



## Jurisdictional Pluralism in a Litigious Sea (1590–1630)

Guillaume Calafat

### ► To cite this version:

Guillaume Calafat. Jurisdictional Pluralism in a Litigious Sea (1590–1630): Hard Cases, Multi-Sited Trials and Legal Enforcement between North Africa and Italy. Past and Present, 2019, 242 (Supplement 14), pp.142-178. 10.1093/pastj/gtz041 . halshs-02778959

**HAL Id: halshs-02778959**

**<https://shs.hal.science/halshs-02778959>**

Submitted on 4 Jun 2020

**HAL** is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

# JURISDICTIONAL PLURALISM IN A LITIGIOUS SEA (1590–1630): HARD CASES, MULTI-SITED TRIALS AND LEGAL ENFORCEMENT BETWEEN NORTH AFRICA AND ITALY\*

On Tuesday 21 May 1624, Anton Marco Pietro, a Corsican merchant living in the Tuscan port of Livorno, appeared before the civil tribunal of the governor of the city. He verbally presented a complaint to the court of justice that was registered as the 65<sup>th</sup> of the year 1624: he accused another Corsican merchant, Simone Francesco Franchi, of owing him a debt of one hundred crowns (*scudi*). Since Franchi was a foreigner and might flee the city, Pietro asked for him to be arrested and imprisoned, unless he could provide a sufficient bond (*sicurtà*).<sup>1</sup> At first, this seems like a very normal request: a trial concerning debt recovery, of which hundreds if not thousands of its kind were recorded each year in the registries of early modern civil tribunals. Likewise, imprisonment for debtors was a fairly commonplace procedure, a feared means of confining the insolvent debtor.<sup>2</sup> However, a closer inspection of the court summons reveals two singular elements. Firstly, Pietro declared that he appeared before the court as prosecutor on behalf of Murād Bey, one of the principal authorities of the Ottoman province (*eyālet*) of Tunis until the start of the seventeenth century. The status of this latter figure raises a first set of

\* I am deeply grateful to Lauren Benton, Maxine Berg, Simona Cerutti, John-Paul Ghobrial, Claire Gilbert, Wolfgang Kaiser, Jessica Marglin, M'hamed Ouaidi, Silvia Sebastiani, Corey Tazzara, Pier Mattia Tommasino, Francesca Trivellato and Konstantina Zanou for their valuable remarks and suggestions. I also thank audiences at Columbia University and Princeton University where I presented earlier versions of this article. I wrote it when I was a Herodotus Fund Member at the Institute for Advanced Study in Princeton. I thank all the participants in the early modern seminar at IAS (2017–18) for their generous and constructive comments.

<sup>1</sup> Archivio di Stato di Livorno (hereafter ASL), *Capitano poi Governatore ed Auditore* (hereafter CGA), 'Atti Civili', 73, no. 65, fo. 822<sup>r</sup>; and another copy in Archivio di Stato di Firenze (hereafter ASF), *Carte Stroziane*, prima serie, 163, fo. 134<sup>r</sup>.

<sup>2</sup> See, in particular, Julie Claustre (ed.), *La dette et le juge: juridiction gracieuse et juridiction contentieuse du XIII<sup>e</sup> au XV<sup>e</sup> siècle (France, Italie, Espagne, Angleterre, Empire)* (Paris, 2006); Julie Claustre, *Dans les geôles du roi: l'emprisonnement pour dette à Paris à la fin du Moyen âge* (Paris, 2007).

questions: what were the jurisdictional, political and diplomatic systems that allowed a Muslim, North African dignitary to demand the payment of a debt from a Catholic merchant in Italy during the early modern period? Apart from the differing statuses and religions of the parties involved, we find a second original detail when we look at the nature of the debt itself. Franchi had not borrowed a hundred crowns directly from Murād Bey, but rather from one of his ‘slaves’, Ḳā’id Māmī, who had recently died. The bey of Tunis was thus demanding repayment of the debt in his role as Ḳā’id Māmī’s master and inheritor. The case brought before the civil tribunal of Livorno hinges on two interrelated questions. Is it true that a master inherits his slave’s outstanding credits in North Africa? And, if this is the case, can this debt rightfully be reclaimed on ‘Christian land’ (to borrow the terms used in the legal documents themselves)?

This case thus tests the court’s jurisdictional capacities by questioning the rules and customs in place in a Muslim normative context and their possible application in a country of *jus commune*. In other words, it is a ‘hard case’, to use the term employed in legal theory to define an affair in which the rules are not decided a priori and are therefore open to question and interpretation.<sup>3</sup> Though we consider that judges’ room for manoeuvre and ability to exercise discretion and flexibility are fundamental to their métier, I define the hard case as one in which there is an *explicit* interpretative dimension to the legal decision-making process. In other words, the hard case always appears as an original configuration and an ongoing enigma to be solved, which forces judges to experiment and improvise. Hard cases are not statistically rare or marginal ‘outliers’, but the very *raison d’être* of courts and legal institutions.

As Jean-Claude Passeron and Jacques Revel put it, the case can be detected by its resistance: it ‘is an obstacle’, not a simple observed singularity, but a unique, disruptive and surprising one.<sup>4</sup> With the *Pietro v. Franchi* trial, the singularity becomes a hard case not only because of the exceptional nature of the request,

<sup>3</sup> H. L. A. Hart, *The Concept of Law* (Oxford, 1994; first pubd 1961), 128–36; Ronald Dworkin, *Taking Rights Seriously* (New York, 2013; first pubd 1977), 105–62. About the Hart/Dworkin controversy on the frequency of hard cases, the phenomenology of judicial decision-making, rules versus principles and strong discretion of judges, see Scott J. Shapiro, *Legality* (Cambridge, Mass., 2011), 259–81.

<sup>4</sup> Jean-Claude Passeron and Jacques Revel, ‘Penser par cas: Raisonner à partir de singularités’, in Jean-Claude Passeron and Jacques Revel (eds.), *Penser par cas* (Paris, 2005), 18. About cases as privileged analytical tools for social scientists, see in particular Charles C. Ragin and Howard S. Becker (eds.), *What is a Case? Exploring the Foundations of Social Inquiry* (Cambridge, 1992); Howard S. Becker, *What about Mozart? What about Murder?* (Chicago, 2014).

but also because of its anomalous form and the abundant documentation it produced. For historians, such cases are valuable for several reasons. Indeed, they *define a problem*, with ‘emic’ terms and categories — that is, with the perspective of the actors involved in a specific historical context.<sup>5</sup> Put differently, the hard case functions both as a descriptive and as an analytical heuristic questionnaire: emic questions raised by hard cases require an in-depth description, that is, an inductive and qualitative investigation that allows us to reveal — or at least to better understand — the social and institutional conditions of possibility in which they occurred.<sup>6</sup> That is why ‘thinking by (hard) cases’ supposes a ‘narrative constraint’: ‘to explain a case is necessarily to take into account a situation, a context. The particular framing of the plot where circumstances are inserted is what makes the case singular’.<sup>7</sup> In doing so with the *Pietro v. Franchi* case, my aim is to reconstruct what legal sociologists and anthropologists refer to as the ‘uses of law’, as well as the forms taken by the legal reasoning and the pragmatic functioning of early modern civil and commercial courts.<sup>8</sup> Investigated in all its complexity, the hard case allows us to articulate together the social, emotional and institutional history of law, and the technical and intellectual dimensions of legal operations and categories, two aspects that historiography often tends to study separately.<sup>9</sup>

<sup>5</sup> For a defence of an ‘emic’ perspective in history, with slightly different approaches, see Simona Cerutti, ‘Microhistory: Social Relations vs. Cultural Models?’, in Anna-Maija Castrén, Markku Lonkila and Matti Peltonen (eds.), *Between Sociology and History: Essays on Microhistory, Collective Action and Nation-Building* (Helsinki, 2004); Carlo Ginzburg, ‘Our Words, and Theirs: A Reflection on the Historian’s Craft, Today’, *Cromohs*, xviii (2013).

<sup>6</sup> Passeron and Revel, ‘Penser par cas’, 11–13 and 22–7. That is why I do not consider relevant the opposition between *source-* and *problem-*driven history raised in Jan de Vries’ contribution to this volume, ‘Playing with Scales: The Global and the Micro, the Macro and the Nano’.

<sup>7</sup> Philippe Lacour and Lucie Campos, ‘Thinking by Cases, or: How to Put Social Sciences Back the Right Way Up’, *EspacesTemps.net* (May 31 2005), <<https://www.espacestemp.net/articles/thinking-by-cases-or-how-to-put-social-sciences-back-the-right-way-up/>> (accessed 1 June 2019), commenting on and translating Passeron and Revel, ‘Penser par cas’, 22.

<sup>8</sup> About the ‘uses of law’ and ‘legal consciousness’ of social actors, see esp. Richard L. Abel, ‘A Comparative Theory of Dispute Institutions in Society’, *Law and Society*, viii (1973); Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans* (Chicago, 1990); Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago, 1998).

<sup>9</sup> Interesting studies have focused on the making of ‘commercial law’ and the debates about the existence of the so-called *lex mercatoria*. Few of them, nonetheless, attempt to bring

My approach to hard cases borrows several modes of enquiry from the field of microhistory. Firstly, a sustained attention to names, which can function as ‘Ariadne’s thread’ and guide us through different collections and types of archives, from notary acts to minutes, from diplomatic correspondence to petitions, and from parish registers to material artefacts.<sup>10</sup> This microhistorical ‘Ariadne’s thread’ shares many methodological similarities and intellectual affinities with the ‘multi-sited ethnography’ promoted by George Marcus, who called for the adoption of several ‘tracking strategies’ for doing anthropology in a global age (such as following the people, the thing, the metaphor, the plot, the biography, the conflict et cetera).<sup>11</sup> This multi-sited approach also requires in-depth descriptions of local sites to describe and understand the very nature of links and connections.<sup>12</sup> Following actors and tracking names in legal records and notarial deeds provide an efficient method to learn about the transformation of disputes and claims

---

together normative sources, statutes, proceedings and ordinary legal practices. For convincing examples in different veins, see Simona Cerutti, *Giustizia sommaria: Pratiche e ideali di giustizia in una società di Ancien Régime (Torino XVIII secolo)* (Milan, 2003); Francesca Trivellato, ‘Sephardic Merchants between State and Rabbinic Courts: Malfesance, Property Rights and Religious Authority in the Eighteenth-Century Mediterranean’, in Diogo Ramada Curto *et al.* (eds.), *From Florence to the Mediterranean and Beyond: Essays in Honor of Anthony Molho*, 2 vols. (Florence, 2009), ii, 624–48; Dave De Ruyscher, ‘From Usages of Merchants to Default Rules: Practices of Trade, *Ius Commune* and Urban Law in Early Modern Antwerp’, *Journal of Legal History*, xxxiii (2012).

<sup>10</sup> Carlo Ginzburg and Carlo Poni, ‘The Name and the Game: Unequal Exchange in the Historiographic Marketplace’, in Edward Muir and Guido Ruggieri (eds.), *Microhistory and the Lost Peoples of Europe: Selections from Quaderni Storici* (Baltimore and London, 1991); Giovanni Levi, *Inheriting Power: The Story of an Exorcist* (Chicago, 1988).

<sup>11</sup> George E. Marcus, ‘Ethnography in/of the World System: The Emergence of Multi-Sited Ethnography’, *Annual Review of Anthropology*, xxiv (1995). For hints on the methodological proximity between microhistory and multi-sited ethnography, see Christian G. De Vito, ‘Verso una microstoria translocale (*micro-spatial history*)’, *Quaderni Storici*, cl (2015), 821; Angelo Torre, ‘Micro/macro: ¿local/global? El problema de la localidad en una historia espacializada’, *Historia Crítica*, lxi (2018), 37–67, esp. 50; Romain Bertrand and Guillaume Calafat, ‘La Microhistoire globale: affaire(s) à suivre’, *Annales: Histoire, Sciences sociales*, lxxiii (2018), 12–15. Christian De Vito convincingly developed this point in ‘History Without Scale: The Micro-Spatial Perspective’, in this volume.

<sup>12</sup> As argued in particular in Bruno Latour, *Reassembling the Social: An Introduction to Actor–Network Theory* (Oxford, 2005), 237–8. See also, about historiographical uses of George E. Marcus and Bruno Latour’s works, Sebastian Conrad, *What is Global History?* (Princeton, 2017), 121–2 and 128–9.

in different legal arenas, regions, states and political entities. This approach unveils the complex web of jurisdictions in which social actors of the early modern period could navigate. The *Pietro v. Franchi* dispute was indeed a 'multi-sited' trial on a transregional scale, which circulated from Tunis in 1619 to Pisa in 1625, through different procedural stages in Corsica, Genoa and Tuscany. Instead of comparing a priori different legal institutions across the Mediterranean, with the risk of brutal and anachronistic analogy, 'following' in detail disputes in multiple jurisdictions helps to capture the same legal questions in different locations and contexts.<sup>13</sup>

Secondly, the intensive analysis of the case and the trial, irrespective of its statistical frequency, permits us access to different kinds of interactions — interactions preceding and surrounding litigation as well as those central to it — that reveal their necessarily multidimensional character: economic, relational, social, political, religious, emotional and affective. In order to avoid an irenic view of the relationship between litigants, courts and state authorities, my aim is to look at both the ways in which different legal institutions could operate, co-operate and compete, and the ways in which actors approached them.<sup>14</sup> By paying close scrutiny to proceedings, we can touch upon the socially negotiated forms of institutions and courts, which adds nuance to the analysis of their efficiency — and of their economic efficiency in particular, since this tends to be postulated and asserted rather than studied empirically.<sup>15</sup>

A close reading and an in-depth description of this trial between the two Corsican merchants enables us to study the institutional and procedural mechanisms through which the circulation and translation of contention concretely operated across the religious, normative and political boundaries which divided the Mediterranean region in the seventeenth century. Indeed, the context of this case is that of a jurisdictional pluralism that has made the Mediterranean an essential laboratory for what the field of global history has come to refer to as 'cross-cultural trade', in order to define commercial co-operation between agents belonging to distinct political, legal and religious

<sup>13</sup> Of course, I do not mean that comparisons are contextually vague and irrelevant. See, for a recent example of comparative methods attached to the 'specificity of cases and contexts', Simona Cerutti and Isabelle Grangaud, 'Sources and Contextualization: Comparing Eighteenth-Century North African and Western European Institutions', *Comparative Studies in Society and History*, lix (2017).

<sup>14</sup> See esp. Trivellato, 'Sephardic Merchants between State and Rabbinic Courts', 628.

<sup>15</sup> On the importance of procedure as an analytical tool to understand pre-modern conceptions of justice and uses of legal institutions, see esp. Renata Ago and Simona Cerutti, 'Premessa', special issue 'Procedure di giustizia', *Quaderni Storici*, ci (1999).

communities.<sup>16</sup> In this sense, the fragmentation of the Mediterranean region is interesting in that it catalyses commercial relations that are marked by permanent risk and intrinsic fragility on the one hand and by a significant 'connectivity' and regular interactions on the other.<sup>17</sup> By looking at a hard case that involves the recovery of a debt owed to a Muslim 'slave' in a 'Christian land', I borrow a host of questions raised by the field of global history about the mechanisms of regional integration and the multiple forms of its resistances at different scales.<sup>18</sup> Through the *Pietro v. Franchi* trial, I intend to show that the study of legal claims in particular locations can illuminate broader patterns about the functioning of litigation, the translation of rules and proofs, and access to justice between Islam and Christianity.<sup>19</sup> Indeed, I consider the global turn in history as an incentive to study the nature of cross-polity and cross-legal interrelations beyond conventional

<sup>16</sup> For an historiographical outline and a research agenda on 'cross-cultural trade', see Francesca Trivellato, 'The Historical and Comparative Study of Cross-Cultural Trade', in Francesca Trivellato, Leor Halevi and Cátia Antunes (eds.), *Religion and Trade: Cross-Cultural Exchanges in World History, 1000–1900* (Oxford, 2014). See also, for a critical appraisal of the pitfalls of the 'cross-cultural' approach in the historiography of the early modern Mediterranean, Eric R. Dursteler, 'On Bazaars and Battlefields: Recent Scholarship on Mediterranean Cultural Contacts', *Journal of Early Modern History*, xv (2011); Jocelyne Dakhli, 'Extensions méditerranéennes: Europe et Islam au contact durant les siècles modernes (XVI<sup>e</sup>–XVIII<sup>e</sup> siècles)', in Emmanuel Désveaux and Michel de Fornel (eds.), *Faire des sciences sociales: Généraliser* (Paris, 2012); E. Natalie Rothman, *Brokering Empire: Trans-Imperial Subjects between Venice and Istanbul* (Ithaca, NY, 2012), 1–26.

<sup>17</sup> On connectivity in the Mediterranean region, see the seminal work of Peregrine Horden and Nicholas Purcell, *The Corruption Sea: A Study of Mediterranean History* (Oxford, 2000), esp. 123–72; for the specific political and military context of the Mediterranean area during the seventeenth century, see Molly Greene, 'Beyond the Northern Invasion: The Mediterranean in the Seventeenth Century', *Past and Present*, no. 174 (Feb. 2002); Wolfgang Kaiser and Guillaume Calafat, 'The Economy of Ransoming in the Early Modern Mediterranean: A Cross-Cultural Trade Between Southern Europe and the Maghreb (16<sup>th</sup>–17<sup>th</sup> centuries)', in Trivellato, Halevi and Antunes (eds.), *Religion and Trade*.

<sup>18</sup> Conrad, *What is Global History?*, 90–114; Jeremy Adelman, 'What is Global History Now?', *Aeon*, 2 March 2017; Richard Drayton and David Motadel (with the replies by David Bell and Jeremy Adelman), 'Discussion: The Futures of Global History', *Journal of Global History*, xiii (2018).

<sup>19</sup> Guillaume Calafat, 'Moslemische Prozessparteien in Westeuropa (1500–1800)', in David von Mayenburg et al. (eds.), *Geschichte der Konfliktlösung in Europa: Ein Handbuch* (Berlin, forthcoming 2019).

European political units.<sup>20</sup> As such, the complexity of (normative or cultural) interactions, frictions and exchanges should not be solely indexed to geographical long distance.<sup>21</sup> Despite the relative proximity of the two markets, transactions between Tuscany and Tunisia required highly complex economic preparation and legal arrangements that could easily be jeopardized at any time. The hard case tests precisely the fragile nature of these socio-economic and political connections, at the crossroads between the microhistorical ethnography of judicial practices, and the global history of legal encounters and cross-polity interrelations.<sup>22</sup> The goal of this article is to use a close microhistorical analysis of a complex trial to account for not only the successful transactions, institutional interdependence and asymmetries, but also violent relationships between North Africa and Southern Europe. It will be concerned with the level at which jurisdictional and religious frontiers are not conjectured to be or defined a priori as stable entities, but rather are thought of in terms of social construction, generative processes and shifting interactions.

In the first section of this article, I will introduce the three main litigants of the *Pietro v. Franchi* hard case, namely Murād Bey, Anton Marco Pietro and Simone Francesco Franchi. Their short biographies will provide an account of the Corsican merchant milieu, family ties and networks, and systems of patronage across multiple sites in the western Mediterranean (especially Tunis, northern Corsica and Livorno). The second section will investigate the role of written documentation and oral proof in a context of jurisdictional pluralism. I will follow the multi-sited hard case in different magistracies and appeals courts, from Tunis to Pisa, focusing on the role of enforcement as a key issue to understanding long-lasting litigation in different jurisdictions. The third section will deal with the social uses of law as a constitutive and endogenous dimension of the hard case: emotion, humiliation and anger will take centre stage as a way to analyse the transformation of disputes and the

<sup>20</sup> A way of 'moving laterally' and searching original and neglected configurations, as Sanjay Subrahmanyam puts it. See Sanjay Subrahmanyam, *Explorations in Connected History: From the Tagus to the Ganges* (Oxford, 2005), 11.

<sup>21</sup> See John-Paul Ghobrial's introduction in the present volume, 'Seeing the World like a Microhistorian'; Bertrand and Calafat, 'La Microhistoire globale', 15–18.

<sup>22</sup> See Lauren Benton and Adam Clulow, 'Legal Encounters and the Origins of Global Law', in Jerry Bentley, Sanjay Subrahmanyam and Merry Wiesner-Hanks (eds.), *The Cambridge World History* (Cambridge, 2015); Lauren Benton, 'Made in Empire: Finding the History of International Law in Imperial Locations', *Leiden Journal of International Law*, xxxi (2018).



question of legal qualifications.<sup>23</sup> Hostility between litigants will reveal mechanisms of political and economic intimidation in order to influence and even corrupt judges. Finally, the fourth section will focus on the translation of Muslim rules of succession between Tunisia and Tuscany: special attention will be paid to the role of witnesses and merchants' knowledge of practices and customs, but also to the vocabulary of religious antagonism as a way to discredit the opposing side.

## I

THE ACTORS OF THE TRIAL: HOUSEHOLDS, PROTECTION AND CORSICAN MERCHANTS ACROSS THE MEDITERRANEAN

*Murād Bey Qūrsū*

Let us introduce, one by one, the three main litigants involved in the *Pietro v. Franchi* hard case, in order to better understand their histories, relationships, interactions and social positions. The first is Murād Bey, the principal creditor to whom the debt was owed. Murād was undeniably one of the main symbols of the economic and political ascension of certain *mamluks* in the Ottoman province of Tunis at the end of the sixteenth and the beginning of the seventeenth century. These *mamluks* were former slaves who had become Islamized servants, whose dependence on their masters did not prevent them from enjoying a significant social, economic and political mobility in Tunis.<sup>24</sup> As suggested by his *nisba* — the place of origin usually attached to the name of the *mamluk* — Murād 'Qūrsū' was originally from Corsica, from the little village of Levie to the south of the island, which was at that time under the relatively loose rule of the Republic of Genoa.<sup>25</sup> According to a narrative account of his life, Murād used to be called Giacomo Santi until he was captured by Tunisian corsairs at the age of nine.<sup>26</sup> His master, Ramaḍān Bey, probably belonged to a military and administrative elite called the

<sup>23</sup> For a seminal article on this issue, see William Felstiner, Richard Abel and Austin Sarat, 'The Emergence and Transformation of Disputes: Naming, Blaming, Claiming', *Law and Society Review*, xv (1981).

<sup>24</sup> M'hamed Oualdi, *Esclaves et maîtres: les mamelouks des beys de Tunis du XVII<sup>e</sup> siècle aux années 1880* (Paris, 2011) <<http://books.openedition.org/psorbonne/2469>> (accessed 19 June 2019), esp. ch. 1. See also, for *mamluk* in the Ottoman context, Ehud Toledano, *As if Silent and Absent: Bonds of Enslavement in the Islamic Middle East* (New Haven, 2007); M'hamed Oualdi, 'Mamluks in Ottoman Tunisia: A Category Connecting State and Social Forces', *International Journal of Middle East Studies*, xlviii (2016).

<sup>25</sup> See esp. Antoine-Marie Graziani, *La Corse génoise: économie, société, culture. Période moderne, 1453–1768* (Ajaccio, 1997).

<sup>26</sup> *Histoire des révolutions du royaume de Tunis au XVII<sup>e</sup> siècle: une œuvre de Guilleragues?*, ed. Paul Sebag (Paris, 2003), 54–62.

'slaves of the Porte' (*kapı-ķulu*) who were sent from Istanbul to rule the Ottoman provinces.<sup>27</sup> The bey of Tunis was tasked with levying taxes and maintaining order in the countryside by way of a *maħalla*, a remnant militia of the Hafsid era (1229–1574) that regularly toured the province's interior as far as Ghadames to the west of the Libyan desert. This was a prominent political and military position which called for an efficient army and good relations with the province's leading figures and families.<sup>28</sup> During his tours, the bey would also collect gold and black slaves sold on Saharan routes.<sup>29</sup>

As the Tunisian chronicler Ibn Abī Dīnār (1610–90) recorded, Ramaḍān Bey 'acquired a certain number of mamluks . . . In his lifetime, many men from amongst the ranks of these mamluks became great dignitaries. . . . Murād Bey was the most noble of character and the most illustrious'.<sup>30</sup> Ramaḍān Bey indeed awarded Murād an enviable place in his administration and gave him his daughter's hand in marriage.<sup>31</sup> From 1604 to 1609, Murād Qūrsū occupied the post of customs officer of Tunis, a strategic role that enabled him to build close ties with the Christian merchants of the province. Most likely with the permission of Yūsuf Dey (ruled 1610–37), considered in European sources as the true governor of the province of Tunis, Murād took over from his master in 1613 as the bey of Tunis. He led numerous military operations in the province's interior in order to quell dissident tribes and raise taxes. The Venetian envoy in Ottoman North Africa, Giovanni Battista Salvago, explains that 'Murat Bei' was amongst the province of Tunis' leading shipowners and describes him as the 'general of the land' (*general di terra*).<sup>32</sup> Bolstered by his military successes and his reputation across the province, his legitimacy was further consolidated when the Sublime Porte awarded him the

<sup>27</sup> Oualdi, *Esclaves et maîtres*; Asma Moalla, *The Regency of Tunis and the Ottoman Porte (1777–1814)* (London, 2004), 19.

<sup>28</sup> Taoufik Bachrouch, *Formation sociale barbaresque et pouvoir à Tunis au XVII<sup>e</sup> siècle* (Tunis, 1977), 64 and 146–7.

<sup>29</sup> *Un document inédit sur la Tunisie au XVII<sup>e</sup> siècle*, ed. Jean Pignon (Paris, 1968); Bachrouch, *Formation sociale barbaresque et pouvoir à Tunis*, 64.

<sup>30</sup> Ibn Abī Dīnār Muḥamad Ibn Abī al-Qāsim, *Al-Mu'nis fī ikhbār Ifriqiya wa Tānis*, ed. Muhammad Shammām (Tunis, 1967); trans. M'hamed Ouarghammi, Univ. of Nice Sophia-Antipolis dissertation, unpubd (1987–8), 357.

<sup>31</sup> André Raymond, *Tunis sous les Mouradites: la ville et ses habitants au XVII<sup>e</sup> siècle* (Tunis, 2006), 26.

<sup>32</sup> Giovanni Battista Salvago, 'Africa overo Barbaria': *Relazione al Doge di Venezia sulle reggenze di Algeri e di Tunisi* (1625), ed. Alberto Sacerdoti (Padua, 1937), 45. On Salvago, see E. Natalie Rothman, 'Self-Fashioning in the Mediterranean Contact Zone: Giovanni Battista Salvago and His *Africa overo Barbaria* (1625)', in Konrad Eisenbichler (ed.), *Renaissance Medievalisms* (Toronto, 2009).

title of ‘pasha’ in 1631.<sup>33</sup> As the Ramaḍān Bey’s successor, Murād Qūrsū inherited one of Tunis’ most powerful households, made up of *mamluks*, devoted soldiers and slaves. The anthropological structure of the household suggests not only the broad notion of kinship upon which it was based but also, and more generally, a wide system of protection and patronage.<sup>34</sup> Murād nonetheless chose to pass on the title of bey to his biological son, Ḥammūda Bey, his child by a converted Corsican slave who was known as Yaṣmīnā. Until 1702, the Muradid beys were the masters of the province of Tunis, despite episodic rivalry amongst them.<sup>35</sup>

Murād appears early on in the records of the chancellery of the consulate of France in Tunis. The task of this institution was to ensure the smooth running of French commerce — trade with Marseille, in the main — in this region of the Ottoman Empire, as well as to enforce compliance with the so-called ‘Capitulations’, a set of privileges granted by the Sultan to members of the ‘French nation’. Archived from 1582 onwards and today conserved at the Centre des Archives Diplomatiques in Nantes, the records of the chancellery of Tunis were meticulously inventoried by Pierre Grandchamp in the 1920s and remain one of the richest sources for historical investigation of Tunisian foreign trade in the seventeenth century.<sup>36</sup> Until the arrival of a Dutch vice-consul in 1616, and then the appointment by the Levant Company of an English consul in 1622, French consular chancelleries were the sole bodies charged with certification and adjudication concerning certain goods or the recovery of debts owed by merchants dealing (mostly) with western Europe.<sup>37</sup>

<sup>33</sup> Jean Pignon, ‘Osta Moratto Turcho Genoese, Dey de Tunis (1637–1640)’, *Cahiers de Tunisie*, ii (1955), 335–6; Sadok Boubaker, ‘Négoce et enrichissement individuel à Tunis du XVII<sup>e</sup> siècle au début du XIX<sup>e</sup> siècle’, *Revue d’histoire moderne et contemporaine*, l (2003), 37; Raymond, *Tunis sous les Mouradites*, 26; Ahmed Saadaoui, *Tunis: Architecture et art funéraires: sépultures des deys et des beys de Tunis de la période ottomane* (Tunis, 2010), 136.

<sup>34</sup> Jane Hathaway, *The Politics of the Households in Ottoman Egypt: The Rise of the Qazdaglis* (Cambridge, 1998), 17; Oualdi, *Esclaves et maîtres*, 65, n. 12.

<sup>35</sup> Raymond, *Tunis sous les Mouradites*.

<sup>36</sup> Pierre Grandchamp, *La France en Tunisie de la fin du XVI<sup>e</sup> siècle à l’avènement de la dynastie hassinite*, 11 vols. (Tunis, 1920–33).

<sup>37</sup> On French consular chancelleries and their legal and economic role, see esp. Yvan Debbasch, *La Nation française en Tunisie (1577–1835)* (Paris, 1957); Guillaume Calafat, ‘La juridiction des consuls français en Méditerranée: litiges marchands, arbitrages et circulations des procès (Livourne et Tunis au XVII<sup>e</sup> siècle)’, in Arnaud Bartolomei et al. (eds.), *De l’utilité commerciale des consuls: l’institution consulaire et les marchands dans le monde méditerranéen (XVII<sup>e</sup>–XX<sup>e</sup> siècle)* (Rome, 2018); Arnaud Bartolomei and Anne Brogini, ‘De la réglementation aux pratiques marchandes: l’enregistrement des actes dans les chancelleries consulaires françaises (XVII<sup>e</sup>–XIX<sup>e</sup> siècles)’, in

The Muslim businessmen and shipowners of Tunis had recourse to the consul when chartering ships, when they were selling or exchanging captives, or when they had interests involving a transaction with European traders. Murād appears at first in these records as a customs officer, in the latter part of the first decade of the 1600s. Once he had assumed the title of bey, he is mentioned as the master of slaves and captives whom he sold to redeemers or to Corsican, Genoese, Neapolitan or Jewish brokers.<sup>38</sup> Murād's *mamluks* also possessed captives, such as the corsair Ẹā'id Ja'far, also known as 'the Genoese', or Ẹā'id Māmi Qūrsū, who held Corsican slaves that were bought back by Corsican merchants in Tunis and Livorno.<sup>39</sup> Murād Bey's household was not, however, exclusively Muslim. Several of his slaves, who had not renounced their Christianity, gravitated around the consulate of France in Tunis and ran businesses of their own.<sup>40</sup> Similarly, Murād Bey protected the Christian merchants with whom he did business.

### *Anton Marco Pietro*

Among these merchants was Anton Marco Pietro (or sometimes Pietri), the second character involved in the hard case. Pietro appears for the first time in the records of the chancellery of the French consulate of Tunis in September 1613, which give his age as 23.<sup>41</sup> He was born in the port of Centuri in Cap Corse.<sup>42</sup> In the early 1610s, he travelled to Tunis and acted as an agent on behalf of several Corsican merchants based in Corsica, Livorno and Marseille. Pietro was charged with buying back captives, and with sales and transfers of money between North Africa, the Italian peninsula and southern France.<sup>43</sup> In fact, a spell in Tunis was a rite of apprenticeship for merchants from the Cap Corse specializing in trade with North Africa and especially in the coral trade. A good knowledge of the Tunisian merchant milieu and the workings of commerce there (encompassing maritime loans and obstacles, insurance and risk) was a means of proving one's worth and bolstering one's reputation and credibility. In 1613, Anton Marco Pietro sent wool and couscous to

---

Bartolomei *et al.* (eds.), *De l'utilité commerciale des consuls*; Jörg Ulbert, 'Qu'est-ce qu'un chancelier de consulat? Une approche par les textes de droit français', *Mélanges de l'École française de Rome — Italie et Méditerranée modernes et contemporaines*, cxxviii (2016).

<sup>38</sup> Grandchamp, *La France en Tunisie*, iii, 91, 199, 251, 253, 261, 270, 295.

<sup>39</sup> *Ibid.*, 114, 118, 137, 175.

<sup>40</sup> *Ibid.*, 345.

<sup>41</sup> *Ibid.*, 85.

<sup>42</sup> ASF, *Notarile Moderno, Protocolli (Testamenti)* (hereafter NMT), Matteo Ciupi, 14186, no. 43, fo. 111<sup>r</sup>.

<sup>43</sup> Grandchamp, *La France en Tunisie*, iii, 113, 191, 202.

Marseille. Two years later, he supplied and insured ships on behalf of two prominent Jewish merchants in Livorno. In 1616, he purchased leather from Murād Bey for over 9,000 pieces of eight reales, a cargo again destined for Livorno. In subsequent years, he bought back Corsican and Provençal captives owned by Murād Bey and Yūsuf Dey, who were the two main political authorities in Tunis. In 1619, Pietro became the owner of a boat captured by Tunisian corsairs.<sup>44</sup>

The many successes of Anton Marco Pietro — as an agent in the captive trade, and a shipowner and trader in his own right — show the opportunity for the rapid accumulation of wealth that Tunis offered to Corsican merchants in the early seventeenth century. They were able to advance large sums of money that were guaranteed by partners in Livorno or Marseille who already benefited from strong links or existing credit in the Ottoman province.<sup>45</sup> The amiable relations that Anton Marco Pietro enjoyed with the local authorities are evidenced by a dispute against a Catholic merchant in which the Corsican merchant was accused of benefiting from the ‘favour and the force of the Turks’.<sup>46</sup> The complaint registered at the French consulate noted that Pietro lived in ‘the home of the leading Turks of the land’.<sup>47</sup> The expression ‘*casa dei Turchi*’ mentioned in the records referred not to a place but most likely to a household in which Christians and Muslims cohabited.

The links between Anton Marco Pietro and Murād Bey are further attested to by letters sent by the bey of Tunis to the Tuscan Grand Dukes: in several letters written between 1621 and 1622, Murād Bey referred to Anton Marco Pietro with the affectionate term ‘*nipote*’, ‘grandson’ or more likely ‘nephew’.<sup>48</sup> Though it is difficult to determine the exact nature of the family ties between the bey of Tunis and his Corsican ‘*nipote*’ from Centuri, it was far from impossible that Anton Marco Pietro was related to one of Murād’s wives: we know that Murād Qūrṣū had married former slaves

<sup>44</sup> *Ibid.*, 94, 134–5, 198–9, 234, 319, 326.

<sup>45</sup> Kaiser and Calafat, ‘Economy of Ransoming in the Early Modern Mediterranean’, 119.

<sup>46</sup> Centre des Archives Diplomatiques, Nantes (hereafter CADN), Tunis, ‘Chancellerie’, 712PO/1/407 (VI), fos. 202<sup>r</sup>–203<sup>v</sup>.

<sup>47</sup> *Ibid.*, fo. 202<sup>r</sup>.

<sup>48</sup> ASF, *Mediceo del Principato* (hereafter *MdP*), 6377, fo. 67<sup>v</sup> (15 Apr. 1621); ASF, *MdP*, ‘Minute di lettere di Ferdinando II’, 104, fo. 294<sup>r</sup> (12 Sep. 1622); ASF, *MdP*, 6377, ‘Viaggi’, fo. 67<sup>v</sup> (15 Apr. 1621); ASF, *MdP*, 4279, ‘Lettere di Costantinopoli, di Levante e di Barberia scritta da Turchi e da Cristiani’, fo. 148<sup>r</sup> (6 Mar. 1622); fo. 162<sup>r</sup> (11 Nov. 1622). About these letters sent to Tuscany from the Ottoman Empire, see Daniele Baglioni, ‘Lettere dall’impero ottomano alla corte di Toscana (1577–1650): Un contributo alla conoscenza dell’italiano scritto nel Levante’, *Lingua e stile*, xlvii (2011).

of Corsican origin. Furthermore, in September 1624 in Livorno, Pietro married Lucia di Santi, a member of the bey's original family; this marriage thus forged a new matrimonial alliance between the Pietri of Centuri and the Santi of Levie.<sup>49</sup> These affective relationships show that the conversion to Islam by no means meant the dissolution of family ties. It appears as if the co-presence of two different religions within the same transregional family was in no way considered exceptional, strange or contradictory. To some extent, this was likely because conversion was a common feature of Mediterranean societies in the late sixteenth and the seventeenth century, necessarily mixed by way of forced migrations, conflicts, slavery, captivity and economic crises. What is more, the religious border was doubtless more permeable than the sources might suggest. It seems to me as though whenever historiography looks to ascertain the degree of sincerity with which conversions were carried out, it falls into the traps set by the Inquisitors and the political authorities of the early modern age. By this I do not mean that the religious barrier was meaningless and had no military, diplomatic or cultural ramifications; I simply mean to underline that, in terms of practice and in the context of trans-Mediterranean families, there was a great deal of religious fluidity. The letters of Murād Bey are interesting with regard to this matter: in the same letter in which he supported Anton Marco Pietro, the bey of Tunis recommended a 12 year-old niece to the monastery of San Giovannino in Pisa. He asked the Grand Dukes of Tuscany to honour the young girl as they would honour him.<sup>50</sup> These links also shed new light on the familial and affective nature of the protection afforded by Murād Bey to Anton Marco Pietro, who seemingly were related on two levels.

### *Simone Francesco Franchi*

The third character implicated in the hard case presents yet another type of profile. Simone Francesco Franchi was a native of Bastia, the main city in northern Corsica, and appears in the records of the French chancellery in Tunis for the first time in 1617. He was listed not as a merchant but as the consulate's chancellor, a role that he would perform until May 1618.<sup>51</sup> At the turn of the seventeenth century, the chancellor carried out a wide variety of functions under the consul: he was at once the clerk, bailiff, notary, secretary and archivist of the consulate. He was also charged with composing and undersigning records and designating the opposing parties in litigation. Like many Corsican merchants in Tunis, Franchi had likely cut his teeth in

<sup>49</sup> Archivio Storico Diocesano, Livorno, *Registro dei matrimoni*, 1, fo. 116<sup>r</sup>.

<sup>50</sup> ASF, *MdP*, 6377, fos. 67<sup>r</sup>–68<sup>r</sup>.

<sup>51</sup> CADN, Tunis, 'Chancellerie', 712PO/1/407 (VI), fos. 254<sup>r</sup>–517<sup>v</sup>.

the Coral Company, managed from Marseille by prominent families of French naturalized Corsican merchants.<sup>52</sup>

His office suggests in any case good legal knowledge and mastering of the ‘*ars mercatoria*’ that would allow him to negotiate comfortably with the key local and European merchants of Tunis. Drawing up inventories and registering contracts, he would have acquired an intimate knowledge of the city’s most significant cash flows, the products and the characters. The vast majority of the chancellery’s documents were written in Italian, since for the most part they involved individuals and merchants linked to the states of the peninsula; as a result, a record from the chancellery could have a probative value in an Italian-speaking institutional and political framework. As several documents explicitly point out, the written record of a dispute or a contract from the consulate of Tunis could allow the creditor to call in debts or assert his rights ‘in the land of the Christians’.<sup>53</sup> In this, consulates played an important role in harmonizing procedures in the Mediterranean, one that lent an ever-increasing importance to written proof in the arbitration of litigation.<sup>54</sup> In general terms, Italian was one of the most widely-spoken languages in the province of Tunis, but more than this, was an instrumental language for trade and diplomacy in the western Mediterranean. The letters sent by the Tunisian authorities to the Grand Dukes of Tuscany and to the Chamber of Commerce in Marseille were all written in Italian, for example.<sup>55</sup> The presence of numerically significant numbers of converts, captives and slaves from the peninsula also explains that the *lingua franca* used in North Africa was strongly skewed towards Italian, all the more so

<sup>52</sup> On this Coral Company, see Paul Masson, *Les Compagnies du corail: étude historique sur le commerce de Marseille au XVI<sup>e</sup> siècle et les origines de la colonisation française en Algérie-Tunisie* (Paris, 1928); Paul Giraud, ‘Les Lenche à Marseille et en Barbarie’, *Mémoires de l’Institut historique de Provence*, xiii (1936); xiv (1937); xv (1938); Wolfgang Kaiser, *Marseille au temps des troubles: Morphologie sociale et lutte de factions, 1559–1596* (Paris, 1992), 157–61; Michel Vergé-Franceschi, ‘La Corse enjeu géostratégique en Méditerranée et les marins Cap Corsins’, *Cahiers de la Méditerranée*, lxx (2005).

<sup>53</sup> See, for example, CADN, Tunis, ‘Chancellerie’, 712PO/1/407 (VI), fo. 672’.

<sup>54</sup> According to John E. Wansbrough, this circulation of consular records in the Mediterranean contributed to the progressive formation of a mercantile and legal *lingua franca* forged from a (mostly Italian) notarial culture. See John E. Wansbrough, *Lingua franca in the Mediterranean* (Richmond, 1996), 136–7.

<sup>55</sup> For an excellent critical edition and linguistic examination of some of the Italian letters of seventeenth-century Tunisian political leaders, see Daniele Baglioni, *L’italiano delle cancellerie tunisine (1590–1703): edizione e commento linguistico delle ‘carte Cremona’* (Rome, 2010).

in Tunis proper.<sup>56</sup> Franchi was not the first Corsican, nor even the first Bastian to occupy the office of chancellor: in 1616, Battista Levanto underwrote several records.<sup>57</sup> His brother Antonio was an important Bastian merchant and Levanto himself did extensive business with Jewish and Corsican traders in Livorno. In other words, the Corsican presence at the French consulate in Tunis remained decisive in the first decades of the seventeenth century. In 1618, Franchi dedicated himself exclusively to merchant activity in Tunis. Records show he exported sugar to Livorno, received orders from Corsican merchants, lent money for the purchase of captives and raised money from an associate in Florence one year later.<sup>58</sup>

## II

### RECOVERING DEBTS IN A CONTEXT OF JURISDICTIONAL PLURALISM: 'FORUM SHOPPING' OR PURSUIT OF ENFORCEMENT?

How did these three men decide to trade together? What were the reasons for the breach of their partnership? In other words, how did the dispute emerge and which institutions were mobilized by the litigants? The bitter litigation and the hard case will not only highlight the difficulty of legal enforcement in a complex web of jurisdictions, but also reveal the ambiguity of written documentation for the actors attempting to use it as proof in multi-sited trials.

In July 1619, Franchi partnered with Anton Marco Pietro and Alessandro di Santi (perhaps Pietro's brother-in-law), both Corsican and 'nephews' of Murād Bey. Together, the three Corsican merchants purchased, for a huge sum of 11,000 crowns, 286 cases of sugar of various kinds (likely plundered) from Ustā Murād 'the Genoese' (also known as Benedetto Rio), a famous ship captain and one of the leaders of the Ottoman province of Tunis, and protégé of Yūsuf Dey.<sup>59</sup> Such episodic commercial partnerships sought to share the risk of high-yield operations, and would be renewed if successful. Anton Marco Pietro sailed for Livorno with the sugar as well as several Christian captives whose freedom had been bought. He sold the sugar for 14,000 crowns, a profit of 27 per cent on the price paid in Tunis. With this money, Pietro purchased various goods in Tuscany as well as a buying back

<sup>56</sup> Jocelyne Dakhliā, *Lingua franca: histoire d'une langue métisse en Méditerranée* (Arles, 2008).

<sup>57</sup> Grandchamp, *La France en Tunisie*, iii, 202.

<sup>58</sup> *Ibid.*, 315.

<sup>59</sup> Pignon, 'Osta Moratto Turcho Genoese, Dey de Tunis'; Salvatore Bono, 'Genovesi islamizzati in Tunisia nei secoli XVI–XVIII', in Raffaele Belvederi (ed.), *Rapporti Genova–Mediterraneo–Atlantico nell'età moderna* (Genoa, 1989); Angelo Terenzoni, *Dalla schiavitù alla Reggenza di Tunisia: Benedetto d'Arri Ligure di Levanto (1574–1640)* (Genoa, 2003).



a number of Muslim captives, a deal with an estimated profit margin of 15 per cent.<sup>60</sup> This transaction demonstrates several ways in which Corsican merchants in Tunis were well positioned to amass significant fortunes. Firstly, they took advantage of their friendly relations with local authorities, and with Corsican and Ligurian converts in particular, to purchase goods spoiled by Tunisian corsairs. These purchases were legal to the extent that, once captured by corsairs, goods changed ownership according to the *postliminium* rule of Roman law and medieval customs.<sup>61</sup> Secondly, they were able to rapidly raise funds and obtain credit from Tunisian merchants. Ustā Murād loaned Pietro and his associates 8,000 of the 11,000 *scudi* used to purchase the sugar, to be reimbursed after the sale of the goods in Livorno. Murād Bey similarly lent 1,000 *scudi* to Franchi so that he could participate in this partnership (called *compagnia*). As Pietro's voyage shows, Corsican merchants and sailors were to be found at every step of the journey made by goods as they moved across the Mediterranean: they oversaw transport, sale and subsequent purchases, thus considerably reducing the various fees and transaction costs (be they in terms of distance, insurance, commission, information et cetera). Finally, by acting as intermediaries in the return of captives, the Corsicans not only made further trading profits but also benefited from an added security and safe passage that reduced their exposure to risk at sea.<sup>62</sup>

Upon Anton Marco Pietro's return to Tunis in Spring 1620, he was faced with litigation brought against him by Simone Francesco Franchi. Pietro represented not only his own interests but those of Murād Bey, Franchi's creditor, and Alessandro di Santi. Franchi was in quite a predicament. He owed not only 1,000 crowns to Murād Bey, but also faced demands from Ustā Murād for the repayment of the loan of 8,000 crowns. Ustā Murād was threatening to throw him in jail alongside his slaves. Before the vice-consul of the French nation, the chancellor and two witnesses, Franchi asked Pietro

<sup>60</sup> ASL, CGA, 'Atti Civili', 73, 90, fo. 1076<sup>r</sup>.

<sup>61</sup> ASF, *Notarile Moderno, Protocolli*, Claudio Ciuppi, 5625, fo. 2<sup>v</sup>–10<sup>r</sup>: 'ho visto sempre contrattare in Livorno gente di Barberia, ed altri luoghi di infedeli, che ci son venuti con lor robe, merci, et mercantie sicuramente così come sono stati sicure, et franche le robe compere in detti paesi di Barberia, et condotte in questo porto da fedeli, o infedeli, quali non sono stati molestate in giuditio, ne fuor di giuditio, et se pure alcuno ho voluto molestarle, ne ha portato sentenza contro, et è stato condannato nelle spese' (certificates signed by Bastiano Balbiani, Matteo di Terenzio Mellini, Giovan Battista Pezzini, Camillo Turchetti, Fretta Scarpi and Antonio Puccini). For the *postliminium* rule in medieval customary maritime law, see: *Il Consolato del mare colla spiegazione di Giuseppe Maria Casaregi*, ed. Giuseppe Lorenzo Maria Casaregi (Venice, 1737), ch. 229, 230–4.

<sup>62</sup> On this practice, see Kaiser and Calafat, 'Economy of Ransoming in the Early Modern Mediterranean', 127.

to close the books of their *compagnia*, their commercial partnership. But Pietro in turn demanded that Franchi first provide a receipt confirming that he had received his third of the 14,000 crowns that their commercial association reaped in Livorno. Franchi contended that he did not receive his share, and at the same time demanded a much larger sum corresponding to the price of his commission and interest on the sale, which equated to at least double his initial investment. However, he ultimately consented to provide the receipt in exchange for a promise by Pietro to reimburse his creditors.<sup>63</sup> A document drawn up in February 1621 records a dialogue between the two parties in the home of the vice-consul:

*Franchi:* You do these things because you benefit from the power of the Turks in this place. If you were in a Christian land, where justice reigns, you would not do such things.

*Pietro:* Do as you will and do as you wish, but you will have from me neither balance nor payment of any kind without first providing me with this receipt.

*Franchi:* But how am I to give you a receipt if you do not first pay me?<sup>64</sup>

The nature of this receipt soon became the subject of complex litigation between the two men.<sup>65</sup> Was the receipt ultimately signed under duress? Or did it really mean that the balance had been paid to Franchi? These questions point to the limits of written certification. On the one hand, they were often demanded by merchants and institutions as proofs, in particular for high-value transactions or ones that implied deferred payments and deadlines (such as bills of lading, account books, powers of attorney, bills of exchange

<sup>63</sup> CADN, Tunis, 'Chancellerie', 712PO/1/408 (VII), fos. 302<sup>v</sup>–303<sup>r</sup>.

<sup>64</sup> ASL, CGA, 'Atti Civili', 73, 90, fo. 1087<sup>r</sup>: 'Allora il detto Simone Francesco Franchi disse S[igno]rie che vene pare di queste cose, che vole che io li faccia prima la quietanza che darmi conto ne pagamento di sorte alcuna dicendo "tu fai queste cose come stante la forza de' turchi, che tu tieni in questo luogo, dicendo se fussino in terra di Christiani dove batte la giustitia, non faresti queste cose", et il detto Anton Marco Pietro disse "fa quanto voi, e di quello che ti piace, che da me non haverai ne conto, ne pagamento, di sorte alcuna, se prima non mi fai la quietanza gia detta", et allora, il detto Simone Francesco Franchi disse "S[igno]ri, me sarebbe testimoni per a loro e tempo come vole che io li faccia prima la quietanza senza darmi ne conto, ne pagamento" '.

<sup>65</sup> *Ibid.*, fo. 1098<sup>r</sup>: 'Deduce fede e copia valida d'uno instrumento celebrato in Tunis, sotto li 25 di maggio 1620 per il quale appare detto comparente haver fatto quietanza dalli detti 4667.15.9 a favor del detto Anton Marco Pietro spettanti a lui per il detto negozio et deduce fede et attestazioni valide per le quali si giustifica che detta quietanza presentata e fatta forzatamente'.

and so on). This explains why, even as a tacit war simmered between France and Tunis between 1610 and 1616, the consulate of France continued to provide such functional and crucial certificates. On the other hand, it is difficult to understand the context in which written documents were drawn up without recourse to oral testimonies: nothing guaranteed that the institution responsible for recording and certifying these documents was free or impartial, to the extent that they could even have created important biases in the market.

Over the course of almost five years, Franchi would carry his burden of liability across several jurisdictions (see Map). After his association with the nephews of Murād Bey left him in difficulty, he sought the help of procurators to call in debts owed to him in Corsica, activating part of this vast network of debt and credit that structured the social and economic relationships of the early modern period.<sup>66</sup> He also ensured that all written traces related to the transaction were recorded in order to assert his rights. Above all, he sought to recover various sums of money that he considered Pietro owed him: the amounts varied significantly, from 880 pieces of eight in 1621, 1,221 crowns in 1622, and 1,717 crowns in 1624, as Franchi also sought damages and interest.<sup>67</sup> Pietro, meanwhile, maintained that his adversary's claims were unfounded. In Tunis, in February 1621, he denounced the case against him as 'vain, nul and void, invalid, extravagant . . . and impertinent', adding that Franchi 'ought not to believe his own dreams' and that he had been paid correctly.<sup>68</sup>

The degree of conflict, hatred and personal animosity between the two men is remarkable, and contrasts sharply with the majority of records and minutes where the vocabulary tends towards compromise, a search for consensus and mutual good faith. The vehemence of the dispute, translated into conflictive and aggressive words, indicates the hard case: judges must not only apply a rule of law, but respond to a challenging social breach whose consequences must be assessed. Here, other than the high financial stakes, the reciprocal accusations had serious economic, social and moral implications for the

<sup>66</sup> Grandchamp, *La France en Tunisie*, iii, 381. On early modern chains of credit see, in particular, *Réseaux de crédit en Europe, XVI<sup>e</sup>–XVIII<sup>e</sup> siècle*, special issue, *Annales histoire sciences sociales*, xlix (1994); Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (London, 1998); Laurence Fontaine, *The Moral Economy: Poverty, Credit and Trust in Early Modern Europe* (New York, 2014; first publ 2008).

<sup>67</sup> CADN, Tunis, 'Chancellerie', 712PO/1/408 (VII); ASL, CGA, 'Atti Civili', 73, 90, fo. 1084.

<sup>68</sup> ASL, CGA, 'Atti Civili', 73, 90, fo. 1084: 'dice che detto Simon Francesco non deve credere alli suoi sonni, con dire che detto Antonio Marco tene 880 pezze di otto reali'.

parties involved. In a society where one's credit and credibility were determined by one's good reputation (*bona fama*), an affair of this kind could have long-term negative ramifications for a merchant's career.<sup>69</sup> The emotional dimension of the hard case clearly had an impact not only on the length of the litigation but also on the choice of the legal authority, which tested both the capacity and the borders of jurisdictions.

Pietro accused Franchi outright of 'lies', 'falsehood' and 'perjury'; as such, Franchi ought to see all his 'vain and invalid demands' refused. Franchi meanwhile alleged that Pietro had used his backing from the 'Turks' to force his signature of the receipt, intimidating and even making threats on his life in Tunis.<sup>70</sup> He called upon several institutions in the hope of recovering his money. At first, we might imagine that Franchi engaged in what today's social scientists and historians refer to as 'forum-shopping', a practice that entails looking to take advantage of the plurality of available jurisdictions in a given normative space.<sup>71</sup> However, on closer inspection, it seems that Franchi was in fact looking to trace Pietro's assets in order to ensure that any eventual legal decision in his favour be enforced. Put simply, the litigant was not simply looking for an advantageous judgment within a unified, even jurisdictional offer, but was searching to identify and leverage the various institutions capable of physically seizing the money and the goods of his

<sup>69</sup> See esp. on the uses of courts, the pursuit of debts by litigants and 'structures of hatred' between them: Daniel L. Smail, *The Consumption of Justice: Emotions, Publicity and Legal Culture in Marseille, 1264–1423* (Ithaca, 2003).

<sup>70</sup> ASL, CGA, 'Atti Civili', 73, 90, fos. 1076<sup>r</sup> and 1084<sup>r</sup>.

<sup>71</sup> This kind of legal 'consumer' behaviour gave rise to antagonistic positions among scholars. On the one hand, forum shopping is considered as an analytical and heuristical tool to study the agency of merchants in open and pluralistic jurisdictional or normative spaces (the forum shopping would be, from this point of view, the behavioural counterpart of jurisdictional or legal pluralism). See esp. Sally Engle Merry, 'Legal Pluralism', *Law and Society Review*, xxii (1988); Sally Engle Merry, 'Legal Pluralism in Practice', *McGill Law Journal*, lix (2013); Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge, 2002); Paolo Sartori and Ido Shahrar, 'Legal Pluralism in Muslim-Majority Colonies: Mapping the Terrain', *Journal of the Economic and Social History of the Orient*, lx (2012); Jessica Marglin, *Across Legal Lines: Jews and Muslims in Modern Morocco* (New Haven, 2016). On the other hand, forum shopping is perceived negatively — mostly by lawyers and jurists — as an abuse of jurisdictions, which favours the malicious and strategic dilatoriness of trials, to the detriment of effective justice and trading relationships. For nuanced positions, see *Forum Shopping Reconsidered*, special issue, *Harvard Law Review*, ciii (1990); Petsche Markus, 'What's Wrong with Forum Shopping?: An Attempt to Identify and Assess the Real Issues of a Controversial Practice', *International Lawyer*, xlv (2011).

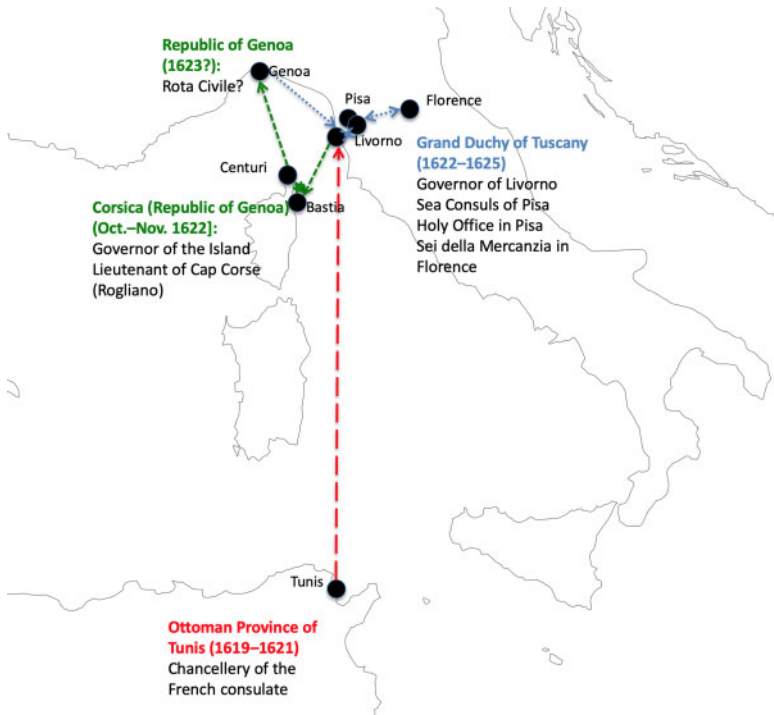
adversary. In principle, according to the maxim inherited from Roman law *actor sequitur forum rei*, the plaintiff had to bring his dispute before the court of the defendant.<sup>72</sup> Beyond the question of the geographic location of the trial, the main aim of this maxim was to protect the rights of the defendant, as well as deciding which was the competent jurisdiction to deal with the trial: this is precisely the meaning of the word *forum* which designates both a court and a jurisdiction. In practice, however, it was legal and common use to prosecute a debtor in the place of the contract (*forum contractus*), the place of injury (*forum rei sitae*) or at their place of residence (*forum domicilii*).<sup>73</sup> This flexibility was particularly sought after by merchants looking to bypass potential constraints linked to their high degree of mobility.

Franchi's litigation was an itinerant dispute: it began in Tunis and continued in Tuscany, moving on to Corsica and Genoa before returning once more to Tuscany, four crucial locations of the trading network of Corsican merchants in the western Mediterranean. To understand its stakes, we must follow the parties across a plurality of sites which involve diverse political, social and jurisdictional configurations (see Map). Franchi managed to extricate himself from Tunis around the start of 1621, but left several debts behind him that meant he was obliged to provide bonds (*pegni*) and leave his brother as a hostage in the Ottoman province — a practice that was not uncommon to prove one's good faith and give guarantees.<sup>74</sup>

<sup>72</sup> Codex, 3, 19, 3: *Imperatores Gratianus, Valentinianus, Theodosius*: 'Actor rei forum, sive in rem sive in personam sit actio, sequitur. Sed et in locis, in quibus res propter quas contenditur constitutae sunt, iubemus in rem actionem adversus possidentem moveri'. The doctrine *actor sequitur forum rei* is still used nowadays, in both common law and civil law countries, to fight against abusive practices of forum shopping.

<sup>73</sup> See, in particular, Gerard Malynes, *Consuetudo, vel lex mercatoria: or, The Ancient Law-Merchant. Divided into Three Parts: According to the Essentiall Parts of Trafficke. Necessary for All Statesmen, Iudges, Magistrates, Temporall and Ciuile Lawyers, Mint-men, Merchants, Marriners, and All others Negotiating in All Places of the World* (London, 1622), 452; Benvenuto Straccha, *Aliorumque clarissimorum juris-consultorum de mercatura, cambiis, sponsonibus, creditoribus . . . decisions et tractatus varii* (Amsterdam, 1669), 792; Jean Toubeau, *Les Institutes du droit consulaire, ou la jurisprudence des marchands* (Bourges, 1682), 199–200.

<sup>74</sup> ASL, CGA, 'Atti Civili', 73, 90, fo. 1093: 'sa che Simone Francesco Franchi, nel detto tempo che fece il pagamento delli mille scudi havuto detti denari in presto, et doppo venne il fratello di lui, il quale detto Simon Francesco per venire in terra de Christiani lascia detto suo fratello pegno in Tunisi, per la restitutione delli mille denari avanti'. Upon the signature of a new peace treaty with Tunis in 1616, the Corsican knight Giacomo Vinciguerra also left his son in the province for a year and half as proof of his good faith (see Wolfgang Kaiser, 'Suspendre le conflit: pratiques de neutralisation



THE *PIETRO* v. *FRANCHI* CASE IN SEVERAL COURTS AND INSTITUTIONS, FROM TUNIS TO PISA (1619–1625)

Franchi sought justice in Tuscany firstly because the sugar transaction had been carried out in Livorno (*forum rei sitae*) and there were a number of witnesses in the port; secondly — and more importantly — because Anton Marco Pietro held a number of assets in Tuscany together with numerous associates, and was looking to establish himself there.<sup>75</sup> In Tuscany, Franchi's litigation was judged by the Sea Consuls of Pisa, a prestigious magistracy with extensive competence in commercial and maritime litigation, whose judges belonged to the Florentine aristocracy and were not doctors in law but rather

entre chrétiens et musulmans en Méditerranée (XVI<sup>e</sup>–XVII<sup>e</sup> siècles)', in Jean-François Chanet and Christian Windler (eds.), *Les ressources des faibles: neutralités, sauvegardes, accommodements en temps de guerre, XVI<sup>e</sup>–XVIII<sup>e</sup> siècles* (Rennes, 2009)).

<sup>75</sup> ASF, *MdP*, 6377, fos. 67<sup>r</sup>–68<sup>r</sup> (15 Apr. 1621).

merchants, or at the very least had a good knowledge of commerce and of *mercatura*.<sup>76</sup> In March 1622, Franchi obtained a semi-favourable ruling from this court in which Pietro was ordered to pay him 359 crowns — of the 1272 sought by Franchi — and to better justify his statements. However, this ruling was revoked following a supplication filed in September 1622, in which Pietro explained that he was in Tunis and that his procurator in Tuscany did not have all the necessary elements that would allow the judges to make a decision.<sup>77</sup> Pietro subsequently obtained a favourable rescript in response to an appeal filed in the same tribunal.<sup>78</sup> The following month, Franchi sent a request to the governor of Corsica in Bastia concerning his case. A trace of this document can be found amongst the various records held by the Corsican tribunal. In Centuri, the brother of Anton Marco, Domenico Pietro, was informed on the square before the village church that he had to travel to Bastia to take care of his brother's affairs. Pietro's brother invoked the *actor sequitur forum rei* right in order to challenge the authority of the governor of Corsica to rule in the matter, asserting that the litigation ought to be decided by the lieutenant of Cap Corse, since the port of Centuri lay within his jurisdiction.<sup>79</sup> In the meantime, Anton Marco Pietro — whether as a precaution or in order to finance his installation in Livorno — had sold the goods that he owned on the island.<sup>80</sup> The close relationship between Pietro and Franchi tested the inner workings of litigation and legal recourse, and provides a highly revealing case with regard to the functioning of procedures and appeals. As with many transregional and mobile commercial litigations, the high financial stakes and the localization and collection of written and oral proofs complicated the trial further and gave rise to numerous appeals and re-evaluations.

<sup>76</sup> ASF, *Consulta poi Regia Consulta*, prima serie, 462, 'Nota de' Magistrati e Ufizi Pubblici della Città di Pisa', fo. 371<sup>r</sup>. About this tribunal, see esp. Andrea Addobbati, 'La giurisdizione marittima e commerciale dei consoli del Mare in età medicea', in Marco Tangheroni (ed.), *Pisa e il Mediterraneo: Uomini, merci, idee dagli Etruschi ai Medici* (Milan, 2003); Guillaume Calafat, 'La somme des besoins: rescrits, informations et suppliques (Toscane, 1550–1750)', *L'Atelier du Centre de recherches historiques*, xiii (2015).

<sup>77</sup> About appeals obtained by means of supplications in early modern Tuscany, see James E. Shaw, 'Writing to the Prince: Supplications, Equity and Absolutism in Sixteenth-Century Tuscany', *Past and Present*, no. 215 (May 2012); Calafat, 'La somme des besoins'.

<sup>78</sup> Archivio di Stato, Pisa (hereafter ASP), *Consoli del Mare* (hereafter CDM), 'Suppliche' 973, fos. 306<sup>r</sup>–306<sup>v</sup>.

<sup>79</sup> Archives départementales de Corse du sud, Ajaccio, *Governatore*, 9FG43, '1622–1623: Pièces diverses' (Oct. 1622).

<sup>80</sup> CADN, Tunis, 'Chancellerie', 712PO/1/408 (VII), fos. 380<sup>v</sup>–381<sup>r</sup>.

## III

## DIPLOMATIC STAKES, INTIMIDATION AND SOCIAL HUMILIATION

How did the hostility, emotion and anger shown by litigants play a role in the transformation of disputes? To what extent did judges have to take into account the political and diplomatic implications at stake in the case? In his complaints and his reclamations, Franchi denounced the lack of impartiality in the justice process. In Livorno and in Pisa, he mentioned the intimidation that he faced in Tunis as well as the corruption of the French consulate. In Corsica, Franchi justified his recourse to the governor of the island by pointing to the fact that the contract at the centre of the litigation was drawn up in North Africa, between 'persons of various jurisdictions but subjects of the Most Serene Senate (of Genoa)'. He further states that he 'feared for his life' (*timore di perdere la vita*) in the Ottoman province. Clearly dissatisfied by the rulings in Pisa, he also accuses Tuscan judges of being 'incompetent' with regard to the litigation.<sup>81</sup> If the competence of the Tuscan jurisdiction is debatable with regard to this case, its impartiality is also to be questioned. In another letter sent to the Grand Duchess of Tuscany, this time in November 1622, Murād Bey thanked the Florentine court for the warm welcome accorded to his nephew, Anton Marco Pietro, and in particular for having accepted to 'accord him particular favour in his trial (*litte*) and interests'.<sup>82</sup> In other words, if the litigation in Tunis appeared biased to Franchi, then the tribunals of Livorno and Pisa seemed equally corrupt, acting according to what could be likened to a 'reason of State'. The trial of the two Corsican merchants took on a diplomatic turn at a time when the Grand Duchy of Tuscany was looking to soothe relations with North Africa, a thaw that was attested to by a number of exchanges of captives and gifts between the two powers.<sup>83</sup> Around the same time, Murād Bey sent six mares, some lions and dates to the Medici in Tuscany.<sup>84</sup> Exchanges with Tunis were a crucial factor in the economic growth of the new so-called 'free port' of Livorno.<sup>85</sup>

<sup>81</sup> Archives départementales de Corse du sud, Ajaccio, *Governatore*, 9FG43, '1622–1623: Pièces diverses' (6 Oct. 1622).

<sup>82</sup> ASF, *MdP*, 4279, fo. 162<sup>r</sup>: 'Io sopra questo son' restato ammirato di quanto honnore ricevo di V.A.S. Anton Marco mio nepote mi a detto quanto e stato ben visto di V.A.S. et che si e volsuto deignare di volerlo favorire particolarmente nelle sue litte et interessi ne resto tanto maggiormente obligato a V.A.S.'

<sup>83</sup> ASF, *MdP*, 4279, fo. 146<sup>r-v</sup>; ASF, *MdP*, 'Minute di lettere', 104, 95<sup>r</sup>–96<sup>r</sup> (15 Mar. 1622).

<sup>84</sup> ASF, *MdP*, 4279, fo. 144<sup>r</sup>: 'Moratto Bey hà mandato sei giumente che le furon chieste dal G.D. Cosimo; alcuni lioni; et altri animali et due sacchi di dattoli'.

<sup>85</sup> On the growth of the new port city of Livorno at the end of the sixteenth and the beginning of the seventeenth century, see Francesca Trivellato, *The Familiarity of Strangers: The Sephardic Diaspora, Livorno, and Cross-Cultural Trade in the Early Modern Period* (New



Friendly relations with the powerful bey of Tunis were prioritized, even if these benefited only the small group of merchants that made up the trade elite of the port of Livorno. The profitable trade with North Africa called for mutual favours and signs of friendship such as the freeing of slaves and captives here and there, and support of efforts to recover debts. This was the case for example in 1635 when Yūsuf Dey made implicit threats of reprisals against Tuscan merchants should his procurators fail to recover significant debts in Livorno.<sup>86</sup>

Several factors explain, then, why Franchi sought justice in a number of jurisdictions or *fora*. The simplest explanation was that he believed that he had been seriously wronged and that he was looking to recover his money and at the same time restore his much-tarnished economic and social credibility. He would also have been unable to gauge the level of corruption of the Tuscan tribunals with regard to his litigation. Rarely attested to in written form, such bias often escapes historians, as do the multiple social, emotional and political factors which shape the origins of legal disputes and the proceedings and results of trials. In this case, even if it is difficult to fully account for every aspect of the litigation, by paying attention to the various institutions that were engaged, to the family ties and social positions at stake and to the surrounding economic and political context, we can reconstruct the legal and social configuration which could influence the judges' decisions.

When, in May 1624, Anton Marco Pietro appeared before the tribunal of the governor of Livorno to demand 100 crowns from Simone Francesco Franchi on behalf of Murād Bey, his adversary was already laden with debts. On 14 October 1623, Franchi was arrested and imprisoned in Livorno because of debts being called in simultaneously by a Greek cobbler (35 pieces of silver) and by the vice-consul of Tunis, together with Murād Bey (228 crowns).<sup>87</sup> On 30 January 1624, Bartolomeo Rio, the 'carnal brother' of Usta Murād, transferred a loan of 80 crowns owed by Franchi to Pietro.<sup>88</sup> The delicate situation of the Bastian merchant offers an example of how the

---

Haven, 2009), 70–101; Andrea Addobbati and Marcella Aglietti (eds.), *La città delle nazioni: Livorno e i limiti del cosmopolitismo (1566–1834)* (Pisa, 2016); Corey Tazzara, *The Free Port of Livorno and the Transformation of the Mediterranean World* (Oxford, 2017).

<sup>86</sup> ASF, *MdP*, 4279, fo. 1<sup>r</sup> (24 Nov. 1635).

<sup>87</sup> ASL, *CGA*, 'Atti Civili', 75, 97, fo. 1249<sup>r</sup>: 'fu catturato ad istanza di un Mco Niccolò Greco Catolaio per la somma di denari 35 et il medesimo giorno fu reffirmo, et sequestrato in carcere ad istanza del detto Anton Marco Pietro come procuratore di un Claudio Severt et in Moratto Bei'.

<sup>88</sup> ASF, *Notarile Moderno, Protocolli*, Cesare Martinuzzi, 9450, fos. 7<sup>r</sup>–8<sup>r</sup>.

accumulation of multiple debts could quickly ruin a merchant and lead to their downfall should these be called in simultaneously. This type of co-ordinated action by creditors against a debtor aimed at nothing less than the public humiliation of the indebted party: imprisonment represented an economic and social downgrade that relegated the insolvent debtor to the rank of a 'shameful pauper'.<sup>89</sup>

Franchi remained in prison for six months. From his cell, he nonetheless continued to demand the money that he considered was owed to him by Anton Marco Pietro, and he revived the affair in February 1624 despite his 'destitute' situation (*miseria*).<sup>90</sup> Though he was in no position to cover the costs of the trial or to commission procurators, Franchi did not want the trial to be judged in a summary and oral (*pettorale*) fashion as his 'destitute' and helpless situation would have allowed in Livorno.<sup>91</sup> Producing the various documents, receipts, contracts and testimonials related to the trial was an extremely costly business: Franchi complained that he lacked the funds to pay for the copying of the necessary elements and their transport from Tunis as well as for his three lawyers.<sup>92</sup> Dissatisfied by the tribunals of Livorno and Pisa, he looked to appeal to the commercial court in Florence, the *Sei della Mercanzia*.<sup>93</sup> However, this line of action was unsuccessful: a number of recent decisions by the Grand Duke of Tuscany had confirmed the competence of the Sea Consuls of Pisa in terms of second-instance appeals relating to commercial and maritime questions.<sup>94</sup> Franchi could have made a further appeal to the *Ruota Civile* in Florence that was competent for third-instance appeal hearings.<sup>95</sup>

Anton Marco Pietro meanwhile stuck to the same line of defence: he maintained that Franchi held 'mad pretentions' and was not telling the truth, pointing to the existing public documents and receipts which served as proof in such cases. Murād Bey's nephew thus drew on the proof-value of written documents — in particular with regard to legal obligations — in this

<sup>89</sup> Giovanni Ricci, 'Naissance du pauvre honteux: entre l'histoire des idées et l'histoire sociale', *Annales: Économies, Sociétés, Civilisations*, xxxviii (1983), 158–77; Smail, *Consumption of Justice*, 14–15; Claustre, *Dans les geôles du roi*, 352.

<sup>90</sup> ASL, CGA, 'Atti Civili', 73, 97, fo. 1264<sup>r</sup>.

<sup>91</sup> On summary procedures see, in particular, Simona Cerutti, 'Nature des choses et qualité des personnes: Le Consulat de commerce de Turin au XVIII<sup>e</sup> siècle', *Annales: Histoire, Sciences sociales*, lvii (2002), 1491–520; Cerutti, *Giustizia sommaria*.

<sup>92</sup> ASL, CGA, 'Atti Civili', 73, 97, fo. 1264<sup>r</sup>.

<sup>93</sup> *Ibid.*: 'se ne appella alli Mto Ill. Ssri del Magistrato de Sei de Mercantia di Fiorenza'. About this tribunal, see Shaw, 'Writing to the Prince'.

<sup>94</sup> ASP, CDM, 'Suppliche', 972, n. 340, July 1619.

<sup>95</sup> Calafat, 'La somme des besoins'.

case the records of the consular chancellery in Tunis. Moreover, he insisted that Franchi had chosen the wrong jurisdiction and that he ought not to roam from one tribunal to the next.<sup>96</sup> In short, he accused Franchi of ‘chicanery’, an expression which referred to the way in which one party could attempt to exhaust (*defatigare*) the other by bringing one appeal after another. Chicanery — which in Latin and Italian corresponds to the polysemic term *calunnia* — implied an intense degree of conflict between the litigants and also served as an excellent means of revealing the entanglement of jurisdictional competences and the numerous conflicts related to questions of law, jurisdiction and competence during the early modern period.

In order to prevent the sugar case from being heard once again, Pietro pointed out that the appeal could not be brought in such a fashion as to ‘prejudice things already judged’, as a grand-ducal rescript from June 1624 confirmed.<sup>97</sup> This meant that Franchi could not engage new proceedings without having first acquitted himself of the debts incurred in previous affairs.<sup>98</sup> Yet Franchi had brought the same accusations — deceitful ones, according to Pietro — before numerous tribunals, beginning with the vice-consul of the French nation in Tunis, and later the governor of Bastia and a court in Genoa (most likely the *Rota Civile*). He had finally brought the charge before courts in Tuscany, where two rulings had been handed down by the Sea Consuls of Pisa and another by the tribunal of the governor of Livorno. Two further records mention an arbitration decision (*lodo*) between the two men that was reached by ‘mutual friends’ (amicable composers) in summer 1624.<sup>99</sup> This is an interesting point as it shows how the choice of arbitration could intervene *after* the involvement of ordinary jurisdictions, and that it sometimes functioned as an ultimate recourse rather than as a preliminary stage that preceded recourse to tribunals. The disagreements as to the jurisdictions and procedures between the two litigants are asymmetrical: Pietro was advised by legal officers and counsels, while Franchi, as he stated in one of

<sup>96</sup> ASL, CGA, ‘Atti Civili’, 73, 97, fo. 1248: ‘se si pretende alcuna nullità deve ricorrere dalli predetti Signori Consoli, et non andar vagando, con gravissima spesa del comparente, in questa parte, et in quella, si che il comparente non pretende voler dir altro, ne opporre altro alle dette folle pretentioni, che le dette sententie insieme con la detta notula il che tutto corta nel presente processo’.

<sup>97</sup> ASL, CGA, ‘Atti Civili’, 73, 97, fo. 1249<sup>r</sup>.

<sup>98</sup> As affirmed by a decision of the *Rota Civile* of Genoa, one of the most prestigious and influential civil tribunals of early modern Europe: *Decisiones Causarum executivareum Rotae Reipublicae Genuensis* (Genoa, 1608), xxiv, 67–8: ‘Instantia insufflata per Principem nulla expensa fatta mentione, potest per partem opponi quod non audiat nisi prius reffectis expentis’.

<sup>99</sup> ASL, CGA, ‘Atti Civili’, 75, fo. 155<sup>r</sup>; ASP, CDM, ‘Atti Civili’, 128, n. 29.

the petitions sent from his prison cell, no longer had the means to do so.<sup>100</sup> It is in the context of this uneven footing that Anton Marco Pietro demanded the debts owed to Ḳā'id Māmī. Barely a month after his release from prison, Franchi found himself once more summoned to reimburse debts; this time all he could do was complain that he was the victim of persecution at the hands of Pietro who he said was 'harassing' and 'troubling [him] continuously'.<sup>101</sup>

By autumn 1624, however, Franchi seemed to have recovered financially to a certain extent, doubtless thanks to the arbitration that established that Pietro owed him 400 crowns — a significantly smaller sum than the one he was seeking, however. No sooner was Franchi solvent than Pietro demanded the repayment of the 100 crowns owed to Ḳā'id Māmī, in the name of Murād Bey. In and of itself, there was nothing strange about this request: Muslim merchants frequently had agents who were charged with recovering debts in 'Christian countries'. In 1627 Yūsuf Dey wrote to the Tuscan sovereign about the arrest of two Genoese debtors to be judged 'under good faith': the Tunisian ruler recommended to the protection of the Tuscan court four agents — two Muslim and two Christian procurators — that he sent to Livorno to try and recover a huge debt of 29,604 pieces of eight reales.<sup>102</sup> At the same time he exerted diplomatic pressure on the Tuscan rulers in order to ensure that his agents fulfilled their mission. The port of Livorno represented a particularly worrying hub for creditors since its statutes allowed for the granting of asylum to failed merchants: since 1591, a series of privileges accorded to the city by the Grand Duke of Tuscany with a view to bolstering the city's population permitted the annulment of debts accumulated in other countries for all merchants who wished to resettle in the Tuscan port and to move their businesses there.<sup>103</sup> Franchi himself had hoped to benefit from Livorno's statute of exemption, an attempt that Pietro would flag up as further proof of his 'falseness' and his 'wickedness'. The arbitration had done nothing to attenuate the highly personal nature of the conflict between the men, which continued to play out in a remarkably violent and aggressive vocabulary that ran contrary to the cardinal principle of 'good faith' that was meant to govern the settling of all civil and commercial disputes.<sup>104</sup> For the Tuscan judges, this was also a feature of the hard case.

<sup>100</sup> ASL, CGA, 'Atti Civili', 73, 97, fo. 264<sup>r</sup>.

<sup>101</sup> ASL, CGA, 'Atti Civili', 75, 207, fo. 152<sup>r</sup>.

<sup>102</sup> ASF, MdP, 4279, fo. 178<sup>r</sup> (8 Feb. 1626/1627).

<sup>103</sup> *Collezione degli Ordinamenti Municipali di Livorno e statuti di mercanzia di Firenze* (Bologna, 1980), 234–5.

<sup>104</sup> On the implied covenant of good faith that presides over any obligation, see Reinhard Zimmermann and Simon Whittaker (eds.), *Good Faith in European Contract Law*

## IV

## MUSLIM RULE OF SUCCESSION, LEGAL TRANSLATION AND THE MAKING OF RELIGIOUS BOUNDARIES

Once again, the transposition of this conflict from the personal arena to the legal one proved costly. Not only did proof of Franchi's debt have to be gathered, but this was also to be a hard case: did Murād Bey have the right to demand repayment of a debt originally owed to his 'renegade slave', Ḳā'id Māmī, in Livorno? How could legal enforcement work in such cases? The affair was judged in two phases and took almost a year to be deliberated, with the last recorded ruling being passed down in 1625.<sup>105</sup> In the first instance, the governor of Livorno and his court auditor condemned Franchi to repay the debt.<sup>106</sup> But this, of course, was not the end of the case: the Corsican merchant appealed several days later on the grounds that the ruling had been reached 'with precipitation', that Murād Bey was not the legitimate heir of Ḳā'id Māmī, and that in any case he had repaid Ḳā'id Māmī.<sup>107</sup> The second instance was pleaded at the tribunal of the Sea Consuls of Pisa. They were assisted by a chancellor who served as the real authority on the customs, practices and the 'style' of the court (*stilus curiae*). The summary procedure in which the court operated was flexible and supposedly adapted to the commercial sphere: the tribunal avoided formalism and allowed a significant degree of freedom to the parties involved in terms of the actions they could take, in order to shed light upon 'truth' and 'the matter of fact'.<sup>108</sup> However, unlike the 'very summary' procedure in which lawyers were excluded from the tribunal, in this case two procurators — a pair of Pisan notaries — advised the litigants before the Sea Consuls.<sup>109</sup>

---

(Cambridge, 2000). For an example of its translation in early modern commercial and civil tribunals, see Guillaume Calafat, 'Ramadam Fatet v. John Jucker: Trials and Forgery in Egypt, Syria, and Tuscany (1739–1740)', *Quaderni Storici*, cxliii (2013).

<sup>105</sup> ASP, CDM, 'Atti Civili', 128, case n. 29, (24 Jul. 1625).

<sup>106</sup> *Ibid.*, fo. 158<sup>r</sup>: 'Invocato il nome di Dio pronuntiamo, sententiamo et dichiariamo le cose domandate per detto Anton Marco Pietro in detto nome esser state et esser vere et quelle essersi possute e far di ragione per che diciamo il detto esser creditore di detto Simone Francesco Franchi della somma et quantità di scudi cento moneta di Tunisi come per la polizza di recognitione di debito et successione lo condanniamo a dover pagare li detti scudi 100 al detto Anton Marco Pietro in detto nome et dichiaramo in esecuzione del deposito fatto quello doversi in estintione di detto debito liberare al detto Anton Marco Pietro in ogni miglior modo et le parte assolviamo dalle spese del presente giuditio'.

<sup>107</sup> ASL, CGA, 'Atti Civili', 75, 207, fo. 159<sup>r</sup> (6 Nov. 1624).

<sup>108</sup> Cerutti, *Giustizia sommaria*.

<sup>109</sup> ASP, CDM, 'Atti Civili', 128, case n. 29. The procurators were Vincenzo Frosini for Franchi and Francesco Guadagni for Pietro.

At the trial, Pietro presented several receipts as well as testimonies (*fedi*) signed by merchants and sailors who dealt extensively with Tunis. These individuals had lent their names to a form of *parere*, an affidavit that explains a point of foreign law or a commercial practice that relates to customary rules involved in litigation. In this case, the affidavit stated that ‘when a renegade dies in this region of Barbary, his masters are indeed heirs to the renegade. Thus is the custom and the practice in these parts of Barbary’.<sup>110</sup> By way of such affidavits, mercantile expertise played an important role in legal proceedings, since tribunals readily recognized practices and customs as sources of law. Amongst the signatories of the affidavit presented by Pietro were wealthy shipowners and traders in Livorno, members of the city’s elite. It is important to note that the minutes translated ‘*mamluk*’ by ‘*rinnegato*’ to better emphasize the idea of religious betrayal over that of the servitude implied by the position. Similarly, the ‘practices and customs’ of Tunis are mentioned: nothing but a broad and generic evocation of the normative Islamic and Ottoman space about which the Tuscan judges seem to know very little.

To combat the written documents presented by Pietro, Franchi used another procedural tool, namely a series of twenty-four highly precise questions which he submitted in writing to the witnesses called by Anton Marco Pietro, who had all promised to tell the truth under pain of perjury.<sup>111</sup> The interrogation deals first with questions of identification: who were Ramaḍān Bey, Murād Bey and Ḳā’id Māmī? The following questions focused on the system of inheritance between masters and *mamluks* as it is applied in Tunis and ‘in Barbary’. Finally, the witnesses were questioned on their own business in North Africa and their links to the parties. Of the three witnesses interrogated, two were Greek captains based in Livorno, Stefano Saladiotto and Dimitri Cailla; the third was a Corsican merchant, Carlo di Lorenzo, who acted as a witness to Anton Marco Pietro’s marriage to the niece of Murād Bey.<sup>112</sup> The responses to the interrogation offer precious information as to the history of the Ottoman province of Tunis, in particular with regards to the political ascension of Murād Bey. Carlo di Lorenzo explains how he came to know, over the course of his stays in Tunis and in Annaba at the end of the sixteenth century, both Ramaḍān Bey and Murād Bey. He explains that Ramaḍān Bey had many ‘renegades’ in his household, including one Ḳā’id Murād, who

<sup>110</sup> ASL, CGA, ‘Atti Civili’, 75, 207, fo. 173: ‘morendo un rinnegato nelle parti di Barberia li padroni sono heredi delli loro rinnegati. Et cosi diciamo essere usanza et costume in dette parti di Barberia sapendo cio per essere pratici in quelle parti’.

<sup>111</sup> Giuseppe Salvioli, *Storia della procedura civile e criminale* (Milan, 1925), ii, 309–21.

<sup>112</sup> Archivio Storico Diocesano, Livorno, *Registro dei matrimoni*, 1, fo. 116<sup>f</sup>.

would later become Murād Bey through his marriage to his master's daughter. Murād Bey is described as the 'head general of all the militia of the countryside', an influential and powerful figure in Tunis. Dimitri Cailla, from Athens, also had extensive knowledge of the Ottoman provinces of North Africa, having frequently travelled and done business there. He was also an agent of Yūsuf Dey, and specialized in the commerce of captives. He knew that Murād Bey inherited half of the wealth of Ramaḍān Bey, that he was a wealthy merchant, with many slaves, amongst whom there was indeed a 'renegade' by the name of Ḳā'id Māmī — although he could not say with certainty whether this is the figure to whom Franchi supposedly owed his debt. Franchi's questions further suggested several other details, for example alleging that Ḳā'id Māmī had a brother and children, the implication being that these relatives could be his legitimate heirs rather than Murād Bey.<sup>113</sup>

After this passage concerning the identification of the individuals involved, the heart of Franchi's written interrogation, from chapters 11 to 16, dealt with the inheritance rights of masters '*secondo la legge maomettana*' ('according to Muhammadan law'). The three witnesses, who had all stated that 'masters [were] indeed the heirs to their renegades' would confirm their previous declarations. They explained that they had all had the opportunity to observe such practices during their time in Muslim lands, and the Greek sailor Saladiotto claimed to have himself been enslaved thirteen years earlier in Constantinople. There, he had seen at first hand his master inherit the possessions of his slaves. He claims that the practice is the same throughout 'Turkey', which we can interpret to mean the entire Ottoman Empire and even the Muslim world in general, since 'Turk' is often deployed as a synonym of 'Muslim' in western sources. Carlo di Lorenzo and Dimitri Cailla both declared that they possessed a good knowledge of North Africa, Tunis, Annaba and Algiers since they had lived there and traded with the territories' merchants. Their responses, more precise than those given by Saladiotto, are interesting not only in terms of the question of collateral and the descendants of 'renegades' but also in terms of the possible site of inheritance.<sup>114</sup>

As we have seen, the term 'renegade' which is used in Franchi's interrogation referred to a former slave who had converted and been freed.<sup>115</sup> This

<sup>113</sup> ASL, CGA, 'Atti Civili', 75, 207, fo. 162<sup>r</sup>–171<sup>v</sup> (21 Dec.–30 Dec. 1624); ASP, CDM, 'Atti Civili', 128, n. 29.

<sup>114</sup> *Ibid.*

<sup>115</sup> On the figure of the 'renegade', see Giovanna Fiume, 'Rinnegati: le imbricazioni delle relazioni mediterranee', in Borja Franco Llopis *et al.* (eds.), *Identidades cuestionadas: Coexistencia y conflictos interreligiosos en el Mediterráneo (ss. XIV–XVIII)* (Valencia, 2016).

liberation nonetheless maintained a link of patronage between renegade and master, a relationship of proximity that was known in the Islamic theological and legal sphere as *walāʾ*.<sup>116</sup> This link of dependence conferred several rights upon the master upon the death of the mawlā, to use the Arabic term for the 'freeman'. The master became the guardian of any of the children of the mawlā not yet of age and would inherit the deceased's goods should he have no agnatic beneficiaries (*ʿaṣaba*), that is, direct male heirs. In case of the death of the master, his sons also stood to inherit from the mawlā. If the master had no sons, then the goods of the mawlā were passed on to the bayt al-māl, an institution charged with taking care of unclaimed inheritance.<sup>117</sup> The link of dependence that persisted despite the renegade's freedom recalls to a certain extent that of the Junian Latins in Rome: according to the *lex Iunia Norbana* passed under Tiberius, the Junian Latins lived free but died as slaves.<sup>118</sup> In other words, if Ḳāʾid Māmī was a *mamluk*, the mawlā of Murād Bey, and if he had no sons, then it was indeed Murād Bey who was his rightful heir. Carlo di Lorenzo and Dimitri Cailla described in precise detail these rules in their responses to Franchi's interrogation. They excluded the possibility of brothers or other collateral relatives inheriting the estate of the deceased renegade, whether these relatives were Christian or Muslim. The Greek captain did however specify that the sons of the renegade, should he have any, were indeed legitimate heirs.<sup>119</sup>

These cross-examinations provide a rare insight into the practical and real-world knowledge of the rules of succession in place in Ottoman North Africa as observed by a small group of merchants and sailors in Tuscany. They show how the judges in Pisa drew upon mercantile knowledge to question Tunisian rules and principles that lay beyond their expertise (one of the aspects of the hard case). This was undoubtedly common practice in commercial tribunals that were used to questioning foreign usages, customs and laws. More than an example of the legal know-how of traders, these interrogations also reveal a

<sup>116</sup>David Santillana, *Istituzioni di diritto musulmano malichita con riguardo anche al sistema sciafiita* (Rome, 1925–1938), i, 125–6; Joseph Schacht, *An Introduction to Islamic Law* (Oxford, 1982), 169–74; Arent Jan Wensinck and Patricia Crone, 'Mawla', in *Encyclopaedia of Islam* (Leiden, 2012); Oualdi, *Esclaves et maîtres*.

<sup>117</sup>Santillana, *Istituzioni*, i, 125–6; Oualdi, *Esclaves et maîtres*; Isabelle Grangaud, 'Le Bayt al-māl, les héritiers et les étrangers: droits de succession et droits d'appartenance à Alger à l'époque moderne', in Sami Bargaoui, Simona Cerutti and Isabelle Grangaud (eds.), *Appartenance locale et propriété au nord et au sud de la Méditerranée* (Aix-en-Provence, 2015).

<sup>118</sup>Inst. I, VI, § 3; Dig. XXXVII, 14.

<sup>119</sup>ASL, CGA, 'Atti Civili', 75, 207, fos. 167<sup>v</sup>–168<sup>r</sup> (23 Dec. 1624) and 169<sup>v</sup>–170<sup>v</sup> (30 Dec. 1624).



good deal about the nature of the circulation of legal knowledge at the start of the seventeenth century. The history of science has shown the structuring importance of port cities and places of commerce as sites of knowledge.<sup>120</sup> Legal and institutional history could similarly benefit from an exploration of these same spaces as sites of legal confluence.<sup>121</sup> In Pisa, for example, the proximity of the Sea Consuls and the university allowed for intellectual exchanges between merchants, sailors and learned lawyers.<sup>122</sup> The knowledge of Muslim rules acquired through practice and experience was also an important resource for traders who had to navigate between multiple normative and jurisdictional systems. From this point of view, the interrogations offer a clue to the legal dimension of mercantile knowledge — a dimension which they could doubtless turn into another source of profit amongst the many other sought-after forms of knowledge and practical know-how.

While nothing prevented Muslim rules from being questioned in the course of the litigation, the issue of the enforcement of these norms in a land of *jus commune* represented another debate entirely and another hard dimension of the case. Apart from the question of identification and family ties, which entailed the untangling of the links between Murād Bey and Kā'id Māmī, one of the main questions raised by Franchi's interrogation centred on the possibility of inheriting these goods 'in Christianity'. In other words, was it valid to apply a rule of succession originating in the Islamic world in a Christian jurisdiction? The litigation not only was mixed in terms of the litigants (a Muslim plaintiff versus a Catholic defendant), but also because it raised the question of the applicability and the territorialization of a rule that no existing treaty between Tuscany and Tunis defined. The relationships between the grand duchy and the Ottoman province were founded on a fragile and variable principle of reciprocity; this principle was an incitement to reach topical rather than systematic judgments that aimed to resolve localized, distinct cases.

The arguments of Pietro and Franchi — formulated with the help of their procurators — adopt radically different approaches on this point. Pietro and his lawyers sought to underline the continuity between Muslim laws and Roman laws, wherein 'the master is the inheritor of his slave' (*dominus sit heres servi*). Franchi by contrast looked to erect a religious barrier: question

<sup>120</sup> See, for example, Harold J. Cook, *Matters of Exchange: Commerce, Medicine, and Science in the Dutch Golden Age* (New Haven, 2007).

<sup>121</sup> Benton, *Law and Colonial Cultures*, 80–126.

<sup>122</sup> ASF, *Consulta poi Regia Consulta*, Prima Serie, 462, 'Relazione al Real Consiglio di Reggenza della Giurisdizione, Amministrazione e Regolamento del Tribunale dei Consoli di Mare', fo. 300<sup>v</sup>.

number sixteen of his interrogation asked the witnesses whether the goods of a 'Corsican renegade' should go to his 'paternal and maternal relatives in Christendom' or rather to 'enemy Turks and Moors of our holy faith contemptuous (*sprezzatori*) of imperial Christian laws', by which he meant Roman and canon law.<sup>123</sup> By employing a register of religious hostility, Franchi looked to raise an ideological boundary between Islam and Christianity, pointing to the lack of reciprocity in terms of succession between the two religions. Carlo di Lorenzo claimed to not know what became of the goods and effects of the 'renegade' in 'Christian lands', but Dimitri Cailla said that in general they were not inherited in 'Christendom'.<sup>124</sup> This normative boundary was not without consequence for the question of credit and debt, and explains for example why, as we have seen, bonds and hostages were used to underwrite transactions.

Since the beginning of his troubles in Tunis, Franchi had referred in relentlessly hostile terms to 'Turks and Moors'. When he learned that the governor of Livorno had given a favourable ruling with regard to the recovery of debts by Murād Bey, he was in Pisa, at the tribunal of the Inquisition.<sup>125</sup> He had appeared before the Inquisition to denounce one Juan Pérez de Zaragoza, a Moor or 'Andalusian' who had been expelled from Spain in 1609 and who had also been known by the name Muḥammad in Tunis.<sup>126</sup> Franchi declared that in Tunis he had witnessed Pérez return to the Muslim faith and 'sell Christians as slaves', in particular two Florentine children.<sup>127</sup> Muḥammad/Juan Pérez appeared in the records of the chancellery of the French consulate: he traded in North Africa with Corsican and French sailors and merchants, Portuguese 'New Christians' and Jewish merchants from Livorno. Franchi recognized Pérez in Livorno and saw him attempting to embark two 'Andalusian' boys of fourteen years old in order to return them to their

<sup>123</sup> ASL, CGA, 'Atti Civili', 75, 207, fo. 171: '16. *Item se crede o tiene che li effetti et beni di Caito Memi, corso rinegato si aspettino et vadino doppo la sua morte alli suoi parenti paterni o materni in christianità opure alli Turchi et Mori nemici della nostra santa fede et sprezzatori delle legge imperiali christiani*'; ASP, CDM, 'Atti Civili', 128, 29.

<sup>124</sup> ASL, CGA, 'Atti Civili', 75, 207, fo. 172<sup>r</sup> (30 Dec. 1624).

<sup>125</sup> ASP, CDM, 'Atti Civili', 128, 29 (6 Nov. 1624).

<sup>126</sup> About the expulsion of the 'Moriscos' from Spain, see Isabelle Poutrin, *Convertir les musulmans: Espagne, 1491–1609* (Paris, 2012); Giovanna Fiume and Stefania Pastore, 'Diaspora morisca', special issue of *Quaderni Storici*, xlviii (2013); Mercedes García-Arenal and Gerard Wiegers (eds.), *The Expulsion of the Moriscos from Spain: A Mediterranean Diaspora* (Leiden, 2014).

<sup>127</sup> Archivio Storico Diocesano, Pisa, *Tribunale dell'Inquisizione*, 7, fo. 651<sup>r</sup>. The figure of Juan Pérez is examined by Peter Partner, *Corsari e crociati: Volti e avventure del Mediterraneo* (Turin, 2003), 153–85.

original faith in Tunis. 'Animated by [his] piety' and 'fearing excommunication' should he not denounce Pérez, Franchi had the Moor arrested on suspicion of apostasy. A trial featuring numerous interrogations and a torture session was carried out by the tribunal of the Holy Office of Pisa between September 1624 and April 1625.<sup>128</sup> Ultimately, Pérez was only condemned to salutary penitence, and forced to recognize his errors, to travel to Rome and to visit the seven churches three times.<sup>129</sup>

It is difficult to see the case brought by Franchi before the Inquisition as anything other than a threat and an act of revenge against his Corsican rivals. He was clearly ready to use every jurisdiction and legal tool available to damage his adversaries. In his deposition, he added that he had seen Pérez do business with 'Bartolomeo Rio [Ustā Murād's brother] and other Corsican merchants and traders in Tunis'.<sup>130</sup> Franchi thus forced his rivals to appear before the Inquisition to explain the nature of their relationships with the slave trader Pérez. Rio and Pietro were both called upon, and denied participating in any dishonourable commerce.<sup>131</sup> The trial reflected very badly upon Franchi, too: in the documents produced by Pérez in his defence, he described his detractor as 'a wicked, agitated, quarrelsome person, who has made it his profession to persecute others' by threatening legal action against them and slandering them.<sup>132</sup> The twentieth question of the case related to Franchi's litigation with Anton Marco Pietro:

This same Simone Francesco had demanded 12,000 crowns from Pietro; this pretention was judged civilly as reckless and slanderous. For this reason, Simon Francesco spent a good deal of time in prison; daily, he invents slander, falsehoods and impenitence, and feeds and lives off these things; so much so that he has been left poor, a beggar and a vagabond, hated by all who know him, and that in his own Corsican nation, he is known as the disgrace (*vituperio*) of the nation.<sup>133</sup>

<sup>128</sup> I thank Dr. Elisa Carrara, from the Archivio Storico Diocesano in Pisa, for sending me the pictures of this trial. About the condemnation, see Partner, *Corsari e crociati*, 178.

<sup>129</sup> Archivio Storico Diocesano, Pisa, *Tribunale dell'Inquisizione*, 7, fos. 859<sup>r</sup>–862<sup>v</sup>.

<sup>130</sup> *Ibid.*, fo. 654<sup>r</sup>.

<sup>131</sup> *Ibid.*, fos. 655<sup>r</sup>–658<sup>r</sup>.

<sup>132</sup> *Ibid.*, fos. 729<sup>v</sup>–730<sup>r</sup>.

<sup>133</sup> *Ibid.*, fo. 730<sup>r</sup>: 'il quale esso Simone Francesco pretese circa scudi dodici milia [contro il signor Anton Marco Pietro, altro corso, negoziante in Livorno], fu detta pretensione civilmente giudicata temeraria et caluniosa. Et egli per la stessa causa et è stato prigioniero molto tempo et così giornalmente va inventando calunie e falsità et impenitenzie e di questo si pasce et campa, si come per se stesso è povero e mendico e vagabondo per la

The witnesses called upon by Pérez confirm the unenviable reputation of the merchant of Bastia in Livorno. A Spanish witness explains that he saw an 'angry' Franchi complain of 'these Moorish traitors' to whom he wanted to do the greatest damage possible.<sup>134</sup> Another Spaniard accused Franchi of having shamelessly and violently demanded thirty ducats from Juan Pérez's mother. He continued by stating that the Corsican of Livorno, Anton Marco Pietro, called Franchi 'the nation's infamy'.<sup>135</sup> While the Corsican nation was certainly riven by internal rivalries, here the infamy of Franchi referred both to his social isolation and to the negative effects of his character upon the collective reputation of Corsican merchants. The testimonies produced at the Holy Office demonstrate the public, notorious and defamatory nature of the long litigation between Pietro and Franchi. They reveal the extent to which a long trial, in which influential political actors could intervene behind the scenes, could destroy the social and economic credibility of one of the parties. One of Franchi's final argumentative tactics was the evocation of a religious boundary and the unity of Christendom against Muslims, and the promise of flushing out traitors. Yet in a 'free port' such as Livorno where Jews, Christians and Muslims were very much accustomed to dealing with one another, this line of attack had little chance of success.

## V

### CONCLUSION

Simone Francesco Franchi could not stay in Livorno, and his trail goes cold after the affair. He was left humiliated after losing his various trials, with the sole exception of the debt he sought to recover from Murād Bey, which was adjudicated in July 1625, over a year after Franchi first brought his case.<sup>136</sup> Though the motives of the Pisan tribunal cannot be ascertained, we can imagine that Franchi's poverty, the unusual nature of the demand by the bey of Tunis, and the exemptions afforded to debtors in Livorno acted in the Bastian merchant's favour. At the same time, sometime around 1624, diplomatic relations between Tunis and Livorno were becoming strained, perhaps due to the activity of Tuscan and Tunisian corsairs or because of

---

quale sue attioni è odiato da che ne ha conoscenza et della sua stessa natione corsa che lo chiamano il vituperio della natione'.

<sup>134</sup> *Ibid.*, fos. 734<sup>r</sup>–735<sup>r</sup>.

<sup>135</sup> *Ibid.*, fo. 738<sup>v</sup>: 'Io ho sentito dire à Anton Marco Pietro et al suo cognate et da molti altri Corsi suoi conoscenti in Livorno, et tutti di sua natione lo chiamano l'infamia della natione'.

<sup>136</sup> ASP, CDM, 'Atti Civili', 128, 29 (24 Jul. 1625).

the outbreak of a violent plague in North Africa. Was Franchi still in Tuscany or had he fled in the face of social opprobrium? Upon his death in 1635, Anton Marco Pietro was a rich merchant based in Livorno, close to the trading elite and a member of the city's most influential Catholic secular confraternity of the city (the confraternity of *Santa Giulia*). He possessed a Moorish slave, Fatima; he had founded churches in Tuscany and Corsica; he bestowed upon his daughter a thousand pieces of eight, while his sons inherited significant amounts of wealth and property. Pietro's will mentions a number of ongoing trials, in Pisa and in Genoa, and charges his heirs and several procurators with their conclusion. Indeed, it was not unusual for a merchant to be outlived by a litigation in which he was involved.<sup>137</sup>

By tracking the various transformations of the multi-sited litigation between Franchi and Pietro, from a trial in Tunis about cases of sugar unpaid for, to a case brought before the Holy Office of Pisa, I have attempted to reveal the inextricability of the social, economic, legal, diplomatic and religious stakes raised by hard cases. To do so, it is necessary to retrace the circulation of the merchants across a number of jurisdictional spaces as well as to read the proceedings of the legal trials and rulings against the extrajudicial and parajudicial trajectories and actions of the litigants. This allows us to account for the forms of intimidation, violence and emotion at various levels which invite us to look beyond the site of one trial, the statute books and the records in order to understand the litigants' motivations and procedural actions. This bitter litigation that was characterized by the transposition of an intimate dispute to the legal sphere, by insults and by chicanery tested the jurisdictional plurality of the mercantile space, as well as revealing transregional coalitions founded upon bi-religious family networks. As such it allows us to reflect upon the usages of law under the early modern period, upon the social implications of recourse to tribunals, and upon the conflicts in terms of laws, competences and legal enforcement between Islam and Christianity. The microhistorical approach not only helps to describe complex itinerant disputes and map competent jurisdictions, but explains why and how they could occur, evolve and circulate. It tests the impartiality of legal institutions — which often escapes the historian — and highlights the ambiguity of written proof in multi-sited litigation. From this point of view, this particular hard case is also a good indicator of the tension, fragility and latent violence of trade relations between Ottoman North Africa and southern Europe at the turn of the sixteenth and seventeenth centuries. Interestingly, the

<sup>137</sup> ASF, NMT, Matteo Ciupi, 14186, n. 43, fos. 110<sup>r</sup>–118<sup>r</sup> (27 Aug. 1635).

microhistorical in-depth description of the dispute reveals cross-religious systems of patronage, protection and alliance that organize economic co-operation across geographical and political boundaries. At the same time, it shows how the vocabulary of religious hostility could be wilfully activated to harm the opposing party and try to disqualify it during the trial.

*Institut d'histoire moderne et contemporaine & Guillaume Calafat*  
*Université Paris 1 Panthéon-Sorbonne*