The Private Governance of a Global Market: The London Corn Trade Association, 1885-1914

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Abstract

The First Global Era (1870-1914) was not just about the Royal Navy securing the sea-lanes and the pound sterling towering over the international financial system. Rule Britannia, with all its explicit power relationships, rested as well on a wealth of private rules and self-governed institutions that made global trade reasonably secure and stable. While this private side of hegemony has been well identified for a long time, the actual construction of global markets, from a micro-perspective, remains largely unexplored – at least, when one looks beyond finance.

The present contribution is based on the (as yet unexplored) archives of the London Corn Trade Association (LCTA), a rather small, non-profit, elite association that drafted and implemented the rules for the global cereal markets. From 1878 onwards, this asked that it did three main things. It adopted and updated grain standards, which transformed mere farm produces into globally traded commodities. It arbitrated disputes between merchants, an activity that earned its principals a substantial income flow. And it drafted and continuously amended tens of Standard Contracts that were offered to merchants worldwide. Standard Contracts established in general the market rules: there was no other forum where an adhesion to collective rules and the possibility of sanction were written down. Three dimensions of this contractual strategy then stand out in particular:

i. Each Standard Contract, typically associated with a given type of grain of a specific origin (like South Russian Oats), formalized a set of interaction rules with local trading institutions, such as Produce Exchanges, Chambers of Commerce or Port Authorities. The Standard Contracts were thus literally "plugged into" the local market environments – such as public regulations, market customs, port regulations, etc.

ii. The Standard Sale Contracts of the LCTA were also dovetailed to three other standard contracts: a shipping contract (or Bill of Lading), an insurance contract, drafted by the Institute of Underwriters (a body closely associated to the Lloyd's); and a trade finance contract offered by London Merchant Banks. These four contracts thus worked as a complex contractual vehicle that gave to all parties a considerable degree of legal and physical safety. In other words, they worked as "transnational legal pathways" that supported the whole value chain, from distant farmers in the Pampa to large millers in the Hamburg port.

iii. Participation in the various committees of the Association was not remunerated and, more generally, its overhead costs were remarkably limited. The main private benefits of participating in its management were in fact twofold: access to privileged information (including on competitors) and the fees associated to sitting on arbitration panels (first instance and appellate).

1. Avoiding Conflicts of Laws

The political and economic history of the First Global Era, between 1870 and 1914, raises a well-known, but still intriguing paradox. While this period was marked politically by a hard, self-contained conception of sovereignty and by the often-brutal competition between States, it also witnessed a high degree of commercial and financial integration across borders. During these decades, flows of goods and capital reached relative levels that had never been seen before, either among Western countries or with other regions, colonized or not (O'Rourke and Williamson 1999, Federico and Persson 2007, Flandreau and Zumer 2009).

The paradox, however, is not so much about the tariff dimension of international trade, which has been discussed in detail by generations of economic historians (Pahre 2012, Rogowski 1999). It is, instead, about the institutional and legal underpinnings of trade in an age when the dominant legal and political discourse envisaged sovereign States as the only self-standing actors on the international scene (Kennedy 2006, Koskenniemi 2009). Following this dominant view, citizens and merchants could act and transact on the international scene only in so far as their own State gave them the rights to do so (Wheaton 1846, Massé 1846, Mancini 1873). They were not supposed to freely enter the international scene, to leverage private rights, or to develop arrangements that would help them reach their own ends – like trading with more ease and at a lesser cost. During this First Global Era, what is known today as the law of international commerce and finance fell essentially outside the domain of international law; it is not even clear that this sub-field was identified by the legal academy at the time as a legitimate, self-standing object. Still today, in fact, legal scholars show little interest in exploring how the law supported commerce and finance *then* (Mallard and Sgard 2016).

The only recognized legal language that accounted for cross-border transactions between private parties was the discipline of Conflicts of Laws, which examines, in essence, whether and how a given national judicial order can receive and enforce foreign rights, contracts and judgments (Banu 2018, Joel 1988, Mills 2006 and 2018). These rules belong entirely to the domestic legal systems of each country and do not call for any formal coordination between them, unless treaties are negotiated and ratified; hence, they are purely Westphalian in character. Generations of lawyers thus pored over such tricky issues as the inheritance rights of foreigners in Spain or the US, or the rights of children born to a binational couple married under Catholic rite in Italy but divorced in France at a time when divorce was not recognized in Italy. Other things being equal, the same arcane logic applied to commercial disputes over partnerships, exchange letters or bankruptcy, for instance (Sgard 2013).

The problem is that these rules were (and still are) seen as altogether complex, time-consuming, somewhat unpredictable, and certainly costly.[1] Hence, the question of how these generic problems were dealt with by global merchants in the pre-1914 decades. What legal strategy allowed them to minimize, or indeed to avoid, the massive transaction costs caused by the fragmented international judicial landscape of those years? How was the tension eventually resolved, at the micro-level, between Westphalian politics and global private markets?

This article offers an answer based on the case of the London grain market, first because of its huge relative size and because jurisdictional borders should have weighed particularly heavily

[1] Chattaway (1907) thus underlines that grain importers, for instance, when in conflict with shippers, "could have recourse to law, but legal proceedings, especially when they have to be carried in a foreign country, are so expensive and troublesome that in nearly all cases buyers refrained from legal action, and the unsettled grievance, after the interchange of a few letters charged with reproaches, menaces, and explanations, died a natural death."

on wholesale trade of such a low unit-costs commodity.[2] As important, we can also draw on the large body of archives that was left by the London Corn Trade Association (LCTA or "the Association"), a private, non-profit organization that established this market and regulated it, almost on a day-by-day basis, from 1878 onwards.[3] One can thus read over several decades and thousands of pages the detailed, handwritten minutes of its Executive Committee, which made the strategic decisions and adopted trading rules, as well as those of specialized geographic committees dealing, for instance, with Indian or Russian trade. But there are also registers of arbitration cases (often with awards included), plus a large correspondence with counterpart institutions and with private merchants, in England and abroad. This trove of archives, which until now has never been systematically explored, opens up a unique bottom-up, empirical perspective into how, at the apex of the Westphalian era, a tiny group of elite merchants structured and integrated one of the largest markets of the time.[4] We can indeed identify both the rules they designed and also how they discussed, negotiated and enforced them. The letter of the law and the records of its practice are conjoined in these volumes.

The LCTA did three main things. First it produced grain standards that transformed mere agricultural produces into homogenous fungible commodities, so that supply and demand could aggregate into large, global, liquid markets. Second it arbitrated disputes between merchants, either about the logistics of exchanges or the quality of grains. The Association's substantial market power then guaranteed the execution of awards: delinquent traders lost access to the Baltic Exchange in London, where grain was traded. Thirdly, it drafted, printed and continuously amended tens of standard sale contracts, like the "La Plata Grain Contract for Sailing Cargoes" or the "Chinese Horse Beans Contract". These standard contracts are the key to understanding how grain was moved safely, regularly and at a low cost from the distant Argentine pampa to the London or the Hamburg docks, while the corresponding payments made the reverse voyage.

As it drafted and amended its contracts, the Association aimed primarily at internalizing as systematically all the risks of contractual breakdowns or legal gaps along the whole value chain, that is between exporters, ship owners, captains, insurers, grain merchants, millers and bankers. The result was a highly consistent, self-enforced, private legal order that was de facto entirely independent from state-based legal institutions, especially the foreign, non-English ones. Because it was neither dependent upon, nor constrained by the official legal orders, the Association avoided entirely all the costs and uncertainties of conflict of laws. By joining this self-enforced private order, with its on-board dispute-resolution mechanism, merchants exited the realm of sovereignty and inter-sovereign legal borders. Extra-territoriality, hence a thoroughly integrated transnational market, rested entirely on a strategy of private, contract-based ordering.

Tellingly, over several decades, one does not find in the archives of the Association a single discussion about a specific point of Belgian or Italian contract law, or Canadian arbitration law. At no point did the Executive Committee discuss what to do with a given Dutch or Argentine judgment, neither did it call upon foreign lawyers or counsels when drafting or amending individual contracts. Any reference to bilateral treaties or conventions, not to mention principles of international law (public or private), is also entirely absent from the LCTA's paper trail. In their place, we find intense, constant exchanges, negotiations and agreements between the Associaition and a proprietary, international network of private counterpart institutions, such as the Argentine Centro de Cereales, the Odessa Bourse, the Hamburg Börse, the Chambre

[2] Its main features could, however, be observed in many other commodities, like cotton, oil and tallow, jute, copra, tea or fur. Dowling (1929), Forrester (1931), Rees (1972).

[3] Archives of the LCTA can be consulted at the London Metropolitan Archives (c. 30 volumes as a whole).

[4] See Barty-King (1978) for a semi-professional history of the LCTA and Barty-King (1994) and Findlay (1927) for the history of the Baltic Exchange, where the grain was actually traded. Beyond them, the main reference on global commodity trade during the first global era is Topic and Wells (2012). See also Velkar (2010) on produce standardization at the LCTA.

Syndicale of Marseille or the Bombay Chamber of Commerce. This far-reaching, private diplomatic network of norm-setters and norm-enforcers was the institutional infrastructure that supported extra-territoriality and allowed merchants to safely opt out of the State-based, Westphalian judicial order.

Ultimately, however, this market was discretely, though decisively, anchored on two outstanding British sovereign institutions. All the contracts were first subject to English contract law, and so they ultimately fell under the jurisdiction of the higher London courts. This additional legitimacy and guarantees of legal consistency came, however, at a very low cost: even in the rare occasions when cases ended up there, these courts would defer to trade-base arbitration, as more generally to the authority of the trade associations. Second, the Bank of England re-discounted the commercial bills that financed foreign trade, in particular commodity import trade. These short-term securities, which were issued on the back of the contracts drafted by the likes of the LCTA, were in practice the main short-term papers traded on the pre-1914 London money market (Warburg 1914). The fact that the Bank of England bought these bills especially when intervening as a lender of last resort further reinforced the point: a liquidity crisis at home would not be allowed to spill over and destabilize Britain's foreign trade.

The following Section thus reviews the relevant legal and socio-legal literature in the two main currents that bear on the present discussion: private orders and standard contracts. Section III discusses the governance of the London Corn Trade Association and the set of incentives that backed the constant investment of time and skills made by these top London merchants. Sections IV discusses their legal culture, or "legal consciousness" and Sections V and VI the structure of the Standard contracts, in particular how they came to support a consistent transnational market order. Section VII concludes.

2. Private Ordering and Standard Contracts

Market orders are typically envisaged in the economic and socio-legal literature through the prism of two highly contrasted models: the impersonal, competitive, publicly-ordered markets, which operate on the basis of state-sanctioned law and official courts; and the community-based, privately-ordered models, among which the better known examples are the medieval Maghrebi traders, as studied by Greiff (1992), the New York Diamond dealers, as analyzed by Bernstein (1992) and Richman (2006), or the future market for rice in pre-modern Japan (West, 2000). In this latter class, contractual discipline typically rests on the closely-knit character of an ethnic or religious community, a societal pattern that allows altogether for a high level of mutual monitoring and the credible threat of a brutal exclusion in case of delinquent behavior (Ellickson 1991). Continuing access to this high-margin market (as to one's community) thus results from the trade-off made by individual merchants between the short-term benefits of opportunism (skirting, stealing, etc.) and the net present-value of defending their personal reputation.

However, this second, communitarian model often comes with low levels of competition, substantial rents and a bias for informality. Some norms of exchange may thus be formalized, but others will be "just known" within the community, like the personal reputation of fellow traders. Contracts are often oral and traders may resist a move to formalization. In turn, these patterns often imply a poor capacity of governance: discrete decisions may be taken from time to time, like the exclusion of a member, but somewhat paradoxically these rather small communities don't respond easily to strategic challenges. Diversification to new products and the adoption of new technologies are at best progressive and reorientation of trading lines across geographical space is generally difficult.

The pre-1914 London corn market illustrates an alternate, "third way" model where private ordering was consistent with open access, impersonal exchange, global integration and limited rents. Like the traditional community-based variant, market discipline resulted here from the trade-off between the long-term benefits of participating to a superior market and the threat of exclusion. But rather than responding to *societal power* and communal authority, faithful behavior in London was founded on the specific *market power* of a highly efficient trading platform that was policed by a powerful gate-keeper. Hence, like publicly ordered markets, the LCTA platform thrived on its capacity to attract traders, hence, to aggregate supply and demand on as competitive and as large a scale as possible. Market size and low transaction costs then delivered liquidity, produce variety and exact pricing, so that contractual discipline had a strong endogenous dimension: the broader the market, the higher the benefits of access, hence the incentives to play by the rules.

Significantly, the thousands of merchants from across the world who joined the London corn market at that time did so *voluntarily*, so that the global preeminence of this market was an equilibrium outcome (Greif and Kingston 2011). One could actually refuse to use standard contracts and trade with bespoke ones, following earlier practices (Fuchs 1890). Alternately, a merchant could deal through the local markets of Antwerp or Marseille, where similar standard contracts were gradually introduced, although as long as he stayed there he would remain a fringe player with limited growth prospects (Lefèvre 1882, Jöhlinger 1917, Van Hissenhoven 1923).

The "third-way" character of the London corn market, between the community-based and the open access models, also comes up when considering how market discipline was enforced. On the one hand, and when looking at the closed circle of principals who governed the market, every indication points to a diffuse and powerful effect of personal reputation, social capital and mutual monitoring. The Association's top tier was entirely peopled by elite merchants who had often inherited their position from their fathers. Over decades, they rotated through the specialized committees, first as members and then as Chairmen, before being eventually coopted to the Executive Committee and possibly becoming President of the Association. The pattern is not specific to the Corn Association: brokers and merchant banks, who were also gatekeepers, worked as well on the basis of their own, long-established reputation in the City of London (Clapman, Cassis, Flandreau).

We are here in the classic economic sociology of the City of London, where relationship-based governance was instrumental in coordinating professions, private regulatory bodies and public authorities, to huge collective benefits (Kynaston 1994 and 1996).[5] Socio-legal scholars, like Dezalay and Garth (1996 and 1997), Lazega (kkk) or Sagy (2011), though with a different theoretical language, have explored how modern capitalism often conjoins law-based, impersonal rules with highly personalized networks where cooptation and mutual recognition rule, and where social power is rooted.[6]

On the other hand, personal reputation was clearly not a factor among individual market participants, among whom many never set foot in London and only traded through brokers. We are here fully in the nineteenth century world of open, competitive commodity markets with a lot of small- and medium-sized participants, and also with a high level of entry and exit (Rothstein 1988). Accordingly, rules, as written on the standard contracts, are formal, impersonal and endowed with a clear legal character. Significantly, they were the key for entering the market, while membership to the LCTA was not.

The LCTA was actually incorporated under the 1867 Statute of Company Act, its standard contracts worked under the 1893 Sale of Goods Act and its rules of arbitration followed the 1889 Arbitration Statute. But these were broad, generic statutes which bore only indirectly on the

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[5] The pervasive informality of this model is indirectly, though tellingly, illustrated by the absence of any comprehensive English-language description of how the London corn market worked and how it was organized. The best users' guide was actually written in German, while the only legal study of the Association's contracts was published in French (Fuchs 1890, Schwob 1928).

[6] With a different theoretical vocabulary, Carnevali (2011), in the case of American trade associations, and Lazega (JJJ), on today's European professional organizations, arrive at similar conclusions.

corn trade.[7] Hence, beyond penal cases (1677 Statute of Frauds), the shadow of the law was quite dim, so that the micro-management of the grain market was de facto entirely in the hands of the Association. Over decades, its archives do not mention the briefest exchange between its principals and a public regulator, in today's sense of the word. Critically, the fact that "[state] law was a distant backstop to market integrity" (Cranston 2007) allowed the Association to widely deploy its contract-based order and so to construct a wide-ranging, de facto extra-territorial market. This is where the Association actually added value and worked as a global "transaction cost engineer" (Gilson 1984), as a technological innovator (Davis 2013), or simply as a legal craftsman.

The unique character of this market architecture is further underlined when we compare it to three somewhat similar historical experiences, which share some common features with this pre-1914 London case, though without presenting all its key characteristics. The medieval Champagne Fairs, for instance, also invited merchants to opt-out of the local legal orders and to join a platform founded on negotiated extra-territoriality. Like the London Corn Trade Association, the keepers of those Fairs invested considerable efforts in maintaining a network of agreements which backed up the market, though we find here mostly public bodies: kingdoms, cities and principalities. Still, merchants who paid the entry fee to the Fairs were offered safe passage and legal protection. By all accounts, debt contracts entered into in Champagne and judgments rendered there were broadly enforceable across Europe (Sgard 2017, Edwards and Ogilvie 2012, Greif 2004). Besides, joining the Fairs and entering transactions with fellow merchants were two very different legal acts: contracts and market institutions were not conjoined.

The success of modern international commercial arbitration, on the other hand, is also founded on the possibility for businesses to opt out of national jurisdictions and join a de facto private, extra-territorial judicial order (Gaillard 2010, Mattli and Dietz 2014). The parties can then choose the forum where they want to resolve their disputes, the substantive contract law and the arbitration law they want to rely upon (Paulsson 2013). But ultimately the whole regime rests on the willingness of sovereigns to enforce awards without imposing much constraints and oversight on the process. This trend was formalized in the 1958 United Nations Convention on the Recognition and Enforcement of Arbitration Awards, which remains today the touchstone of the whole regime (Bermann 2017).

Last, today's commodity and financial markets show, of course, many patterns similar to those observed in London before 1914: high competition, global reach, strong trade organizations and standard contracts (Pirrong 1994 and 1995). The LCTA's own successor, the Grain and Feed Trade Association (GAFTA) still prints tens of contracts, and indeed some clauses are very similar to those adopted in the late nineteenth century. GAFTA also handles a lot of arbitration cases and blacklists delinquent traders on its website, though this information is only available to its members.[8] A major difference, however, is that, today, both the exchanges and the market participants are typically regulated, often heavily so, so that private rules are fully intertwined with public ones in complex relations of complementarity and mutual recognition. Moreover, the transnational character of today's markets does not rest anymore on a private, "handmade" network of counterpart institutions, similar to that observed in the pre-1914 decades. Digital trading platforms make an obvious difference, but market participants are also much more concentrated and vertically-integrated, so that a large part of the work that used to be done by the London Association is now internalized by these large global firms (Rothstein 1983 and 1988).

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[7] For instance, the 1893 Sale of Goods Act applied only indirectly and problematically to the Cost, Insurance and Freight model of commercial contracting, from which the Association's standard contracts derive (Kennedy 1924, Goiten 1924).

[8] See The Grain and Feed Trade Association, "All Contracts." https://www.gafta.com/All-Contracts. Accessed 23 May 2019.

3. The London Corn Trade Association: Governance and Private Rents

The London Corn Trade Association was founded in 1878 and incorporated in 1886, in the context of the emergence of a truly global market for cereals, following the rapid growth of demand in Europe, the emergence of new producing regions like South Russia and Argentina, and a steep fall in information and transport costs – due to the telegraph, railways and steamer ships (Broomhall and Hubback 1930, O'Rourke 1997). Materially, the LCTA was established in the same building as the Baltic Exchange where all trade intermediaries met, including the shipping and insurance brokers. Both institutions were governed by the same group of people and they even had the same legal counsel. But the Association did not grow out incrementally from the domestic into the international sphere, as was often the case with English commercial institution: it was born to be global. From the onset its governing structure, its rules and its procedures reflected the well-identified project to better regulate cross-border transactions and, in particular, to make trade finance by merchant banks easier (Chattaway 1907, Fuchs 1890, Rees 1972, Barty-King 1978).[9] XX Foreign merchant houses were among the founding members of the Association [Ref].

The formal governance structure of the Association hinged first on an annual General Assembly that elected an Executive Committee of twenty, later twenty-five, members, which met about every two weeks and was the main governing body of the Association. A Chairman was elected every year and was re-eligible once, at which point he would propose his own successor. The work of the Association then rested on some eight to ten geographic committees, like the Black Sea & Danube Committee or the East Indian one. Their six-to-eight members had their fingers directly on the proverbial "pulse of the market": they received information on how the growing season progressed in the various producing regions and were in direct relation with the likes of the Odessa Bourse or the Bolsa de Comercio in Rosario, Argentina. They also had an ongoing correspondence with merchants who complained, for instance, over the amount of dirt in the shipments arriving from a given port, or who reported on a new machine for unloading grains from boats that had been adopted in Antwerp. Access to superior market information was clearly a strong incentive for joining these committees, which otherwise did not incur any monetary remuneration.

Preparing Grain Standards or adopting Grain Standards sent by a recognized foreign market authority was the core task of the geographic committees (Hubback 1911). By 1914, there were more than twenty Quality Standards only for Argentine trade. For the main types of grain, six or eight successive Standards could be adopted each year, as the season progressed. The Association put a lot of its collective expertise into this activity which asked, in practice, that hundreds of grain samples be kept on its premises, as a large "grain library" or a material database. Although over time it gradually had to cede ground to public trade bodies in the exporting regions,[10] the Association staunchly defended its right to adopt grain standards single-

[9] Among the 262 market participants who adhered to the Association between 1886, when it was incorporated, and 1890, 171 came from London, 59 from other cities in Britain, and 31 came from the Continent. A number of London members were, however, representatives of foreign merchant houses. The Paris head office and the London branch of Dreyfus Frères, for instance, were both members of the Association. LCTA, *Register of Members*. London Metropolitan Archives, CLC/B/103/MS23190/ 001.

[10] After tensions in 1900-1901, Canadian grain standards, for instance, were fully acknowledged, while the Russian organizations asked in vain for years that their own grain standards be accepted.

handedly, which it saw as an expression of its collective skills and superior level of information.[11]

Arbitration on the quality of grain shipments or on trade logistics was not the job of the geographic committees, although their members individually ended up doing it often, simply due to their superior knowledge and expertise. First-instance arbitration was most common and was usually in the hands of the parties: thousands of them took place each year, often directly in the port, which left little trace in the archives or the accounts of the Association (Fuchs 1890, Chattaway 1907, Barker 1920). Thus, there is no measure of the total number of cases per year, nor an indication of how much was earned in related fees.[12] The execution of awards never appears in the Association's records as a problematic issue. As said, the rule was that the names of delinquent parties were posted at the entry of the Baltic Exchange with an explanation that they were barred from trading, even through a broker. This practice is still applied today (Kennedy 1977, Mustill and Boyd 1982 page 378, Cranston 2007).

An appeal could then be lodged with the Arbitration Appeal Committee, where all the big names of the Association sat. After the parties paid a flat fee of 15£15 if they were member of the Association, and 21£ otherwise, a an ad hoc Appeal Court of five members was formed, which could overturn the initial decision by a majority of four.[13] Arbiters were shippers, grain merchants, brokers or millers – never lawyers. Neither did the parties themselves ask for counsel to advise or represent them. There is actually a palpable sense that the Appellate Courts were perceived both as an alternate source of expertise and as a representative of the whole trade, who spoke with all its incorporated social authority. The gradual strengthening of the rules of recruitment and procedure in the Appellate cases can also be interpreted as a response to the perceived need to reassure foreign merchants that arbitration in London was not utterly biased against them.

Arbitration proceedings were the main source of private revenue that may account for the continuing participation of principals in the labor-intensive work of governing the Association. In order to assess the potential for rent-seeking behaviors by London insiders, one should start from the broad-brush budget that was published in the LCTA's Annual Reports: from around £3000 at the turn of the 1890s, it reached £5000 a decade later before hovering between £8000 and £10,000 during the last years before the war –about one million pounds at today's value. While growth was substantial, the total budget thus remained *prima facie* small. The Association as such was a low-cost operation. The fact that the Association accumulated large financial reserves, representing well over twice the annual budget by 1910, also suggests that it was not under intense pressure to release this accumulated wealth to stakeholders.

Table 1 then details the main items on the revenue side of these budgets, among which three do not weigh much: interest on investments, annual subscriptions by members and sales of

[11] After the government of South Africa criticized the LCTA's refusal to adopt its own official grain standards, the Association thus answered, quite grandly, that "the Association has not only the right to criticize an official Standard, but the power to decline to adopt one, which right it has before now exercised, with the result that the Standard objected to has been amended." Argentine, American & Australian Committee, Minutes, 20 October 1910. See also Black Sea & Danube Committee, 29 April 1902, for a similar response to "a letter from Mr. Louis Dreyfus counter signed by the other Black Sea Shippers … complaining about our Azoff barley standards." Or, also, the negative answer given to the Centro de Cereales of Buenos Aires, who had requested the identity of the individual shipments on the basis of which standards had been made. American and Australian Committee, Minutes, 21 September 1905.

[12] In the standard case, each party chose an arbiter, which in practice often acted as a representative of the merchant who had solicited him, so that, at that point, arbitrations looked more like settlements than judgments. If these two arbiters could not agree, the Association's Executive Committee selected a third one, an Umpire, who actually made the decision. Similarly, the choice of arbiter fell to the Executive Committee if the parties failed to nominate their arbiters within the stated time period.

[13] After 1901; in the early 1890s, this proportion fluctuated between sixty-five and seventy-five percent.

contract forms. Two main sources of income then represent roughly 40% of total incomes each during the latter years: grain-related activities (like sale of samples, expertise services, etc.), and arbitrations (first instance and appeal, fees for arbiters and overheads). A look at the expense side of budgets then shows that a stable proportion of 60 to 65% of fees earned by the Association from appellate procedures were in fact redistributed to the arbiters themselves: they receive 2£1 each per case.

But that's not all: the awards and the minutes of the Appeal committee show that when the first instance award was reversed, the parties (typically the loosing one) had to make extra, direct payments to the arbiters: these complementary "fees and costs" were decided by the arbitration panel single-handedly, without further written justification, and they do not show up in the Association's account. This sum varied substantially between cases, but on the whole, it added a rather stable average of some seventy percent to the costs of appellate cases, or 10£ on top of the 15,15£ or 21£ initially collected by the Association.

Appellate arbiters, however, were a small number: the elite Appellate Committee had twenty-five members until 1905 and thirty-five afterwards. But cases increased even more: from 54 on average per year before that date, to 98 afterwards, so that the annual income earned by the average Committee members increased substantially: from 25£ per year until 1900, to 43£ afterwards (see graphic 1). This latter sum is comparable to the annual wage of an adult male worker in those years (Bowley 1900). Hence it is substantial from a private, individual perspective and may well account for the continuing willingness of these merchants to contribute time and expertise to the Association. It comes on top, moreover, of the income earned from first instance arbitration, which were apparently more broadly shared among the London trade members.

Significantly, foreign merchants and commentators did not complain much with the Standard Contracts and the grain standards, but they are often unhappy with the arbitration practice of the LCTA: in their view it was both costly and biased in favor of London insiders, especially the largest trading houses. Jöhlinger (1917) states that London grain arbitration "is in no way reliable"[14]; an aggrieved Austrian merchant, Maximilian Praschkauer, published a rather well argued pamphlet against London corn arbitration, both in English and in German.[15]

MORE???

Even London merchants occasionally admitted that there might be an issue. The point was made when hearings were organized in 1895 to consider the prospect of the newly-created London Chamber of Arbitration: outsiders from the corn trade suggested that commodity arbitration in Le Havre or Antwerp might have been fairer with foreigners.[16]

On the whole, however, the figures do not suggest that the London Corn Trade Association was operating a powerful rent-seeking machine. They rather underline the point made above: this market was an equilibrium institution, endowed with considerable market power. The London insiders, on the one hand, did not allow rent-seeking strategies to debase the Association and its market: the private revenues they earned from arbitration proceedings remained strictly proportional to market activity, hence to the continuing success of their Association. On the other hand, even though outsiders resented its pre-eminence and felt (rightly or wrongly) that they were unfairly treated, they kept trading and arbitrating in London, even though Hamburg, Antwerp or Le Havre may have offered fairer practices. Schwob (1928) even comments on a rather large body of precedents decided by French courts, including Appelate courts, on the

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[14] "Keineswegs in jeder Hinsicht zuverlässig," page 124, 340-355. See also Fuchs (1890).

[15] "On London Arbitration." *The Miller*, 2 December 1889.

[16] "Traders abroad very often have a feeling, rightly or wrongly, that they would like their disputes with parties in London to be settled by an absolutely independent and recognised tribunal, having some recognised authority or standing, and not left to this spirit of friendly and amicable arrangement where they naturally suppose … that the one party who is in London is best off …. You see they are abroad and there is nobody to speak for them." London Chamber of Arbitration, p. 23 and 24.

LCTA contract, known as "le contrat de Londres". Yet there is no question that, from a global perspective, Le Havre and Marseille remained marginal outposts.

4. The Trades and the Law: Legal Consciousness

Rhetorically, the London Corn Trade Association saw itself as the expression of the "the trade." It often seems that, in its own perception, the true check on the discretion of its principals did not in fact derive from broad membership and elections. More important, apparently, was the collegial character of the Association's governing bodies, where the main professions engaged in the grain trade were represented) and, beyond, their continuing willingness to use its contract forms and arbitration facility. Critically, "the trade" was seen here as global body. The Chairman of the Association thus warned the 1907 General Assembly that: " … in view of the revision of contracts in the Autumn, I think it only wise to point out to UK friends that if we are going to be too rigidly insular, and there is not little give and take in regard to contract conditions, I am afraid that … a larger share of the grain trade will go to [the] Continent … I have held very strongly that we ought not to be merely an Association for making money. We must, of course, protect the interests of the Members, but we ought to make the basis of our Association the benefit of the trade as a whole."[17]

Hence, the Association was to be the voice that formalized the common wisdom and implicit capitalized experience of "the trade" – importers, shippers, brokers, millers, etc. The minutes books of the various committees attest indeed to the constant attention given to the suggestions, demands and grievances of individual merchants and organizations. They are literally filled with letters received and their responses, sometimes in a few summary lines, on other occasions over several pages. Back and forth exchanges can thus be followed over several months.

The notion of "the trade," with its sociological undertone, is often referenced with that of "the province" of the Association, which suggests a more formal notion of a socially recognized competence, plus a set of accepted rules and ways of doing business, which defined the Association's own range of legitimate intervention. "Provincial" borders could thus be opposed for instance to government officials who wanted to draw the Association into broad policy discussion: "it is outside the province of the Association to offer suggestions upon the subjects which will be under consideration of the Dominions Royal Commission, but … in the event of their requiring any evidence re grain exports we will do our best to procure same for them."[18]

Critically, the notion of a province was also used to decline any binding pronouncement on issues regarded as legal, in the hard, State-centered sense. A merchant who had raised a problematic question of market regulation was thus answered that: "it does not fall within the Duties or province of the [Executive] Committee to decide the question whether the buyers are or are not bound by the Brokers signature."[19] The Association refused in the same way to interpret its own contracts, as when "A letter was read from Mr. Jacques Meyer of Düsseldorf asking the meaning of certain clauses in our contract forms. The Secretary was instructed to reply it is not within the province of the Committee to reply to such questions; suggesting that he should apply to somebody in the trade for the information he required."[20]

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[17] General Annual Meeting, Report, 2 May 1906.

[18] Exec. Comm., Minutes, 27 August 1912.

[19] Exec. Comm., Minutes, 12 March 1907. Similar formulas are employed on many other occasions. See, for instance, the Executive Committee Minutes of 28 September 1909, 5 November 1912, 16 September 1913, 9 June 1914; as well as the Minutes of the Argentine, American and Australian Committee, 19 December 1912.

[20] Exec. Comm., Minutes, 13 December 1904. The same position is expressed in almost similar terms in Exec. Comm., Minutes, 3 January, 7 March 1905, 12 March 1907; Argentine, American and Australian Committee, Minutes, 19 December 1912. The term is not specific to the LCTA, as exemplified by a similar

As remarkable as the refusal to comment is, here, the explicit assumption is that "the trade" knows best the actual rules and would be fully in its own province when answering Mr. Meyer's question. One step further, the refusal to offer an answer could reflect both the perceived absence of jurisdictional competence and an avowed deficit of legal skills. Thus, when a merchant asked if a Dutch arbitration award could be appealed at the LCTA, in London, "The Secretary was instructed to reply that it was hoped that the occasion would not arrive, and that the Committee was not in a position to say whether such an Appeal could or could not be heard."[21] It seems therefore that in their own legal consciousness, the Association's principals did not properly deal with the law. As a substantial London merchant said explicitly: "If we have arbitration we do not want any lawyers to draw up these sorts of things where we fear that we may be 'copped', because they have been made not understandable to those who are simple merchants, but perfectly understandable to the lawyers.… If we want to have arbitration, we must not have law – we want equity."[22]

At the same time, the Association knew very well that they could be affected by outside legal accidents and that the frontiers of their province were not immune from legal threats. They would thus better preserve peaceful relations with third parties, like ship owners or millers, or the London Port Authority, with whom a conflict could always end up in court and leave beyond a wrong precedent. The Association thus had its own legal counsel and also substantial financial reserves that were regularly justified by potential legal threats. As was said at an Annual Assembly, "we never know when we may be called upon to fight a heavy law case."[23]

5. Drafting and Amending Contracts

The LCTA was indeed a City-based, English institution. A legal fiction written into all Standard Contracts stated that foreign merchants were supposed to be domiciled at the Consulate of their country of origin in London, whereas Scots were nominally hosted in the offices of the Association. A key consequence is that disputes over the contracts or arbitration awards could be subject to trial in an official English court, following in particular the "Special Case" rule that asked that points of law in disputed cases be addressed to a court of law. But this was a rare occurrence, primarily because the basic structure of the contracts did not change much over time while the courts themselves typically deferred to private market authorities. The counterpart to the ultimate judicial guarantee that the Association received from the higher echelon of the English judiciary was therefore very limited.

By 1896, forty-eight standard contracts had been adopted, reaching more than sixty on the eve of World War I – many fewer contracts than grain standards. Corn traders would thus buy these pre-printed forms and write by hand the specifics of their transaction, like the standard of grain, the price and volume, the date of shipment, etc. But as they signed on to these *Voluntary clauses,* traders also adhered to a much greater number of *Adhesion clauses* on which they had no say and which stated the broad rules of the market, in fact a kind of trade-based commercial code.

These standard adhesion clauses established and regulated the market as a whole, inasmuch as traders adopted these contracts and traded with them. Trading on the Baltic Exchange with ad hoc, personal contract forms was possible, but this would have implied considerably higher

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answer made by the Baltic Exchange to the Institute of Underwriters: "this matter is outside our province." Baltic Mercantile and Shipping Exchange, Board Meeting, 28 July 1913.

[21] Exec. Comm., Minutes, 19 October 1920. Similarly, in a earlier case of an award rendered in Rotterdam, it was answered that: "The [Executive] Committee does not feel competent to express an opinion as to the question in your letter which involve[s] a legal point." Exec. Comm., Minutes, 28 September 1909.

[22] London Chamber of Arbitration. Minutes of the Inquiry Committee. Hearing of William E. Chambers, grain and seed trader, 18th July 1895, pages 67 and 68.

[23] Exec. Comm., 1906 Annual Report, 29 May.

transaction costs, as the trader would have had to negotiate personally the terms of his contracts with the foreign grain exporters, shippers, insurance companies and banks. Hence, the standard contracts were not exactly the key to the market, but they implied so large savings in transaction costs that they de facto established the massively dominant standard of transaction. There might have been some niche markets, or highly specific, occasional transactions, but otherwise it is hard to perceive any incentive for returning to bespoke contracting.

The most widely used LCTA contracts were revised every two or three years, a procedure that could extend over several months and which presented a clear legislative character, with no reliance whatever on rule of precedent. Problems encountered in the past with given clauses would find their way to the discussion table through voluntary contributions, following invitations made by the Executive Committee in the professional news publications. Individual traders, including members of the Association's committees, Continental merchants or foreign market authorities then sent proposals for amendments. In the case of the most widely used contracts, more than twenty amendments could be proposed, which typically had a clear professional and technical character.

The geographic committees were the first to consider these contributions and to report on them. Then, an ad hoc "Sub-Committee," presided over by a member of the Executive Committee, coordinated the whole work as a kind of clearinghouse – or, say, a *curia* that made sure that amendments across contracts would remain consistent. But the Executive Committee had the last word. The Association also refused to share with outside institutions the final writing of amended clauses, even if in practice considerable back-and-forth discussions took place with foreign partner institutions, like the Argentine Centro de Cereales or the Russian bourses. Lastly, the amended clauses were published in the profession's newspapers, in London and abroad.[24] Sometimes a new form was printed, but paper slips could also be pasted into the already-printed contract forms.

The existential challenge for the Association was to keep "carrying the market" with the adhesion of merchants to its contracts. If a given contract was rejected when launched, or after it had been revised, or again if another trade organization successfully issued its own contracts, then the Association had no means to compel them. The Berlin trade association launched for instance a standard contract for trade with Russia, which became the standard for German grain merchants; but when it issued a contract for Argentine grains, it was not adopted [Ref].

This concern always remained on the mind of the Association's leaders. For instance, after a change had been introduced in the insurance clause, the Chairman admitted publicly at the 1906 General Assembly that there had been "a little misapprehension" among merchants, which was, however, undue, as there was no "arbitrary introduction of fresh matters in the policies; it is simply the collection into one concrete clause, of all conditions that have hitherto been scattered over the entire policies."[25] On another occasion, a merchant sent to the Association a copy of a Bill of Lading (i.e. a maritime transport contract) "which included an unusual deviation clause." The UK Chamber of Shipping was immediately contacted and it soon answered that it had made an inquiry and that the ship owner would immediately correct the said clause.[26] Even more seriously, in 1909, the Executive Committee initiated a discussion on whether or not, and to which extent, clauses across contracts should be further unified. This proposal, which could have been seen as a reasonable step in a process of standardization and simplification, was however

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[24] *The Argus*, in Melbourne, thus informed its readers on 12 February 1912 (page 8), that "The London Corn Trade Association have given notice that from March 1 maritime insurance policies tenderable under contracts must cover risks of strikes, riots, and civil commotions, which the Lloyd's standard policies exclude. It is understood that underwriters will accept these risks at a minimum premium of 1 per cent."

[25] General Annual Meeting, Report, 29 May 1906.

[26] Exec. Comm., Minutes, 15 January and 19 February 1907.

rejected quite soon and never discussed again, the Chairman having concluded that "to build up new forms was very dangerous and not desirable."[27]

These examples make clear that the Association's contracts worked as a coordination mechanism that established the market and allowed supply and demand to aggregate. The clear sensitivity of merchants and LCTA principals to the potential adverse effects of any amendment underline that here was, indeed, a fragile common good, whose value resulted ultimately from the continuing willingness of market participants to adhere to the rules and contracts that the Association proposed.

At the same time, individual clauses could also reveal powerful conflicts of interests. Take, for instance, a clause stipulating that the quality of Argentine grains in individual shipments should be appraised on the basis of a criteria of "Fair average quality of the season's shipments at time and place of shipment," a clause known as *faq rule.* Literally, it says that once a grain standard has been adopted by the Association, it is the only benchmark for arbiters when appraising all deliveries from the same place and for the time being. Yet, a revision committee once suggested that the Argentine contracts should adopt the *about faq rule*, which was relied upon in many other LCTA contracts. This rule implied more flexibility on the actual quality of deliveries, therefore fewer constraints on exporters and shippers. The suggestion triggered strong and eventually successful reactions among London-based buyers and millers, who anticipated an adverse distributive impact on them.[28] It soon appeared that opening discussions on such sensitive clauses proved indeed "dangerous and not desirable." This pattern might explain, in turn, why the London Association kept printing so many different Contracts.[29]

A similar, but even more brutal conflict emerged after 1905, when strikes became quite common across the world. Initially, from Russia to Argentina, London merchants and millers were strong enough to put all the costs and constraints on the Exporters or the Shippers, rejecting in particular the (civil law) principle of *force majeure*, which would have implied a de jure suspension of the contract. But after a long and protracted conflict, during which some shippers even refused to attend the Executive Committee, a more balanced "Strike Clause" was adopted and generalized across the whole universe of LCTA contracts.[30]

6. The Architecture of a Privately-Ordered Transnational Market

If we now look in more detail at the structure of the LCTA standard contracts, two remarkable features stand out: each contract was minutely adjusted to the legal and institutional environment of its exporting region or port (hence the La Plata family of contracts). And these

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[27] Exec. Comm., Minutes, 9 February 1909. See also the East Indian Committee, rejecting that changes in contracts could be introduced "merely for the sake of a visionary uniformity", East Indian Committee, 13 february 1908.

[28] The problem was pointed out during a British-Russian conference held in February 1910, when the head of the Russian delegation underlined that "in commerce our idea should be the unification of processes in buying and selling. We experience considerable difficulty in dealing with England, where you have some 16 different contracts, but on the Continent you only have some three or four. I think our idea should be to strive to have one contract for a country." Exec. Comm., Minutes, January to March 1909.

[29] This pattern was also seen as a key reason why the Association failed, until the 1920s, to developed a future market, which instead emerged, with great success, in Liverpool. LCTA, Conference between Russian Delegates and British Delegates. 15-17 February 1910.

[30] In June 1906, for instance, the Executive Committee received a telegram from the Port of Nikolaieff, South Russia, saying, "The Committee of the Exchange recognises 'force majeure' as applying to loading not being completed in time." At which point, "The Secretary was instructed to thank them for their communication, notifying them that 'force majeure' is not recognised by the Association." Exec. Comm., Minutes, 12 June 1906.

sale contracts were also closely articulated, by way of ad hoc clauses, to three other standard contracts, namely for shipping, insurance and trade finance. This way, the LCTA coordinated parties and contracts across jurisdictions and along the whole value chain. Legal consistency would guarantee in particular that the responsibilities of each intermediary were clearly established, including vis-à-vis insurers. The result was a remarkably consistent, extra-territorial contractual vehicle (see Graph 2).

***Conflicts of laws and usances*.**

At least till the end of the nineteenth century, international merchants and shippers followed the so-called *usances* proper to each port were they traded. Dozens of handbooks collected those customary rules, which can be seen as the very last ramification of the old Law Merchant.[31] Which units of measures for weights and volumes apply in Bristol, Cadix or Bergen? What is the tolerance regarding the percentage of dust in grain deliveries in the upper La Plata regions? Which institution is the legitimate authority to announce, by telegram, that the ports of Odessa or Novorossiysk have frozen and that traffic (hence, the execution of contracts) is interrupted? Who has the material responsibility over the grain when it is transferred from silos or train carriages into boats? When does the responsibility of the ship's captain start?

Drafting a Standard LCTA Contract first asked that all such local rules be collected in order to make sure they would be mutually consistent, so that the flow of grains and payments would be legally as safe and continuous as possible. In practice, the best-established and the most-knowledgeable merchants would first be interviewed or directly co-opted into the drafting committee. But the London Association also typically entered into informal negotiations with local market authorities – Exchanges, Chambers of Commerce, etc. The point was neither to reproduce these *usances* entirely in the contracts, nor to impose the rules followed for instance in the Port of London: the Association largely recognized the local trading customs and it conceded often when a local authority argued that it had long been accepted practice to take option B rather A, on a given, specific issue.[32] We also often find a clause stating "Vessel to discharge afloat according to the custom of the Port."[33] Eventually, discussion with the local authorities would thus lead to a formalization or codification of local *usances* that might have remained till then customary and unwritten. The objective, however, was less formalization for its own sake than making entirely sure that the local *usances* and the sale contract would be thoroughly aligned so that the LCTA contracts would be literally "plugged into" the local legal and customary environment. This the first element of answer to the question raised at the beginning of this article: the risks and costs of conflicts of laws and jurisdictions were entirely avoided because disputes were addressed on the sole basis of the LCTA contract and sent back to London for arbitration, and later, in some rare cases, to the London courts. Neither the substantive law nor the courts of other countries would ever bear on how corn trade disputes were resolved: this is what extra-territoriality is about. But it asked in turn that the contractual vehicle itself be watertight, so that no foreign legal material would ever filter inside.

Other less Standardized Contracts

With this objective, the drafters of the LCTA articulated the Association's Sale contract to three complementary English-law contracts: the Bill of Lading (maritime transport contract) the

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[31] Sonndorfer (1882) is a fine example of a worldwide collection of *usances* regarding units of accounts (weight and volume), standard brokering premium or rules for appraising the quality of grain shipments. See also Lefèvre (1882). Spalding (1925) offers similar information regarding Exchange Letters in different countries and continents, but see also *Universal Commerce* (1818) for a very similar, though much earlier, publication.

[32] See a deliberation of the on the inclusion of a customary rule within the Baltic Oat Contract (Exec. Comm., Minutes, 1 November 1904).

[33] La Plata Parcels, 1896, n° 17.

Maritime Insurance policy and trade finance. These contracts thus worked as a package which integrated the successive operations of international commerce from source to destination (Thorpe 1924). In practice, this package belonged to the class of *Cost, Insurance and Freight* (CIF) model of contracting: all costs incurred until the grain was delivered to the buyer were entirely taken by the seller and included in the price initially agreed upon with the former (Schwob 1928, Thayer 1940, Rothstein 1983). This set of "Documents", as they were called, was thus construed as a legally valid representation of the grain while it was still at sea, so that handing them over formalized the transfer of the property and guaranteed that the final buyer would obtain delivery of the grain from the captain. These "Documents" could thus be used as a collateral for a trade credit. The point is that whereas CIF contracts can be entirely drafted on a bespoke basis, the LCTA was probably among the very first entity that standardized them.

In practice, this contractual *assemblage* mobilized the whole set of specialized professions and market institutions that made the London marketplace unique: an Italian or a German merchant who imported grain from Argentina would use an LCTA contract because of its recognized legal safety and consistency, but also because it was the obvious way to contract in London for shipping, insurance and, ultimately, for credit. The cluster of contracts that the LCTA had assembled thus gave access to these network externalities; hence it also leveraged them to increase further the benefits for merchants of conducting business in London, and nowhere else.

Bills of Lading are the generic contract form for maritime freight services. They are, altogether, a transport contract, proof that the ship's captain has received the goods (hence that they have been loaded on the ship), and they formalize the transfer of property of the goods to the buyer (Tongeman 1947). Bills of Lading, whose legal history goes back to the Middle Ages, have traditionally presented large variations across countries, ports, types of ship, goods, etc., thus a lot of *usances* norms shaped these bills. Because the Association had to make sure that its contracts remained legally consistent with these various Bills of Lading, it was in almost continuous discussion with the UK Chamber of Shipping, which was the main professional organization of shipowners.[34] These negotiations converged on a series of regional Bills of Lading, for instance for Australia, the Danube Berth, etc. For the North Atlantic trade, no Standard Bill at all was adopted, so that each Shipper kept using his own contract forms within the CIF framework. The resistance of Bills of Lading to standardization thus became a factor in the continuing large number of Contract forms that the LCTA adopted.

Insurance policies are also old, well-known contracts that accept large variations in their degree of standardization vs. a bespoke approach. The main interlocutor of the LCTA here was not directly the Lloyd's, but the Institute of Underwriters (Thorpe 1924, Copeman 1947, Hewer 1984). Negotiations could go on for months to settle minute details in the Association's contracts that, in turn, might have large potential distributive effects between the parties in case of losses. In 1906, an ad hoc LCTA Committee on "Rules for Policies of Insurance" drafted a standard Average Clause dealing specifically with the evaluation and sharing of losses after an accident at sea. This clause was then sent to the Institute of Underwriters and the Lloyd's for discussion and approbation, so that, once included in the LCTA Standard Contracts, it would be entirely consistent with the standard insurance police for grain traders.[35]A major concern during all those years was to adjust the contracts to the gradual extension across exporting countries of bulk transport, whereby grain is on- and off-loaded from silos to ships, by way of electric elevators; before, grain was transported in jute bags, loaded on boats with cranes. The whole material logistics of the value chain was thus affected, from the producer's farm to the final

[34] A Sub-Committee in charge of coordinating the revision of Contracts noted, for instance, in 1902 that: "it is very advisable that the Bills of Lading to be issued shall be in conformity with the Contracts forms issued by this Association and in harmony with the established custom of the Trade." Exec. Comm., Minutes, 11 March 1902.

[35] Exec. Comm., Minutes, 20 and 27 March 1906.

buyer, and so, inevitably, the contractual construction that supported it and the power relationship it contains. [ref].

Trade finance, lastly, was of course strategic because most grain merchants did not have the working capital needed to finance the huge contracts typical of international commodity trade. The three standardized "Documents" (sale, shipping and insurance) made access to credit considerably easier and cheaper, because less clerical work would be needed and also because protection against default was seen as watertight. In practice, the nexus between trade and finance was an operation called "acceptance," whereby high-reputation merchant banks endorsed (i.e. they gave their guarantee to) three- to six-months Exchange Bills drawn by first quality importers on the back of the "Documents" (Spalding 1924 and 1925, Warburg 1914). These merchant banks often had a geographic specialization and a superior knowledge of the reputation and current position of all individual merchants or importers within this market segment (Chapman 1984).

Having their bills "accepted" by such banks against a commission allowed them to be discounted (resold) on the London Money market (Dowling 1929, Truptil 1936). In practice, accepted commercial bills on export and import trade were the main class of papers exchanged on the London money market, thanks to their legal safety, to the expertise of the London merchant banks and also to the presence of the commodity itself on British soil in the case of import trade. Last but not least, accepted trade bills, especially those corresponding to commodity trade, were unconditionally rediscounted by the Bank of England in case of liquidity crisis, i.e. when it intervened as a lender of last resort (Accominotii and Ugolini, 2019). This is the ultimate vindication of the solidity of this privately ordered contract, which made the whole machinery of British commodity trade stronger and more resilient.[36]

7. Conclusion: A Transnational Private Legal Order

This article tells the story of how a mere agriculture produce was eventually transformed into the near-equivalent of gold. After the grains had become a certified commodity fit for global trade, standard contracts allowed them to be sold and transported across the world with great ease and legal safety. The private market authorities in exporting countries, the Shipping Chamber, the Institute of Underwriters and the merchant banks all voluntarily entered structured, horizontal agreements with the London Corn Trade Association, eventually formalized by ad hoc standard clauses. Although these four matching contracts remained independent from each other (as they were materialized in different documents), they were so strongly tied together that they worked as a package that de jure established and transferred property rights on incoming deliveries. As a late commentator said, "the fungibility of the produce leads to that of the contract" (Dauphin-Meunier 1940). Acceptances by merchant banks then absorbed the idiosyncratic financial risk carried by each individual importer, so that the short-term debt that financed trade operations also became highly fungible and safe, the material commodity being here a perfect collateral. Eventually, the Bank of England guaranteed last resort equivalence between these short-term financial contracts and cash money, in the form of the most liquid and most widely circulated currency of the time, the pound sterling: a currency that was "as good as gold," as it was then said.

Here lies the beauty of this most remarkable construction. The global pre-1914 grain market worked on the basis of private rules and private contracts, issued by non-regulated private trade organizations and subject to private arbitration and private enforcement. This system allowed for a strong contractual integration of the whole value chain, though without exposing the parties to the costs and uncertainties caused by conflicts of laws and jurisdictions: trade

[36] See, however, a detailed discussion on the difficulties of obtaining credit in London banks on the basis of American contractual documents. Exec. Comm., Minutes, 17 March 1908.

operators had little concern for non-English, foreign laws and foreign courts, whatever the strong Westphalian character of the inter-state geopolitical order. Still, the whole construction was thinly – though decisively – anchored on two superior public institutions, established at the core of the British state: the high London courts and the Bank of England. Law and money, both essential attributes of sovereignty, ultimately confirmed and backed-up this transnational, private market order. This is where hegemony met market power.

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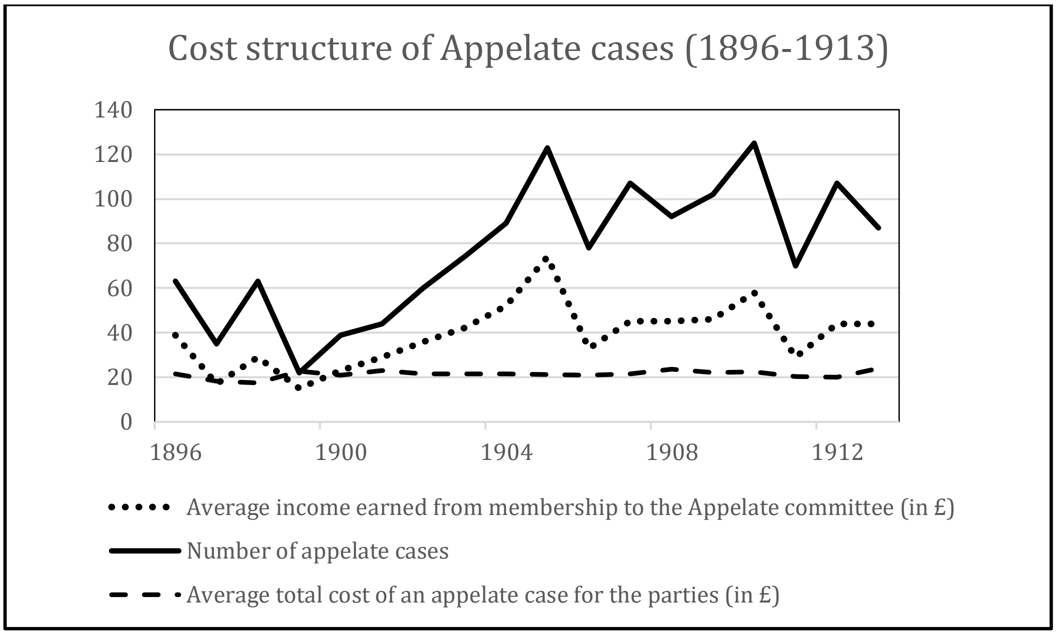
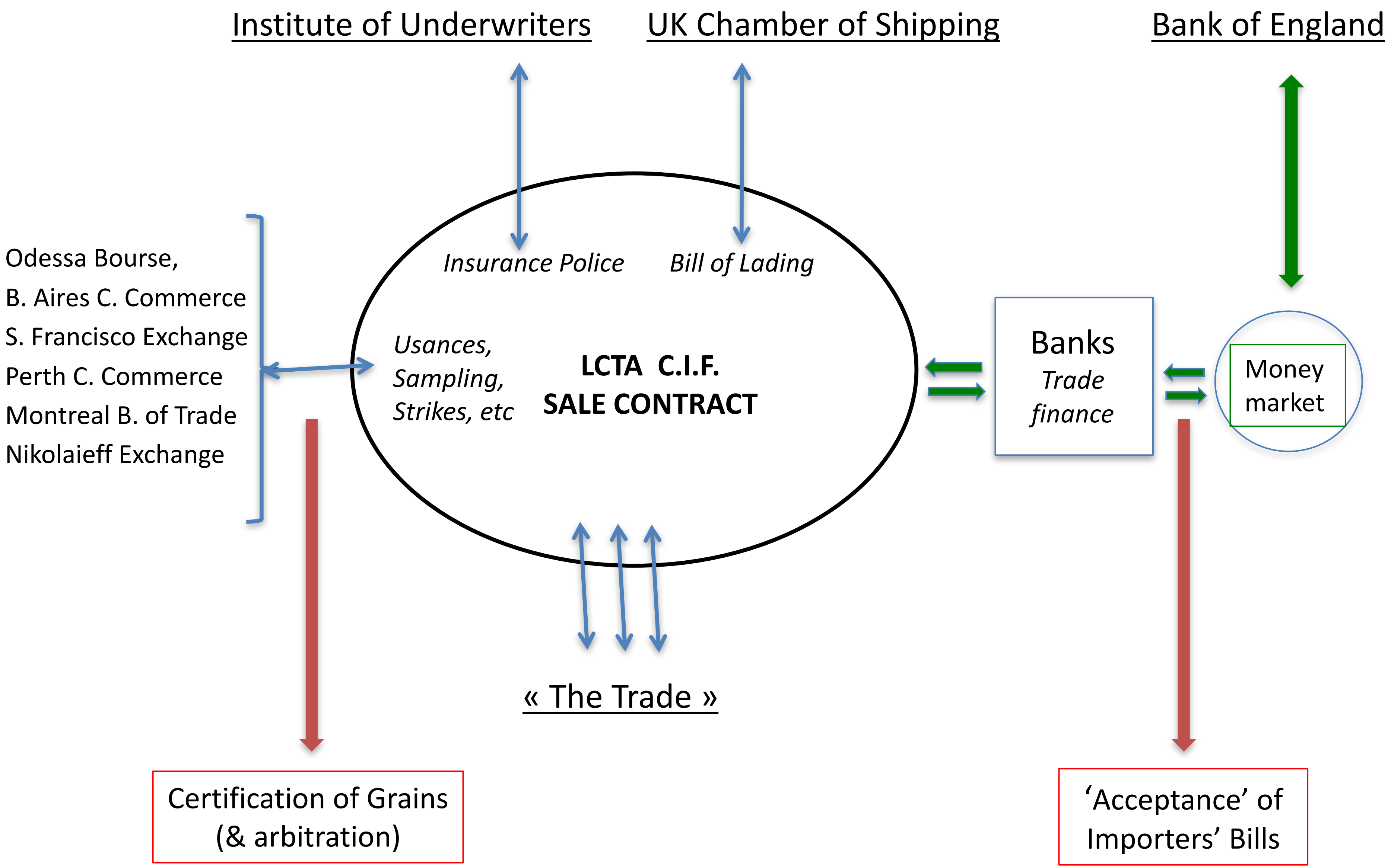
Table 1: Structure of the LCTA Budget (in percentage of total)

	1888-1889	1900-1901	1908-1909
Members' subscriptions (as % of total receipts)	8.4	7.2	10.1
Sales of Standard Contracts (%)	7.1	10.5	6.4
Analyses and sale of grain standards (%)	22.5	41.8	37.0
Fees on arbitrations (%)	61.5	37.3	40.9
ow appellate procedures (%)	(45.6)	(16.1)	(18.9)
Interest on investment (%)	nd	3.2	5.7
Total fees paid to members (as % of total receipts)	32.2	12.4	20.2
ow fees on appellate procedures (%)	(29.9)	(8.7)	(11.5)
Number of appellate arbitrations	86	26	100
Investments as % of receipts (cash in bank included)	74.1	137	226
Membership	nd	298	439

Nota: Figures are averages for two successive years.

Source: Annual Reports.


Cost structure of Appelate cases (1896-1913)
140
120
100
80
60
40
20
0
1896
1900
1904
1908
1912
Average income earned from membership to the Appelate committee (in £)
Number of appelate cases
Average total cost of an appelate case for the parties (in £)


Institute of Underwriters
UK Chamber of Shipping
Bank of England
Odessa Bourse,
B. Aires C. Commerce
S. Francisco Exchange
Perth C. Commerce
Montreal B. of Trade
Nikolaieff Exchange
Insurance Police
Bill of Lading
Usances,
Sampling,
Strikes, etc
LCTA C.I.F.
SALE CONTRACT
Banks
Trade
finance
Money
market
« The Trade »
Certification of Grains
(& arbitration)
'Acceptance' of
Importers' Bills