60.

Defining the Unknown

A very important process of reform and legislation around 1660 provided the pivotal moments for England and France, when respective shifts occurred, turning economic activities in a state of nescience about "nation" into one where the nationality (of merchants, sailors and ships) became *the* central specified unknown.

England

The 1660 Second Navigation Act[5] and the 1662 Act of Frauds,[6] together with the system of peace treaties and sea-passes, marked a decisive point of the nationalization of English seafaring in the Mediterranean. The first 1651 Navigation Act had been an "experimental law" to some extent, and, even though it had been strongly influenced by the lobbying of the Levant Company, only with the 1660/62 combination of laws did legislation achieve enduring decisiveness and incorporate important clauses concerning the southern trade.[7]

This occurred through the transformation of a state of nescience embedded in former practices into specifications of non-knowledge about the nationality of sailors. Those regulations required that English merchants who wanted to import from or export to the Mediterranean "beyond Malaga," had to provide an English ship with a minimum of two decks, armed with sixteen guns with at least thirty-two

[5] "An Act for the Encourageing and increasing of Shipping and Navigation," *Statutes of the realm* 5 (1819), 246–250.

[6] 'An Act for preventing Frauds and regulating Abuses in His Majesties Customes,' *Statutes of the realm* 5 (1819), 393–500 = 14 Car II c. 11.

[7] Harper, *Navigation laws* remains unsurpassed for the history of the legislation itself (citation on p. 53).

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men, with the master and at least ¾ of the crew needing to be English.[8] The Navigation Act was rigid insofar as it allowed the seizure of foreign ships and their goods; the Act of Frauds dealt with the discipline and fine-tuning of the English ships themselves. The Mediterranean clause of the Act of Frauds only concerned the merchants who mostly conducted trade between Livorno, Spain, Portugal and England; the Levant Company – founded first as Turkey Company in 1580/81, and provided with a renewed charter in 1662 – was not affected. The Englishness of the company's trade had already been secured by virtue of the company being closed to both foreigners and naturalized merchants until 1753. Even beyond the question of nationality, the company could only be joined by "meer merchants," a restriction which remained firm despite frequently recurring complaints.[9] This stabilized the "Englishness" of the factories' personal in the Levant (Constantinople, Aleppo, Smyrna) probably more effectively than the French did.[10]

As for incoming ships until the 1740s – mostly between 1675 and the early eighteenth century – there were numerous cases when merchants applied to the Treasury to be freed from the one percent duty as they had lost men during the voyage due to several problems. These applications demonstrate how rigorously the surveyors of the Navigation Act and the Customs Commissioners controlled the ships in the English port cities. Mostly the problem was that the overall number of men was too small.[11]

The one percent duty of the Act of Frauds concerned the character of the ship to be armed and suitable for defense, an armed condition that had to be maintained by English men for their English ships. To better understand the meaning of those norms, one has to take a short look at its pre-1660 history. Following 1617, when the Barbary corsairs attacked English ships and port cities on the Western English coast for the first time, the English government raised £40,000 over the next three years, in order to finance warships and men against this new

[8] 14 Car II c. 11, § 33. [9] Schulte Behrbühl, *Deutsche Kaufleute*, 226–233.

[10] Cf. Wood, *Levant Company*, 136–140; Matterson, *English trade*, 222–242.

[11] Cf. cases from the 1670s to 1742: CTB V, 99, 1133; CTB VI, 616f., 644; CTB VII, 305, 349, 364, 375f., 533, 645; CTB VIII, 2135, 2147; CTB IX, 1, 2166f.; CTB IX, 485, 1247f., 1259f.; CTB XI, 252, 268, 332, 366; CTB XII, 155, 249, 271; CTB XIII, 145, 312, 343f., 360, 384; CTP II, 73, 108; CTB XXXI/2, 108; *Journals of the Board of Trade and Plantations* IV, 379–385; CTBP II, 223; CTBP III, 161, Nr. 20; CTBP V, 137; CTBP V, 148.

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threat.[12] The government seized the money through fixed sums demanded from the port cities in proportion to the amount of their trade which the London administrators had calculated from past customs records.[13] Some of the cities, apparently first of all London, but also Weymouth, decided to raise that money through a one percent duty on import and export customs. This was probably a repurposed technical practice that the port's financial administration had utilized before.[14] Others simply collected the required money from their merchants. Nearly all complained that the London center's pretended knowledge of local trade was false and outdated, not least because of the current losses caused by the corsairs. The local character of the duty also created several unintended problems within the inner-English competition of the outport cities.[15] Perhaps because of that experience and due to intense discussions about the similar and related ship money (1635–1640),[16] the solution of a duty on imported and exported goods – even if still remembered[17] – was not chosen during the 1620s

[12] Hebb, *Piracy*, 21–42. The Merchants of the East India, the Turkey, Spanish, Barbary, French Eastland, Muscovy, West Country and Flanders Companies all wrote a petition to Sir Thomas Smith asking for help and defense against the corsairs (March 9, 1617, PC 2/28, f. 581). The idea was to hold "a continued Force and strenth [sic]" (John Digby, April 30, 1617, SP 14/91, f. 78), and for that purpose £ 40,000 should be collected by the City of London and other port cities by a "proportionable contribution" (the same, April 30, 1617, SP 14/91, f. 79).

[13] City of Southampton to the Council, February 22, 1619, SP 14/105, f. 195; " … wee suppose that the other Ports of the Kingdome doe contribute according to the proportion" (City of Bristol, February 28, 1619, SP 14/105, f. 222; Dartmouth, March 6, 1619, SP 14/107, f. 12).

[14] Exeter, March 20, 1619, SP 14/107, f. 65v: the first step was a "ticket … certifying that everyone … have paid their due uppon this collection" before being allowed to "receave … goode or marchendizes … in or out"; Weymouth, March 10, 169, SP 14/107 f. 23r mentions explicitly the "Customes … of … one upon every hundred which is the charge as they have heard that upon the like occasion is taken in London and elsewhere."

[15] For example, the Dorchester merchants withdrew their trade from Weymouth because of the local one percent duty. See Weymouth to the Council, June 8, 1619, SP 14/109 f. 153 and May 30, 1620, SP 14/115, f. 85. Other merchants complained about being charged twice for the same purpose if they conducted trade in two cities (Barnstaple, June 17, 1620, SP 14/115, f. 137).

[16] State of research: Langelüddecke, "Ship money."

[17] The members of the Algiers Commission, Paul Pindar, Kenelm Digby and John Wolstenholme recalled on March 15, 1631 that "About 12 years since … order was taken to leuie one percent of the merchant goods to raise such a some" for the purpose of suppressing the pirates, but the commissioners judged that now there would be "no hope of raising money in that way" (SP 71/1, f. 111r).

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and 1630s when the corsair problem was growing.[18] Only twenty-three years later, in 1642, just a year after the Long Parliament had prohibited Charles' ship money, was the so-called Algiers (*Argiers*) duty adopted for that solution. It was, however, moved to the national level: the one percent was now to be levied in every English port city. While paying ship money for a royal navy was unpopular, such a duty to deal with the problem of piracy was accepted.[19] The 1642 solution decentralized the necessary knowledge about the amount of trade by ordering that local customs officers assess the levy according to current circumstances instead of calculating in London a proportion from past data meant to be valid for the present and through its national character; the unintended problems involving increased inner-English port competition were resolved. The 1642 duty act was extended several times.[20] While the money not used for ransoming captives was finally allocated to financing the navy in general, the 1659 overview of England's revenues still listed the one percent duty.[21] Those solutions prior to 1660 were not linked to the rules of nationality concerning the ships and their men. It was first (in 1617–19) an answer based instead on the old feudal concept of the defense of the realm to which the cities had to contribute. The second step, the national tax of 1642, still had its roots of legitimacy in this concept of the defensive obligation of the king against the realm's enemies and of his subjects to contribute the financial means to this aim.

The 1660/2 standards represent the sublimation and projection of the earlier defensive character of state violence against foreign threats into a mercantilist internal/external distinction by inquiring into and controlling the national character of commerce. Paragraph 33 of the

[18] Gray, "Turkish piracy"; Barnby, "The sack"; Hebb, *Piracy* and Matar, *Britain and Barbary*, 38–75.

[19] Matar, *Britain and Barbary*, Appendix 1, 173–176 for a recent print of the Act. Hebb, *Piracy*, 27f. was the first (and nearly only) to see a parallel between financing the navy against the threat of piracy and the ship money, but his study stops before the Algiers tax and the continuity of the one percent duty from 1617 to the 1660/62 Acts is not seen.

[20] Prolongations: January 28, 1644/45 Firth and Rait (eds.), *Acts and ordinances*, vol. 1, 609–611; July 7, 1645, ibid., 731–732; May 11, 1647, *Journal of the House of Lords* 9 (1646), 182–185; March 26, 1650, Firth and Rait (eds.), *Acts and ordinances*, vol. 2, 367f.; June 26, 1657, Firth and Rait (eds.), *Acts and ordinances*, vol. 2, 1123–1130.

[21] 'The income of England,' April 7, 1659, in: *House of Commons journal* 7 (1659), 627–631.

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Act of Frauds set minimums on the type of English ship capable of being a "swimming defence machine" on its own. Now the duty worked by forcing merchants to use such "swimming little exclaves of England" in the Mediterranean – if not, the duty served as a contribution to necessary convoy shipping sponsored by the crown. The distinction between foreigners and Englishmen, present in the ports and – at least theoretically – in the whole Mediterranean, pointed in an abstract manner back to those older roots of the defense of the realm. The economic and prohibitionist impact of the 1660/62 regulations was high. Transport between the Mediterranean and Britain was nearly completely monopolized by British ships.[22]

From an epistemic point of view, the watershed of 1660/2 transformed the state of nescience about nationality into a central specified unknown. Non-knowledge about the nationality of each person on each ship in the Mediterranean was now of importance. It was specified as a problem and formed *the* central directive rules of Mediterranean commerce.

Eighteenth-century merchant handbooks transmitted those norm specifications as they had developed and practiced during the seventeenth century and following the 1701 Union. According to this, "British-built ships" were:

> Ships of the Built of Great Britain, Ireland, Guernsey, Jersey, or the British Plantations in Africa, Asia, or America, and whereof the Master and three fourths of the Mariners are British, that is, his Majesty's Subjects of Great Britain, Ireland, and his Plantations, and three fourths of the Mariners such during the whole Voyage, unless in Cases of Sickness, Death, etc.[23]

A "stranger" was someone:

> born in a foreign Country, under the Obedience of a strange Prince or State, and out of the Allegiance of the King of Great Britain; or a British Man born, who has sworn to be subject to any foreign Prince; though if such British-born Person, returns to Great Britain, and there inhabits, he must be deemed as British, and have a Writ out of Chancery for the same: And likewise the children of all natural-born Subjects, though born out of the Allegiance of his Majesty, etc. and all Children born on board any Ship belonging to, or in any Place possessed by, the South-Sea Company, are to be deemed natural-born Subjects of this Kingdom.[24]

[22] Cf. below n. 69. [23] Crouch, *Guide*, 131, 142. [24] Ibid., 145.

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Evidently, similar to the Navigation Act itself, handbooks like that of Crouch reflect an already strong Atlantic orientation, but at the time of the handbook's publication, the Southern-European trade still represented a good third of Britain's foreign commerce and non-European trade only another third. London remained the uncontested British center of Mediterranean commerce,[25] and even more so, "as much of a third of New England's adverse balance of payments with the mother country came from available returns from the Spanish, Portuguese, and Mediterranean markets."[26]

Probably nowhere else besides the kingdom's naturalization records do we find more precise definitions of "Englishness/Britishness" and "strangers" than in these foreign trade records and merchant handbooks.[27]

France

The French parallel to the English combination of the Navigation Act, Act of Frauds, as well as war and convoy shipping, were the almost exactly contemporaneous French reforms of the 1660s regarding Mediterranean shipping and the central port of Marseille. Most significant for our purposes was the prominent edict of March 1669.[28] This edict laid the ground for the status of Marseille as a free port and its monopoly over the Mediterranean for French imports and (less so) exports. If one reads its text, especially the first section, one sees how the edict uses the old concept of *commercium*, as exchange between peoples and "even the most opposite spirits who become conciliated

[25] Imports and exports to and from Southern Europe and the Mediterranean – the Barbary risk zones – each made up between 26 and 30 percent of all foreign trade in 1663/69, 1699/1701, 1722–1724, 1752–1754. Exports only make up 26.6 percent. While its absolute volume remained quite stable throughout the eighteenth century, its share in the overall growth foreign trade sank to 19.4 percent in 1752–1755 (imports) and to 14/17 percent (imports/exports) in 1772–1774, cf. Davis, "English foreign trade 1660–1700," 164–165; Davis, "English foreign trade, 1700–1774"; French, "London's overseas trade," 482; French, "London's domination," 29. More recent survey articles are usually neglecting the southern and Mediterranean commerce, cf. Engerman, "Mercantilism."

[26] Morgan, "Mercantilism," 183. Cf. Lydon, *Fish and flour*, 8 and passim.

[27] Cf. for comparison with the Atlantic perspective Zahedieh, "Economy," 55; Braddick, "Civility and authority," 128. Kidd, *British identities*, 250–286 focuses on Gothicism for its Atlantic dimensions.

[28] For its text cf. Julliany, *Essai*, vol. 1, 221–228, and *Lettres instructions et mémoires de Colbert*, vol. 2, 796–798.

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through a good and mutual correspondence." It stressed that, by royal grace, the act rescinded all former duties levied upon foreigners, specifying each old half to one percent duty annulled, and announced a message of liberty for all foreigners to come to Marseille.[29] Nevertheless, under the umbrella of that gracious liberty, the second part of the edict introduced a heavy 20 percent duty on all goods not shipped in French vessels. Works on economic history from Masson to Carrière have consistently stressed the prohibitive character of the edict due to that 20 percent duty.[30] Masson and Rambert called it "a kind of [sc. French] Navigation Act,"[31] and Carrière devoted a chapter to evaluating the economic rationality of the prohibitive 20 percent.[32] One of the best informed contemporary historical accounts of French-Anglo-Dutch commercial competition from the sixteenth century until around 1700, Pottier de La Hestroye's *Mémoire sur le restablissement du commerce*, highlighted the anchorage duty and the 20 percent duty as the only French means of protection, endangered by new peace treaties of Nijmwegen and Utrecht which allegedly granted the Dutch too many liberties. Colbert's 1664/69 reforms and legislation was placed here in exact parallel to the English and the Dutch prohibitive measures.[33]

Without doubt, this is the perspective of the state-centered discourse of political economy. Today, scholarship less interested in inter-state competition than in the complex realities of merchant networks, sometimes hidden by the perceptional framework of *state simplifications*, has come to appreciate the edict's impact on attracting foreigners,

[29] Cf. the beginning: "Comme le commerce est le moyen le plus propre pour concilier les différentes nations et entretenir les esprits les plus opposés dans une bonne et mutuelle correspondance . . . déclarons le port et havre de nostre ville de Marseille franc et libre à tous marchands et négociants . . . à cet effet nous avons supprimé et supprimons [sc. the following duties . . .]" (ibid.). Cf. for that most general notion of commerce close to "communication" and "relationship" Steiner, "Commerce," 182.

[30] Masson, *Commerce XVII*, 160–177; Bergasse and Rambert, *Histoire*, 204–214; Paris, *Histoire*, 3–43; Carrière, *Négociants*, 309–330.

[31] Masson, *Commerce XVII*, 166; Bergasse and Rambert, *Histoire*, 208.

[32] Carrière, *Négociants*, 319–330.

[33] The treatise, first written in 1698, was revised and expanded until 1715. I follow here Rothkrug, *Opposition*, 435 against Harsin. Cf. also Faure, *La banqueroute*, 57f.; Murphy, *John Law*, 8–11. On the context of the establishment of the *Conseil de commerce* on June 29, 1700 cf. Kammerling Smith, "Le discours économique," 31–37. On Pottier de la Hestroye as advisor of the crown cf. McCollim, *Assault on Privilege*, 143–145.

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foremost Armenian and Jewish colonies – but there is a risk of overlooking the second, prohibitive part of the legislation.[34] Many of the foreigners would probably not have come to Marseille if French trade had not been monopolized through the 20 percent duty. Their immigration was only partly voluntary, prompted by Colbert's promises of liberty and freedom. This Janus-faced character of the French regulations of prohibition *and* free port establishment was different from the English Acts, and they likewise produced different results on the epistemic level of ignoring/knowing nationality.

The 20 percent duty had been advocated by Marseille merchants as early as 1658.[35] Their main interest was to exclude both foreigners and other French merchants, in addition to monopolizing the Levant trade in Marseille hands. In October 1662, Henri de Maynier de Forbin, baron d'Oppède, the first president of the Parlement de Provence, general counsellor to Louis XIV, and Colbert's close collaborator in reforming the port of Marseille,[36] called together, by royal order, the aldermen and deputies of Marseille, as well as the deputies of the cities of Toulon, Antibes, St. Tropez, Fréjus, La Ciotat and Martigues in the *Chambre de Commerce*. After having collected several *mémoires* and *advis* on the "restablissement du commerce," the deputies assembled between October 9 and 14 in the presence of the Duke of Mercœur, they deliberated over propositions and d'Oppède produced minutes of their discussions to be sent to the king.[37] Royal protection of commerce, they argued, should be granted by the renewal of the capitulations with the sultan and the installation and strong empowerment of the office of ambassador to Constantinople. Levantine commerce, they maintained, could not flourish without the state's protection. The central measure of reform in this important 1662 collective *mémoire* was a proposal by the assembly and d'Oppède to introduce the 20 percent duty. Its aim would be to distinguish between the commerce of the Ponant and of the Levant

[34] As already Cole, *Colbert*, vol. 1, 392–396, Takeda, *Between crown and commerce*, 31–36 completely omits the 20 percent duty. But cf. Trivellato, *Familiarity*, 116f.

[35] Bergasse and Rambert, *Histoire*, 72.

[36] Masson, *Commerce XVII*, 141–146.

[37] This central document in AN AE B III 234 n. 13 bears the autograph signature of Oppède. Masson, *Commerce XVII*, 160–177 remains the best account of the discussions between the crown (Colbert), its representatives d'Oppède and Arnoul, and the *Chambre de Commerce*, but is mistaken to believe that only in 1667 "prit corps le projet d'affranchissement du port de Marseille."

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and to prevent the English and French from conducting Levantine trade under "their own flag" instead of the "French flag."[38] The whole compromise – 20 percent duty on the one hand, affranchissement and cottimo on the other – was already worked out at that time in collaboration with all other Levant port cities. In its general framework, the dual character of the standard was present from the beginning of the yearlong decision-making process. The matter still took some time and discussion.[39] Once established, the duty formed a firm basis for Marseille's Levantine monopoly to which the *mémoires* concerning Levant commerce addressed to Colbert and Seignelay in the 1670s and 1680s always referred as such.[40]

The norms were successful. Of the 371 ships that departed between 1680 and 1683 from Marseille to the Levant, only ten were not French. The monopoly was enduring. In 1753, of 439 ships, there were only seven ships classified as foreign. This is even more decisive if we look just at France's northern competitors (the English, Dutch and the French "Ponant"): Of the 16,210 ships that entered the port of Marseille from the Levant between 1709 and 1792, only 199 vessels (0.12 percent) were from Northern France or Northern Europe.[41] Vice versa, Marseille merchants were largely unable to participate in the Northern trade, owing to their ships not being competitive with those produced by the Northerners. From the point of view of Marseille, commerce had been partitioned between the passive Northern and Atlantic trade on the one side and the concentration on their active Levant trade on the other.[42] But one has certainly to distinguish shipping *in* the Mediterranean from shipping to and from the Mediterranean and the respective home country. Duties such as the 20 percent had a decisive impact on the latter, but less so on the former.

As opposed to the English standards, the French rules were at first rather imprecise about the "Frenchness" of a French ship. The 1669 edict expressed the norm in a quite complicated manner, articulating

[38] AN AB III 234 nr. 13.

[39] Masson, *Commerce XVII*, 160–164; cf. *Mémoire* 1669, inc. "Trois choses ont ruiné la ville de Marseille et son commerce," CCM H 7.

[40] CCM H 7 (1678, inc. "La chambre du Commerce de la ville de Marseille"); AN B III 234, nr. 30 (1682, non fol., last page); ibid., nr. 34 (1684, non fol., point 4); cf. however, the letter of Choiseul to the *Chambre*, Versailles, August 2, 1762, CCM E 148; and CCM C 143–162 for frauds and debates concerning the duty.

[41] Carrière, *Négociants*, 584–594.

[42] Carrière, *Négociants*, 500.

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foremost the idea that all ships should sail directly from their outgoing Levant port to Marseille without stopping "in Livorno, Genoa or elsewhere," and by charging all goods transported on foreign ships, even if French-owned, with the duty. It also formulated rules of registration with the French consuls in the Mediterranean port cities. The edict always used the legal distinction between "our subjects" and "foreigners [*estrangers*]" or between "foreign" and "French ships," but it did not define what was to be considered a "foreign" as opposed to a "French" ship.[43] Only through evolution in practice and through further royal decrees – a 1681 ordinance and an elaborated 1727 declaration – did those definitions become more specific. Now, to be officially counted as French, a ship had to meet a quota of being at least ⅔ "really French." By this qualification, French administration allowed foreigners to hold as much as a ⅓ interest in a French ship. This was different from the English case, where the body of the ship had to be not only British-built but also completely British-owned. Nevertheless, the question remained, what was to be counted as the corresponding "thirds" of a ship? Its sailors? The value of the ship itself? The goods it carried? From the 1681 Ordinance until the second decade of the eighteenth century this remained rather unclear, and therefore probably also not seriously debated or inquired into, either by the merchants, the state, or the *Chambre de commerce*.[44] The mixed character of free-port politics and of protectionism led to a higher degree of fluidity in the French case.

The French were also undecided about the best way to control the "floating Frenchness" in the Mediterranean. Early ordinances opted for centralizing administration and procedures within Marseille. Passports and *congés* were only to be issued by the Admiral and his officers in that port city, no consul, and not the ambassador in Constantinople were permitted to issue such passes, something that had been a common

43 Julliany, *Essai*, vol. 1, 224–227.

44 There were some attempts to gain higher precision as by the *Intendant des galères* Pierre Arnoul (on him Dessert, *La Royale*, 46f.) who proposed in 1715 to form a register in which the *Commissaire de la Marine* should duly note the first name, last name, age, place and address of residence of each sailor who had lived there for at least five years to be then recognized as "French" in the *bureau des entrées et des sorties* (CCM H 7). This corresponded with the number of years for naturalization as stated in the 1669 edict. Cf. Sahlins, *Unnaturally French*, 96 for a similar but later 1718 rule.

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practice.[45] Several subsequent orders and *mémoires* relied solely on the consuls' authority and their, by definition, decentralized administrative power. Consuls were called upon to examine ships and use their chanceries for the registration process.[46] This was in fact a question of the practical organization of epistemic processes: At what location can one best cope with ignorance? Where should knowledge crystallize? This is foremost a question of deciding between centralized and networked organizational structures for knowledge.

The differences between the rigorous demarcation of Britishness and the more fluid, evolving Frenchness of the merchant vessels might be explained by the different spirit and roots of the French legislation. Referring to the basic model of Mediterranean economics, defined by the two levels of inter-merchant and inter-European competition on the one hand, and the parasite economy represented by piracy/privateering on the other, the Colbertian standards were predominantly formulated from the perspective of the first level, while the British ones had largely been developed from the perspective of the second. While the French had known well of the Barbary problem for a long time, the 1669 Marseille edict evinced no genealogical roots in concepts of the kingdom's defense, as the English legislation did. In fact, in that same year, 1669, Colbert transferred navy warships from Toulon back to Marseille and the French trade ships were likewise armed with cannons like the English. From the point of view of how the conglomerate of Versailles/Paris/Marseille and the London centers of administration thought and ruled, there was a different logic at hand. While we usually conceive of British trade politics as the spearhead of modern economic development, paradoxically, English mercantilism seems to have been far more "war-born," while French mercantilism – despite being

[45] The ordinances from between May 22, 1671 and March 24, 1686 are imprecise concerning the consul's power, but the ordinance of December 22, 1686 explicitly prohibited consuls from issuing passports. Still, the consuls were allowed to issue a passport to a captain who had bought a ship in a foreign country. He then had three months to come to Marseille with this provisional passport to exchange it for one issued by the admiralty. Intelligent merchants sometimes used that "provisional" passport much longer and thus undermined the admiralty's authority (CCM E 146, and Pierre Arnoul, "Mémoire sur les abus que font les Nations Etrangères de la Bannière de France," December 14, 1715, CCM E 147).

[46] Cf. at latest the Art. 17, 25, 31 of the Maurepas Ordinance December 9, 1727, CCM E 147 specifying the consul's role in registering the *rôle d'équipage* and embarking of ships.

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so decisively envisioned from the perspective of state – seems "trade-born."

Mercantilist Paradoxes: Known Flags, Unknown Nations

From the point of view of inquiring into the epistemics of nationality, the interdependency between the two-level system and the emerging systems of security production – Ottoman-European and Barbary States-European treaties, sea-passes and armed naval support –[47] created several further administrative procedures. These were in constant interplay with the duty and customs system and the definition of the nationality of a ship, its cargo and its passengers.

National competition did not just need to play the protectionist card. It also pursued an expansionist agenda in terms of its nationality, and both lines of reasoning were partially contradictory. This becomes evident when analyzing the carrying trade and its gradual merging with practices of (ab)using a foreign flag. The carrying trade, the transport of other ("foreign") merchants' goods was of importance as was also the practice and possibility for "foreign" merchants to sail under the protection of one of the large naval powers.[48] The English plied the carrying trade in the Western Mediterranean to some extent, mostly along the Italian coast or along routes from Livorno to non-European ports beyond the Mediterranean. The French did both on a much larger scale, as the attractiveness of their protection grew from the late seventeenth century until a period that was once termed the "French reign" of the Mediterranean after 1740.

The traditional sign of being under the protection of a given "nation" was the ship's flag. The stronger the risk of piracy was, and the more resources that had to be used for the protection of the ships flying one's flag, the more it was in the interests of a given state to ensure that a ship flying a French flag was also a real French ship – whatever a "real French ship" might be. And as the treaty system between the Barbary

[47] Cf. Paris, *Histoire*, 188–193 for how the *Chambre de Commerce* paid large parts of the Royal navy expeditions; Villiers, *Marine royale*, vol. 1, 64f. for the growth of the French navy in general; Hebb, *Piracy*, 136–143 for an estimation of the costs of piracy attacks directly affecting England or English ships 1627 to 1640 (£1,000,000 to £1,300,000).

[48] Panzac, *La caravane* is now the starting point, but cf. Heywood, "Ideology" 18: "A study of specifically Anglo-Saxon – better, British – participation in the Mediterranean caravane maritime remains to be written."

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states and the European powers had evolved and the corsairs became more or less willing members of an international maritime law system, they became increasingly interested in being certain what *was* a French or English or Dutch ship and what was not, if they met one at sea. This was a fairly simple logic, but it resulted in continual communication about ignoring, want and the need for knowledge about those criteria.

From the given interdependency between inter-European competition and the parasitic piracy economy, one can derive, grosso modo, a rule that in times of significant pirate activity, when the transaction costs for security were high, it was more advisable to keep the number of those who profit from a given state's valuable protection small, so as to act in a protectionist manner against the practices of flag borrowing. In times when pirate activity was low, it became profitable instead for the flag of a given state if many merchants from other nations sailed under its protection through increased duty revenues, the concentration and attraction of flows of merchandise and the symbolic "branding" effect of apparent domination at sea. No early modern state and port accounting calculated those relationships in a mathematized form in our period, but the general rules of relationship and interdependency were clearly perceived and explicitly articulated.

The Normative Framework

The first English-Algerian peace treaty that contained detailed provisions concerning encounters between Algerian and English ships at sea and the control of the pass was concluded for the Crown by John Lawson in the same year as the Act of Frauds was issued, on April 23 / May 3, 1662. Under its terms, Algerians were to let every merchant ship whose captain could provide "a pass, under the hand and seal of the lord high admiral of England" sail in peace. If such a pass did not exist, the ship was, nevertheless, supposed to go free if the "major part of the ship's company be subjects to the King of Great Britain."[49] Following treaties repeat that latter clause.[50] The first order by which Charles II instructed the Lord High Admiral and the farmers of customs about the procedure is

[49] Art. II (executive instructions), Chalmers II, 364 (date old style) = Dumont VI/2, 419f. (date is Gregorian).

[50] Treaty October 30, 1664 (Art. II executive instructions), Chalmers II, 32; Treaty November 29, 1672 (Art. IV), Dumont VI/1, 205; Treaty April 10 (old style), 1682 (Art. IV), Chalmers II, 367.

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from November 23, 1663.[51] Following those orders, when a ship wanted to leave the port of London for a destination in the Mediterranean beyond Malaga, several necessary steps had to be taken: "The Surveyor of the Port where the Ship lies must go on board, and examine and survey her, and muster the Seamen; then he must certify in Writing under his Hand to the Collector of the Port, the Burthen and Built of the Vessel, the Number of Men, distinguishing Natives and Foreigners, the Number of Guns, what sort of Vessel she is, &c." The Collector then prepared an affidavit in which the Master's oath to the truth of all noted particulars was testified.[52] This affidavit was next transmitted to the secretary of the Admiralty who checked if the master of the ship had returned all past passes previously granted to him. The secretary had to ensure that the ship was English built or foreign but "made free," that its master was the king's "Naturall Subject" or "Forreign Protestant made Denizon," and that "two thirds of the marriners" were the king's subjects. The secretary then issued against the payment of a bond – in 1682 that tariff was £50 for ships up to 100 tons, £100 for larger ships[53] – the sea-pass which the master had to give back after returning to the port.[54] The first register of sea-passes issued by the Admiralty dates from 1662, but the extant series is interrupted between 1668 and 1683, and again between 1689 and 1729.[55] The first register 1662–1668 and one may probably infer by that also the passes themselves, did not mention the destination of the ship.[56] In 1682, the practice changed; the officers of the Admiralty were now to use

[51] Keppel, *Keppel*, vol. 1, 158.

[52] Cf. "The Forme of the Oath to bee made by the Master of an English built Ship" according to the 1682 rules, in ADM 7/76, f. 3r (for foreign-built ships, ibid., f. 4r).

[53] Cf. "The forme of the Bond directed to bee taken" according to the 1682 rules, ibid., f. 2v.

[54] *Ductor mercatorius*, 36f.; "The severall Rules, now in Force for the Granting Passes, made since the Peace with Algire in Aprill 1682," ADM 7/76, f. 1–5.

[55] ADM 7/630 (1662–1669) and ADM 7/75–76 (1683–1689), ADM 7/77 starting with 1730.

[56] ADM 7/630: The first 600 entries are numbered (until f. 43), then this practice seems to have been lost again, while later, at least since 1729, each pass had an individual number in uninterrupted chronological order. This verified the identity of each pass. The 1660s entries contain (1) name of the ship, (2) home port, (3) name of master, (4) burden in tons, (5) number of men, specifying mostly "all English," (6) number of canons, (7) construction (Dutch, English . . .), (8) identificatory picture on the ship's body or figurehead. The "forme of the Pass" (ADM 7/75, f. 2r) does not indicate the destination.

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a table that contained the same scheme of entries. Still, the destination was not mentioned. Instead, an entry indicated the current location of the ship ("Place shee lyes at").[57] After July 10, 1683, the alternative that it was sufficient if the "major part" of the men were English – which opened a door to case sensitive consular negotiations in favor of English ships without passports – was made invalid. Indeed, corsairs often rigorously seized ships in the early eighteenth century if they had no "proper Pass ... altho she evidently appears to be a British ship" and confiscated their cargos.[58] The pass system had stabilized at least by 1682/83; the passes remained in use until the middle of the nineteenth century.[59]

In 1717, a typical sea-pass issued by the commissioners of the Lord High Admiral read:

> Suffer the Ship Royall George of London John Levett Master, Burthen about Two hundred & fifty Tuns, mounted with Eightin Guns and Nauigated with Twenty two men, seventeen his Majestys subjects, British Built, Bound to Affrica to pass with her Company Passengers, Goods & Merchandizes without any Lett, Hindrance, Seizure, or Molestation, The said Ship appearing unto Us by good Testimony, to belong to the Subjects of His Majestie, and to no Foreigner.[60]

This example also shows how the captain respected the rule of at least ¾ English men of the Navigation Act at the lowest possible limit – 16 of 22 would not have been enough – as foreigners were cheaper. The ⅔ rule of the sea-pass issuing instructions was overridden here. The difference

[57] ADM 7/75: the current location refers to the dock in the London port or the riverside place along the Thames, to an outport city or even to a place abroad (Newfoundland, the Straits, Barbados, Jamaica). Thus passes could be issued *in absentia* during those early years. Also added were entries for the date of pass issue, the name of the signing officer, and a space for a memorandum note.

[58] Duke of Newcastle, Whitehall, November 27, 1732 in response to the Algerians' requests, SP 71/7, f. 617–622, 619.

[59] The sea-passes were engraved printings with blank spaces for the individual ship and master. They were also cut into two parts along a scalloped line. The upper, smaller part was sent to the consuls who gave them to the Bey/Dey of the Barbary cities. The lower part was given to the captain. Only the perfect match of both sides on the sea or in Algiers and Tunis, when a ship was brought in, granted free shipping and secured from captivity. For reproductions of English, Dutch, Danish, Swedish sea-passes around 1800 cf. Gøbel, "Danish," 171; Müller, *Consuls*, 145; Ressel, *Zwischen Sklavenkassen*, Abb. 3, 4, 6.

[60] "Original English Mediterranean Sea-Pass," October 21, 1717, AN MAR B7/474 nr. 21. In 1717, a typical sea-pass issued by the commissioners of the Lord High Admiral read (Fig. 1.1.)

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between those several quotas remained. It also shows that quite often the ships left England with fewer than two men for each of at least sixteen guns, which would be here thirty-six men. If they entered like that London on the way back, they would have to pay the one percent duty of the Act of Frauds. Often, they hired still more men within the Mediterranean.[61] The problem of how to handle "English ships" without passes remained, as is evident already from the later treaties.[62] As those early eighteenth-century passes contain the destination of the ship, so did also the registers restarted in 1730, obeying a different notation system, following an order of December 18, 1729: a first destination ("Whither bound" directly from the place the pass is received at) and a second destination ("Whither bound from thence") was noted in two columns. So, passes were now issued to ships for instance "of London," currently lying in the "Thames," heading for New England by passing the Straights of Gibraltar and then back to Lisbon. Or first to "Lisbon, New England," counted as one first destination, and then to the West Indies. All ships now enrolled in the London Admiralty registers had to be currently anchoring at a port of the British Isles.[63]

One may ask why the northern nations relied on the strongly formalized sea-pass system, while the French congé documents remained far less developed. The higher interpenetration of Atlantic and Mediterranean trade reveals a reason for this. As the Atlantic trade grew, it was first not necessary to demand a sea-pass from the Admiralty in London when coming from the plantations; a certificate from the respective governor or his representatives was considered sufficient[64]. This, however, was a simple document written in English like a French *congé* without the haptic element of two parts that had to fit together. A ship, coming from there "and trading to Portugal, the Canaries, Guinea and the Indies"

[61] For the requests of exemption from those rules cf. the references above n. 11.

[62] Treaty April 10 (old style), 1682 (Art. IV), Chalmers II, 367; "Treaty concluded by Admiral Arthur Herbert and ambassador William Soames," April 6, 1686 (Art. IV), Chalmers II, 381. "Additional articles agreed with Captain Munden and consul Cole," August 17, 1700, Chalmers II, 387.

[63] ADM 7/76. Only from that time, they can serve as supplementary source to the Port Books where the customs officers noted the foreign outgoing shipping and which are preserved for 1686 and again since 1709 (Davis, *The rise*, 380).

[64] "Additional article agreed with George Byng," October 28, 1703, Chalmers II, 389. Registers of those early American Mediterranean certificates are to be found in the records of the provincial governors, see for Pennsylvania the entries excerpted in Linn and Egle, *Pennsylvania Archives*, vol. 2, 628f. from 1761–1764. Cf. Lydon, *Fish and flour*, 54f.

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By The Commissioners for Executing the Office of Lord High Admirall of Great Britain & Ireland &c. And of all His Maties Plantations &c.

Suffer the Ship Royall George of London John Livett master, Burthen about Two hundred & fifty Tuns, mounted with Eighteen Guns and Navigated with Twenty two men, seventeen his Majesty's Subjects, British Built. Bound to Affrica to pass with her Company Passengers, Goods & Merchandizes without any Lett, Hindrance, Seizure, or Molestation, The said Ship appearing unto Us by good Testimony, to belong to the Subjects of His Majestie, and to no Foreigner. Given under Our Hands, and the Seal of the Office of Admiralty the Twenty first day of October in the year of Our Lord One Thousand Seven hundred and Seventeen

To all Persons whom these may Concern

Orford

Geo: Dodington

Geo: Baillie

By Command of their Lordsps

(17675)

Figure 1.1 and Figure 1.2 Two English Sea-Passes, left of 1717 without the upper part, on the right of 1719 with the upper part still attached (AN MAR B7/473). On the left are visible the two blue 6 pence duty stamps for issuing, which are not the bond to be left, the stamp of the Admiralty on the left and the number of the passport (Nr. 17675) as it was registered in the passport register. The only printed matter is the ship and title in the wreath of leaves; but the text below is nevertheless a form already written by the officers with blanks left to be filled in (names of ship and captain, dates etc.).

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BY THE
COMMISSIONERS
for Executing the Office of
Lord High Admirall
of Great Britain & Ireland &c. And
of all Her Ma.ties Plantations &c.

Suffer the Ship

to pass with her Company, Passengers, Goods & Merchandizes without any Lett, Hindrance, Seizure, or Molestation, The said Ship appearing unto Us by good Testimony, to belong to the Subjects of Her Majestie, and to no Foreigner. Given under Our Hands, and the Seal of the Office of Admiralty the day of in the year of Our Lord One Thousand Seven hundred and

To all Persons whom these may Concern

By Command of their Lords.ps

Figure 1.1 and Figure 1.2

without any such pass would be taken by the Algerians despite its clear appearance of British property.[65] While the Romance languages were strongly present among the Barbary corsairs – themselves often renegades

[65] James Wisham to Lord Bolingbroke, Algiers, August 8, 1719, SP 71/5, f. 203r.

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from Mediterranean countries – and as their *lingua franca* was itself a fluid mix of Castellan, Catalan, Italian and Arabic elements,[66] documents from Mediterranean countries were more likely to be understood at sea, even if illiteracy was a problem. English was not a frequently spoken or read language on the North African shore. Consul Wisham recommended, in 1714, the issuance of real Mediterranean sea-passes and not only the said certificate to ocean traders coming from the Americas, Asia and Africa, because the Barbary corsairs "being not only entirely ignorant of the English Tongue, but even of the Characters of any Christian Language, can make no Judgment whether such Certificates are true or falses, and that the only mean whereby they can know <a> ship belonging to Her Majestys subject is by comparing the Indent of Passes with the Passes themselves."[67]

The Admiralty and customs officers in British ports not only sought to determine the "Englishness" of the ships and their men, the administration also ensured itself by the typical early modern "last step" of assurance, the ship master's oath. A promise under oath that the ship was English-built, belonged to the English, and that the necessary amount of men were English, served as a convenient capstone for the construction of the account books' correctness. To a certain extent, it also replaced reality through its sworn statement. If it later proved to be wrong, the administration could always blame the master, but for the pass registers, the exact number of outgoing English and foreign men was saved. According to those rules, English nationalizing was successful. Nearly all importing and exporting into and from the Mediterranean was conducted by English ships as early as 1615. The English had lobbied with energy against any plan by Italian firms to be established in London.[68] The nationalizing of the ships themselves took longer. Between 1654 and 1675, the share of foreign-built ships was between a third and the half of all ships leaving English ports, a proportion that fell from the 1680s to less than 10 percent.[69] This

[66] Changing concerning the region: In Morocco the *lingua franca* was more "spaniard," in Tunis more influenced by the Italian, cf. Cifoletti, *La lingua franca*.
[67] SP 71/5, f. 203r. For the triangular trades between Britain, the Mediterranean and the "rest of the World" cf. McCusker, "Worth a War?"; Richardson, *Mediterranean passes*, reel 1, 10.
[68] Davis, *The rise*, 232, 296; Pagano de Divitiis, *Mercanti inglesi*, 151f. (case of 1666).
[69] Davis, *English shipping*, 48f. For the steps of "naturalization" of a foreign ship bought by an English or to free a ship caught legitimately as prize cf. Crouch, *Guide*, 132f. The Treasury Books and Papers contain numerous records on that.

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indicates that the naturalization of ships – or, "making them free" – was of high importance; a large number of ships taken from the Dutch was "freed" in 1668/70.

The elite in Algiers and Tunis, the Dey, Bey, the milice and the Divan, was well aware of the European legislation[70] and knew what the treaties stipulated. When the English government communicated the new rules[71] for granting sea-passes to its consul in Algiers, Samuel Martin, in 1675, he transmitted this information to the Dey, provoking discussion in the Divan. The new Algerian ruler Bobba Hassan complained about the "many forraine shipps sayling under English Collours" but admitted that this could very probably not have been by permission of the English themselves as it was not in their own interest as the "true [sc. English] subiects found the lesse Employment for their shipping."[72] This was a time when the French were attacking their Northern European rivals – Hamburg, the Dutch – which rendered the British flag especially attractive. Many ships used it even if many of their sailors and even their captains were not English.[73] Such extensive use of a flag formally protected by the treaty induced the corsairs to bring ships into the Algerian harbor, and to distinguish there by closer scrutiny between "English" and "non-English" passengers. Applying in 1677 the clause of the 1662 treaty requiring a "major part of the ship's company" to be English, they classified a ship like the English-built *Susannah* sailing from Livorno to Palermo with its English captain Walther as not English "because his number of passengers, & strangers exceeded the number of the English Men."[74] The rule that ¾ of the men on board had to be English was apparently quite successfully implemented on vessels arriving in and departing from England. But English ships within the Mediterranean, such as most of

[70] Cf. below n. 123.

[71] There is no evidence for those specific rules (cf. the gap between 1664 and 1683, n. 55). It seems that there was in fact an interruption of the use of sea-passes between 1664 and 1683 (cf. SP 71/2, f. 172v).

[72] Samuel Martin to Whitehall, Algiers, May 6, 1676, SP 71/2, f. 103v.

[73] "The Narrative of Samuel Martin Consull of Algiers" (1676/7), SP 71/2, f. 172r: "those sea's swarmed with English shipping & indeed of all Nations under our Bandera."

[74] Samuel Martin to Whitehall, Algiers, May 31, 1677, SP 71/2, f. 183r. Martin then fought for the ship, referring to the main Art. 2 of the 1662/64 treaties, willingly ignoring the executory instructions which had just formulated that "major part" rule.

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the Italian merchants based in Livorno, could and did depart more easily from those rules.[75]

The French were affected by the phenomenon of the borrowed or abused flag far more than the British. Before a ship left Marseille, it had to be checked by the *commis* of the *lieutenant de la Marine*. At least after 1681, there should have been a *rôle d'équipage*, a list of all men on board. The French counterpart to the sea-pass was the *congé* for the ship that was likewise issued against a certain payment according to a fixed tariff. The *congé* could, in theory, only be issued if two thirds of the men on board were French "currently resident in France."[76] From 1696, however, because of the system's frequent abuse by foreigners, a different *congé* form was distributed with the inscription "Etranger."[77] The higher frequency of flag abuse was due to several causes: the partial free-port status of Marseille, the effective nationalization of the Levant import and export shipping by the English and their Levant Company's monopoly, and the more fuzzy French legislation developing in a back-and-forth manner.[78] A 1671 order prevented French merchants and ship owners from lending their name to strangers ("prêter le nom"), an old practice of foreigners using the "Frenchness" of a Marseille merchant for their own purposes. Immigrants to cities often tried to use the names and the signs of the privileged burghers and guild members. This forbidden practice was also called "prêter les noms ou marques."[79] Between 1671 (Ordinance of May 20) and 1727, this practice, usually exercised by way of counterfeit contracts, was sometimes defended absolutely, sometimes it was allowed again partially as between 1684 and 1717. Other regulations concerned restrictions of naturalization standards. Foreigners who had been granted a letter of naturalization but who had not really abandoned their domicile in their former homeland were deprived of the privilege of naturalization, a rule designed foremost

[75] This concerns the *small vessel* shipping and carrying trade conducted for Italian, Jewish and Armenian commissioners. On its rise cf. Pagano de Divitiis, *Mercanti inglesi*, 80–91; for the cross-cultural collaboration of the Sephardic Jews of Livorno cf. Trivellato, *Familiarity*.

[76] Art. VIII, "Ordonnance du Roy," Strasbourg, October 24, 1681, CCM J 59.

[77] "Ordre de Louis Alexandre de Bourbon, comte de Toulouse," Versailles, May 21, 1696, CCM E 146.

[78] These *déclarations, arrêts* and *ordonnances* are filed in CCM E 146 and E 147.

[79] Cf. Art. 415 of the "Ordonnance générale," registered to the Parlement of Paris in 1629, cited by Éon, *Commerce honorable*, 234.

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against Genoese merchants who had apparently established a practice of dual nationality and residence, and enjoyed the privileges of flag use, protection and tax reductions of both places, and the ability to flexibly choose the best conditions for each given freight and voyage (royal declarations of August 21, 1718; February 1720).[80] The 1727 declaration linked rules concerning the property of ships and the use of flags with very specific regulations about how to keep a register of the ship lists ("rooles d'equipages") containing the names and nationalities of all men on board, from the captain to the passengers and every sailor.[81]

The ways to undermine the rules relating to the distribution of *congés* were apparently much more multiform and frequently applied in the French case. Deviation from the ideal started right in Marseille, while for the English, it seems to have been more a question of difference between the London homeport and shipping realities in the Mediterranean.

Nationality in the Practice of Shipping and Slave Ransoming

This steady processing of "the national" through the observation and the breaking of rules, and through communication about them can be shown through several examples from the Mediterranean.

Regarding the English, it was not uncommon to find foreign-built ships, belonging to strangers with only the captain and a few English men using the English "Bandero." For example, the treasurer of the Bey of Tunis, a Jew, wanted to use a non-English built ship with only three English men on board. Old sea-passes were used[82] which had not been returned to the Admiralty with "scratch't names & put others in their stead."[83] Sometimes a consul issued a pass to merchants to let them deliver their goods to a North African city, and when departing, because they had no passes, these mariners obtained protection from privateers, either European or Maltese, or even the Algerians.[84]

80 On Genoese naturalizations in that period cf. Sahlins, *Unnaturally French*, 96, 170, 175f. and mostly 199f.; in general Dubost and Sahlins, *Les immigrés*, 182f.

81 "Déclaration du Roy, concernant la navigation des vaisseaux François aux Côtes d'Italie, d'Espagne, de Barbarie, & aux Échelles du Levant" (October 21, 1727), CCM E 147.

82 The term of validity for passports was negotiable. For the British ships sailing to India, it was important to have a validity longer than one year, while the Algerians preferred a six month term of validity (1730/31, SP 71/6, 97–99).

83 Consul Goddard to James Vernon, Tunis, December 30, 1700, SP 71/27, f. 105r.

84 Consul Lawrence to James Stanhope, Tunis, February 17, 1716, SP 71/27, f. 213r.

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New subjects of the British king were not always included under protection granted by peace treaties without some difficulty. The inhabitants of Gibraltar, Port Mahoney and Minorca, for example did not appear to be very "English" to the corsairs.[85] They obviously feared that those Catalan-speaking British subjects would be hardly recognizable and "that the Mayorkeens Cattalans and other Spaniards may hereafter clandestinately make use and navigate under Brittish Colours" if the door was opened once to such an un-northern Englishness. The consul proposed himself as the authority to "distinguish who are his Majestys right subjects and who are not" by inspecting Mediterranean sea-passes in question.[86] If ships came in now from Gibraltar to Tunis, it could be a matter of life or death if the consul and other representatives of the English nation, requested by the Bey, accepted the papers presented to them.[87] Could an English Mediterranean pass from Gibraltar protect a Catalan tartan and could a bill of health produced there testify to the health of the men on board, or neither of these things?[88] Ships which were even less clearly British – a Genoese captain coming from Gibraltar leaving a ship without men and protection anchored offshore Oran – could fall into the hands of corsairs if the English men were not on board and the British embarkation pass from Gibraltar was with the crew and captain at a tavern ashore.[89] While here Catalan-speaking British subjects and ships, or enslaved German-speaking subjects of the British Crown from Hanover, such as one Albrecht Wilhelm Forstmeier[90] had to be protected, English speaking Irish Catholics naturalized in Spain could likewise complicate the usual

85 For the British discussion about the inclusion of Gibraltar into the British Empire cf. Plank, "Making Gibraltar British," especially 351–358; Constantine, *Community and identity*, 11–92.

86 As n. 84.

87 Cf. the case where a British Gibraltar privateer was brought in to the harbor of Algiers "because he had St. Georges Colours, which they mistook for Genoese and because the Captain & ships company spoke little English, it was with the greatest difficulty they got her released; but the poor Captain and all his Men lost all their Clothes." (Thomas Bolton to the Duke of Bedford, memorial of ca. 1748, SP 71/8, f. 301–333, 308).

88 Consul Lawrence to the duke of Newcastle, Tunis, June 19, 1733, SP 71/28, f. 354r; similar case 1730/31, SP 71/7, f. 97–99.

89 Duplicata [of a Letter of Robert Cole to the Earl of Dartmouth?], Algiers, October 8, 1712, SP 71/4, f. 204r (relating to affairs of May 1710).

90 Recommendation of Forstmeier to Consul Hudson, Algiers, June 11, 1724, SP 71/6, f. 273r (cf. f. 483ff.).

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patterns of recognition.[91] Far away in Northern Europe, those Mediterranean affairs with the corsair economy could trigger merchant migration and therefore the fluctuation and repartition of nationalities, as traders moved from a neighboring territory some miles across a border to become inhabitants and later naturalized subjects of a British dominion, such as Hanover, in order to obtain access to British sea-passes.[92]

The British protection of a ship could also be obtained by paying a consulage duty to the Levant Company in the Mediterranean. In those cases, completely "un-British" ships sailed under that flag, and if some problem occurred, the "national" was affected as the consul of the place was typically involved and had to resolve not only a technical problem, but also defend the reputation of the flag. A Greek, George Aptall, a former member of the Oxford Greek College,[93] who apparently pursued the career of ship captain, sailed with his ship from Alexandria to the North African ports "with goods belonging to Turks and with 30 Turkish passengers," but Aptall made a stop in Crete, murdered six of the Turks and sailed away with their goods. As the consulage was paid to the vice-consul of Alexandria, the Turks tried to get recompense from the English Nation, obviously thinking of the British protection as something like insurance.[94] Cases like this put the consul and "the nation" in serious conflict against the Ottoman authorities. A Turk of Smyrna who had chartered a pollacca of a certain Mariano Julia who enjoyed British protection as being from Port Mahoney, while of quite un-northern appearance (with a "poor old Turk, & a negro girl"), as the consul felt obliged to remark, dissolved his contract because of the French threat. In October 1741, a ship under British protection sailed from Malta to Tripoli with "Ninety Moors, men, and Women, all Pelgrimes who were coming from Alexandria with a Sweedish ship to Malta." The French took the ship and enslaved the passengers, putting some on the galleys in Toulon. In response, the pasha of Tripoli now appealed to the English, as the ship was under their protection.[95] The freeing of

[91] Consul Lawrence to the duke of Newcastle, to Tunis, August 18, 1735, SP 71/28, f. 463.

[92] Harding, "North African Piracy."

[93] See the next chapter for the English-Greek connections.

[94] Cf. Matterson, *English trade*, 156–158, the affair took ten years to be resolved.

[95] Consul Lawrence to the Duke of Newcastle, "Account of the severall insults offer'd by the French Cruizers to His majesty's Colours in these Seas," Tunis, August 2, 1742, SP 71/29, f. 215–217. A similar case: eight Algerian Mekka

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enslaved Algerians, passengers of a ship under British protection taken by a Spanish cruiser, could become a state affair that did not just involve the captains and the consul in Algiers, but the Dey, and in London the Lord Justice, the Secretary of State, as well as the British ambassador to the Spanish Court in 1722/23.[96]

It is generally argued that the Europeans had their different ransoming institutions while the Moroccans and the Maghreb had not.[97] The cargo trade and the lending of protection to foreign ships, as in these cases, could produce paradoxical situations where the Muslims gained access to that infrastructure of the consular and diplomatic system, pitting Europeans against Europeans.

Despite *and* because of the 20 percent duty, and because of the steadily growing importance of the French market, the French flag was highly attractive in the Mediterranean.[98] Aside from the more complex naturalization process, the already mentioned counterfeit contracts were the most frequently used way. That those contracts were simulated was obvious to the locals in Marseille, cognizant that the modest fortunes of a given master could not have permitted him to really buy an expensive ship.[99] In reality, the ship master acted as employee of a foreign merchant, but before the French port administration, he presented himself as owner and, being himself of Marseille and falling under the other rules of the royal ordinances, he could obtain the *congé* of the Admiralty and the right to use the French flag for a ship that was completely foreign in economic terms. There were other ways too; the simplest was just to take several flags on the ship. This meant there were English ships with French and Spanish flags on board, and a ship with only Irish men on board sailing under English flag, but with passports of the French Admiralty in Brest, meaning Irish Catholics switching between Britishness and French protection.[100]

pilgrims were taken by the French before Tunis, sailing on an English ship, cf. the request of the Divan of Algiers to Louis XIV, Algiers, July 26, 1696 and response of Seignelay: Plantet, *Correspondance*, 252, 260.

[96] Cf. only Carteret to De la Faye, Göhre, November 22/11, 1723, SP 71/6, f. 223r.

[97] Ressel and Zwierlein, "Ransoming"; Hershenzon, "Plaintes et menaces," 453.

[98] Panzac, *La caravane*.

[99] "Coppie de la lettre du Conseil de Marine a M. Arnoul Intendant des Galères," December 2, 1716, CCM E 147.

[100] Grammont, *Correspondance*, 18, 45, 59.

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A case in some way comparable with the English intervention for captured Muslims occurred in 1717 when Algerians took a ship commanded by a French captain with 119 Spanish passengers, sailing from Barcelona to Valencia, which, because of its French passport, the French consul in Algiers had taken under his protection. The consul ended up hosting the Spanish for three years in his own house, because the Algerians were only willing to free them in exchange for 130 "Turks and Moores" taken in 1716 by the Sicilians of Syracuse – then ruled by Savoy after the treaty of Utrecht – who had likewise traveled on a ship with a French captain. This put the French in the position of an "arbiter" between enemies, but the whole affair was perceived as causing dishonor to the French flag. While on the one hand the French could flatter themselves as having something like precedence and hierarchical dominant rule among the Europeans and even over the corsairs, they were also challenged to prove the efficiency of their protection.[101]

The deviations from the French norms about who was allowed to sail with the French flag were perceived by contemporaries as a mass phenomenon instead of single cases. This is also true for how the French perceived the matter themselves. During the regulatory period of the regency from 1715 to 1717, the *intendant des galères* Pierre Arnoul, and the *Chambre de Commerce* unsystematically gathered data about the abuse of the French flag at sea through the interrogation of incoming sea captains. Five captains gave accounts of many ships from St. Remo, Naples, Malta, Sicily, Genoa and Messina that they had encountered, providing incomplete lists of some thirty or forty ships whose names and captains they remembered. All had flown the French flag, but often it was at best the captain alone who had been French or naturalized, while all the men on board had not been French.[102] Similar

[101] Cf. the correspondance of Jean Baume, 1717 to 1719, Grammont, *Correspondance*, 138–152. Another case where the honor of the white flag was endangered: Denis du Sault of Tunis, St. Mandrier, August 27, 1720 to the Secretary of State, AN AE B I 1130.

[102] "Memoires donnez à la Chambre de Commerce de Marseille par les Capitaines cy après denommez des Batimens Étrangers qui naviguent sous la Bannière de France," sent as attachment to Arnoul's "Mémoire sur les abus que font les Nations Étrangères de la Bannière de France" (December 14, 1715), CCM E 147. Pirates sailed with a set of several flags to fly as was convenient in a given situation ("There was on board the sloop four sorts of Colours English, French, Swedes and a Black Ensign which had in it a Death head on one side and an Arm with a sword in ye hand on the other side," consul Lawrence to the duke of Newcastle, Tunis, October 2, 1720, SP 71/27, f. 301).

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notes, gathered less systematically, are to be found in reports of how the Deys and Beys of Algiers, Tunis and Tripoli complained about counterfeit Frenchness.[103] Sometimes massive fleets, as in 1699 some 200 ships, passed the North African coast with French flags and the Algerians let them pass without examining them. But impossibly, the consul suggested, all of those 200 ships were really French.[104] The use of the French flag by ships that had in fact never visited a French port evidently occurred much more often than with other European nations from at least the 1680s, however.

Ransoming communication was, from the perspective of the epistemic of mercantilist political economy, a secondary phenomenon. The national belonging within captivity and ransoming correspondence was distinctly connected more to the state level than the merchant economy. Literature on captivity and ransoming is expanding, and sometimes the issue of identifying captives of one's own nation has been addressed explicitly.[105] The impression gained from what the archival records reveal and what scholars have discovered until now is that the sources do tell a great deal about the need to identify the nation of captives and about how eager both consuls and corsairs were to do so. Nonetheless, there is little evidence about how such identifications were conducted in early modern times. Seldom do we have consular correspondence or the ransoming orders really sent to a captive's country of origin, requesting entries in the parish records. For those that do exist, it remains unclear how that entry could have helped to confirm anything other than that there was an entry for a person of that name in that parish. The application of that knowledge gained for the captive claiming to be that person hundreds of miles away in North Africa still remained, in the end, arbitrary. Some slave lists (infrequently) contain rudimentary forms of captives' physical descriptions,[106] but they usually only offer

[103] Plantet, *Correspondance*, 120 (case of 1686); AN AE B I 1088, no fol. (case of 1686/87); Du Sault, "Réponses aux griefs du Dey," Tunis, July 1, 1693, AN AE B I 1088, no fol.

[104] Consul Durand to the *Chambre de Commerce*, Algiers, January 12, 1699, Grammont, *Correspondance*, 65.

[105] The literature on ransoming Christian captives in the Mediterranean has exploded and regionalized since the 1964 monograph by Salvatore Bono. Instead of surveying that field here again cf. Ressel and Zwierlein, "Ransoming."

[106] Kaiser, "Vérifier"; AE Nantes, Corr. Consulat Algier, A II, fol. 93–104; later examples with physical descriptions in CCM G 41, but this is not the usual case.

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lists of names with the place of origin.[107] In all likelihood on shore, the language spoken by the captive and who he claimed to be, if believed and supported by the consul, was usually the only communication that reified a nationality, as many passengers and sailors possessed no passports or letter of conduct.[108] Usually corsairs, as well as Europeans, simply referred in writings to, for instance, "5 French and 7 Dutch slaves" or something similar. Research on early modern identification processes *within* the proto-national states has shown how complex and unclear the standardization of descriptions and modern record keeping was in times before photography.[109] Matters were still more complicated in a zone of constant travel and assimilation among merchants, sailors and passengers such as the Mediterranean shores and at such great distances from the metropole. Boubaker has underlined the high "importance attributed to national belonging" by religious as well as state institutions and that "mostly, both sides kn[e]w the identities of the persons,"[110] and this is true. Yet one must add that we do not know much about how that past conviction "to know" was achieved and if we, according to current measures of what might be deemed knowledge about personal identities and nationality, would call that "knowing."[111]

Where Does the Nation Start and Stop? Irritations and Reflexivity

It is evident from what has been shown that the mercantilist communication created the paradox of an ongoing query for the nation and for national attributions, but that it often ended up in an awareness of ignorance. Most interesting in this context are those testimonies of experts and administrators of the regulations to be executed that betray a reflexive analysis of those paradoxes and of the functioning of the norms themselves. Some of those observations show that, to some

[107] "Rolle des Esclaues François qui ont esté remis au Sieur Le Maire par le Divan de Tripoly le 27e Septembre 1686," AN AE B I 1088 [unfol]; CCM G 39–48, specially the early *rôles* in G39, cf. two entries from a 1615 *rôle*; printed examples: *Les sources inédites de l'Histoire du Maroc*, IIe sér., tom. 4 (1693–1698), 376–383, 630–632.

[108] Conseil de la Marine to Arnoul, April 6, 1718, CCM G39.

[109] Caplan and Torpey (eds.), *Documenting individual identity* and for France especially Denis, *Une Histoire de l'identité*.

[110] Boubaker, "Réseaux," 27.

[111] This seems to be still close to the medieval situation, Kosto, "Ignorance about the traveler."

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extent, what has been widely considered a major insight of the twentieth century – the constructivity of nations, or their status as imaginations, as that of other community discourses – was already available to the constructors themselves.

In 1748, the chaplain to the factory in Algiers, Thomas Bolton, wrote a memorandum to the Secretary of State, the Duke of Bedford, in which he explained the attractiveness of the British flag. He conceived of all Barbary/European intercourse in the Mediterranean as essentially a story of imitation of the initial English war/treaty solution established in 1662 after Admiral Blake's 1647 victory, even that of Ludovician France. Bolton attributed the rise of the Swedish, Danish and Hansa cities during the first half of the eighteenth century to the "inactive reign" of the former Dey who died in 1745.[112] The result was that all of a sudden the smaller neutral powers and Italians became the preferred carriers of trade, even by English merchants themselves.[113] Evidently then, and not without surprise, there was a precise awareness about the causalities between flag use in the carrying trade, war, peace and the opportunities of neutrality. The reflections of Robert White from two years later are even more sophisticated: The Act of Frauds of 1662 included explicitly under the term "English men" all the king's subjects from England, Ireland and the colonies.[114] The 1660 Navigation Act and the administrative practice similarly understood as "British-built Ships" all "Ships built in Great Britain, Ireland, Guernsey, Jersey, or the British Plantations in Asia, Africa, or America."[115] But during the last Jacobite upheavals in Britain and their repercussions on the shores of the Mediterranean – where fear of Jacobite conspiracies among the English nation and employees of the Levant Company was frequently mentioned before and around 1750 –,[116] Imperial administrators reflected upon the restrictions of that definition of "English." White creatively interpreted the renewed treaty clauses with Algiers of August 1700 in retrospect, trying to prove that neither of the contracting parties, at that time before the Act of Union between England

112 SP 71/8, f. 307 – The Dey was Ibrahim Kheznadji Pascha (reg. 1732–1745). Bolton's analysis corresponds with current research, cf. Ressel, *Zwischen Sklavenkassen*, 467–469, 481.

113 SP 71/8, f. 305.

114 Act of Frauds 1662, Art. V – cf. above n. 6.

115 Crouch, *Guide*, 131; Navigation Act 1660, Art. VII (above n. 5).

116 Cf. Bolton to Whitehall, Algiers, s.d. (rec. December 15, 1748), SP 71/8, f. 343; Robert White to Whitehall, September 1, 1748 had to clear his "Charac'ter from the infamous imputation of Jacobitism" (SP 71/24, f. 62–63).

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and Scotland that formed Great Britain in 1707, could have intended to include "Scotland, Ireland, or any of His Majestys other Dominions" under the term "England."[117] Nor could the term "British Ships" reasonably have been thought to "cover or imply all Country Ships belonging to His Majestys Dominion." Finally, White deconstructed the very core of the processes of identification and national attribution, the moment of matching the upper and the lower parts of the sea-pass:

> Besides, this whole article seems to render the Security of Passes very uncertain and precarious, Because the vague term, *Fit*, which is the Ruling Term in the Article, may admit of many Different Meanings. It may be understood for the Scollops fitting, for the Lines fitting, for the Length, Breadth and Thickness of the Pass fitting, It may be constructed to mean One or all of these, or any thing else.[118]

Beyond the particular situation – five ships had been brought into Algiers because the scalloped Passes did not correspond with the corsairs' counterpart – the reflections show an awareness of the somewhat unreal moment of testing nationality, how the fitting (or not) together of some pieces of parchment was the code for being British/not-British. It was the code for freedom/captivity, and even for life/death.

White's reasoning, obviously based in his training in Common Law legal language analysis, was dominated by the aim of delegitimizing the existing treaties with respect to a precise political situation. But it shows nevertheless an astonishing amount of awareness of the problem of "how to know the nation." It even shows the availability of relativist thought about the constructedness of nationhood as it was defined by the "fitting/non-fitting" of two pieces of parchment. If, like White, one starts to reflect on definitions, they become fluid. The fifty-year distance since the Union had added an additional amount of relativity to that; it made the past political situation unsuitable to dictate the present. This magic moment of the nationalizing "fitting" of sea-passes was deconstructed like rationalist reformed theologians were trained to deconstruct the mystical moment of transubstantiation. While one analyzes today sometimes the past discourses of belonging or not to a nation in a Schmittian way as secularized forms of belonging or not to the *corpus mysticum Christi*,[119] proto-constructivist thoughts about national

[117] SP 71/8, f. 489v. [118] Ibid., f. 490r.
[119] Cf. Bell, *Cult of the Nation*, 38. On the *communio cum Christo* as central category of forging communities and political alliances in pre-national

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communion building were apparently possible just by reflecting on the crude materiality of identification processes such as pass matching.

For the French, one can find similar forms of reflexivity in *mémoires* concerning the functioning of the whole Mediterranean seafaring and trading system between 1715 and the 1730s in response to the abuses of the flag, mostly by help of the counterfeit contracts. In those cases, once issued, captains used the admiral's *congé* for several years and the port administrators tolerated all this when the ships returned to a French port. As a result, according to a memorialist in 1715, foreign ships had effortlessly taken over shipping from the French, but still under French flag, as the "real" French ships now remained without work in their home ports. This also created something like a low-cost market for French sailors who were present in foreign port cities to be hired to fulfill, at least partially, the French equipment rules. Paradoxically, the French realized that after fifty years of Colbertian legislation, French protectionism – at least if run too laxly – could create economic exiguity for the French and profits for foreign (Italian) merchants.[120]

Only fifteen years later, the situation changed once again. With pride, an anonymous 1731 memorialist of the *Chambre de commerce* remembered that they had flattered themselves by the French flag's attractiveness and its "high reputation with foreigners" until that date, while Dutch and English ships in the Mediterranean could find almost no tonnage besides their own commerce for decades.[121] Now, the peace had changed the situation. Competition had risen and the French now risked losing their share of the carrying trade market. At that point, this memorialist warned about the ill effects that would result from severe protection that followed too rigorously the "maximes d'Etat" instead of an economic rationale. He therefore openly recommended what seems to have even been the usual practice for a long time, a somewhat laissez-faire enforcement of laws that would re-allow foreigners to take up to a third of the stake in the property of French shipping as had been the rule in the glorious times of Louis XIV. In so doing, he justifiably criticized the decision taken by the *Régence*

reformed thought Zwierlein, "Les saints de la communion"; Zwierlein, "Consociatio."

[120] "Mémoire sur les abus que font les Nations Etrangères de la Bannière de France," communicated to Pierre Arnoul, December 14, 1715, CCM E 147.

[121] *Mémoire* of the *Chambre* directed to Maurepas, December 24, 1731, CCM E 147.

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administration in 1716/17 as being too rigid and perhaps too informed by state theory, in an attempt to convince Louis XV to return to the political economics of his great-grandfather. Indeed, Maurepas responded to Lebret at the end of January 1732 by accepting the necessity to tolerate the abuse of the flag "by not always observing strictly the 1727 declaration" in order to not lose foreigners as important subcontractors of French navigation. The "inclination to our nation," he declared, was of high importance for France. If the advantages of the (ab)use of the French flag by the foreigners had been "more than reciprocal," the nation would have profited infinitely from it.[122]

The protectionist perspective on the second level of Mediterranean economics, piracy, in 1715 was that the corsairs were well acquainted with the rules requiring a ship to be manned by at least ⅔ Frenchmen. If they captured one of those counterfeit French ships with old passes and nearly no Frenchmen on board, they normally enslaved the whole crew to the great dishonor of the French nation. However, if the waters of the Mediterranean were plied only by ships flying the French flag, the corsairs would have had, in the end, no possible target for their main business, piracy. This would force them to resume attacks against French ships. The complete dominance of the French flag was therefore dysfunctional within the given system.[123]

It seems that the 1715 "white flag overflow" argument was not the winning one. After the Maurepas administration had adopted the policy of tolerant enforcement in the 1730s and following a favorable capitulation with the Ottomans in 1740, the French had found their balance.[124]

What is interesting here is how, within fifteen years, the arguments could completely change direction. It is remarkable how the French realized and reflected upon the economic functions and dysfunctionalities of their own regulations, how they recognized a quite simple everyday practice of simulating Frenchness. While naturalization procedures and belonging to a nation were, on the one hand, so restrictive and bound to blood and soil, as the research of Sahlins and Dubost has shown, the undercover use of nationality as a mere sign and currency

122 *Mémoire*, December 24, 1731 and response letter Maurepas to Lebret, January 31, 1732, CCM E 147.
123 *Mémoire* to Arnoul 1715, CCM E 147.
124 The records in CCM E 148 show that after the 1730s there were only case-to-case decisions which increased a little after 1768.

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within the Mediterranean shipping context betrays the other side of the same coin: the national became an element of steady processing from the 1660s, and because of that, its status as an attribute and a sign, that is, its constructedness became likewise visible. Nationality became objectified as the content of specified (non-)knowledge, but objectifying it also meant exposing its partial arbitrariness.

Those moments of high reflexivity concerning the sign status of the national show that, at the same time as the central mercantilist distinction of what was internal or external was sharpening, it also became underdetermined. Terminologically speaking, this was no retreat to the prior state of nescience about the "national," no return to the more fluid and much less specified situation before the 1660s. It was rather, in a spiraling way, a new form of reflexive awareness about the usability of the national created by undermining the valid norms or by the skilled use of them – all this long before the modern nineteenth-century heydays of nationalism. Just as how the post-Reformation plurality of confessions and the micropractices of playing and use of these confessional boundaries in a pluralizing manner were not the same phenomena as inter-religious exchange in the Middle Ages, the perforation and deaggregation of the specified national was different from the earlier state of unconscious ignorance about it.

A Comparative Look at the Medieval Conditions

To test the historical specificity and the new character of the 1660s regulations, it will be helpful to have a comparative look at earlier situations in the Mediterranean. As the sixteenth century was, from roughly 1492 (the Christian conquest of Granada) to 1574 (the Ottoman reconquest of Tunis) a period of unsettled circumstances along the North African coast, it is more enlightening to consider the late medieval period, before the Ottomanization of the region. Many caveats of "incomparability" may be brought forward, but on the other hand, the continuities of the corsair activities of the North African cities/kingdoms are striking.[125] The Berber kingdoms of Fez, Tremecén (with Algiers, Oran), Tunis (Bugía), Granada (Almería) and their corsair

[125] For authors who trace the lines of continuity between the North African Arabic and the Ottoman period cf. Abun-Nasr, *A history of the Maghrib*; Heers, *The Barbary Corsairs*.

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attacks on European – foremost Aragonese – merchant shipping form the direct precursors of the early modern situation. The sixteenth-century Ottomanization meant mostly the implantation of a Janissary elite in the city states which took over much of the Berber seafaring and corsairing traditions.

The different ways of obtaining ransom from Berber captivity in late medieval times were (a) ransoming through individual friends, merchants, families,[126] (b) ransoming through the religious orders, above all the Trinitarians (founded in 1198) and the Mercedarians (founded in 1218), but also through the military orders, (c) ransoming by help of corporative and municipal institutions, (d) ransoming through a monarch's direct diplomatic intervention. In Spain, the *alfaqueques* had been professional ransoming mediators acting on behalf of the crown or of municipalities since the thirteenth century, but they mostly operated on the inner Spanish Christian-Muslim territorial border.[127] Trinitarians and Mercedarians were late order foundations linked to the challenges of the crusades, and their only reason for existence in terms of competing with the established military orders was their specialization in ransoming captives.[128] They were not very active in either the Holy Land or the Eastern Mediterranean, and if so, more as hospitallers than as ransomers.[129] Despite the early foundation of the Trinitarians in Marseille, which is probably attributable to specific *Provençal* interests,[130] their activity in the late medieval period is scarcely documented in either France or Genoa.[131] Consequently, following the spread of their monasteries in Spain, the Trinitarians formed, with the Mercedarians, whose origin and center had been in Aragón, a rather

[126] López Pérez, *La corona de Aragón*, 806–812 and Rodriguez, *Captives*, 107–118.
[127] Cf. Díaz Borrás, *El miedo*, 61–72.
[128] Cipollone, *Cristianità – Islam*; Cipollone (ed.), *La liberazione* (but no contribution on late medieval practice); Cipollone, *Marsiglia*, 105–135, 111, 115; Brodman, *Ransoming Captives*; Rodríguez-Picavea, "The Military Orders"; Forey, "The Military Orders."
[129] Friedman, *Encounter*, 203, 210.
[130] Le Blévec, "Le contexte parisien," 120f., 124f.
[131] In the massive study Deslandres, *L'Ordre des trinitaires* only in vol. 1, 324f. and in the documentary annex vol. 2, 61f. are some short allusions to fourteenth-century ransoming activity. Cipollone, "Contributi," 36–40 can only refer to testamentary legacies where persons attribute some money to ransoming purposes of the order, no proto-national specification is mentioned. For Genoa Heers, "Gênes," 238; Porres Alonso, *Libertad*, 187–198.

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regionalized religious order concentrated on the problems of Aragón/Castellan/Murcia connections with the inner Spanish Arabic and the North African Berber corsair threat.[132] Even in this region of their main activity, we do not possess much certain archival evidence of their ransoming activities, even though largely retrospective, hagiographic and advertising publications of the orders claim that they freed several thousands of captives.[133] The non-hagiographic documents that we possess from the fourteenth century show that the ransomed persons were in fact all from the dominions of the Aragonese crown in the Mediterranean, from Spain, Sicily and Sardinia.[134] But none of the Trinitarian or Mercedarian sources spoke of their task other than as freeing "Christian captives" (not "Aragonese captives").[135] Municipal institutions are a different matter.[136] The most famous of these is the *Entidad Valenciana en pro de los cautivos*, founded in 1323 and active until 1539, which organized the charitable collections from a city's parishes for ransom in the form of efficient city-state bureaucracy. This became a hybrid between a municipal duty or tax and traditional church collection. Here, the money was reserved only for Christians of Valencia. Only if there were no more Valencian captives could the money be used for Christians from the kingdom of Valencia, preferably from the city's neighborhood. Here a tiny proto-national element was evident, but in practice it was purely municipal.[137] Diplomatic negotiations between the Aragonese kings and the Muslim kingdoms over peace treaties could seem most similar to early modern realities. The *cedulae*, the royal instructions to Aragonese ambassadors and the peace treaties themselves, show how the kings focused on the freeing of subjects from *their* territory as an act of the lord's duty of protection.[138]

[132] Brodman, *Ransoming*, 120.
[133] For example the *Historia general* of Gabriel Téllez (1639), cf. Díaz Borrás, *El miedo*, 55f.
[134] Brodman, *Ransoming*, 114.
[135] Cf. Porres Alonso, *Libertad*, 277–284, 285–307, 425–429. There is only one privilege to the order granted by Juan II of Castille, April 6, 1448 that states "la dicha Orden [...] han fecho a mí muchos seruiçios e a los mis reynos mucho prouecho *en redimir mis vasallos e naturales y súbditos* de la dicha cautibidad [...]" (ibid., 289).
[136] Brodman, "Municipal Ransoming Law."
[137] "Ordinacions per a traure cautius christians de poder de infeels" (1324), § III and IV, cited in Díaz Borrás, "Notas," 346.
[138] Jayme II to the king of Granada, Mahomad Aben Nacer, 1301: "fazemos vos saber que el fiel nuestro Bernart de Segalar debe fablar con Vos sobre feito de los

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The normative form of the peace treaties is very different from the early modern treaties between the Barbary and the European states. The Aragonese treaties were formulated like conclusions of a peace following war. The liberation of captives was conceived in terms approximating the prompt exchange of captured warriors after a decisive battle. There were no precise regulations of future shipping or other exchanges, of ship control, and no pass system was inaugurated. The liberation of captives in those peace negotiations was not accomplished via ransoming either. Only the fact that the Aragonese envoys negotiated the number of freed captives in exchange for a proportional number of years of peace shows that both sides acknowledged a prolonged period of regular corsairing and the taking of captives instead of a situation of discrete war and enduring periods of peace.[139] The selectivity of freeing and protecting just *their* subjects was therefore not born out of the context of inner-European and inner-Christian economic competition and the captivity market.

With good reason medievalists stress that the practice of mercantilism has its roots not in seventeenth-century England or France, but in twelfth- or thirteenth-century protectionist trade policies, for which not just Aragón but also the French kingdom and the Italian imperial republics Venice and Genoa were spearheads of development.[140] Aragón's competition with late medieval Italian merchants is perhaps the most profiled example and anti-Italian Aragonese legislation,

Christianos *de nuestra tierra*, qui son cativos en poder vuestro" (Capmany y de Monpalau, *Memorias historicas*, vol. 4, 30); peace treaty between Jayme II and the king of Bugía "Alid Abu Zagri" (that must be the emir Abū al-Baqā'), 1309, Art. III: "Item: que tots los catius ó catives qui sien *de la terra ó Senyoria del Senyor Rey d'Arago*, è son en la terra o Senyoria del Rey de Bugía" (ibid., 40); embassy of Jayme II to the ruler of Tremecén (Tlemcen/Timlisān) Abd al-Rahmān I b. Mūsa I, Abū Tāshufīn, 1319: "vulats deliurar è soure tots los dits catius *de la nostra terra è Senyoria* qui son en vostre poder" (ibid., 67f.); the same language is used in 1309/19, Capmany y de Montpalau, *Antiguos tratados*, 73, 96, 98. An exception is the instruction of Jayme II to the Mamluk sultan of Egypt Al-Malik al-Ashraf Khalil, August 9, 1292, where the aim was to free not only Aragonese, but also Castillan and Portuguese subjects (ibid., 31). Cf. Rodriguez, *Captives*, 123–130; for the Hafsid rulers Bosworth, *The New Islamic Dynasties*, 43f.; Rouighi, *The Making*, 42.

139 Capmany y Montpalau, *Antiguos Tratados*, 101 and Capmany y Montpalau, *Memorias historicas*, 68f. (1319).

140 Heckscher, *Mercantilism*, vol. 1, 325–337. A clear "strategy of commercial politics on an international level" is not visible for fourteenth/fifteenth-century Florence, cf. González Arévalo, "Rapporti commerciali," 182 (Venice, Genoa).

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culminating in King Martin's edict of January 15, 1401 can be seen in perfect continuity with the policies and practice of trade of the then leading seventeenth-century states.[141] Yet the lack of competitive proto-national semantics within ransoming correspondence suggests that the late medieval economic system of the Mediterranean as a whole cannot be understood as an already fully developed two-level system of international trade competition on the one hand and parasitic corsair activity on the other. The smaller naval capacities of both sides meant that exchange between them was more regionalized, and that inter-Christian competition was far less state-defined in the Mediterranean as a whole and in interaction with the Levant and North Africa in particular.[142] If Aragonese politics in North Africa has been characterized largely as an imperial economic enterprise,[143] it had not been so in competition with European powers at this point. If, too, Aragonese ships were competing with Castellans and Italians and, from the fifteenth century, with the Portuguese, this competition was not linked in a triangular way to the confrontation with the Berber kingdoms as was the two-level system of seventeenth and eighteenth centuries.

Even in quite similar structural situations and with actors such as Aragón, perhaps the "most modern" of all medieval kingdoms, one still cannot detect real genealogical precursors for the epistemic situation of the seventeenth century. National belonging remained, in medieval times, more in a state of nescience. If the processing of "the national" in all politico-economic communication did not first begin with the standards of the 1660s, this still was a moment of unprecedented enforcement wherefore it can be taken as an epochal turning point.

The Political Arithmetic of the Unknown: The French Nation

Attempts to shape the reified result of the investigation processes into national attributes were a final matter in which ignorance and specification of the unknown national played a crucial role in the seventeenth- and eighteenth-century Mediterranean imperial administration. At first, this concerned the nation in its narrower sense, which derived

141 Del Treppo, *I mercanti catalani*, 163–173; Ferrer i Mallol, "Genoese Merchants"; Houssaye Michienzi, *Datini*, 378–384.

142 Panzac, *La marine*, 88–92.

143 Dufourcq, *L'expansió catalana*; Dufourcq, "Un imperialisme médieval"; López Pérez, *La corona*, 267 supports Dufourcq's interpretation.

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from the medieval concept of naming a group from a given region or country within a plural, "multinational" context a *natio*: the *nationes* of a university, of a military order or, as here, of merchant colonies. By and large this only applied to the French side in our study as there were virtually no traces of the state dirigist organization of the "English nation."

There are several thorough studies of different French "nations" in the narrower sense for Tripoli in Syria,[144] Tunis,[145] Aleppo[146] and Constantinople,[147] but there is no study of how the Paris/Versailles center tried to organize the nations in the *échelles* as a whole.

The decisive period of the French state's empirical investigation into the *échelles* and of its major regulatory efforts was between 1685 and 1730. Since the late seventeenth century, the ambassador in Constantinople and the consuls regularly reported to the *Chambre de commerce* in Marseille and also to Versailles about the number and the character of the merchants in each place.[148] Sometimes a general numeric overview of all the French in the Levant was elaborated, but there was no established administrative practice of annually counting all French subjects.[149] But sometimes, as in 1732, the French Ministry tried to obtain a current overview "of all the Frenchmen living in the échelles." This was linked to the decision to send certificates of residence to all those who had not yet acquired one if they matched the criteria of bon-conduit.[150] A constant perception of deception, of not knowing the exact realities is apparent and a continual desire for central control was notable.[151] Many unforeseen travelers,

144 Roux, *Les échelles*, 32–49. 145 Debbasch, *La nation*.
146 Fukasawa, *Toilerie*, 71–109.
147 Eldem, *French trade*, especially 203–283; Frangakis-Syrett, *Smyrna*.
148 Cf. Eldem, *French Trade*, 205 for the census of 343 individuals of the Constantinople nation and Fukasawa, *Toilerie*, 78 and 97 with n. 22 for the references of the "états des Français résidant à Alep" (AN AE B III 290, CCM J 901–921, J 932–967, J82); some other examples from the consular correspondence in AN AE B I 630 for Cyprus 1691 and AN AE BI 320, f. 324r for the French nation in Cairo in 1730 (11 maisons, 17 marchands).
149 The *état* of 1769 is in CCM J 59.
150 Maurepas to the *Chambre de Commerce*, Compiègne, May 30, 1732, CCM J 59.
151 "[Send me an] autre État plus complet . . . faire connoître que comme l'on veut sçavoir le véritable État des choses." (Lebret, Aix-en-Provence, May 20, 1724 to the *échevins* and *députés* of Marseille; Maurepas to the *Chambre*, Compiègne, May 30, 1732, both in CCM J 59).

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"vagabonds," "français oisifs" – as they were called in the sources – were detected.[152]

The administration distinguished between several different units within their populationist regulation attempts. These included the number of whole *maisons*, i.e., firms in a city; the number of merchants; the number of foreign merchants under French protection; the number of craftsmen and servants who performed auxiliary services for the merchants; the dragomen, translators and enfants des langues; relatives and family members of the aforementioned groups; Frenchmen who were censured as not productive. The king and his ministers tried to regulate the number and even the quality of all those groups.

Regarding the most important group (the merchants themselves), after 1685 the Crown developed something like an ideal scheme of the population that it wanted to realize which one can summarize with the following parameters:[153]

- The overall number of merchants in each city should be "proportionate" to its economic trade balance.
- The merchants should not be younger than 25.
- They should be unmarried, preferably.
- They should be good Catholics and not Protestants.
- They should stay no longer than ten years abroad.

That implied that the sojourn should be made by a cohort of men aged around thirty, who would then return to France at a time when they were still young enough to marry, yet experienced enough to fill the full position of head of a Marseille firm. Excepted from this scheme were the consuls who were mostly older but who were also no longer real merchants after the arrêt of 1691.[154] Connected to this was the repeated prohibition against marrying in the Levant, aimed mostly against marriages between French merchants and Christian Ottoman subjects. The French state did not want the uncontrolled establishment and proliferation of a Levantine French population. For the most part,

[152] For letters and orders concerning the "françois oisifs" cf. Pontchartrain to the *Chambre*, November 21, 1714, Maurepas to the *Chambre*, September 9, 1725; July 4, 1731; to president Lebret, July 3, 1731 (CCM J 59).

[153] The ordinance of February 12, 1720 prescribes the necessity of the special certificate for naturalized strangers; the ordinance of March 21, 1731 fixed the time of residence in the *échelles* at ten years, CCM J 59.

[154] Debbasch, *La nation*, 182–194.

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however, the administration feared the uncontrolled dispersion of French property in the case of death and inheritance. This problem found its way to the agenda most prominently during the *Regency* in 1716. There was first an ordinance of the *Conseil de la Marine* which decreed that every merchant who married an Ottoman subject would lose all his rights as member of the nation and to attend its assembly (August 11). An ordinance of July 20, 1726 followed that entirely forbade merchants and their family members from marrying any "daughter or widow, stranger or from that country, subject or not subject of the sultan or of the powers of the Barbary regencies, even those of French origin or who are born in the Levant and those regencies" during their Levant stay. Only the king could grant exceptions.[155]

The merchants tried to oppose sections of the rules. Under this regulatory situation, a French merchant had perhaps just five years of productive time in the Levant. Their European rivals, they argued, would gain advantage through the extra time they could devote to gaining additional experience, power, connections and roots in the Ottoman world. As a compromise, the ordinance of 1716 fixed that a French merchant might go to the Levant at the age of 18, but that he would be admitted to the assembly only at the age of 25.[156]

As a result of all those differentiations, one can distinguish at least five categories of the "national":

(1) Frenchmen who came to the Levant at the age of 25 and left after ten years. These had full access to the merchant nation's assembly if they were active in commerce.[157]
(2) Frenchmen who arrived in the Levant at the age of 18. No access to the assembly.
(3) Frenchmen and women who were born to other Frenchmen in the Levant and had stayed there.

[155] Debbasch, *La nation*, 128–136.
[156] Ordinance of October 21, 1685; *Mémoire* by the merchants to Pontchartrain; negative response by Pontchartrain (letter of June 15, 1701); Ordinance of March 17, 1716, CCM J 59.
[157] The intendant des *échelles* Isnard reserved the right of admission to the assembly to those merchants whose *per annum* economic productivity equaled at least 2000 piastres, on Cyprus, 1500 were enough: decision of the *Chambre*, June 26/August 1, 1731, CCM J 59.

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(4) Foreign merchants naturalized in France (a) with and (b) without special permission to conduct trade under French protection in the Mediterranean.
(5) Foreign merchants not naturalized but enjoying French protection.

The most intensive discussion concerned the actual number of merchants in the Levant. The government's fear was always about the potential to lose productive subjects into the periphery.

The guiding principle of the French administration was the "proportionality" between the number of different kinds of individual Frenchmen (merchants, craftsmen [*artisans et gens de métier*]) and of the *maisons* on a corporate level, which meant the merchant factories and firms on the one hand and the volume of the trade done in a particular port on the other. The idea of proportionality developed from an embryonic stage to a quite elaborate version after the middle of the eighteenth century.[158]

The process of fixing the number took a great deal of time and apparently remained undecided for decades. Nevertheless, the Ministry had quite concrete conceptions of misbehavior and rule transgression, such as the founding of new firms "directement [ou] indirectement" by splitting up an older one. Maurepas aimed for a "general rule [*une règle générale*]" regarding that perennial question about population and several times ordered the chamber and the Levantine outposts to refrain from actions that would create unwanted facts before that rule had been established.[159] The chamber acted with some dilatory tactics on that "projet de la reduction,"[160] and Maurepas ordered that the *Chambre* should at least not distribute any new certificates to merchants other

[158] One had to fix the number "in proportion to the trade conducted during a normal year in each *échelle* [*proportionnement au commerce qui se fait année commune dans chaque Echelle*]" (Maurepas to the *Chambre*, Versailles, January 14, 1733, CCM J 59). The notion of "année commune" meant "normal year" in the sense of an average peacetime year, as war conditions always changed situations beyond the calculable. Earlier, Maurepas had stated that one should be attentive that the "nombre des négociants [would not grow] d'une manière disproportionnée au commerce qu'ils peuvent faire" (cf. Roux, *Les échelles*, 27).

[159] Maurepas to the *Chambre*, Versailles, November 29, 1736, CCM J 59.

[160] Maurepas to the *Chambre*, Versailles, April 30, 1737: "il peut y en avoir un trop grand nombre à proportion du Commerce qui s'y fait, cette matière ayant esté examinée, il a esté resolut de ne prendre quant à présent aucun arrangement général à cet Égard" (CCM J 59).

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than to those who would join the ones already active in the Levant.[161] Finally, the inspector of the échelles, Pierre-Jean Pignon,[162] was sent to conduct census-like visitations of all the French nations of the Levant in 1740–1742,[163] and to negotiate the question within the Chamber of Marseille.[164] The "proportionality" of the number of French residents conducting trade or associated with Levantine commerce had its parallel in the French court's concept of the proportionality of the trade conducted as a whole.[165]

In 1740, several *mémoires* addressed this issue. The merchants typically argued against an artificial reduction of houses. They proudly reminded Maurepas and the King in Versailles of the historical process of their installation in the Mediterranean: they had achieved "a revolution" in Mediterranean commerce. While during the seventeenth century, the Dutch, the English and the Venetians had possessed a share of the overall commerce four times larger than the French, now it was precisely vice versa; the French had four times more. The merchants evaluated the overall size of Mediterranean commerce at 18 million livres (the proportion of foreign merchants sailing under French flag not included), and the net gain at 15 to 16 million. This was the result of their labors, and for that, they needed a stable number of merchants.[166] One memorialist

[161] Maurepas to the *Chambre*, Versailles, May 12, 1734: the practice would be "contraire aux veues que l'on a de reduire dans chacune les maisons des negoçiants à un nombre proportionné au commerce qui s'y fait" (CCM J 59).

[162] Pierre-Jean Pignon had negotiated in 1729 the French peace with Tripoli, had been consul in the important city of Cairo in 1729–1734, had been *premier commis du bureau du Commerce et des Consulats de Levant et de Barbarie* in 1738–1741, and was *inspecteur du commerce du Levant* at Marseille as successor of Icard in 1741–55 and 1757–59 (cf. Masson, *Commerce XVIII*, 7 n. 1 and passim; Mézin, *Les consuls*, 493f.; AN MAR C7/248). His economic thought, as revealed in his 1750 *mémoire* about the Levant Commerce from the Gournay papers, is analyzed by Meyssonnier, "Vincent de Gournay," 100–106).

[163] Masson, *Commerce XVIII*, 20–25; Paris, *Histoire*, 331.

[164] There is no study of the office of the inspector of the Levant commerce. One may transfer some elements from the several dozens inspectors of manufactures to its functions, cf. for that Minard, *La fortune*.

[165] Maurepas to the *Chambre*, Versailles, April 22, 1740, CCM J 59: "Si les résidents au Levant, Messieurs, proportionnoient les ventes qu'ils font à crédit à la consommation annuelle de leurs échelles, ou si les negociants de Marseille qui règlent leurs operations mettoient quelque proportion entre les envoys et la consommation [they might be correct . . .]."

[166] *Mémoire* April 22, 1740, CCM J 59. The number seems to be quite accurate: Carrière, *Négociants*, vol. 2, 1040, col. II for 1740 = 17,9 Mio. livres.

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estimated the number of persons employed in the Mediterranean trade at 100,000. If one sought to reduce that commerce to less than half, it would not only affect the Mediterranean. As the current French commerce with Germany, Italy, the Netherlands, Spain and the Americas would function only "in relationship and in proportion" to that of the Levant, the implications of reducing the Levant trade would necessarily lead to the stagnation of all French commerce. By "fixing the number of trading houses in the Levant," he claimed, "one would also fix the [sc. all French] commerce."[167] The *Chambre* even evinced a form of self-perception that was similar to present forms of mercantile acuity: for a duration of thirty years it calculated an average of one percent economic growth which shows the use of a long-term memory and a correspondent regulatory idea concerning the amount of commerce as a whole.[168] Rather than cutting the number of merchants, one of the *mémoires* authors gave detailed advice about how the organization and the quality of several products of the Levant trade could be improved.[169] The danger of the planned reduction having deleterious effects was seen first regarding the international competition in the Mediterranean. Markets would be left to France's competitors. Resulting from the 1740/41 discussion and Pignon's visit, the number of the *maisons* was fixed in 1743,[170] but still, the rule of "proportionality" behind that limit was disputed and not rationalized in a mathematical way.

Only in a *Mémoire sur le commerce de Tunis* from 1765 does the mathematical calculation of proportionality become visible. This author implemented the idea of the "normal non-war year" expressed by Maurepas in 1733. First he calculated the overall average import volume for the ten years from 1755 to 1764, at 862,499 piastres per annum. A quarter of this was attributable to four French factories, and the rest to the community of 2,000 Jewish merchants from Spain and Italy. Export revenue was calculated to about 234,187 piastres. For the four years of peace 1754, 1756, 1763, 1764, disregarding the impact of the Seven Years' War, average annual French import revenues were higher, 359,529 and not 213,348.[171] The author judged that an

[167] "Mémoire sur la réduction des Maisons du Levant" (s.d., 1740), CCM J 59.
[168] "Mémoire des Négoçians de Marseille … 1742," CCM J 59. [169] Ibid.
[170] Masson, *Commerce XVIII*, 26–28; Paris, *Histoire*, 331, 333.
[171] AE La Courneuve MD Afrique 9 n. 22 (1765). Public accounting in Italy was experienced by the sixteenth century in distinguishing between "normal" and war years, Zwierlein, *Discorso und Lex Dei*, 443.

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increase of the number of merchant houses was advisable but remained undecided between six or eight as the optimal number and he displayed no idea of a formula or equation to decide the matter. In any case, the *mémoire* shows that the idea of proportionality developed from the early eighteenth century to the last third of the century from a simple wording or phrase into a form that necessitated the precise analyses of the economic past and future prognostics for a given *échelle*.[172]

The general political aim pursued is not surprising. During the first half of the eighteenth century, the usual populationist concepts for metropolitan France centered on increasing the population as far as the agricultural production could allow. After the expulsion of the Huguenots, in France one usually never finds the kind of overpopulation arguments by pro-colonialists that are known to have circulated in England around 1600, when overpopulation and depopulation arguments were in balance. Avoiding the loss of people to the *échelles* was precisely in line with that general idea.[173] One can practice populationist politics without political arithmetic, even without knowledge about the number of inhabitants.[174] It is not that general aim, but the *how* of administrative practice seen here in the *échelles* that can be called astonishing at this time (1720/40). What can be witnessed here is an embryonic form of applied quantitative political "laws" of arithmetic combined with an enduring political desire to also shape a given population qualitatively.

Thierry Martin once put forward the question of whether there ever really was French political arithmetic. The usual answer was that it could be found after 1750.[175] The findings here presented from the Maurepas administration seem to contradict this claim. Was there an earlier comparable form of applied political arithmetic in Europe? Political arithmetic itself was "invented" and proudly advertised by William Petty and Charles Davenant in England as early as 1690.[176] There are some passages in Petty and Davenant that show ideas close to those applied by the Maurepas administration. These concern the

[172] AE La Courneuve MD Afrique 9 n. 22 [1765].

[173] Usually, the increase of population was recommended for the main state, while emigration to the colonies should be regulated strictly for preventing France from losing population: cf. still helpful Spengler, *Économie et population*, 32–105, for the English case Campbell, "Of People."

[174] Nipperdey, *Bevölkerungspolitik*, 119–121.

[175] Martin, "Une arithmétique politique française?"

[176] McCormick, *William Petty*.

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delineation of a given population into productive and unproductive sections and the question of how to increase the number of the former and to decrease that of the latter,[177] a plan that corresponds with Maurepas' continual repetition of orders to get rid of the "français oisifs" in the *échelles*. Generally not much is known about the *early* reception of the English political arithmetic in France before 1750.[178] Petty was fascinated by the idea of proportion in the sense that he thought square roots to be inscribed into the nature of things. This was a reasoning not related to practical application.[179] In the flood of French political economy literature that started to pervade the public sphere after the Montesquieu choc and the year of rupture and takeoff in 1750,[180] one only occasionally finds echoes.[181] Vauban, often mentioned as an appropriate candidate for a real French political arithmetic in parallel to the classical English authors, offered in fact many

[177] Petty, "A treatise of taxes and contributions," 28; Davenant, "An essay," 202. Cf. Finkelstein, *Harmony*, 121–124, 221f. The early texts analyzed by Appleby, *Economic thought*, 129–157 did not contain further general reflections about the proportionality between commerce and the number of people (I checked William Goffe, Adam Moore, Leonard Lee, Samuel Hartlib, John Cook, Peter Chamberlen, Humphrey Barrow, John Moore).

[178] For the post-1750 reception cf. Reinert, *Translating empire*.

[179] For Petty's curious *Discourse concerning the duplicate use of proportion* (1674) cf. McCormic, *William Petty*, 190. Cf. for the English practice Deringer, "Finding the Money."

[180] Precisely around 1750, the overall print production in Europe, the number of published treatises on political economy, the overall number of translations, and the number of translations of economic theory, all exploded (Théré, "Economic publishing," 11; Lüsebrinck et al., "Kulturtransfer im epochenumbruch," 33; Reinert, *Translating empire*, 52–60). In 1750, the Gournay circle was formed: All those are clear moments of a new framework concerning the epistemic conjunctures, perhaps more important in this context than the outbreak of the Seven Years War or the 1750 export crisis in the Levant.

[181] Veron de Forbonnais, *Elemens du commerce* (1754), vol. 1, 56: "La population est l'âme de cette circulation intérieure, dont la perfection consiste dans l'abondance des denrées du crû du pays en proportion de leur nécessité"; Cantillon, *Essai* (1755), partie II, chap I, 151f.: "On a essaié de prouver, dans la Partie précédente, que la valeur réelle de toutes les choses à l'usage des Hommes, est leur proportion à la quantité de terre emploiée pour leur production & pour l'entretien de ceux qui leur ont donné la forme." But nothing similar in Melon, *Essai politique* (1734); Law, *Œuvres complètes*; Pierre de Boisguilbert; Huet, *Le grand trésor* (1713); Du Tot, *Réflexions politiques* (1738); Du Tot, *Histoire* (1716–1720); abbé de Saint-Pierre, "Utilité des dénombremens" (1733); abbé de Saint-Pierre, "Projet pour perfectioner le Comerse de France" (1733).

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calculations about the regularities of population growth, and his taxation plans also contained ideas about just proportions. Once again, these calculations did not lead to considerations of practical implementation and there was no combined inductive-deductive generation of populationist laws in relationship to states of a given trade.[182] The general *enquêtes* performed to survey the population, in addition to the natural resources, monuments and curiosities of France in 1716–1718, 1730 and 1745, all with the participation of the country's intellectual avant-garde and its institutions, mainly the *Académie des sciences*, cannot be classified as being conducted according to principles of political arithmetic. They were counting the population, but not calculating in the sense that political plans relating to it were guided by certain rules derived mathematically from what had been tallied.[183]

Brian distinguished between three steps of development of political arithmetic: (1) Cartesian accounting as present with Vauban around 1700; (2) experimentation present in surveys like the one conducted under the controleur général Orry in 1745; (3) progressive abstraction from the stated facts, an analysis of the causes, the comparison, and finally the identification of regularities and abnormalities which he did not find in France before 1770 with the abbé Terray.[184] The characteristic feature of political arithmetic in the sense of step three is to consider a "population" as an object of nature that obeys rules similar to those physicists were searching for from the Padovan school to Galileo and Newton.[185] This was the case in early forms of probabilistic calculation of life expectancies in given cohorts of populations from Graunt to Huygens and de Moivre. Even there, however, it still took a long time to form mathematical functions that would approximate life expectancies and annuities instead of using and improving life tables. And it still took longer until mathematical laws like that were begun to be implemented in institutional administrative practice.[186] But what is visible in the Maurepas administration

[182] Cf. Virol, *Vauban*, 199–254 and the annexes 5 and 6 on pp. 415–420; Meusnier, "Vauban," 91–132, 98; McCollim, *Assault on Privilege*, 107, 141.

[183] Garner, "L'enquête Orry," 371. But cf. the circular letter of Orry, Paris December 17, 1744, Lecuyer, "Une quasi-expérimentation," 174.

[184] Brian, *La mesure de l'état*, 176f.

[185] Zwierlein, "Politik"; Daston and Stolleis (eds.), *Natural law*.

[186] Hacking, *The emergence*; Hald, *A history*, 513, 547; Krüger, Daston and Heidelberger (eds.), *The Probabilistic revolution*, vol. 1; Daston, *Classical probability*, 137, 172–174; Zwierlein, *Prometheus*, 202–208.

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concerning the Levant trade is just fitting into that step of development: Rules active in the *nature* of trade and economy were to be found in the periphery. Next, normative rules which had the desired effect had to be formed accordingly.[187] Finally, the generated rules were supposed to dictate the realities, in movements backwards from the center to the periphery. Those were now half-normative and half-empirical rules, rules fitting the "macroeconomic" framework as one might call it today.

All that said, one would be tempted to depict the Maurepas administration's efforts to shape the French Nation in the *échelles* as a small but important "political arithmetic revolution" of French government. This was not just a speculative philosopher's abstract idea, but a practice. It was not just a rigid normative ruling;[188] it not only gathered data through queries, enquêtes, tables and columns of numbers, but it did so with the aim of generating socioeconomic rules like experimentators in the laboratory through empirical investigation and abstraction. It predated Brian's third step by roughly forty years. This means one may answer Martin's question in the affirmative. Yes, there was a French political arithmetic, but earlier in practice than in theory. And that happened in France's periphery or with respect more to the empire than to the core of the country. The tiny size of the population abroad, their high mobility and the absolute dependency of the merchants abroad on the crown's protection within the Ottoman lands presented a better object for "scientific" populationist experimentation than the homeland itself.

By conceiving of the *nations* in the *échelles* as a whole to be organized and shaped by such general rules, they were dismantled of their

[187] It would be necessary to "establir une règle par rapport aux artisans . . . qui sont en trop grand nombre dans plusieurs Éschelles . . . " (Maurepas to the *Chambre*, May 30, 1732); "mais je prévois qui sera difficile de régler le nombre . . . il seroit convenable et aisé d'en régler le nombre proportionnement" (Maurepas to the *Chambre*, Versailles, January 14, 1733); the merchants themselves when they "règlent leurs operations mettoient quelque proportion" (Maurepas to the *Chambre*, April 22, 1740); the merchants responded with the same language: "toutte autre règle ou arrangement" would be against the necessary "Liberté" ("Mémoire des negoçians" 1742); or they claimed that "il convenoit mieux de laisser libres les negoçians, sans les assujetir à des règles générales" (*Mémoire* of the *Chambre* for the comte de Castellane, nominated royal ambassador, January 7, 1741 – all in CCM J 59).

[188] As the extraordinary 1727 letters patent for colonial French America, cf. Pritchard, *In search of empire*, 241.

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medieval corporative identity of merchant colonies from a given region (*nation* in the narrower sense) and transformed into parts of the allegedly well-regulated and controlled body of *the* nation, of France abroad. This becomes apparent in a late *mémoire* written by Pignon, who was perhaps the closest collaborator of Maurepas in the Levant. In this text, written during the 1750 grain crisis, Pignon shows that he conceived the work that had to be done from 1720 not only as a technical modeling of numbers. Instead, he now used all that language that is characteristic of the later eighteenth-century construction of modern nations that one usually associates with the times around the Seven Years War.[189] Political economy had to correspond to the "génie de la Nation" and one had to be careful to utilize commerce to augment the good and suppress the bad parts of "le caractère même de leur Nation." He reminded his audience about the necessary "union" among the merchants of the French nation, endangered by its own interests.[190] The seemingly materialist and technical political arithmetic reduction of merchant families to calculable numbers went now hand in hand with an early enlightened thought that aggregated the merchant nations into *the* Nation as the newly constructed subject of History.[191]

One can thus see a remarkable development. Around 1650/60, the hitherto nescient concept of nationality was transformed into a conscious specified unknown, in different ways in the English and the French case. It became a question and a matrix against which reality was continually measured and tested. In asking about the unknown nation, the national became more and more reified. It could become, around 1720/40 an object of abstract reasoning. An awareness of its constructedness grew. Finally, the reification of the national could lead, in the French case, to a new quasi-material object of political arithmetical calculation. Paradoxically, the aggregation of autoreferential unknowns could reach such a state of shapable, malleable concreteness. *Ab ovo*, there is no "nation" of anyone born, but the mercantilist practice of continually asking about and ascribing it started a process of administrative communication, building, in a manner of speaking, on

[189] Cf. Colley, *Britons*; Blitz, *Aus Liebe zum Vaterland*; Bell, *The cult*.
[190] Pignon, "Sur le Commerce" (1754), 75–80. For the identification of Pignon as author thanks to the (larger) manuscript copy in Gournay's library cf. Meyssonnier, "Gournay," 100–106.
[191] Stanzel (ed.), *Europäischer Völkerspiegel*; Bell, *The cult*, 140–168.

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the void. At its end a second level was reached, a second-degree process emerged in which the reified nation, as result of the aggregated results of classification and attribution, could be planned, shaped and calculated regarding its arithmetic, physical and finally even moral character.

Baldus versus Grotius: Conceiving the Empires and Their Unknowns

Analysis has thus far moved in a bottom-up direction. This is because the central emphasis of the chapter is that the mercantilist trade empires, considered as institutional settings and as networks of humans that communicated in a specific way, were built on unknowns, on the question about the national once that category had emerged. The fluidity of that everyday microcommunication of the same or similar contacts and questions was even the socle of aggressive and violent mercantilist estrangements and competition. Its "fundaments" were, in the end, just reiterated forms of communication, of attributions, of words and signs. This brings us now to move from purely operative forms of (non-)knowledge to higher condensed epistemic forms. As was the case for the intersection between proto-political-arithmetic method and administrative practice, imperial discourses also had their impact on action and decision-making. Some of those moments of connection, which is not simply one between the sphere of "books" and the sphere of oral and handwritten "action," will be shown below – when a Grotian idea in an advisory text is put into practice for Colbert, when differences between free trade and regulated commerce were negotiated before the Council of Trade. There was also a complexity and systematicness to those discourses, as, for instance, the different approaches to Roman law by Grotius and Selden will show. This was detached from action, but it gave them their enduring impact and power to convince on the level of discursive tradition and as a firm point of retreat. So, the imperial concepts were present and more stable. They were developing more slowly, guiding, in some way, the general directions of decision-making processes in the long run, in other words, of the shape of the English and the French empires. If one puts the chicken-and-egg question for the "origins" of empires on the table, I would opt for the just mentioned bottom-up perspective and emphasize the relation between norms as specifiers of unknowns

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and their continual enactment in practice. But this does not mean that discourses or "ideology" were unimportant. Those two levels were in a relationship of interdependency, of mutual stimulus, and of "fitting" together. They were – to use a geological or Braudelian metaphor – like different discursive strata of fluid magma on the one hand and of more solid, more slowly moving tectonic elements on the other.

A growing body of literature has been investigating concepts of empire, perhaps more for British than for French history.[192] In this comparison of imperial concepts, one can exclude, for both France and Britain, the use and exploitation of crusader ideology around 1700. That does not mean its total erosion; France utilized those motifs, for example, in the context of its status as protector of the Christian faith. Nonetheless, it is of next to no importance for the question of nationalizing economics.[193]

From French Grotianism to the Property of the Mediterranean

There are few French theoretical politico-economic texts, however one might define them, *before* 1750. Some decades ago, Perrot demonstrated how the one important candidate for such an early theory, Montchrestien (published 1615),[194] was almost unknown and rarely cited by eighteenth-century bibliographers of the then newly established discipline of political economy. They all started with Melon, Boisguilbert or similar early eighteenth-century authors, while the extension of Bodinian thought into economics by Montchrestien was forgotten.[195] The one and nearly only author cited in several *mémoires* right until the times of Gournay is Richelieu.

[192] Colley, *Britons*; Wilson, *The sense*; Armitage, *The ideological origins*; Armitage, *Foundations*; for rather a later period Pitts, *A turn to empire*; Haran, *Le lys et le globe*. Usually, the Mediterranean does not play a great role in that literature.

[193] Charles V as the late medieval Iberian kingdoms still borrowed from crusader ideology during his Tunis and Algiers enterprises 1535/41 (cf. Poumarède, "Le voyage de Tunis"). Duke Charles II Gonzague-Clèves-Nevers who tried to establish a whole European military order still played on that until the third decade of the seventeenth century (Papadopoulos, *Η κίνηση*, 148–196; Cremer, *Der Adel*, 144–168, but the ideological basis here was eclectic, mixing motifs from antiquity with references to Charles Martel, Byzantine rule and Godefroy de Bouillon). Crusader motives in late seventeenth-century attacks by British or French ships against the Barbary corsairs had become rather ornamental.

[194] Monchrestien, *Traicté*. [195] Perrot, *Une histoire*, 67f.

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Richelieu's *Testament politique* was published for the first time in Amsterdam in 1688. It had been known and certainly circulated in manuscript form among the French political elite before.[196] The parts of the *Testament* which go beyond all the political authors writing and publishing in Richelieu's own circle in the 1620s and 1630s, and even beyond most who wrote later until the times of Louis XIV, are the chapters on Economy, Navigation and Trade (second Part, Chapter 9, 5–7): all other prominent French authors and intellectuals of that time – Guez de Balzac, Boisrobert, Hay du Chastelet, Chapelain, Cardin Le Bret, Philippe de Béthune, Hersent, the anonymous author of the *Catholique d'État*, Louis Machon and Gabriel Naudé – think in quite purely political terms of reason of state and post-Machiavellian and post-Bodinian discussions of sovereignty; there is no "imperial political economy" to be found with them.[197] That is why the 1688 publication of Richelieu's *Testament* could make a "fresh" impression at a time when Colbert was already dead and many elements of the *Testament* had already been realized, and that is why this text could still be a reference in 1750, not only in veneration of the mighty cardinal, but also because it was still functional concerning the political economic foundations of French imperial expansion. There was virtually no other good text at hand.[198]

Richelieu started the fifth section of his work on "Sea Power" with the question of who possesses the empire of the sea.[199] Richelieu's own way of reasoning operated through examples rather than through systematization. The central example came from the times of Henri IV. When Henri IV sent the Duke of Sully to England in 1603 to honor James VI/I's accession to the throne, a patrolling English rowing barge stopped Sully's ship in the middle of the Channel and commanded that the French white flag be removed from the top mast in order to honour the English king as "the sovereign of the Sea." When Sully, who thought as ambassador he was exempt from that sign of humility,

[196] Richelieu, *Testament politique*, ed. Hildesheimer, 17f.

[197] Thuau, *Raison d'État*; Church, *Richelieu*; Cavaillé, *Dis/simulations*. For further references, cf. Zwierlein, "Machiavellismus / Antimachiavellismus."

[198] That is also the reason why the English authors always pointed to Richelieu and liked to cite the *Testament politique*: It was, ultimately, an authoritative source for "the" French politics with which one had to compete or which one should emulate. Charles Davenant was particularly strong on that, cf. Finkelstein, *Harmony*, 228, 337 n. 50, but cf. also Cary, *Essay* (1695), 141f.

[199] Thomson, "France's Grotian Moment?," 394.

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refused, the English captain enforced his order with a barrage of cannonballs which "cut through the heart of all good Frenchmen." Starting with that example, Richelieu then reflected about possible solutions for such situations: French ships close to the English coast having to lower their flag, and vice versa, English ships close to the French coast theirs, or, a rather empiricist-statistical solution, that the ships of a smaller fleet would have to lower their flag upon encountering ships of a larger fleet anywhere at sea. Richelieu finished his discussion of this point by concluding that the king just has to "be strong at sea" regardless. Whatever might be a solution by what was later termed the international maritime law, the political answer had to lay in the expansion of naval armaments.[200] He proposed maintaining forty ships in the ocean and thirty galleys in the Mediterranean. As it is well known, the actual realization of those navy plans happened under Colbert and Seignelay.[201]

Bearing in mind what has been said in an earlier section on flags and signs of nationality, it is remarkable that the ship's flag was the principal iconic sign chosen by Richelieu to introduce the section of his treatise on international trade and naval competition in the two seas that he suggested considering separately, the Ocean (meaning the Atlantic) and the Mediterranean. In this example, which is followed by an analysis of competition between the English, Spanish, Dutch and French, Richelieu condensed the central distinctions of we/them, of internal/external and of foreign/home. The sixth section addresses "Commerce as depending of the Sea Power." Through that order, Richelieu made clear that commerce and commercial competition was a *filia potestatis*, and was subordinated to naval military strength, conceiving commerce as part of state power as was typical in the French tradition.[202] Following the major division between "Ocean" and "Mediterranean" which would later also be the principal division within the French Ministry of the Marine (Ponant/Levant), Richelieu first dealt with the (possible) colonial Atlantic and North European trade, then the Mediterranean Levant trade:

I have to add that I was mistaken for a long time concerning the commerce of the Provençaux in the Levant: I thought, with many others, that it is detrimental for the state, founded in the common opinion that it would tear

[200] Richelieu, *Testament politique*, ed. Hildesheimer, 323f.
[201] Dessert, *La royale*; Villiers, *Marine royale*, 1–120. [202] Cf. above n. 4.

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money [*argent*] out of the kingdom by importing nothing else than unnecessary merchandise which are only good for the luxury of our nation.[203]

Richelieu's views of the Levant has attracted less attention in recent years, but this passage is a clear indicator that the *Testament* is an Anti-Montchrestien and an Anti-Razilly on what concerns conceptions of imperial outreach into the Mediterranean as Henri Hauser demonstrated in 1944.[204]

Montchrestien had pointed out that the French Levant trade with the Ottoman Empire, Egypt and the Barbary Coast would stimulate the economies of those hostile countries. One could observe, he noted, that when French trade ceased, all the societies of that region always became destabilized, with the outbreak of "brouilleries, seditions, et guerres civiles." Relying on the basic mercantilist idea that it is detrimental for a country to let money flow out and foreign goods enter, he underlined that, in this particular case, the matter would be even worse as this trade would be "totalement ruineux" for the French and of great advantage for the enemies of Christians.[205] He then proposed complete European protectionism as a Europe/Orient blockade. French, Italian and Spanish manufacturers should answer the demand for silk, and the wool production of Southern France should be augmented so that France could withdraw completely from the Levant trade. Europe could stay apart from Muslim countries in complete economic autarchy. This done, "those excessive sums of gold and silver which are leaving France will remain there."[206] Montchrestien judged the Levant

[203] Richelieu, *Testament politique*, ed. Hildesheimer, 338f. Cf. that passage with that of Montchrestien cited below (n. 205), it's a direct response.

[204] Hauser, *La pensée*, 20, 74–107. After Hauser, it seems that Mousnier, "Le Testament politique," 137 and Louis André achieved to orient the discussion for decades on the themes of the "reason of state," the "grand dessein" and on the question of the *Testament*'s authenticity. Esmonin, "Observations"; Thuau, *Raison d'État*; Church, *Richelieu*, 480–495; André did not include Hauser's results in the critical apparatus of his edition, so there is no note on Montchrestien (cf. Richelieu, *Testament politique*, ed. André, 423). Thomson, "France's Grotian Moment?" correctly reminds that it is wrong to think of Richelieu as an ideologue who tried to form Europe like a demiurge according to the *grand dessein* (chapter in Hauser, *La pensée*, 108–120), but Hauser's results concerning Richelieu's sources – the *Mémoires*, today deposited in the *Archives des affaires étrangères* – should not be forgotten.

[205] Montchrestien, *Traicté*, ed. Billacois, 361. On Montchrestien cf. Clark, *Compass of society*, 10–14.

[206] Montchrestien, *Traicté*, ed. Billacois, 361s.

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trade therefore to be completely damaging and superfluous for the French economy and, even worse, to Christianity as a whole, because it strengthened the hostile Muslim world.

The *Testament* developed its concept of the French trade empire in the Mediterranean in a completely opposite way, relying on several manuscript *mémoires* written for Richelieu on Levant commerce, one of them excerpted at some length. Against the idea of a European anti-Ottoman blockade, Richelieu argued that Levant goods were not luxuries for France but necessities. It followed then, that the import/export balance was positive for France and that the money (or rather literary, the silver) invested into the Levant did not come directly from France, but from Spain. From here French merchants obtained the silver merely through the sale of Levant goods. Marseille had grown with that commerce, Levantine merchandise was re-exported with a 100 percent profit margin, and therefore many craftsmen and sailors were fed by the Levant trade. Thus, Levantine commerce was necessary. While Montchrestien had argued for the complete reorientation of France's maritime trade to the Atlantic only about two decades after the Dutch and English entry into the Mediterranean, Richelieu's *Testament* had reinforced the Mediterranean perspective, a position which would prove to be realist in the long run. Also suggesting the promotion of France's ship building industry, the final paragraph of that chapter is devoted to the second level of the Mediterranean economy. To "clean" the Mediterranean of the Barbary corsairs, Richelieu argued, it would be sufficient to dispatch a squadron of ten galleys which would start patrolling each April from Gibraltar to Corsica, Sardinia and along the Barbary coast.[207] The bibliography of French printed works on political economy does not list almost any important work touching on maritime trade between the time of the *Testament*'s composition and Colbert, with the exception of Jean Éon's (Mathias de Saint-Jean's Ord. Carm.) *Commerce honorable* (1646).[208] Colbert knew the Cardinal's *Testament*[209] and his memorialists referred to Richelieu's Levant politics as exemplary even before the publication of the *Testament*.[210] But as the *Testament* itself relied

[207] Richelieu, *Testament politique*, ed. Hildesheimer, 342.
[208] Cf. above n. 79.
[209] Soll, *The Information Master*, 53–63, 116.
[210] The "Mémoire à Monseigneur Colbert sur l'establissement solide du Commerce en Barbarie" (October 1670), AE La Courneuve MD Alger 12, f. 172r–173r advocates the conquest of Tabarca from the Genovese Lomellini, a plan which was debated by the English and French for decades.

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heavily on manuscript *mémoires* prepared for the Richelieu government, the Colbertian administration can surely not be understood as an "application" of the *Testament*'s "theory." It was instead a new osmotic cycle between more "theoretical" works, longer analytical *mémoires* and *avis* and everyday correspondence and orders. The many *mémoires* concerning the reform of the Levant trade written for Colbert's use from within and outside the first embryonic Conseil de Commerce in 1664 always thought it necessary to stress that the correct organization of commerce would prevent France from losing money and/or silver pouring out of the country.[211] The first point of d'Oppède's central 1662 *mémoire* for Colbert cited above[212] concerned the duties and tolls of Villefranche (Villafranca) requested by the Duke of Savoy and the similar coastal duties for the Grimaldi of Monaco. They hindered the free access of Marseille ships to their home port by forcing them to stay 100 miles off the coast. They were perceived as a sort of "tribute" of the king's subject to foreign princes and as an insult to the "authority of His Majesty and to the French name." D'Oppède's minutes argue:

> [those duties of Savoy and Monaco are] of an insupportable inconvenience and danger for navigation. The sovereign princes are certainly empowered to impose whatever duties they think in their ports as everyone is free to go there or not. But they have not the right to impose duties within the sea which does not belong to them and which belongs to public and international law where there is no entitlement to property that ever could be valid.[213]

The sea was free. As a result, the 1662 assembly argued, said princes should not be allowed to levy tolls one hundred miles off the coast. Those formulations, betraying a degree of legal expertise (*droit public / droit des gens*) were very probably composed by d'Oppède

The anonymous recalled "feu M. le Cardinal de Richelieu sur la fin de ces jours, entra en quelque traicté pour la tirer des mains de la famille des Omellins [sic] de Gennes."

211 "Le Transport de l'or et de l'argent a esté de tout temps déffendu en ce Royaume . . . Les advantages que produira cest establissement sont de très grandes conséquences, le premier est qu'il ne se transportera pas aucun argent de France" (S. Correur, "Mémoire pour le negoce du Levant," AN Paris B III 234, n. 5).

212 Cf. above n. 37.

213 "D'une incomoditté et danger insuportable à la navigation; les princes souverains pouvans bien imposer dans leurs portz les droictz que bon leur semble pour ce qu'il est libre d'y aller ou de n'y aller pas. Mais non imposer sur la mer quy ne leur appartient pas et *quy est du droit public et des gens* contre lequel *il n'y a tiltre ny possession* que puisse valloir" (AN AB III 234 nr. 13).

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himself.[214] It was, in fact, still the Grotian language of "freedom of the sea" used here as it had been of importance for Richelieu. As Thomson has shown, it was used in the 1620s as a weapon for forcing the strong re-entry of French maritime power and trade into the Mediterranean. Bearing in mind that the 1662 *mémoire* already incorporated all the measures of the 1669 edict, one may argue with good reason that the main "frame of thought" in which d'Oppède/Colbert acted was still very similar to where the Richelieu administration had left the issue around 1635, when the Thirty Years' War and the Fronde had interrupted a good deal of commercial politics in general. The combination of the language of the freedom of trade and of protectionism in the 1669 edict proves to be the extension of the Grotian legacy which, itself, embodied that bifurcate and somewhat dialectical framework.

Richelieu's *Testament* remained the fundamental reference for a long time. In 1700, Pottier de La Hestroye referred to Richelieu in praise of the Cardinal's support for the founding of merchant companies in 1642 and his homage to Marseille as where the Phoenicians had established their trading colony and where Caesar had entered France.[215] The donneur d'avis Adrien Cazier used Richelieu's *Testament* as his latest reference in his 1710 proposals for reform addressed to the King.[216] The Abbé de St. Pierre wrote a whole commentary on the *Testament*, albeit not on the Levant trade chapter.[217] Melon referred to the *Testament* in 1734, commending the Cardinal's efforts to build up the Navy.[218] And the Cardinal's legacy was well-remembered by French Levant specialists. When in 1731, the King sent Duguay-Trouin on a military and political-cultural expedition to the Levant, a member of the Lemaire consular dynasty wrote a *mémoire* (*Observations sur le Voyage des Eschelles de Barbarie*). Lemaire referred to Richelieu's *Testament Politique*, citing the central (hidden anti-Montchrestien) passage:

[214] Cf. Thomson, "France's Grotian Moment?" – for a more detailed analysis of Grotius cf. below the section on English imperial frames of thought.

[215] Law, *Œuvres*, 70–72, 133.

[216] McCollim, *Assault on privilege*, 177.

[217] Abbé de Saint-Pierre, "Observasions" (1741). But his judgment on Mediterranean trade conformed precisely with Richelieu: "De-là il suit que le reste étant égal, nostre Ministère doit porter la Nation le plus qu'il est possible au Comerse Maritime . . . notre Nation peut faire beaucoup plus facilement, que plusieurs Nations d'Europe, la plus grande partie du Comerse de la Mediterranée." (Abbé de Saint-Pierre, "Projet pour perfectioner le Comerse de France" (1733), 204f.).

[218] Melon, *Essai politique* (1734), 37, 94.

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No one doubts the utility and necessity of the Levant commerce which had been renowned as very advantageous even during times when we only could export money to buy their goods and despite the inconvenience of currency departing the kingdom, as becomes evident from the *Testament politique* of M. Cardinal Richelieu. He admits that he had been convinced by reason and experience, after thorough examination, and despite the contrary warnings of the people to whom the utility of commerce was little known in general, and in particular that Levant commerce would provide the state with very important profits.[219]

The chancellor of the Cyprus consulate and the future consul of Algiers, Lemaire, was again referring to competition with the English. The French were eager to achieve superiority over the English in the important *drap* trade with the Ottomans and North Africans, and Provence had recently surpassed England in terms of production. Following Richelieu, Lemaire stressed the state's interest in the trade, showing that economic competition was also competition for political predominance. The proximity of Provence to the Turkish lands gave an advantage to the French concerning their knowledge of transport costs and Ottoman tastes. If they proceeded in this manner, Lemaire argued, the French could totally exclude the "draps d'Angleterre en Turquie" and make themselves "masters of the Levant commerce." Already by 1731, the English were allegedly maintaining their position in the Mediterranean "rather by political reasons to compete over the terrain with us [sc. the French] than for their own utility." Besides the purely economic advantage gained, the French might also acquire "superiority

[219] "Personne ne doute de l'utilité et nécessité du Commerce du Levant, qui dans les tems même où nous n'y pourions porter que de l'Argent pour leurs marchandises, malgré l'inconvénient de la sortie des espèces hors du Royaume, étoit reconnu pour très avantageux, comme il paroist par le testament politique de M. le Cardinal de Richelieu. Il avoue qu'après un mur examen, et malgré la prévention de la pluspart des gens, auxquels l'utilité du commerce en général étoit alors peu connue, il s'étoit convaincu par raison, et par expérience, que le Commerce particulier du Levant procuroist à l'Estat un profit très considérable" (André-Alexandre Lemaire, "Observations sur le Voyage des Eschelles de Barbarie et du fond du Levant en l'année 1731," AE La Courneuve MD Alger 13, f. 127r-144v, 130r: this version seems to be enlargened later: "fait à Alger le 1er Janvier 1751" by Lemaire (autograph signature, f. 144v). The earlier version (without naming the author) in AN MAR B7/311 (unfol.) has as general title "Suite du journal de la campagne de 1731. Observations sur les Échelles de Barbarie" and for the subchapter with the Richelieu paragraph "Observations sur le commerce du Levant en particulier des Échelles que nous avons visitées."

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and almost full ownership of the Mediterranean Sea." As the British parliament would only accept increased military spending when economic interests had to be defended, according to Lemaire, they would withdraw from the Mediterranean as soon as the French took over the *drap* trade. "To remain the masters of the Mediterranean Sea seems to be a considerable object for the State." The French as masters of the sea should remain the only option for trade with the Turks, and the only power to influence the decisions of the Ottoman Porte. As there were ten times more French subjects in the Ottoman Empire than of any other nation, the establishment of French hegemony in the Mediterranean would, Lemaire maintained, be only logical. The English in turn would, perhaps, even give up Gibraltar and Port Mahoney after some time if the costs of maintaining those possessions notably exceeded their commercial profits.[220]

Lemaire used the Grotian Richelieu to express an absolutely un-Grotian vision of the maritime trade, France's sovereignty and its imperial growth; there was no use anymore in camouflaging expansion with the language of free trade. It was now primarily a space to be conquered. The idea of "ownership, property" was applied to the whole sea. This explicitly contradicted the Grotian understanding of how the Romans had conceived of the sea: As will be discussed below, Grotius' central point was the re-enforcement of the original idea of the sea as a *res communis*, a thing common to all and indivisible, of which no one could claim and acquire as property. Lemaire's argument even went beyond the British and Iberian seventeenth-century adversaries to Grotius who had never claimed the property of the whole sea for their prince, but only the *dominium* over some coastal areas. Instead, Lemaire opted for the conquest of the "property" of the whole Mediterranean through commercial, followed by political, domination. This was a clear plea for a French Mediterranean maritime empire.

So, while French anti-Habsburg men of politics used the idea of a free sea in the first half of the seventeenth century as they supported the Dutch against the Spanish in the Mediterranean, by the turn of the eighteenth century, they tended to use a diametrically opposite argument stronger than Selden had formulated it. While it is usually acknowledged that the modern "imperialist" vision of foreign trade would, in the long run, follow a successful path from mercantilism to

[220] AE La Courneuve MD Alger 13, f. 131r–v.

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free trade,[221] one sees here a different intermediate step during the eighteenth century. This was, perhaps, even a more imperialist policy based on a harsh opposition to free trade, and aiming at the monopolist domination of economic space.[222] That this vision was re-used during the 1751 crisis is telling, and, unsurprisingly, Gournay himself still referred to Richelieu in his *mémoire* concerning the rivalry between France, England and the Netherlands, just after citing the Ciceronian locus classicus on maritime empire ("qui mare tene[a]t rerum potiri necesse est," Cicero: *Letters to Atticus* X, 8 [Cumae, May 2, BCE 49], translated into French by the abbé Mongault in 1714 as "Celui qui est maître de la mer, le sera tôt ou tard de l'empire").[223] To those observations, one could add French projects to conquer parts of North Africa and to build colonies during the eighteenth century. There was a long-running discussion about which of the Mediterranean empires would buy the islet of Tabarca from the Lomellini. The small French possessions as the *Bastion de France* were then usually called "colonie."[224] This markedly imperial self-understanding of France in the Levant even reached, at some particular points, plans for terrestrial conquest of Egypt or the whole Ottoman Empire, as is known from Leibniz' famous *Consilium aegyptiacum*. Such grandiose schemes, however, remained unrepresentative for the predominant eighteenth-century imperial thought until 1830.[225]

[221] Mokyr, *The enlightened economy*, 156.

[222] That is not at all the *doux commerce* that one often associates with enlightened French economic thought, at least for the Gournay period (cf., after the classic account of Albert Hirschman, Larrère, *L'invention*, 144–172). Foreign trade planning was different from reasoning about internal commerce and agronomy.

[223] "On sçavoit pourtant dès le tems d'Auguste que ceux *qui mare tenent* [in Cicero: singular] *rerum potiri necesse est*. Le cardinal de Richelieu l'a répété depuis, et les Anglois nous le prouveront bientôt si on ne les empêche" (Gournay, "Moyens" (1755), 360). That Ciceronian *locus* was widely used in British-French discourses about maritime Empire. The passus from a French Navy *mémoire* in 1738 which Cheney, *Revolutionary commerce*, 35 quotes in his English translation ("whoever is master of the sea is master of everything") is obviously such a citation, apparently without indicating Cicero's name. Cf. Selden, *Of the dominion* (1652), 74; Evelyn, *Navigation and commerce* (1674), title page.

[224] Cf. only "Mémoire concernant le commerce des Colonies de Barbarie au pouvoir de la Compagnie des Indes" (1730), AE La Courneuve MD Alger 13, Nr. 22 f. 82r–85v.

[225] Cf. Drapeyron, "Un projet"; Bérenger, "La politique ottomane"; Leibniz, "Consilium Aegyptiacum"; Hirsch, *Leibniz*, 18–21; Dingli, *Seignelay*,

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This synopsis shows that the everyday cognitive processing of the "national" largely corresponded with the larger mercantilist imperial frameworks. As long as the post-Grotian freedom-of-trade doctrine was endorsed by the French, the external/internal definition of the "national" remained more fluid than in the British case, as the 1669 Marseille edict was also more undecided and bifurcated – protectionism *plus* freedom. The more the practice developed in the direction of the hegemonic domination of the Mediterranean, the more the general frame of thought changed into opting for establishing the Mediterranean as "imperial property." As a consequence, the practice of defining and controlling the national increasingly insisted on a populationist modeling of *the* French nation abroad as has been shown, as if "France" already extended from Versailles to Cairo and Algiers. The national was still an everyday unknown, but its forms of specification changed on the microlevel at the same time as the broader visions of the French nation's possible empire in the Mediterranean changed on the macrolevel.

From Venetian dominium maris *to the Britons' Empire*

Since the 1990s, several studies have examined the development of an 'Imperial or Empire consciousness' by the British in the early modern

157–168; Leibniz' plans were not so far from other circulating projects as the literature on Leibniz as a philosopher might suggest sometimes; cf. the "Mémoire," February 6, 1664, AE La Courneuve MD Alger 12, f. 146r–150r: "Comme les forces de tout ledit royaume consistent en la seulle ville D'alger la Conqueste de cette place donneroit au Roy deux cent lieues destendue de pays que ladite ville faict"; for later proposals to conquer (Northern) Africa or Morocco cf. M. Taral de Montpellier: "[proposition] d'une expédition en Afrique," AE La Courneuve MD Afrique 5, nr. 36, f. 132–136v ("Il s'agit Sire de la conquette de leur pays, de cette partie que le Roy de Marroc, les Algériens, Tunis, et Tripoly occupent," 1729); a proposal to conquer vast regions in Africa, first in Morocco, but also reflecting the relationship to Tunis, Algiers, Tripoli, ibid., nr. 40, f. 141r–154v ("Projet pour jetter les fondemens d'un nouvel Empire ou Roiaume Chrétien, sur les Côtes de la Mer atlantique en Afrique, par l'établissement d'un ordre à l'instar de celui de Malthe, quant aux Chevaliers"). In 1785, the abbé d'Expilly proposed a new common Western diplomatic blockade of the Regencies, not to conquer them, but to force the replacement of the current governments of the regencies through "toute autre espèce de Gouvernement" to liberate the "divers peuple qui gémissent sous le joug, sous la tyrannie de ces Régences . . . dans ce siècle éclairé" (Expilly, Genoa, August 16, 1784, AE La Courneuve, MD Alger 13, f. 297r–301v, 300r).

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era. Wilson stated in 1995 that "ironically, anti-imperialist attitudes have been ably documented," while "the meanings and significance of empire in public political consciousness have only begun to be investigated."[226] This gap has been closed to some extent by numerous scholars who, implicitly or explicitly, have mostly focused on imperial consciousness relating to the Atlantic and Pacific dimensions of the growing British Empire.[227] Only two political affairs (Admiral Vernon's victory at Porto Bello over the Spanish in 1739 and Byng's defeat and the fall of Minorca in 1756) have been depicted as crystallizing moments when the British proto-national and proto-imperial public concentrated on the Mediterranean.[228] From a strict 1700-perspective, there is no reason to neglect the question of a "British Mediterranean imperial consciousness." For many in England, the politico-economic importance of the Mediterranean region was traditionally more evident. Samuel Pepys, the Secretary of the Navy, almost never mentioned the American colonies in his notebooks, but as member of the Tangier Committee he wrote a great deal, even if rather sarcastically, about Tangier and the Mediterranean.[229]

Moreover, concerning the concepts of maritime empire, for many centuries only one sea had been the reference point for the production of discourses and theoretical reflections by Europeans: the Mediterranean. If one wanted to formulate a theory of maritime imperialism around 1600, the only texts to base it on would have been legal or politico-juridical theories written by authors who thought about the Mediterranean, as opposed to other bodies of water, and problems to solve within it, beginning with antiquity. One ought to be wary of modernizing the mindsets and hierarchy of authors' priorities. The Mediterranean is significant here on *two* levels: as a point of reference for the reservoir of past discourses used by seventeenth-century authors to formulate their agendas of "modern" imperialism *and* as a scope of those agendas' application for the struggle for power within the present Mediterranean.

In order to understand the French imperial thought between 1615 and 1750, it is much more productive to analyze the huge amount of handwritten *mémoires* on commerce written for the monarchy, because

[226] Wilson, *Sense*, 138. [227] Cf. literature above, n. 192.
[228] Wilson, *Sense* with the many older studies, and recently, e.g., Kinkel, "The King's pirates?," 14.
[229] Beach, "Satirizing English Tangier." Cf. Stein, "Tangier."

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few texts on political economy and commerce were published. For the British case, however, quite the opposite holds true. Printed texts of various lengths about mercantilist, early populationist and commercial theory abounded, even if mostly in pamphlet size. This reflected the different structure of the relationship between the early modern public sphere and government. Certainly, as in France, many handwritten notes and treatises on political economy were also composed in England. However, it is telling that the transmission of papers from the early precursors of the 1696 (re)founded Board of Trade – the only 17 months active first Council of Trade 1651/52 and Charles II's Councils of Trade of 1660–1665, 1668–1670, the Council of Plantations, then Council of Lords of Trade from 1670 – is so nugatory. Before 1696, these documents are overwhelmingly dispersed in collections of private papers; they did not belong to the "heart" of the central state administration. The combination of King-plus-Houses as the center of decision-making produced other media for the transmission of ideas than in France. It was a process triangulated by "the public" where technical discussions about trade forms and company structures like that between EIC and Levant Company took place. In France, political economic debate was, at least before 1750, far less an object of the emerging public sphere – as were religious and other political matters.[230] This mirrored the structure of the French monarchy's power relationships, with its mono-centered orbit around the king. Due to this, thoughts circulated through the medium of handwritten *mémoires*. It made no sense to print them, and often that would not have been allowed in the first place, like Vauban's *Dixme royale*. Even if permission to publish was granted, printing did not increase the "power" of a *mémoire* and the probability of its impact on the final decision, rather the contrary.

Consequently, a comparison is necessarily asymmetrical. While analysis of the French case concentrated on a Richelieu *fil rouge* webbed through the *mémoires*, the corresponding sources for the English are printed pamphlets, books and surveys about trade.[231]

[230] On the several steps of development of the French "public sphere(s)" with the central moments 1585–1594, 1614, 1648, cf. Pallier, *Recherches*; Sawyer, *Printed Poison*; Jouhaud, *Mazarinades*; Darnton, *The forbidden best-sellers*; the massive literature on "Revolution/Public Sphere" since the American reception of Habermas after his translation into English in 1989 is not relevant here, but cf. still Calhoun (ed.), *Habermas*.

[231] For the "political economy of empire" concerning the overseas, and mostly Atlantic, colonies cf. Armitage, *Ideological origins*, 146–169.

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Three different ideal types of a politico-economic vision of the English/British Empire or of Imperial political economics emerge regarding the Mediterranean. The first was a traditional, legalist and "Mediterraneanist" vision of England's imperial dominion of the sea that proved to be the guiding principle for the Mediterranean. The second type was a concept of Britain's imperial dominion rooted in the colonial settlements, first of all in Northern America, sometimes implicitly or explicitly transferred to the Mediterranean. The third type was a more abstract form of commercial empire based solely on the intrinsic power of economics and spread of values.

1. The legal or legalist concept of the early British empire of the sea was developed by the long renowned anti-Grotian phalanx of Welwood and Selden, in addition to John Davies. The promulgation of the first Act of Navigation in 1651 was soon followed by the publication of the English translation of Selden's *Mare Clausum* (1652), the republication of Welwood's *De Dominio Maris* (1653), and a treatise that had hitherto remained in manuscript form, John Davies' *The question concerning impositions* (1656, new ed. 1659 *Jus Imponendi Vectigalia*). It is fair to interpret this confluence of publications not as mere coincidence but to conceive of them as the theoretical commentaries and legitimatory background for the Act. To clarify the discursive *strata* of legal and theoretical thought involved here, I distinguish between five levels:

1) The concept of the sea as *res communis omnium* in Roman Law (antiquity).
2) The medieval *mos italicus* concept of *dominium* and *iurisdictio* in the Mediterranean as present in the fourteenth century (Bartolus).
3) The late medieval *mos italicus* concept of territorial (mainly Venetian) *dominium* of (parts of) the Mediterranean (Baldus and followers).
--- [humanist epistemic change, *mos gallicus*, historical approach to Law] ---
4) Grotius' modern Natural Law approach, rejecting the *mos italicus* tradition; the transformative point here was the reference back to a universalized form of level one.
5) The English combination of elements from Civil and Common Law, also using an embryonic form of the modern Natural Law approach, creating a nationalized conception of the law of the sea, reviving and transforming the *mos italicus* tradition of level three.

Grotius' *Mare liberum*, published in 1609,[232] is a legal treatise asserting and defending the right of the Dutch to navigate and to conduct

[232] Grotius, *Mare liberum* (1609). Cf. van Ittersum, *Profit and principle*; Borschberg, "Hugo Grotius' theory"; Straumann, "Is modern liberty ancient?"

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commerce with the East Indies in the Pacific Ocean.[233] That agenda dominates the text which first, as befits any legal argument, states the grounds and basis for its claim, and then, chapter by chapter, refutes all known or thought to be possible rival rights of dominion of the sea of the opponent in question, the Portuguese. Its argumentative framework is Roman property law, the law of things within the usual division of *personae, res, actiones* as in Inst. 2.1. Within property law, as established legal practice held, Grotius had to identify the *sedes materiae* for the larger question of whether the sea could belong to someone and if so, how. And this fragment within the legal texts was by tradition, the Dig. 1.8.2.1. in combination with several other *leges* in the *Corpus iuris civilis* (e.g. Inst. 2.1.1., Cod. 6.46). Dig. 1.8.2.1 is a fragment of the *Institutes* of the Roman school lawyer Marcianus (third century AD) which stated that "some things are, by the law of nature, common [sc. to all: Dig. 1.8.2 pr] which are: the air, the flowing water, the sea and therefore the shores of the sea." All medieval lawyers treated related issues in commentaries to that fragment. Grotius, as a humanist, certainly did not use the traditional form of the *glossa* anymore, but his mind still followed the order prescribed by the Roman law "system." That the *res communes omnium* are such *by law of nature* was, in Roman law, simply an extension from the usual distinction between the spheres of law in *ius civile, ius gentium, ius naturale*. Roman natural law meant merely that there was a sphere of being and communication in the world with possible legal importance which was common to all humans and even animals, like copulation or the familial bonds between parents and children (Dig. 1.1.1.3). As Merio Scattola and others have shown, the merging of this civil law tradition with the different Thomist distinction between *lex divina, lex naturalis, lex humana* had taken place in the sixteenth century in dialogue between Philippist and later Calvinist jurists and theologians on the one hand and the neo-scholastic school of Salamanca on the other.[234] Natural law, which was of little practical legal importance in Roman times, had by then been "sacralized" and lifted to a status of higher importance. In its turn, the theological tradition had been secularized and "juridificated." With that background behind him, Grotius could now, instead of starting with all the technical

[233] Perruso, "The development," 90; Muldoon, "Is the sea open or closed?" 121 sees *Mare Liberum* as a "point-by-point rejection" of Alexander VI's *Inter caetera* bull. But only the chapters VI and X of Grotius' book are addressing it.

[234] Scattola, *Das Naturrecht*.

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problems traditionally discussed concerning the *res communes* – how a "sea" is different from other waters, what are "shores," how distant an island can be from a neighboring power, what if two powers are of exact equal distance from an island in the sea – commence with the new platform of establishing legal claims, the early modern law of nature: "the right that we are claiming [for the Dutch and against the Portuguese] . . . is rooted in nature [*jus autem quod petimus . . . a natura enim oritur*]." All the energy employed in the first part of the treatise served to strengthen and to solidify that seat of the claim. It was clearly an incipient form of Grotian modern natural law that would be later developed in *De jure belli ac pacis libri tres* (first ed. 1625), as he was already stressing the fact that natural law was not just operative and binding between Christian powers, but all people on earth. This problem could not be resolved within the framework of constitutional or public law that could figure in debates between Spain and the Dutch about the struggle between claimed and denied independence. Even if there was a lord/subject relationship, the law of nature as root of the claim could not be derogated by a king versus his subjects.[235] Later, this argument led to the formula that the law of nature was valid "etiamsi daremus Deum non esse."[236] The following chapters refute diverse possible claims of entitlement to the *dominium maris* of the ocean. An entitlement to the *dominium* is not possible through *inventio* – one cannot find and appropriate something, where there was no prior owner, Chapter II;[237] not from the pope – the bulls *Inter caetera* – because even if the pope had dominion over the whole globe – which Grotius refuted through several arguments stemming from the Salamancist conception of the division of spiritual/secular power –, in the very end the correct *translatio* necessary for the completion of a gift (*donatio*) was missing (Chapter III, arg. from Dig. 39.5; Inst. 2.7; Cod. 8.53); the entitlement cannot come from the laws of war and conquest, the Indians are free and *sui juris* following the categories of the Roman law of persons (Dig. 50.6.195.2; Dig. 1.6.4). The standards regarding a gift cannot apply to something that is not traded (following

[235] Grotius, *Mare liberum* (1609), f. *5rv.

[236] Grotius, *De iure belli ac pacis*, Prol. 11. Cf. Straumann, "Is modern liberty ancient," 62 n. 28.

[237] The *inventio* was applied in classical Roman law only concerning the finding of treasures (Inst. 2.1.39; Dig. 41.1.63; Cod. 10.15.1.). Grotius argued more logically than in a strictly legal way from Cod. 8.40.13, Dig. 41.3.41 and with Donneau.

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Hugues Donneau, Chapters IV, VII). That the entitlement cannot be claimed by *occupatio*[238] took Grotius more efforts to prove in Chapter V. The main point lay in the classification of the ocean as *res communis* and not as *res nullius* in the taxonomy of Roman law[239] and in making a sharp distinction between the infinite ocean and any other form of waters, rivers, or even "internal seas" circumscribed by delineable borders and islands. The force of the argument comes from generalizing and clarifying the meaning of *communis*,[240] and from denying older ideas. He did not mention his opponents directly in the text, but the marginal allegations show that for some points he was doing what a good humanist *mos gallicus* author always would do, refuting the late medieval understanding of the Roman law. That is, he was invoking the legitimacy of allegedly pure Roman law and repudiating the validity of the post-Roman Byzantine law, established by Emperor Leo VI. Grotius furthermore rejected the argument that the sea could be the property of "the Roman Empire,"[241] which was an idea expressed more narrowly by Bartolus and some of his followers. They argued that it was the emperor – thinking of their contemporary medieval emperor – who had to be considered as Lord of the Sea of last resort.[242] He restricted the idea found in Baldus, that there might be lordship over the sea concerning a particular finite zone of the sea, to the question of jurisdiction and protection. Formal agreements between rulers about jurisdictional zones

[238] On the *occupatio* cf. just Kaser and Knütel, *Römisches Privatrecht*, § 26 I, 138–140.

[239] As only a *res nullius* can be object of an *occupatio*, Dig. 41.1.3pr., Inst. 2.1.12. It is wrong that "Grotius believes that by the law of nations the sea is *res nullius*" – if that had been the case, all arguments from the first to the last chapter of *Mare liberum* would not have followed (cf. on such a reading Brito Vieira, "Mare liberum," 370). For misunderstandings that can derive from a wider or nineteenth-century international law terminology of "*terra / res nullius*" and the Roman Law tradition pertaining to Grotius cf. Benton and Straumann, "Acquiring empire by law," 26f.

[240] Decisively, he did not refer to the narrower Roman legal concept of the *communio pro indiviso* as in Inst. 3, 25, but formulated a more general "natural law" idea of *communis* based on Cicero and other authors.

[241] Grotius, *Mare liberum* (1609), 26f.

[242] "Si autem nec alicui regioni nec alicui insule vicina est tunc non possumus dicere quod aliquis in ea iurisditionem habeat nisi imperator qui omnium dominus est [reference to Dig. 14.2.9]" (Bartolus, *Tyberiadis*, 10r – The second part *De insula* of Bartolus' *Tyberiadis* can be considered as a commentary to Dig. 41.1.7.3 and 41.1.7.4; this is received by Cipolla, *De servitutibus*, cap. 26, n. 16, 404. Cf. Barni, "Bartolo da Sassoferrato," 190f.; Cavallar, "River of Law").

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would create international law between and for persons, but not property. As for protection, Grotius defined this as the entitlement to engage against pirates *ex communi jure* at sea, therefore also not creating an entitlement to property. In Chapter VII he argued against the *mos italicus* interpretation which had been formulated in the fourteenth century mostly concerning the Thyrennian and the Adriatic Sea. Italian jurists had developed the idea that the Venetians had acquired the dominion over the Adriatic against the Genoese by prescription.[243] For Grotius, there could be no acquisition of property through *longi temporis praescriptio*, meaning through possession, the will of possession and the passage of a long time (Dig. 41.3), as such a way to acquire property was only for things subject to civil law, not for those of the *ius gentium* or *ius naturale*.[244] As a humanist, he simply refuted medieval lawyers whom he believed did not handle the text and ideas of the Roman law properly. The law of nations in the Roman legal sense of *ius gentium* could not entitle the Portuguese to the property of the sea since the law of nations was relatively permissive and guaranteed freedom of commerce, not privileging one nation over another.

Grotius' text is to a great extent the typical work of a humanist jurist who was rejecting, on the basis of a proto-historicist understanding of Roman Law, medieval derivations of its interpretation.

William Welwood's *De dominio maris* (1616) had a precursor in the English *Abridgement of All Sea-Lawes* (1613) which included a response to the fifth chapter of Grotius' *Mare liberum*, but I concentrate here on the Latin treatise which was republished in 1653.[245] Welwood's main

[243] See below n. 246 to 247 for Baldus and Barni, "Bartolo da Sassoferrato," 186–188 for some pre-Baldean *glossae* and votes. There is a great deal of literature on the practical political establishment of late medieval Venetian dominion over the sea (cf. only the rich synthesis of Arbel, "Venice's maritime empire"), but much less on that part of the legal justification. Mazzacane, "Lo stato e il dominio" comments on nearly all the fifteenth/sixteenth-century lawyers involved, but only with regard to Venice's lordship over the land (the *terraferma*). Thus, Barni, "Bartolo da Sassoferrato" remains very helpful; Perruso, "The development," 81–84. Borschberg, "Grotius' theory," 34f. sees the importance of the Italian/Venetian reference as opposed to Grotius' arguments, but Grotius could not have known Sarpi (edited 1685) or Pace (published 1619) in 1605/06 while writing *Mare liberum*. Forthcoming is now on these matters Calafat, *Une mer jalousée*.

[244] Cf. only Kaser and Knütel, *Römisches Privatrecht*, § 25, 134–138.

[245] For the Welwood/Grotius discussion on fishing cf. van Ittersum, "*Mare liberum*"; for a precise analysis of the sources used by Welwood cf. Ford, "William Welwod's Treatises."

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point was to rebut Grotius regarding the classification of the sea, in particular that the sea was not a *res communis*.[246] Welwood largely did so by reasserting the claim to dominion through *occupatio*. This was a shrewd move as he did not engage at that point with the text of the Digest itself (1.8.2.1 or Inst. 2.1.1). Instead, Welwood moved directly from the general foundation of the Biblical natural law of property to Baldus' commentary on Dig. 1.8.2.1. From Baldus he then took the central idea to negate the attribution of the sea to *res communes* by referring to contrary fragments of the *Corpus iuris* and to conclude that according to the law of nations, "in the sea there are distinct dominions/realms like in the arid soil."[247] While all glossators – Irnerius, Azo, Accursius, Aretinus, even still Bracton – had seen the sea as *res communis* following Marcian,[248] at the end of the fourteenth century Baldus broke from this tradition. He did not do so through a general and explicit rejection, but by building a bridge to the applicability of acquisitive prescription. Interestingly, Baldus took the somewhat hidden final stone of that bridge from canon law: during the Council of Lyon in 1274, Pope Gregory X had issued a decree concerning details of papal

[246] "Ex quibus evidenter apparet res inferioris mundi non esse a primordio, sive a natura, ita communes, ut nonnulli mortalibus persuadere nituntur arida sive terras, iure ipso primario per legislatorem primarium, una cum rebus omnibus arido contentis non esse communia." (Welwood, *De Dominio maris* [1615], 4). As proof, he cited Dig. 1.1.5, in which the jurist Hermogenian had postulated that "people are distinguished, kingdoms founded and dominions made distinct," but Welwood omitted that Hermogenian attributed the foundation of that idea to the sphere of *ius gentium*.

[247] "Item in mari est iurisdictio, sicut in terra, nam mare in terra, id est in alveo fundatum est, cum terra sit inferior sphera, ut no.de.ele.c.ubi periculum, li.6. [note to Liber sextus I.6.3.] ergo praescribi potest, ut l. uiros, C. de ier. off.li.12. [Cod. 12.59.8] nam praescriptio aequiparatur, privilegio, de uer. sig. c. super quibusdam, § praeterea [Liber extra V.40.26 § Praetera], & videmus dicitur iure gentium in mari esse regna distincta, sicut in arida terra. ergo & ius civile, in praescriptio illud idem potest operari, & haec praescriptio quandoque aufertur, & applicatur alteri, sed cum applicatur alteri, ita quod alii non aufertur, ista est consuetudo, & sic Venetiani," Baldus, *In primam digesti veteris partem commentaria*, f. 43r – the *Lectura Digesti veteris* is from ca. 1390, cf. Colli, "Le opere di Baldo," 70. Baldus argued also with Dig. 8.4.13pr and Dig. 44.3.7. The reference to the *Liber sextus* is not really clear. Baldus wrote a comment on those decretales (or rather Johannes Andreae's *glossa*) but it was not printed. Cf. the edition Lally, *Baldus*, 88: only two short *postillae* to I.6.3. At least a part of Baldus' textual tradition has "regna" where Welwood put "dominia."

[248] Charbonnel and Morbito, "Les rivages de la mer," 35.

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elections (*Liber sextus* I.6.3), on which a commentary tradition had developed. The question was how to act if the pope died on a ship at sea with all the cardinals on board. Addressing that problem, not covered by the 1274 decree, Johannes Monachus (Jean Lemoine) advised that one should not give priority to the Lateran for gathering the cardinals together, due to reasons of ceremonial precedence. It was more important to secure the sacral body of the church which would be without a head for an extended period. Accordingly, a papal election should take place immediately in the city to which that part of the sea belonged: "Because it is said that port cities have a district in the sea like one speaks of the Venetian Sea or the Pisan Sea": This early fourteenth-century verdict therefore provided an early codification of the idea of the divisibility of the sea into districts belonging to adjacent territories.[249] In his comment on the Digest title on dividing things (*de divisione rerum*), Baldus had referred to that canon law discussion and had added the argument that the sea was just water in a hollow of the earth. Under the notion of "earth (*terra*)" one should understand the whole inferior sphere in opposition to the skies, according to the Aristotelian understanding of the world's structure. And so, prescription would be applicable also to the sea.[250] Not only did he refer to the fourteenth-century canon law teaching on the pope dying at sea, but the hidden capstone of that argument was also taken from canon law. He found in *Liber extra* V.40.26 that a right to take duties could be either granted by Imperial or royal concession or by the Lateran Council *or* could be acquired "from old customary law since time immemorial [*vel ex antiqua consuetudine a tempore, cuius non exstat memoria*]" – wherefrom he concluded that granted privileges and prescriptions are equal. In this, Baldus' commentary to the Marcian definition of the sea as *res communis* stated implicitly the opposite to the text of the Digest fragment itself and allowed the application of prescription to it just as to any item subject to quirite law. The usual sixteenth-century editions of Baldus' commentaries already contained an additional note on that passage which clarified that Baldean argument relating to the concrete reality of late medieval shipping and sovereignty over parts of the Mediterranean: "Note that the

[249] Johannes monachus, *Glosa aurea*, 246: n. 9–12 to Liber sextus I.6.3. Jean Lemoine's comment to the *Liber sextus* was written after 1304. Guido de Baysio and Johannes Andreae did not yet treat that problem of the pope dying on sea.

[250] Cf. n. 247.

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Venetians are Lords of the Adriatic Sea and of its shores, that means, in general, not in particular as each specific shore belongs to the adjacent beaches."[251]

The sentence of Baldus cited by Welwood was a central conclusion within the commentary that legitimated the possibility of the prescription of the sea, as refuted by Grotius. Welwood proceeded to stress that the divisibility of the sea had been already proven "before all the Roman lawyers" and by Aristotle – or rather Pseudo-Aristotle – as he named all the different parts of the Mediterranean according to the peoples residing alongside it.[252] Welwood's next step was to simply state that this divisibility was valid for the ocean as well as for the Mediterranean. This contradicted Grotius, who had made a categorical distinction between the infinite ocean and other seas, while not explicitly excluding the Mediterranean. And again, Welwood continued to support Baldus and Bartolus, "that lamp of the law," and the late medieval lawyer Cipolla, against the literal sense of the Roman fragments of the Digests. Welwood spoke only of adjacent parts of the sea, which usually meant up to one hundred miles away from land. Welwood also remained faithful to Baldus and the Italian tradition of grounding, which is the right to take duties such as anchorage or contributions to finance defense against pirates in the conception of the sea, understood as a *res* very similar to the soil. Baldus referred in that passage to the feudal law definition of *regalia*, which linked the levying of duties with public streets and navigable waters.[253] The roots for British concepts of *protection* and *security*, and for the right to

[251] "ADDITIO Venetiani. Adde, quod Veneti sunt domini maris Adriatici, & littorum etiam, scilicet in genere, non in specie, quia littora sunt ciuitatum adiacentium littora," Baldus, *In Sextum Codicis Librum Commentaria*, comment. n. 13, f. 166r. Baldus gives an account of a dispute between Genoese, Paduans and Venetians concerning the concession of a right to take duties at a bridge upon a river. To show the just right of taking duties and to transfer that right to someone else, he alleges the dominion over adjacent parts of the sea in analogy: "nam unum, & idem est territorium, quod eminet super aquas, & quod immergitur aquas, & hoc satis probatur ar. littorum maris. Nam littora, quae sunt sub Imperio alicuius populi, ut Venetorum, vel Ianuensium, sunt illius populi, & ab eo qui praeest, licentia est petenda" (ibid.). The additio also refers to the post-Baldus treatise Cipolla, *De servitutibus rusticorum praediorum* (prior to 1475), cap. 26, n. 7, p. 402 col. a, cf. similarly Bertachini, *Tractatus* (1489), prima pars, quaestio 6, f. 3r, col. b.

[252] Pseudo-Aristotle, *De mundo*, III, p. 7 (transl. Bartolomaeus de Messana), p. 33 (transl. Nicolaus Siculus).

[253] Cf. Baldus' commentary to Cod. 6.46.6/7 (cf. n. 251).

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charge subjects and foreigners for those services, became thus deeply entrenched in continental medieval(ist) legal traditions that had been mainly developed regarding Italian territories and city states.[254]

Welwood was himself a professor of civil law, but in Scotland, where the value and applicability of Roman law was more contested than in most other countries in Continental Europe. His reading of Grotius took all alleged *leges* of the *Corpus iuris* at hand. But he gave decisive preference to those medieval commentators and transformers of the Roman law that Grotius had refuted. After 150 years of humanist efforts to historicize, to better and edit the Roman law text, a tradition to which Grotius belonged, Welwood's option for Baldus could not be, in 1615, just a continuation of the *mos italicus*. Instead, it was an intentional and well-chosen revival of Baldus against the humanist lawyer. In this manner, the late medieval Italian concept of dominion over parts of the Mediterranean was received and generalized in Britain and became the cornerstone of the legal response to the Dutch.

While Welwood argued within a civilist framework, another British lawyer started to add common law elements. This was the king's serjeant in Ireland, John Davies (1569–1626).[255] Davies wrote a text in 1625 when Charles I ascended to the throne. He argued therein in favor of the king's prerogatives to legitimately levy duties and impositions such as the much-discussed ship money. Davies had dominated the "Irish legal world" as the "leading figure in the extension and enforcement of the common law" during the "colonization" of Ireland, as Hart and Pawlisch put it. He was central during the establishment of the king's customs offices in nine Irish port cities and legitimated those royal taxation prerogatives by turning to civil law and utilizing arguments from comparative natural law when royal

[254] Welwood, *De dominio maris* (1615), 13 cited in the margins commentaries of Baldus on the *Libri feudorum* I, 1 and II, 53 and 56, from canon law the *Liber sextus* I, 61, Dig. 43.8.2.22 and Dig. 47.9.5. The main legitimatory support he wanted from those citations were (a) the transferability of rules valid for land to the sea, (b) the possibility that the right of impositions could be acquired through long-term customary law (*consuetudo* and *praescriptio*, discussed by Baldus regarding the acquisition of feuds), and (c) that this right of levying impositions belonged to the *regalia*. The citations (especially Libri feud. I, 1 and II, 53) seem wrong or semantically unclear, as it is often the case with early modern prints. For Baldus' commentary cf. only Baldus, *Opus aureum super feudis*, f. vjr col. a, n. 8 (ad I,1); f. 47r col. b (ad II, 53).

[255] Sean Kelsey in ONDB.

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claims could not be grounded in common law.[256] The main purpose of this treatise was to legitimate the levy of duties such as ship money. This had also been an objective of Welwood's text in 1615, but it was all the more so for the royalist Davies in support of Charles, newly ascended to the throne. For this purpose, Davies did not start from natural law in a wider sense, but from the law of nations. Here, he continued the revival of the post-glossators. After a definition of the law of nations from Dig. 1.1.9 and 1.1.1.4,[257] the first author Davies cited by name was, once again, Baldus.[258] Davies picked up from where Welwood finished his *De dominio maris*, with the right of impositions (*vectigalia*),[259] and recapitulated that point with Baldus' legitimation and foundation of the law of nations.[260] The following chapters consist of a historical survey, reign by reign, of prior impositions levied by English kings up to the author's present, with some disappointing results for the period from Edward III to Edward VI.[261] After presenting that historical material, Davies then inquired into the "general reasons whereupon this Prerogative is grounded." He formulated his central point of legitimation with "the King of England is Dominus Maris, which floweth about the Island . . . And he is Lord of the Sea, not only concerning protection and jurisdiction, but also concerning the property on it [*quoad protectionem & jurisdictionem, sed quoad proprietatem*]."[262] Quite obviously, Davies was copying from Welwood without citing him, in those areas which concern citations from civil law, the post-glossators and other ancient sources. He borrowed the central Baldus position from his comment to Dig. 1.8.2.1 on how dominions in the sea are as distinct as on earth, and he also adopted the argument that, in antiquity, the sea was divided into different "national" parts.[263] Likewise, he also used Baldus as a central authority for the legitimation of impositions in general.[264] Probably also copying from Welwood, he imported the fifteenth-century *jus commune* theory

256 Cf. Pawlisch, *Sir John Davies*, 130–141, 161–175; Hart, *King's Serjeants*, 48f.
257 Cited in extenso: Davies, *The question* (1656), 5. 258 Ibid., 6.
259 Welwood, *De dominio maris* (1615), 20–28.
260 Davies, *The question* (1656), 6. It seems that part of that argumentation was already present in Davies in a pre-Welwood period, during a 1607 lawsuit, cf. Pawlisch, *Sir John Davies*, 131.
261 Davies, *The question* (1656), 68f. 262 Davies, *The question* (1656), 87.
263 Davies, *The question* (1656), 87 (he took that from Strabo at the same place where Welwood was using Pseudo-Aristotle).
264 Davies, *The question* (1656), 89.

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of customs and duties on merchandise, like the *gabella*.[265] Baldus was the only continental legal authority Davies cited here. Moreover Davies, who was significant in strengthening common law "at the expense of Irish customary law,"[266] now also legitimated the king's prerogatives to levy impositions and his status as *Dominus Maris*. Here he used the help of common law sources, an "avowry" case from the times of Edward I given in Fitzherbert's *Grounde Abridgment* which expressed the idea that "the king wants the peace to be protected as well on the sea as on land [*le roy voit que le pease soit cy auxi bien gard en le mere come en le terre*]."[267] From the Yearbook of Richard II he cited a case, where, in a very circumstantial matter dealing with procedural law, the judge Belknap had formulated that "the sea is within the dominion of England as is the crown of England [*la meere est deinz la liegeance Dengleterre come de sa corone Dengleterre*]."[268] This short sentence, also included in Fitzherbert's *Abridgment*, became decontextualized during the sixteenth century, and was embedded in Davies' concept of the king's dominion and lordship over the sea as founded in international law. The third is an allegation from the *Rotuli Scotiae* that probably refers to the times of the early English occupation. The lordship of the English king over the sea and the coast was expressed in those times in every charter appointing a new admiral.[269]

What becomes clear in this nascent paralleling civil law with elements from common law is that Davies wanted to show that the position of the English king as *dominus maris* was already an accepted customary legal

[265] Cf. for example Bertachini, *Tractatus de gabellis*; Pace, *De dominio maris* (1619), 170–179.

[266] Hart, *King's serjeants*, 48.

[267] Fitzherbert, *La graunde abridgement* (1577), avowry n. 192, f. 102r. Avowries were a payment by strangers to "buy" protection from a lord and were usually only found in Cheshire and Wales, Stewart-Brown, "The avowries of Cheshire" and Fox, "Exploitation," 529.

[268] Year books of Richard II – 6, ed. Thorne, Hager, MacVeagh Thorne and Donahue, Trinity Term 35, pp. 50, 65.

[269] The English king always appointed an admiral to be "captain and admiral of the fleet of all our ships from the beach of the river Thames to the Cinque Ports and to all other ports and places on (*per*) the coast of the Sea up to the Western parts [*capitaneum & admirallum flote nostre omnium navium ab ore Aque Thamis' tam Quinque Portuum quam aliorum portuum & locorum per costeram maris versus partes occidentales*]" (*Rotuli Scotiae*, vol. 1, 358, 9 Ed. III membr. 25); cf. Ward, *Medieval Shipmaster*, 28–36. The *Rotuli* were also the place where many royal letters of protection were filed: Harding, "The medieval briefes of protection"; Lacey, "Protection and immunity," 83f.

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tradition. He could not cite an English Baldus for this assertion, because there was no English body of theoretical jurisprudential literature directly comparable to the continental *jus commune*. But Davies utilized those arguments to transcend the *jus commune* tradition, and even Welwood at that point, with the specification that the sea belongs to the king not only through "protection," as common law sources supported, or by "jurisdiction," as was the usual late medieval Italian solution, but as "property."[270] Davies showed, unwillingly, in the first part of the treatise, that the practice of levying impositions on merchandise had in fact *not* been very common during the Middle Ages.[271] Therefore, his and Welwood's efforts to legitimate them proved to be a starting point for a new royal self-understanding in those decades, when the first pirate threat appeared on the British coast since 1615/16.

Selden's famous *Mare clausum* marked the final stage of this development. The first version was written in 1619, but the only text we know is the revised version of 1635 which includes a great deal of post-1619 work.[272] What Selden performed was a Grotian refutation of Grotius. He used a method that closely resembled the one that Grotius had developed to generate natural law from historical evidence. The one and only rule or law-like sentence that he produced was that, with all nations in history (book I) and specifically in Britain (book II), there had always been the concept and claim of lordship over a part of the sea. It is worth noting that the first book is almost completely Mediterranean, because the sea in which the people or "nations" of antiquity conducted shipping and trade and whose history Selden was analyzing was the Mediterranean. Likewise, the only medieval seafaring people he discussed, the Byzantines, Venetians and Genoese, were based in the Mediterranean. The Atlantic dimension of the Spanish, Portuguese and Dutch merited two mere pages of discussion that went without major theoretical emphasis.[273] The second book is devoted completely to the Northern Sea. The referential horizon of the whole treatise has nearly no "global" dimension in our sense, even if the

[270] Davies, *The question* (1656), 87. [271] Davies, *The question* (1656), 68f.

[272] Toomer, *John Selden*, vol. 1, 388–437 provides an unsurpassed insight into the sources that Selden cited. The theory of "Natural-Permissive Law" has attracted a significant body of literature, cf. only the recent Somos, "Selden's *Mare Clausum*" and Tierney, *Liberty and Law*, 251–272.

[273] Selden, *Mare clausum* (1635), 74, 115.

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concept gained of maritime lordship could be and was applied later to larger dimensions of global trade.

For most ancient peoples, the Romans and Rhodian's aside, Selden could derive a "sea property rule" only from narrative and descriptive texts, and for those exceptions no ancient theoretical legal works could serve as palimpsest for his own "theory." The same is true for many sections of the second book, but now prescriptive common law sources became his major point of reference, including some book-length treatises for more recent times. The somewhat hidden major and central sources of Selden's overall legal concept are therefore once again the Italian, and mainly Venetian, legal treatises. He indicated that shift himself.[274] For the first time in chapter XVI, Selden referred to texts which dealt more or less in the same way as he did with the question of "De dominio maris" like the *consilium* of Angelus de Ubaldis (Baldus' brother, 1328–1407) or like Giulio Pace's *De dominio maris* (1619). Of those, Gentili, Suarez and Angelo Matteacci stressed the pre-Baldus *res communis / ius naturale* tradition and can be therefore seen as precursors of Grotius, relegated by Selden to marginal notes,[275] while the Italian authors that supported the Venetian rights upon the Adriatic were all named by their full name in the text, and introduced by a long citation by Baldus' brother Angelus de Ubaldis.[276] Thus, despite the equalizing manner of presenting each Oriental people of antiquity, the Romans, Byzantines, the Westerners of his own time and the British in the same way, as following the concept of the property and divisibility of the sea, the only prior systematic work on that question that formed the base of Book I, Chapter XVI was Venetian doctrine. Furthermore, if one checks the works Selden cited, one nearly always finds Baldus as the earliest authority for the precise formulation of the Venetian *dominium*

274 "Testantur illud & agnoscunt non solum Historici passim & Chorographi [sc. like for all the peoples I have treated before] sed & Iurisconsulti" (Selden, *Mare clausum* [1635], 66).

275 Gentili, *De jure belli libri tres*, ed. Rolfe and Phillipson, vol. 1, lib. 1, cap. 19, pp. 146–149; Suarez, "Consilium de usu maris" (1558), 619–629; Matteacci, *De via, & ratione artificiosa iuris universi libri duo* (1591), lib. 1, cap. 36 ("De iure Venetorum, & iurisdictione maris Adriatici"), f. 70v–72v.

276 A. de Ubaldis, *Consilia seu Responsa* (1532), n. 290, f. 123r–124v; Straccha, "Tractatus de navigatione" (1558), 275–287, n. 8 (p. 278); Peregrino, *De iuribus et privilegiis fisci* (1588), lib. 1, n. 17, 18, p. 7f; Marta, *De iurisdictione tractatus* (1669), vol. 1, lib. 1, cap. 33 n. 25, 26, p. 97; Pace, *De dominio maris* (1619); Bonavides, "Fragment," f. 62v, n. 5; Sarpi (pseud. Franciscus de Ingenuis), *De iurisdictione Venetae in mare Adriaticum* (1619), f. A2v.

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maris. Consequently, Welwood, Davies and Selden acted very consciously when citing Baldus expressly so often, not just as the usual "Bartolus and Baldus" eponymy of post-glossatorial wisdom and the *mos italicus*, but as author of an ideological invention, against which the humanist lawyers, not at least Grotius were fighting.

Despite all of Selden's "modernity," what he was doing was reviving and universalizing the fourteenth/fifteenth-century Venetian theory of the dominion of the sea. In terms of Roman Law, Selden was quite prudent. In the chapter in which he explicitly refuted Grotius, he only referred to that author's text and did not precisely discuss the reading of the Roman law fragments in question. His objectives were limited to denying the general assumption of the sea as a *res communis*, admitting only that concerning the "Free sea . . . circumscribed by the open Atlantic and Australian Sea . . . has something of what the old lawyers [sc. have written] about the common good of the sea."[277] How did Selden understand the Roman concept of dominion over the sea in the classical era? His main strategy in the respective Chapters XIV, XV was to move the focus away from the traditionally central *loci* of the *Corpus iuris* and toward other fragments of the Digest. He also attempted to establish a hierarchy between the Roman lawyers of antiquity by elevating parts of Ulpian's teaching to the rank of his leading authority, always cited directly in the texts, while authors of the other fragments are made invisible or devalued, among them Marcian, author of the notorious Dig. 1.8.2.1 fragment. The same fragment Dig. 47.10.13.7 that Grotius had held as an exception[278] was taken as the cornerstone of the proof that the sea was treated as a *res publica*, the private property of the Roman people, not a *res communis* of all, and that by Ulpian himself. The medieval *loci classici* for the question Inst 2.1pr and Dig. 1.8.2.1 were relegated to a marginal note and downplayed so that the meaning of the *communis* was implicitly restricted or tempered as far as the empire and dominion of the Roman people were concerned.[279]

Welwood and Davies did not dare oppose the great civil law scholar Grotius directly on his most familiar ground, they merely relied on Baldus. Only Selden took up that task, and one sees that Selden and Grotius stressed and universalized two opposing tendencies which

[277] Selden, *Mare clausum* (1635), 114. Selden uses the term of *communio* certainly thinking of the *communio pro indiviso*.
[278] Cf. Grotius, *Mare liberum* (1609), 20, 25, 28.
[279] Selden, *Mare clausum* (1635), 59.

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were already embedded within dissonant textual fragments written by various Roman lawyers, and then compiled in the *Corpus iuris civilis*. On the one hand, there was the division of the spheres of law into the "sociobiological"[280] *ius naturale* next to the *ius gentium* and *ius civile* which corresponded to the concept of *res communes omnium* in a very general way and which could likewise conform to the argument that in addition to the sea, beaches/coasts (*litora*) were also such free *res communes*. This is what the third-century authors Marcian and Ulpian maintained.[281] Grotius raised those Roman bases to a new level of generality through the framework of modern natural law.[282]

On the other hand, there were fragments from other Roman lawyers in the *Corpus iuris* which consistently presupposed an institutionalized society and which only recognized a distinction between public and private things, refusing to take a more general pre-institutional level of *ius naturale* into account. Corresponding to this was the contention that at least the coastal zones were also *public*. This is the tradition from which Selden drew to support his arguments that the sea and the coast were considered as belonging to the *populus Romanus* (public < *populus*), and so, in a modern sense, national property. The trick was to hold up Ulpian as a main authority by not really citing all of Ulpian's fragments and by obscuring and downplaying the Marcian texts. This tactic was congruent with the *results* of the post-glossators Bartolus and Baldus, but effectuated here in a humanist reading of the Roman law that could conquer Grotius' method.

Finally, Selden far surpassed Davies in the matter of assembling common law sources to prove from precedents the practice of protection and England's lordship over the sea. He did a great deal of historical research for that, using the *rotuli parliamentorum*, but he also worked with

[280] I take the term *sociobiological* from Behrends to denote the basic concept of Dig. 1.1.1.3 as natural law being something common to men and animals, often credited with bearing signs of neo-Pythagorean influences (Wieacker, *Rechtsgeschichte*, vol. 1, 644 n. 22 with further literature).

[281] Behrends, "Die allen Lebewesen gemeinsamen Sachen" and Charbonnel and Morbito, "Les rivages."

[282] Miele, "Res publica" charges Grotius with arguing in a contradictory way, but in fact the fragments in the Digest themselves are mutually contradictory. It is not the place to enter here into the discussion whether these differences can be ascribed to solid schools (Sabinians contra Proculians) or even to heritages of different ethnicities (cf. Behrends, "Die allen Lebewesen gemeinsamen Sachen" and Charbonnel and Morbito, "Les rivages" for different views on that, and in general Wieacker, *Römische Rechtsgeschichte*, vol. 2).

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archival manuscripts.[283] Using these sources, he derived the status of the English king as lord of the sea, a power he delegated to the admirals as "custos quinque portuum et Maris."[284] Due to the less consistent terminology of common law language, the concept he created was not "unified," but it was still a more general idea of *dominium maris*.

The legal contribution of the troika of Welwood, Davies and Selden to the Mediterraneanist establishment of legitimating ship money, and, in the end, of the horizon of the Navigation Act itself, did not just have an impact on nuanced elements of different text exegesis. At the same time, those different textual interpretations and semantics served to nationalize the concept of sea use and shipping itself. The main subject of Grotian thought was not the nation but the one humankind, the *genus humanum*, as the root and seat of natural law itself. The sea, at least the infinite ocean, allegedly belonged to this general subject of History and of contemporary activity and politics. The revival and generalization of the Baldean and Venetian concept of their lordship over the sea made use precisely of the latest, most territorialized state of development of medieval Roman law, while the older vision of the emperor's supreme terrestrial lordship, as still present with Bartolus, was not of help. With Selden, in the end, this *methodically* Grotian generalization against the Grotian *content* put the subject "people" or "nation" in the forefront of all arguments. Peoples and nations, he maintained, had a *public* relationship of ownership to the sea. There had always been a *plurality* of peoples and nations in the world and so, all of them had, by the law of nations, that public ownership relationship to the sea.[285] Unity versus plurality of the principal subject of History was, on the higher level of thought that only Grotius and Selden reached, the fundamental distinction in approaching the problem. But in terms of technical argumentation, this led the British authors to strongly dig into those sources in the past that had dealt with the delimitation of that unit "nation" in a very practical sense, juridical treatments of border defense and protection and security, those being the everyday forms of defining and defending the "us"

[283] For example the "*Ms. Formularum de Rebus Maritimis* in Bibliotheca Cottoniana, 3. Maii, 13 Hen.4," Selden, *Mare clausum* (1635), 198 marg. b.

[284] Cf. for that Toomer, *John Selden*, vol. 1, 412–432.

[285] Already in Welwood and Davies, the reference to Pseudo-Aristotle and Strabo served to stress the root of the dominion over parts of the sea in the vicinity of *gentes*, cf. above n. 252, 263.

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against the other, of distinguishing the internal from the external, and, therefore, the fundamental mercantilist distinction. If both sides, the British and Grotius, were humanists in their own way, the British applied the selective historical horizon of source analysis typical for humanist scholarship, but in targeting the *medieval era*, while Grotius was simultaneously a universalist and a humanist legal interpreter who used *antiquity* as his period of reference.

Finally, those texts linked discussions of resource extraction, such as customs, ship money and impositions for the sake of securing the national shipping, to the Navigation Act. The nationalizing of trade therefore has a dimension reaching deeply into the foundations of early modern philosophical and political thought. This was the ceiling and framework for the extremely practical day-to-day decisions of identifying ships, flags, men, of taking legitimate "national" customs or not on goods.

The merchants themselves were not bothered about different concepts of natural law and their deeper roots. However, they still understood that the royalist discourse could work as a somewhat Machiavellian tool to legitimate the extension of impositions. Customs would be:

> conceived by some to have its first Original from a safeguard given by those Princes at Sea, to their Subjects and Merchants from all Rovers, Pirats and Enemies, and a Protection for free trading from all such dangers from one Port or City of Trade to another: but we see that in these days the payment of the Duty is still continued, and is daily paid by all Merchants; but the first institution and ground thereof (if so it was) is by many Princes either totally omitted, or at least wise forgotten, and therefore it may now be more properly called a Custom than heretofore.[286]

Lewes Roberts obviously knew how treatises like those of Welwood, Davies, Selden, took arguments from pretended common law traditions and the Mediterraneanist renewal of the Italian *gabella* legitimation, to produce a genealogy of customs such as the one percent duty from levies in order to finance the war against pirates. Roberts even maliciously noted how kings "forget" the legitimation first grounded in specific temporary contexts.[287] Still in 1690, Josiah Child, who had

[286] Roberts, *Map of Commerce* (1700), 13.

[287] Cf. for the legitimation of the 1637 ship money via threats presented by "thieves, pirates, and sea-robbers, as well as Turks" *Armitage*, The ideological origins, 116 and literature above n. 18.

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used the works of Lewes Roberts,[288] argued against the charge that the *Acts of Navigation* would perhaps, at first glance, be only profitable for maritime merchants and shipowners, while complete free trade might be more reasonable for the majority of British producers and consumers. "[T]his Kingdom being an Island, the defence whereof had alwayes been our Shiping and Sea-men it seems to me absolutely necessary that Profit and Power ought joyntly to be considered."[289] The military defense of the kingdom and the economic prohibitions of the Navigation Act were intrinsically bound together. In many other texts which analyze Mediterranean trade through the lenses of natural law and the merchant law of nations, the granting of the monopoly charters to companies and the establishment of a peace treaty system is understood to be rooted in the prerogative powers of the King.[290] The political economic system was regarded here predominantly from the perspective of protection and was conceived of as a system of security production. The notion of "security" as an explicitly considered general guiding principle of politics was a neologism in the Early Modern era, and it is omnipresent in the texts:[291]

The Security of every Country depends upon the Strength of one Country against another, in case of War between them; and herein Countries are to be considered as they are placed in reference to each other: The Bounds of Inland and Mediterranean Countries, are Rivers, lines, and Forts, which are esteemed sacred; and a Violence done to them, is esteemed a just Cause of War; and so long as these are preserved, the Countries within are secured from foreign Wars.[292]

Until the beginning of the eighteenth century, the organization of navigation and trade, the entire combination of Navigation Acts, and the Act of Frauds,[293] the interplay between armed merchant ships, convoy navy ships, and import/export regulation were all seen as an extension of the defense of the realm's borders. The nationalization of ships was supposed to secure the identification of the moving borders at sea beyond those geographical borders on land. "Defense" was

288 For a different question shown in Letwin, *Origins*, 233.
289 Child, *Discourse* (1690), 93. 290 Jeffreys, *The argument* (1689), 12.
291 Whiston, *Decay of trade* (1693), 3; Trevers, An essay (1677); Sheeres, *A discourse touching Tanger* (1680), passim. Cf. Skinner, "Liberty and security" and Zwierlein, "Sicherheitsgeschichte."
292 Coke, *Detection* (1697), 659.
293 Also the 1663 Staple Act, less important here.

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therefore commercialized, the realm's borders extended into the open space of the sea, and conversely, commerce came under the purview of military defense. This first version of British imperial political economics was, to some extent, conservative, medievalist and Mediterraneanist in both its sources and its application. Using those semantic resources, and by projecting the late medieval Italian as well as common law traditions of maritime dominion and territorial protection into the practice and theory of trade and commerce, all gave a national framework to England's self-understanding of insularity.

2. The second way of conceiving of the empire was to imagine the foundation of a settler colony like in New England. At least one author of importance, Daniel Defoe, imagined North Africa as such a possible colony just at the same time as one finds a new emphasis on French conquest plans. This is certainly due to the political instability in the regencies during the late 1720s and early 1730s and it echoed the second siege of Gibraltar (1727).[294] Defoe did not conceive of the European conquest of Africa as an exclusively British project, but as a (non-crusader) joint venture of all major Christian powers. The short chapter in which Defoe discussed this plan compared antiquity to his contemporary times. The Roman Empire, which Defoe styled as rather disinterested in trade, was correlated with the Ottomans, and the trading people of the Carthaginians was implicitly likened to the European trading nations, foremost the British. Indeed, "Defoe insisted that the Phoenicians were the Englishmen "of that Age." This was an imperial ideology different from the usual Roman classicism that fitted the concepts and realities of a trade empire more exactly.[295] Clearly, Defoe was alluding to a historical narrative drawn mostly from small passages in Strabo, that the Carthaginians/Phoenicians had traded with Britannia in pre-Roman times, mainly in tin, and that they had established colonies there. Therefore, there was not only a comparative but also a genealogical link between Britain and North Africa. Defoe evoked Carthage as a past golden age of well-functioning trade

[294] Defoe, *Plan* (1728), part III, Chapter 2, 321–327. For Defoe's earlier concept of empire cf. Dickey, "Power" and Downie, "Defoe"; but this text on the Barbary coast is very rarely considered in scholarship on Defoe's political thought. But cf. Matar, *Turks*, 170–172. For related aspects of Defoe's writing cf. Merrett, *Daniel Defoe*, 160–170; Backscheider, *Daniel Defoe*, 510–515; Novak, "Defoe."

[295] Backscheider, *Daniel Defoe*, 514. For the Roman classicism cf. Levine, *The battle of the books*.

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connections between Europe and Africa. The Ottomans and their piratical economy represented a state of depravation to be overcome. The Barbary nations had to be driven out of the coastal cities, Defoe maintained, and each European nation should obtain "separate Allotments of Territory upon the coast" and those territories should be "peopled with a new Nation, or new Nations made rich by Commerce, and the Country adjacent cultivated and peopled after the Manner of Europe." European settlers should cultivate the country, and the Barbary people, driven into the hinterland might even transform the desert into farmland, forced by necessity, and to the advantage of the European coastal region. In Defoe's scheme, this would constitute a successful increase of the "general Product of the Country." By the establishment of a European Africa trading with Europe, using the Barbary hinterland as second subordinated trading partner, the increase of commerce itself would be achieved.

> [T]his indeed is the Sum of all Improvement in Trade, namely, the finding out some Market for the Sale or Vent of Merchandize, where there was no Sale or Vent for those Goods before; to find out some Nation, and introduce some Fashions or Customs among them for the Use of our Goods, where there was no Use of such Goods before.[296]

Clearly, the American experience represents the model for Defoe's North African conquest plans in quite precise terms of a British style trade-based "settler colony." Certain elements of this second conception surely had their impact on the Mediterranean, from Tangier to Gibraltar and on what concerns the "colonial culture" performed in the Levant factories in the middle of the eighteenth century. In general, however, it did not have any deeper impact, because it did not fit the Mediterranean circumstances or the Levant Company's traditions and convictions.

3. The third way to conceive of the imperial political economics was concentrating in a far more abstract way on the flow of economic values and the forces of trade itself. In one of the leading merchant handbooks that was widely read among the Levant merchants, Lewes Roberts' the *Merchant's Map* (1638), a "geocommercial" cosmography of all four continents is expressed, providing a prototypical analysis of the invisible imperial power of trade and economic expansion.[297] Roberts was

[296] Defoe, *Plan* (1728), 325.

[297] On Roberts cf. Gauci, *Politics of Trade*, 168 and Zwierlein, "Coexistence and Ignorance."

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a member of the Merchant Adventurers, the Levant Company – even with the office of Husband from 1633 to 1641, the East India Company – including a stint as Director in 1639/40, and of the French and the Spanish Company in London, and he had conducted trade in the Levant and lived in Constantinople for at least fourteen years (1611 to 1625):

> How had ever the name of the English beene knowne in India, Persia, Moscovia, or in Turky, and in many places else-where, had not the traffike of our Nation discovered and spread abroad the fame of their Soveraigne Potency, and the renowne of that peoples valour and worth? Many parts of the world had, peradventure even to this day, lived in ignorance thereof.[298]

Roberts argued that the small English island, in addition to the small countries of the Portuguese and Dutch, had gained an "over-proportional" renown by means of global commerce. In contrast, he alleged, the "Emperour of Germany, the greatest of our Christian Princes," was hardly known outside Europe, because his nation did not conduct global trade.[299] Roberts concluded that "It is not our conquests, but our Commerce, it is not our swords, but our sayls, that first spred the English name in Barbary, and thence came into Turky, Armenia, Moscovia, Arabia, Persia, India, China."[300] For Roberts in 1641, "the global" started with the North African Barbary Coast, while India and China formed the end of the enumeration. Roberts' general remarks can be understood as an attempt to describe something hard to grasp, the proportion and amount of symbolic capital and functions of global trade for the imperial growth of a nation. Like Italian political authors since Machiavelli who reasoned under the locus *Della reputazione del principe*, Roberts argued that there was a form of power that did not derive from brute military force, but instead from the management of an appearance of splendor and "cultural fashioning," and from the memory of past deeds and wise counsels.[301] It is as if Roberts – who read Italian and possessed books

[298] Roberts, *Treasure of traffike* (1641), 91. [299] Ibid., 94. [300] Ibid., 92.

[301] Cf. *Il principe* XVIII, 5 (Machiavelli, *Opere politiche*, ed. Vivanti, 166): "A uno principe, adunque, non è necessario avere in fatto tutte le soprascritte qualità, ma è bene necessario parere di averle."; *Discorsi* I, 25, 1 (ibid., 257): "perché lo universale degli uomini si pascono così di quel che pare come di quello che è: anzi, molte volte si muovono più per le cose che paiono che per quelle che sono."; cf. some later examples: "Quanto importi al Prencipe la riputatione per il governo dello Stato: & quello che debba fare per conseruarla" (Frachetta, *Il prencipe* (1648, first ed. 1597), lib. I, Chapter 4, 13–15); Botero, "Della

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close to that tradition – transferring those ideas from princes to nations and from military glory to trade, reasoned about the functions of commercial reputation. This is an early original interpretation of how an empire of trade worked while its center was merely a small island off the coast of Northern Europe, so isolated from the resources and markets of the continents. Roberts' rationale shows that this concept of the flag's honor identified the deepest fundament of an empire in the *knowledge* of, and about, the governing nation abroad. Ignorance/knowledge dictated the presence or absence of the imperial power of a nation, long before there might be questions of conquest, settlement and colonies. While Roberts himself belongs more to the traditional Levant and London merchants, his focus on the forces of trade themselves is close to some of the seventeenth-century proponents of free trade. Not every plea for "Free Trade" can be linked to this third type of proto-liberal imperial thought outlined here, as the words themselves did not always correspond to their actual content. In contrast, not every plea for some elements of trade regulation can be understood as safe indicator that a given text would belong to the legal tradition. Nevertheless, this is usually a first indicator. A controversy coterminous with the first Navigation Act was that sparked by the famous Leveller William Walwyn who, in May 1652, addressed a memorandum to the *Committee of the Council of State for Trade and Foreign Affairs*, the first Council of Trade founded in 1651 which only lasted for seventeen months. He strongly advocated for free trade against what he perceived as the monopoly of the Levant Company. He grounded his arguments in quite general notions of the public good and the Commonwealth, pretending that there was "so antient a continuall claymed Right, as freedome to all English men in all Forraine Trade ... an universall freedome in all forraine trades." Allowing every Englishman to be merchant as he asked for and to conduct foreign trade with his means and wherever he wants to go would provide many advantages, among them the "increase of Shipping ... the increase of Marriners ... the increase of Wealth and plenty ... the increase of Merchants." Because he favored the increase of the overall number of merchants and the freedom to use whatever

riputatione del prencipe"; "Quanto importi la riputatione massimamente ne' principii delle cose" (Ammirato, *Discorsi* (1607, first ed. 1594), book XII, Chapter 1, 258–261); Bireley, *The Counter-Reformation prince*, 54–57, 82–84, 171–177, 198–200, 223–225.

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means they could afford, he had to admit that the merchant ships that could be used then would hardly be "serviceable . . . for Warr or for defence and protection, as those that are built purposely for the uses by the State." He furthermore imagined that, as a result of the freeing of trade, not "so many wealthy men, as [would have been produced] in the same time by Companies, most of them being borne Rich & adding wealth to wealth . . . yet it will produce Thousands more of able men to beare publique Charges," thus creating more of a "middle class" type of merchant population than a stratified pyramid of a few rich individuals who could also afford to use extremely costly heavily armed ships versus the many poor who could only serve in subordinate functions.[302] He also tended to distinguish the tasks and the sphere of merchants from that of the state, those simply conducting trade with their modest private means, with the option for the state to provide security by powerful ships, a proto-liberal division of realms instead of its combination. Those points, touched upon only shortly by Walwyn as they were, from his opponents' point of view, his weak points, were taken by those who responded for the Levant Company. The Company started with denying Walwyn's concept of an "original natural state" of universal freedom of all men concerning foreign trade in society, stating that if that had been the case, then "it did precede all Government" and returning to it or the "exercise of it tends to the dissolution of all other Civill Governments whatsoever."[303] This meant that according to the Levant Company, in a constituted civil society no simple complete freedom of trade allowed to all was possible. Instead, the very character of the society to be constituted implied an order according to the laws of rank and specialization.

The principall end of Government in Trade, being to advance the same for the benefit of the publique, by the incouragment and increase of able Merchants, by the exportation of Native Commodities, & importation of forraine, by the promoting of Navigation and increase of Marriners, and in order thereunto, to procure and uphould forraine priviledges, to beare the charges incident to trade, to defend the people and stock of this Nation, and

[302] "W Walwins conceptions for a free trade," SP 105/144, f. 36v-39v, edited in Walwyn, *Writings*, ed. McMichael and Taft, 446–452.

[303] "Reasons humbly offered by the Gouernor & Company of Merchants trading into the Levant Seas, to the Council of Trade" (May 21, 1652), SP 105/144, f. 41r–47r, 45r.

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to preserve the trade from other Nations: all which may rationally be supposed to be effected rather by a Vnited Society of Persons tutored and bred up to the trade, and injoying the mutuall Councells of each other, then by others trading in a confused and loose way.[304]

The link between the economic and military defense of the people, in addition to the capital of the nation, led then to a rebuttal of Walwyn: "The ships at present employed in the Trade of Turky are such, as a free trade could not produce either so many or so good; and the nature of that trade is such, as cannot be maintained without ships of good defence."[305] The Company remained with the defensive concept of economics whose legitimation was perfected by Welwood, Davies and Selden, pointing to the strength and war-born character of that concept of trade. Aside from the embryonic ideas of an overall increase and the possible global outreach of every Englishman, Walwyn did not develop a complete positive imperial concept that was connected to what he obstinately and repeatedly called "the free trade." Forty years later, such a vision became more discernable in Whiston's 1693 *Discourse of the decay of trade*. Now, the idea of free trade was in fact the leading element for a purely functional economic empire, maintaining that "Strength or Weakness, Wealth or Poverty of this Kingdom wholly depends upon the Good or Ill Management of Foreign Trade."[306] He argued for a more or less complete freeing of commerce, envisioning a global power of Britain in remarkable words. If England could organize its commerce well, the usual opposition between public and private interest would fade away. For that, a military conquest like that of an Alexander or a Caesar would not be necessary, but instead merely the correct management of (free) trade affairs. In so doing, the English would "make our selves in Effect Masters of the Four Quarters of the Earth, and all England become as one City of Trade, and the General Emporie of the World ... the Nation will be abundantly Enriched, and Money being the very Life of War, and Sinews of all Publick Action, we shall be enabled to bring the World into a Dependant Awe."[307] If English commerce flourished, "People from all parts of the Globe, would resort hither to enjoy themselves, and Improve their Stocks: For Trade is the Life-Blood that runs through the Veins of the

[304] Ibid., f. 41r. [305] Ibid., f. 46r. [306] Whiston, *Discourse* (1693), 2.
[307] Ibid.

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Nation, that moves, maintains, and enlivens the whole Body of the People."[308] As an appropriate measure for the government of trade affairs, Whiston recommended the establishment of a Council of Trade whose members should all be merchants. He was essentially making a straightforward plea for functional specialization: "If the business of Salvation be in Debate, we apply our selves to some professing the Ministry: If the Dispute be concerning the Title to an Estate, we desire the Judgment of a Lawyer: If Sick, we Consult a Physitian."[309] So, in questions of commerce, counsel should be provided by merchants specialized in trade. The committee, he proposed, should consist of members of the trading companies – East India, the African and Turkey Company of the merchants trading with Italy, Spain, Portugal – along with merchants from several other colonies and marketplaces from Barbados to Jamaica, New York and New England, in addition to twelve Masters of Ships to be chosen by Trinity House and representatives of the different English places of production with their respective specific goods (Northumberland for coal, Cornwall for tin, Devonshire and Somerset for clothing, etc.).

In 1696, the more stable Board of Trade was finally constituted, where men of politics were, if not by majority, at least in terms of power, still the leading members.[310] The vision and concept behind a text like Whiston's was in fact the strong concentration on the economic power of value flows and growth and on a functionally differentiated society in which economics was more or less self-governed by its own experts. As the idea still started with, and aimed at, the establishment of a powerful empire, the envisioned English Council of Trade became akin to a World Government. In this vision of empire the king was mentioned only briefly; the guiding principle was nearly completely transpersonal. The power that was to drive this empire-building was invisible: not the power of arms and steel, but of economic value acquisition.[311]

As the early opposition between Walwyn and the Levant Company and later quarrels between the East India Company and the Levant

[308] Ibid., 3. [309] Ibid., 4.

[310] On the Board of Trade see Steele, *Politics of Colonial Policy*. On its precursors since 1651 now Leng, *Benjamin Worsley*, 3–79, 153–162, but the Levant Commerce is hardly touched.

[311] Whiston, *Discourse* (1693), 4–11.

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Company during the 1670s and 1680s show, although Josiah Child did not advocate a completely free trade like Walwyn and Whiston, but instead a milder version as represented by the joint stock companies, it is clear that the different imperial concepts and forms of economic thought were still in elective affinity with different company structures and trading societies. The regulated trade as conducted by the Levant Company and secured by the security measures of convoy shipping and the defence-born Navigation Acts conformed to the first type.[312] The chartered joint-stock companies, mostly acting on credit stocks, correlated with the second and partially with the third. The Levant Company thought in more bullionist terms, charging that the East India Company always exported bullion and imported only goods, while the Levant Company did just the opposite.[313] Child and others argued against that simplistic vision by grounding the import/export balance in asset values, not in metal, and asserted that more profit was gained through the re-export to places including the Levant of Indian goods.[314] The discussion of the opening of the Levant Company in 1718–1720,[315] and the decay of British trade in the Levant after the 1730s were an effect not only of external competition with the French, but also of internal negotiations over different forms of political and economic empire in Britain itself. Levant traders, at least in general, remained within the older traditions of economic and political thought.

Comparison

Different imperial visions succeeded each other and competed within both countries. Nevertheless, within these national contexts, there were elements which seem to have transcended the divides. The central point is how one can conceive of the relationship between "economics" and "state/nation" in both cases.[316] While reality will always show ambiguous merged forms and hybrids – French British commercialists and British French statists – in an ideal typological juxtaposition these relationships seem to behave as Figure 1.3.

[312] Letwin, *The origins*, 29–36; Anderson, *A consul*, 73; Wood, *Levant Company*, 114f.
[313] *The allegations of the Turky Company* (1681).
[314] Papillon, *East-India-Trade* (1677), 11f.; Philopatris (i.e. Josiah Child), *Treatise* (1681), 6, 12; Philempórios, *Scheme* (1683).
[315] Matterson, *Levant trade*, 226–241. [316] Cf. the note 4.

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Figure 1.3 British and French Imperial Mercantilism: The relationship between Nation, State and Economy.

In the French case, trade was considered as subordinate to the state's interests. It was a hypo- or hyper-tactical relationship. An economic historian might argue that this was a misperception of how economics functioned, but that is another argument and not a question about what the actors thought themselves. This fundamental point did *not* really change during the seventeenth and eighteenth centuries. What changed was the way the state tried to model the trade, from rigid open/closed decisions (Richelieu/Montchrestien options) to Levant commerce regulated by a populationist state through "general laws" empirically derived from the given realities around 1740. The nation was integral to the state, l'*état* tended to be the global notion. In the British case, in terms of political economy theory, institutional communication and the practice of navigation, the English – or later the British – nation was the general global actor. Trade and state were more connected through parataxis and equal terms, and discussions advocating or disparaging free trade. The development from a legal-defensive concept of merchant empire to a functionally differentiated economic self-government is a question about the shift of dominating parameters on the same level. Only if Defoe's step had been taken in the direction of a settler colony might one have witnessed British populationist regulation in the Mediterranean similar to that evinced by the French. That the French state applied those concepts to what were, in fact, very small communities of some dozens to, at most, two- to three hundred people as in Constantinople shows how the state perception – incorporating the nations in the *échelles* as part of the state abroad – dominated trade from a top-down perspective.

The British model was, from the beginning, more open to a more abstract, invisible form of an empire based on network nodes, possibly even founded in knowledge about itself and perceived by others, as Roberts had put it. The French model conceived of the trade empire as an extension of the French state, itself physically and geographically

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centered within its hexagon borders. This comparison does not lead to an answer for a classic economic history question, why the French achieved a (fragile) domination of Mediterranean commerce during large parts of the eighteenth century while the British Levant trade declined. The reasons for that are probably only slightly connected to the question of whether one of those models was "superior" to the other. The British acted in the Mediterranean only within the first and oldest of the three imperial concepts outlined above. The Levant trade was structurally conservative. It tended to be excluded by competition within the more and more globalized British Empire, governed within the frames of the second and third models outlined. The French restarted their Levant trade with Colbert after a lengthy hiatus, and they concentrated much more on the Mediterranean as their major "home region." So, the investigation into the differences of general imperial frames of thought is less helpful for explaining what happened in the Mediterranean according to purely economic terms of gain or loss of shares. Nevertheless, those variants are of great importance for analysing the epistemic structures *being formed* in the bottom-up process of specifying norms of nationality and of non-knowledge communication *and also forming* the core and the major perceptional framework of both forms of mercantilist empires, of their specific form to define the distinction between internal and external.

Conclusion: Operative National Non-Knowledge

Ships sailing in the Mediterranean, flags, men on board, corsairs perceiving them, mercantilist forms of trade: all that was seemingly very similar for all Europeans and all others. But the notions of the national and the empire's epistemic structures linked to that and the encounters with each other in the Mediterranean were different, even if the wood of the ships, the flesh of the men and the paper or parchment of the passes had the same physical constitution. Through questioning the national and transforming the unknown into knowns, the French and the English continually processed the very bases of the empires themselves in their different forms. Here, the brilliant insight of Lewes Roberts in 1641 holds true for both: their imperial power was grounded first and before the use of any cannons or swords on *the mere knowledge of their nation* abroad.

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The question of how national (non-)knowledge was handled by early modern trade empires relates just to one of the four studied epistemic fields. Those empires and their agents did a great deal beyond asking about and checking nationality, even though this was the crucial point of constantly marking out the difference between internal and external, and it defined the character of their primary "engine" and reason for existence, mercantilist commerce. From the point of view of a history of coping with forms of ignorance, the study of national non-knowledge serves to represent the specificity of *operative* non-knowledge – in its pure forms and in its links and passages over to epistemic, more discursive forms, such as political arithmetic and imperial frames of thought. The autoreferential character of the national proves to be a crucial element here. We are certainly used to, since the 1980s, speaking of the "construction" of nationality, usually referring to discourses of patriotism and similar sources. The path taken here from norms as specifiers of unknowns to the reification of the national and consolidation of discursive formations referring to it, gives way to a different view by putting emphasis on the paradoxical primary element on which everything is built: the logically necessary gap between a normative demand and the impossibility of referring empirically to a reality "just out there" while responding, because the concept encapsulated in the norm is, in itself, artificial. The atoms of nations, so to speak, are specified unknowns, the forces to combine them, are utterances of ignorance.

The processes started by that were powerful and enduring. They quickly transformed all communication in the Mediterranean, starting with the trade itself. And those epistemic movements acquired a shape during the century from the 1650s to roughly 1750, one that needs to be born in mind for an overall view and comparison with the forms of coping with ignorance and the epistemic movements engendered within the other epistemic fields treated in the following chapters: Religion, History, Science.

Using the laws of the 1660s as a starting point provides convenient visibility for the transformation of the national into a specified unknown in comparison to the medieval situation, as shown above. The approximate endpoint in around 1740/50 of the resulting epistemic movement is less firmly connected to similar legislation, apart from the crucial 1740 French-Ottoman capitulations. Inquiries into the national did not stop now, and – despite differentiations between the realms of economy and politics beyond the close mercantilist link

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between the national and trade – it was not to stop for centuries. This epistemic movement did not have a cyclical form with a starting point, an acme and an endpoint; it was rather an open-ended process. There were, in the 1740s and 1750s, indicators of decisive turning points or shifts in the nature the communication used. This was the high reflexivity about the functioning and the paradoxes created by the processes of identifying the national in the Mediterranean, as evinced by new figures in the field. Reflections such as those on the actual operation of "matching" the lower and the upper part of a Mediterranean Sea Pass betray an awareness of the constructive moment of attributing a national belonging to a ship and its passengers. Considerations like Arnoul's about the functional interdependencies of the two levels of the Mediterranean economy between pirates and Europeans, and the necessity to avoid a "white flag overflow," likewise evince an awareness of the significatory power, but also the rather arbitrary quality, of the national as a brand, a flag, or a color at sea. These reflections do not show that individuals were not taking the attribution of nationalities seriously anymore. However, this reflexivity was an eighteenth-century phenomenon emerging after decades of the system's establishment; it was not present at the start. When paradoxes or dysfunctionalities of hitherto unconsciously performed actions became reflected upon, such as here in thetic or ironic forms, they became germs for a further stage of development. At the same time as those moments of reflexivity, a third point of view materialized in the French case, the paradoxical result of reification of the national. It aggregated the myriad of national (non-)knowledge interactions with *the* nation as object appropriate for populationist reasoning. This was, again, a moment of distancing, of setting off a second-level process. Populationist administrative communication about *the* nation remained associated with fundamental standards like the March 1669 edict, but it also had to be partially detached in order to correspond with new rules of empiricist science driven modeling of that object "nation." The English case is marked, at the same time, by the final decline of the Levant trade itself. On the epistemic level, this was the point when the traditional, legalist and defensive character of the national, as it was "frozen" in the Navigation Act and as the Levant Company was processing it, was surpassed by internal and external developments. This meant that the second level of dealing with the aggregated outcome of national non-knowledge communication that materialized in the French administration, did not

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apply in the English case for the Mediterranean. The English were far advanced with forms of political arithmetic reasoning and practice relating to other parts and other constitutional circumstances of the empire, but the Mediterranean trade grew increasingly "achronic," conserving older habitus and older corresponding epistemic patterns. These shapes of the epistemic movements – the start of an open-ended process of asking about the national allows, at a certain point, the emergence of a second-level form to deal with the aggregated outcome of the nation – or to leave it with that – is characteristic for this example of operative non-knowledge. This will be compared with the non-knowledge cycles within the epistemic fields of Religion, History and Science.

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