

WHEN PROOF IS NOT ENOUGH  
AN OTTOMAN MERCHANT IN THE GIBRALTAR  
VICE-ADMIRALTY COURT IN THE 1760s

This article examines the litigation of an Ottoman merchant based in Algiers in the vice-admiralty court of Algiers in 1760. It examines the importance of legal proofs for merchants traversing the Mediterranean world, and the ability of such merchants to record transactions and interactions along the way, as well as to subsequently call on witnesses from near and far. The case examined here sees documents compiled in Italian, Spanish, Arabic, and English, constructing a solid legal case, which was rejected by the British on the grounds of setting a precedent and privileging a «Moor» over a British subject. This then raises the question of the validity of proofs in different Mediterranean settings, with the Ottoman merchant's diverse and thorough documentation rejected in Gibraltar when it would have been entirely admissible in another legal setting.

*Keywords:* Commercial litigation, Algiers, Gibraltar, legal proofs.

*Introduction*

The study of merchants often centres on the disputes in which they found themselves; after all, problems generate paperwork. The early modern Mediterranean, a mix of different languages, cultures, politics, and legal systems, generated plenty of legal disagreements between merchants from a variety of backgrounds. This article aims to explore what happened to an Ottoman subject based in Algiers when things went wrong for him in the Western Mediterranean, and who sought redress in the British vice-admiralty court of Gibraltar. It is an exceptional case in many ways, but indicative of a growing number of unsuccessful litigations of North African and Ottoman merchants in European courts, particularly in the second half of the eighteenth century. This case is important in a number of ways, and although it is difficult to draw broader conclusions from just one example, it provides evidence of key themes that I am developing in a broader piece of writing on this

subject. It demonstrates the importance of written legal proofs to this particular Ottoman merchant, and gives him a voice that is often lacking from historical investigations into the Ottomans and North Africa. It also demonstrates the limits of interculturality when it came to competing legal systems, specifically the limits set by Britain from a mercantilist and protectionist perspective. In her seminal study on the early modern Mediterranean, Fusaro cautions us «not to fall into the trap of anachronism» in thinking too deeply about the nation state in this earlier period, yet she shows us convincingly that the imposition of state interest was crucial in assuring the success of commercial interest for states like Britain. The evident self-interest pursued by the judge at the British vice-admiralty court in Gibraltar in the case that follows, even at the expense of due process that would be expected across the water in Algiers, is indicative of the growing encroachment of a dominant and exploitative European economic system that saw the North African Regencies increasingly – and increasingly violently – peripheralised<sup>1</sup>.

Earnest investigations into questions of legal proof and commercial litigation in the early modern Mediterranean often suffer from a lack of coherent documentation. The accident of the survival of the sources, particularly when dealing with texts and scraps of paper that may not have been retained by state archives or court records, is particularly problematic in reconstructing the materiality of proof. To find a complete set of case documents of legal proofs for an eighteenth-century commercial case is therefore lamentably rare<sup>2</sup>. Fortunately, The National Archives in London hold just such a bundle of papers relating, even more unusually, to an Ottoman subject based in Algiers. Much of the historiography on Ottoman Algiers focuses on slaves, naval forces, and pious endowments, meaning that a focus on Algerian merchants (broadly defined) and especially Algerian merchants outside of Algiers is missing<sup>3</sup>. As a very small means of showing the potential wealth in European archives concerning Algerian and other Ottoman merchants, and to examine the limits of interculturality – that is, the point at which one particular system was privileged or privileged itself to the expense of others – in terms of legal proofs in the Mediterranean commercial world of the eighteenth century, this paper will examine the documentation this particular individual presented to the British Vice-Admiralty court in Gibraltar in the mid-1760s. In the introduction to an interesting set of papers on interculturality, Salhia Ben-Messahel describes the dynamics of interculturality as being «a violation of the frontier separating cultural microcosms [that] creates an intercultural dialogue whose objective is to take into account diversity and the hybrid character of the modern world»<sup>4</sup>. The relationship between interculturality and frontiership is

important in the context of encounters in the Western Mediterranean, not least, to borrow the words of Maria Fusaro, because space in that sea was characterised by a number of explicitly *permeable* frontiers, not simply in terms of the movement of people and goods, but in terms of the movement of legal norms and practices<sup>5</sup>.

Yet if the frontiers were already permeable, then what might constitute a violation of such border? Rather, it would seem, there were zones within which interculturality functioned through large and wide webs with nodes in different political, legal, religious, and linguistic contexts, and there were zones that privileged certain contexts over others. This is something that we see in the interactions between Northern Europeans and Algerians/Ottomans in the Western Mediterranean and beyond. In the case under examination, the British were active participants in what we might term an *intercultural zone*, although I am still torn as to what this actually means in this context. If we take the idea of interculturality in relation to a series of contacts, relationships, or connections, or a form of fluidity, then we are perhaps missing the point of what was going on<sup>6</sup>? What was at stake? Was this a space of the interaction of *separate* and perhaps even *competing* cultures of law and commerce, or, to take the idea of Thierry Fabre, a *creolised* space both of and between these cultures that created a particular kind of localised hegemony<sup>7</sup>? From examining a number of cases, of which the following is exceptional in its detail but indicative in its outcome, it would seem that a European assessment of Algerian justice as corrupt was in fact more applicable to the justice of the British vice-admiralty court. The boundaries of the intercultural space of which the subject of our case-study was a good example were formed by the national interest of the Northern Europeans. This article attempts, on the one hand, to show the breadth of paperwork gathered from around the Mediterranean to support our particular merchant's case, and on the other to seek to understand why, despite this, his claims at the British vice-admiralty court failed<sup>8</sup>.

### *Ottoman and Algerian law*

The French diplomat Laugier de Tassy's oeuvre on the history, politics, and commerce of Algiers published in 1725 was a rather successful publication, being published in a number of editions and translated into Spanish, Dutch, and English<sup>9</sup>. His observations at the beginning of chapter ten of the second book, entitled, *De la Justice Civile et Criminelle*, deserve some attention.

Justice, in both civil and criminal cases, is administered here without delay, without documents, without charges, and without appeals, whether it be by the Dey, the qadi, the kahya, or the reis of the navy. And in contested cases, the only delay is in the necessary time to go to find witnesses, if there are not other sufficient proofs<sup>10</sup>.

It is representative of the supposed arbitrary nature of Algerian justice, as would befit its status as a «pirate state». The administration of justice, according to Laugier de Tassy, was swift, final, and, crucially, lacking in *écritures*, written proofs. He reiterates this when speaking about the procedures for hearing cases of debt in Algiers, that *écrits* were hardly used. Such a notion of an unsophisticated and almost tyrannical nature of the Algerian legal system has been sustained in what one might call the «Barbary historiography», a profoundly Eurocentric set of writings that cannot even begin to imagine that Algiers might have operated in a rather different manner to that described in contemporary European accounts<sup>11</sup>. Even a brief examination of the correspondence of the deys, the records of the qadis, and the records of the European consulates, reveals a series of legal systems with different (although sometimes overlapping) jurisdictions, all of which relied, at least in part on written records. At the basic level was what one might term the confessional courts, those of the qadis, priests, and rabbis, as well as those of the European consuls who held similar rights over their subjects and protégées resident in Algiers. Indeed, the importance of consuls in ensuring commercial functions, in the Ottoman and North African realms as well as elsewhere in the Mediterranean, cannot be understated, providing legal support and advice within an intertwined diplomatic and commercial framework<sup>12</sup>. In case of interfaith litigation, particularly between foreigners and Algerian Muslims, cases were heard at the court of the dey, comprised of him and his *dīwān*, in the presence of the relevant consul and his translators.

Such a system was set out clearly in the treaties signed between Algiers and foreign powers. If we take the British of 1686, for example, the treaty states:

*English text*: Artic. 15 That the subjects of his said Majestie in Algiers, or its Territories, in matter of Controversie, shall be liable to no other Jurisdiction but that of the Dey or Divan, except that they happen to be at difference between themselves, in which case they shall be liable to no other determination but that of the Consul onely<sup>13</sup>.

*Ottoman Turkish text:* The fifteenth section that has been accorded and resolved is, that if a person from among the subjects of the British king engages in litigation with a Muslim or with a person subject to Algiers, it is to be judged by His Highness [the Dey] or the *dīvān*, and not by any other person. And if there is litigation amongst themselves, in that event the individual who is the British consul shall judge the case, and no other person<sup>14</sup>.

Similarly, in the treaties between the Ottoman sultan – Algiers’s nominal sovereign lord – and foreign powers, there is a clear process for litigation involving mixed cases, slightly different in nature, however, in being far more reliant on textual proofs, and far more flexible in terms of jurisdiction. In articles 9, 10, 15 and 16 of the British Capitulations of 1675, it is specifically stated that:

[9] The British and [their] dependents being resident in the Well-Protected Domains with their merchants, gentlemen, translators, and brokers desiring to buy and sell, give and trade, in the event of particular sureties and other legal matters, may go to the judge [who] can give a proof [and] write it in the register. If there are any subsequent disputes, the proof and register can be examined. If their claim is conformable to the proof, let action be taken in accordance with the legal proof. [10] And if there is no proof from the judges, only the producing of a false witness, the claims may not be heard. The enforcement of the law will always be in accordance with the legal proof. [...] [15] The British and their dependents having legal claims, litigations, and other legal matters, [and] their translators or agents not being present, the judges of legal claims may not hear or judge [upon them]. [16] The disputes among the British shall be seen by their ambassadors and consuls. The judges and any other of my slave officials shall not interfere, [and] they may never rule on their practices and customs, nor on their disputes<sup>15</sup>.

Although the Algerian treaty articles do not explicitly discuss the role of written proofs in such cases, the fact that this structure was deliberately enshrined in successive treaties agreed to by both parties means that there was an implicit acceptance that the legal processes of the dey’s courts were capable and fair, comparable to other arrangements in the Mediterranean such as earlier Venetian-Mamluk agreements<sup>16</sup>. Moreover, the significance attached to legal proofs and specific jurisdictions within the Ottoman capitulations also gives us an insight into the legal culture that prevailed in Algiers. The statement of the 1675 British Capitulations that the enforcement of the law will always be in accordance with the written legal proof – *dā'imā hüccet-i şer'īye muқтаzāsınca icrā-yı haққ oluna* – is a testament to the importance of

written proofs within the broad Ottoman legal system. As well as relying on oral testimonies and decision-making processes, it was also a system based on record-keeping, receipts, and register; in short, contrary to Laugier de Tassy, it was a system of *écrits*.

This was certainly the case for European merchants resident in Algiers, but what about the situation for Algerian merchants trading abroad? A number of the articles of treaties between Algiers and foreign powers contained reciprocal clauses, so did the Algerian authorities expect a similar degree of reciprocity in case of legal disputes in European courts? It is worth dwelling on why this question has not been asked. The literature on commercial litigation within the wider Mediterranean is slowly growing, but Ottoman North Africans, and Ottomans in general, are missing<sup>17</sup>. In part this might be a chronological issue; Daniel Panzac pointed to the first decade of the nineteenth century as the moment that North African merchants and shipping began to arrive in Mediterranean ports, following the demise of corsairing as a major activity<sup>18</sup>. It may also be that there has simply not been sufficient studies on *both* sides of the Ottoman-European relationships, in order to view commerce «all of a piece»<sup>19</sup>. Yet, with some digging, one finds Ottoman and North African merchants, and their factors, across the Mediterranean in the second half of the eighteenth century. In part, the absence of such individuals has to do with the source base; searching for Ottoman or North African litigants in European commercial courts is far from easy. Beyond this, however, it is perhaps due to the fact that many of the documents surrounding such cases, rare as they may be, are in a variety of languages, including Ottoman Turkish, Arabic, Italian, and Spanish. Bundles of multilinguistic scribbles are often ignored. But in a large part it seems to be that, with all the focus being on the litigations of European merchants in the wider Ottoman realms, and on the impact of piracy and corsairing on European commerce in the seventeenth and eighteenth centuries, the fate of Algerian and Ottoman merchants who got into trouble at sea has simply not been of interest to a one-sided narrative. At the same time, the courts where such litigations might occur, the admiralty and vice-admiralty courts (and their equivalents) in Britain, France, and the Netherlands, have also received short-shrift in the historiography<sup>20</sup>.

### *The case of Giovanni Xeno*

The bundle consists of twenty-five individual items signed off by the plaintiff, Giovanni Xeno. This individual, who will be an integral

subject in a forthcoming monograph on Algerian merchants in commercial dispute with European merchants and courts, was an Ottoman Greek subject born on the isle of Patmos, but who seems to have spent most of his working life in Algiers. His identity, therefore, is not clear. From the mentions of his cases I have found in the Ottoman archives in Istanbul, he is simply referred to either as a *Rūm zimmi* – a protected Ottoman non-Muslim of the Greek Orthodox confession – or as a *Devlet-i ‘Aliye re‘āyā* – a subject of the Sublime (i.e. Ottoman) State<sup>21</sup>. Therefore, from the Ottoman perspective, he remained an Ottoman subject, not least because Algiers remained an Ottoman territory. Moreover, the British consul in Algiers, James Bruce, referred to Xeno as «a Greek subject of the Grand Signor», thus fitting in with the Ottoman definition<sup>22</sup>. As an Ottoman subject, he was therefore entitled to the protection of the provisions of the Ottoman-British Capitulations of 1675. Yet, at the same time, as a resident of Algiers working for Algerian clients, he would have also been protected by the British treaties with the Algerian Regency, most recently renewed in 1762 from the perspective of this case. Both these treaties were commercial in nature, with the specific aim of ensuring the smooth transaction of peaceful commerce. However, such treaty protection was not brought into account when Xeno stepped before the British vice-admiralty court in Gibraltar, and the purpose of this paper is to examine the documentation he brought to that court and the narratives they presented, and to try to make sense of a legal judgement that did not consider his proofs as valid.

The events that brought Giovanni Xeno to Gibraltar require a brief narration, compiled from Xeno’s own account, the court documents, and the summary of James Bruce<sup>23</sup>. Algiers was on the verge of a major crisis owing to a series of failed harvests, part of a wider famine across the Ottoman realms in the 1760s<sup>24</sup>. Consequently, the Dey of Algiers, Baba ‘Ali Pasha, came to an arrangement with Sultan Muhammad III of Morocco to ship grain from the Moroccan ports, and tenders were offered to Algerian merchants to take part in this project. This also meant business for the ships of the French, Dutch, and British engaged in freighting in the Western Mediterranean, an activity that had been a crucial part of their presence in the Mediterranean since the later sixteenth century<sup>25</sup>. One of the most prominent Algerian merchants of the day, ‘Ali Hoca, entered into an agreement with the Moroccan sultan’s agent at Tetouan, Muhammed Ben-Taleb, facilitated by Giovanni Xeno who would act as the supercargo. The role of the supercargo, a legal category developed in the British context of the seventeenth century, was to protect the interests of the merchants purchasing goods to be

freighted in port and on their journey, and as such, Xeno would travel with the freight on behalf of 'Ali Hoca and Ben-Taleb<sup>26</sup>. The freighting aspect of the deal was arranged on behalf of two merchants resident in Livorno, Lefroy (British of Huguenot descent) and Charron (a French subject), through their agent in Algiers, Peter Cruise. As a major commercial emporium and *portofranco*, Livorno served as a centre of Mediterranean shipping, and Lefroy and Charron provided ships for numerous voyages for merchants going to and from Algiers<sup>27</sup>. The chosen freighter was Patrick Hayes, an Irish subject of Britain, and his ship the *Experience*. The contract was therefore made between Xeno as supercargo and Cruise as broker, and the charter-party agreement for freighting made between Hayes as captain and Cruise on behalf of Charron & Lefroy. The contract stipulated that Hayes would be paid within twenty days of discharging the cargo at Algiers, and that he would follow all the instructions of Xeno in his capacity as supercargo, a position that afforded him great power as well as responsibility.

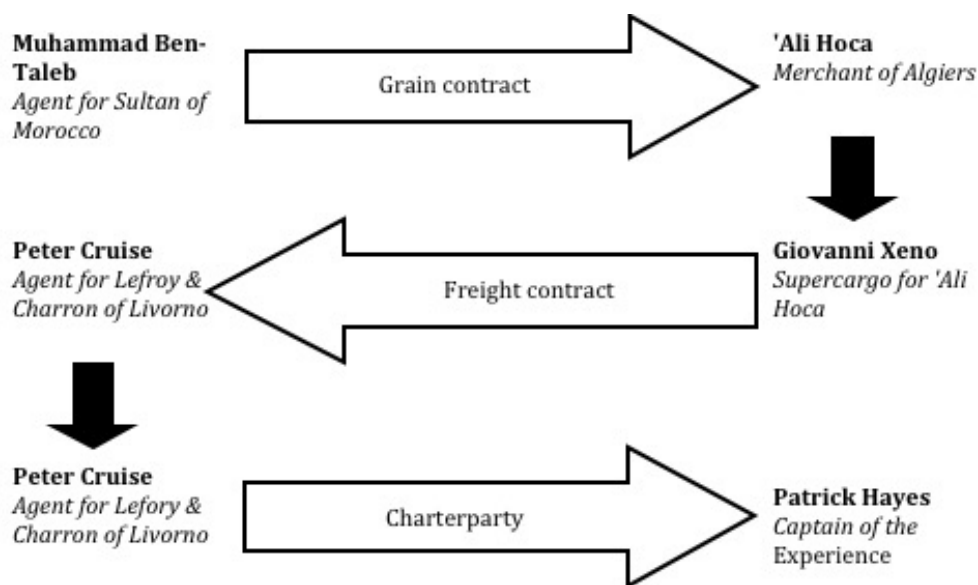


FIG. 1. The contractual agreements for shipping wheat from Morocco to Algiers, 1763.

Terms agreed, Hayes and Xeno set sail for the port of Mahdiya (also called Mamora) in January 1764. Hayes, it transpires, had got himself into a significant amount of debt in Livorno, and rumours abounded that he had insured his ship multiple times with a view of wrecking it off the North African coast and claiming insurance monies to cover his debt, very likely an example of insurance fraud<sup>28</sup>. Indeed, Xeno claimed, he tried to dispose of the ships cables and anchors before leaving, and attempted to run aground off Majora, but failing this, he ended up in Gibraltar. Xeno left to go to Tetouan to confirm the pick-up point



with Ben-Taleb, and instructed Hayes to meet him at Mahdiya, but not to enter into the harbour, which was protected by a barrier that made it difficult for larger ships to cross. Seeing a nice opportunity to wreck the ship, Hayes attempted to cross the barrier in poor weather, but the waves lifted him over and safely into the harbour. By the end of April 1764, all the grain had been loaded onto the *Experience*, and the sultan's own pilot, Salha Reis was sent to Mahdiya to help guide them over the port barrier; Hayes, however, refused to move, desiring to delay the journey. Soon after this delay, Xeno fell gravely ill, and was bed-ridden for several months, and, despite instructing Hayes to leave under the guidance of the sultan's pilot, the cargo remained in Mahdiya. By August Salha Reis was required elsewhere, and he had gone by the time Xeno recovered at the end of that month. With Xeno back, Hayes tried to persuade him that it would be better to sell the grain in Spain, where a higher price could be fetched; this would also negate the earlier contract, removing any liability for the delay. Xeno, of course, refused, and demanded that they go immediately to Algiers as planned, but Hayes ignored him entirely and took him and the ship by force back to Gibraltar. There, he met with several other Irish merchants – Peter Cruise of Algiers and Michael Murphy and Francis Butler of Gibraltar – and they conspired to sell the wheat. After again failing to persuade Xeno to join them in their scheme, Hayes went to the Vice-Admiralty Court and demanded immediate payment for his freighting charges from Xeno or security for it, on the basis, he claimed, that half of the cargo was rotten due to the time spent waiting at Mahdiya.

It is at this point, then that Xeno began collating and presenting his evidence to the Vice-Admiralty Court. Some of the physical evidence, notably the cargo, has not survived, although Xeno presented a sample to the Court to prove that it was not rotten as Hayes had claimed. However, the paperwork was compelling in proving the validity of the contract and the truth of Xeno's narrative of events, and this paperwork deserves some attention. There was an Italian declaration dated 11 January 1764 registering the charter-party agreement with the chancery of the British consulate, attested by the consul James Bruce, in which it was specifically stated that Hayes would be obliged to «fully execute [Xeno's] orders»<sup>29</sup>. By another sworn attestation, again by Peter Cruise (in English), Xeno's claim that Hayes had tried to sell the ship's cables and anchors as a precursor to intentionally wrecking it for insurance purposes was proven<sup>30</sup>. The majority of the rest of the documentation consists of various letters and attestations giving weight to Xeno's version of events. Exhibit «C» was a letter sent by a Captain Antonio Gaibisso moored in Gibraltar, who had also been

employed in freighting grain to Algiers. The document, attested by the Genoese consul in Gibraltar, Don Bartolomeo Dagnino, confirmed that the weather had been bad during Hayes's arrival in Mahdiya, and that «the aforementioned desperate entry [over the harbour barrier] was disapproved of by all, [he] not having received the permission of the King of Morocco nor of his charterer to enter»<sup>31</sup>. A letter from Hayes to Xeno claimed that Salha Reis had deemed the ship in an unfit condition, saying that «we are too heavy to leave from this port, and gave orders not to load any more», with Hayes claiming that «the wheat weighs so much that it pushes the boat down [into the water]»<sup>32</sup>. What is particularly interesting about much of this correspondence, particularly that of Hayes to Xeno, is the language that is used, which seems to be a form of *lingua franca*, heavily influenced by Spanish, perhaps an example of «la bastarda lengua» of Don Qixote fame<sup>33</sup>. The vocabulary shows a wide range of influences, including Spanish, Italian, Catalan, and French, as well as non-standard grammar, was a product of Western Mediterranean interculturality, used in this case between a Briton and an Ottoman Greek shipping from Morocco to Algiers<sup>34</sup>.

Returning to our narrative, a declaration sent from Salé in Morocco, signed by a Pietro Suchitta and, in Arabic, an 'Abd al-Sadiq and the Moroccan agent, Muhammad Ben-Taleb, (their names prefaced by a simple *kataba*, «thus wrote», with Ben-Taleb using the title, *al-ḥājj*) contradicted Hayes's letter by claiming that the ship had been laden in the proper manner («cariceatta [*sic*] nella dovuta forma»)<sup>35</sup>. This statement was attested by the Dutch consul in Salé, Fransisco Rossignol, who also confirmed the validity of the «Moorish signatures» («las firmas moriscos»). Nonetheless, having been told to move more quickly by Xeno, Hayes wrote back and claimed that he was acting in conformity to the contract, but that the ship had not taken on this much water with a cargo of 200 tons on a previous voyage from Gibraltar to Villa Franca<sup>36</sup>.

A number of letters written at around the same time further tried to build evidence for his story, including false claims that he had travelled to Salé over twenty times to try to get a pilot to leave Mahdiya, accusing the pilot Salha Reis of trying to extort a hundred *zecchini* (gold coins) from him for the service<sup>37</sup>. He also tried at this early stage to pick apart the contract, claiming that «my contract says to lade on the coast of Salé... it does not say at the barrier of Mahdiya»<sup>38</sup>. The charter-party says quite the opposite, with the first article of the English version specifically stating that the captain was obliged

to navigate... to the eastward, to the westward, to the right hand and to the left, within and without the Mediterranean... and to go to all those ports and scales which shall be required by the factors or commissarys of the freighter or by his supercago who may be appointed by them, and such places and ports and understood to be practicable, and to which other ships have usually resorted or repaired<sup>39</sup>.

There was no mention of Salé as the sole destination; Hayes seems to be referring to a letter sent by Cruise, attached to the charter-party, that simply stated that he had «no interest in the affreightment of your ship for her present intended voyage to the coast of Sally further, than to oblige my friends Messrs Lefroy & Charron of Leghorn and Signor Giovanni Xeno»<sup>40</sup>. Hayes therefore selectively chose elements from the agreement and correspondence in order to undermine Xeno's authority and credibility.

More than this, an extracted record from the chancery of the British consulate in Algiers notes that Salha Reis, the sultan of Morocco's pilot, arrived in Algiers as the captain of a Moroccan corsair ship in February 1765, giving a full account of Hayes's refusal to use his services and leave Mahdiya<sup>41</sup>. Moreover, in his letter to Bruce at the end of August 1764, falsely claiming to be in Salé, Hayes announced his intention to «stop in Gibraltar but twenty four hours» before going on to Algiers, before noting that «my charterparty is finished with my freighters last month, and Mr Xeno will neither pay me or give me bill for my freight, for which was obliged to protest against him and hold him and others responsible to me for it»<sup>42</sup>. Another examination of the charter-party agreement, which was dated 24 December 1763, gives the duration of the voyage as «for four months certain, and three months uncertain»<sup>43</sup>. In this respect, then, Hayes was right, with the term of the contract at the end of July; however, the delay was due to Hayes's refusal to leave Mahdiya, as Xeno would argue. With all of this evidence, Xeno had presented a number of clear facts to the Court: that Hayes had contractually agreed to follow his orders; that Hayes had recklessly entered the harbour of Mahdiya, and then refused to leave when told to by Xeno and Salha Reis; that Hayes had lied about the ship being overburdened, and not having assistance to leave the port; and that it was Hayes's fault that the voyage was delayed past the contractual date, not Xeno's.

In fighting off the claims of Hayes that he was owed money for the uncompleted voyage, Xeno therefore had very strong evidence to support his case and defend himself against Hayes's allegations. However, the judge of the Gibraltar Vice-Admiralty Court, Hew Craig, thought

differently. In a five page ruling given on 20 September 1764, Craig decided that the entire case essentially depended on whether or not the extended stay of the *Experiment* at Mahdiya was the fault of Hayes or of Xeno. Early on in his judgement, Craig declared that the ship «remained in the River of Mamora [the Sebou River] under the directions of the Respondent [Xeno] from the seventh day of March last... until the third day of September instant»<sup>44</sup>. Therefore, all of Xeno's proofs relating to Hayes's conduct, signed and attested by naval captains, consuls, and merchants, meant nothing; Hayes's account won the day. Consequently, Xeno was given two options: either pay Hayes what he was owed under the current charter-party and enter in a new agreement to ensure that the grain was freighted to Algiers; or, if payment was not forthcoming, Xeno would be forced to surrender the cargo for it to be sold by public auction to pay off the debt. Xeno, protesting the judgement, refused to pay, and consequently the grain was seized to be sold off.

Feeling aggrieved, Xeno began a form of appeals process to ensure that the cargo was sold fairly and openly, and that the monies would be distributed by the Court in accordance with Craig's ruling. However, Hayes spirited off with most of the cargo to sell for his own profit. Xeno wrote a memorial to the Court demanding a copy of the certificates of sale for the public auction, but none were forthcoming<sup>45</sup>. Xeno's concern was based on an accusation made by Hayes that the value of the cargo was «not being sufficient to render one fourth part of the import of the freight due to him», and was suspicious that he was being swindled again; after all, the grain was supposed to be sold in Gibraltar by public auction, not taken by Hayes to sell on his own account<sup>46</sup>. Nonetheless, Hayes left Gibraltar without leaving any documentation, but a number of documents within the legal bundle show the fate of some of this cargo<sup>47</sup>. A statement from one Giuseppe Mortedo in Gibraltar – attested by the Genoese consul, Bartholomeo Danino – recorded that he had loaded a shipment of grain sold by the *Experiment*, and took it to be sold along the Spanish coast, with 190 *fanegas* (equivalent to about fifty-five litres) sold in Ercia for 40 *reales de vellón* per *fanega*, 63 *fanegas* sold in Almuñecar for 44 *reales de vellón* per *fanega*, and a further 142 *fanegas* sold in Jurago at 37 *reales de vellón* per *fanega*, a total of 395 *fanegas* (over 21,700 litres) of grain bringing in the significant sum of 15,626 *reales de vellón*<sup>48</sup>. A second statement from Gibraltar, this time from one Angelo Palmaro, a major dealer in grain who sold part of the cargo of the *Experiment* in Malaga for 37 *reales de vellón* per *fanega*<sup>49</sup>.

Hayes had therefore taken part of the grain and sold it in Spain himself, rather than relying on the public auction ordered by Craig. As well as gathering information on the price the grain was being sold for, Xeno also sought out testimony over its quality, which Hayes had called into question, and the public auction in Gibraltar had seem part of the grain sold – to Hayes’s co-conspirators Butler and Murphey – as damaged corn. However, two merchants resident in Gibraltar, the Genoese Giovanni Battista Vasado and the Livornese Giovanni Manzani, who had inspected the grain held by the *Experiment*, attested that the grain was «completely dry» (*asciutto totalmente*), of a «good quality» (*buona qualità*), and, moreover, that Hayes «did not unload all of the cargo but rather left it in the hold, and a great part of the grain was left inside the ship», following which he sailed for Malaga from the middle of October to the beginning of November in 1764<sup>50</sup>. Moreover, Xeno produced a very important document from the start of the loading of the grain in Mahdiya in May 1764, which is transcribed in full on the following page with a translation from the Italian provided<sup>51</sup>. Hayes and Xeno used a standard form of document, a *polizza di mare*, that was used, with slight variations depending on place, by merchants of all description across the Mediterranean and beyond in this period. Theirs came from Livorno, but the name of that port was simply crossed out and replaced with Mamora (Mahdiya). This small little piece of paper proves that the cargo had been in a good condition when it was put on board the *Experiment*, and that Hayes agreed that the cargo would reach its destination «dry, complete, and in a good condition». Despite a disclaimer written by Hayes in his usual *lingua franca* that he did not know the true weight and contents of the goods he was carrying – a standard disclaimer, given that he had not personally measured and inspected the goods – he agreed that the cargo was in good condition when it went on his ship. This is also a nice example of a document being used outside of its intended area of jurisdiction, with the formula it provided recognised as being as valid for a British and Ottoman merchant lading goods in Morocco bound for Algiers as it was for Livornese merchants, meaning, presumably, that it spoke to a generally acknowledged customary framework of documentation.

As a final piece of evidence to show the criminality of Hayes’s actions, Xeno secured the testimony of a number of merchants in Livorno, sealed with the official seal of the Grand Duchy of Tuscany, giving details of the fluctuations in the price of grain sold between 1 January and 1 April 1765, and demonstrating that Hayes had not got the best possible price for the grain he sold<sup>52</sup>. All of these factors together –

Hayes delaying the departure from Mahdiya before taking the cargo to Gibraltar contrary to the contracted agreement, Craig ordering the cargo to be sold to pay the freighting charges for an incomplete voyage, and Hayes taking most of the cargo and selling it for his own profit in Spain – gave Xeno the confidence, backed by his mound of legal proofs, to petition King George III to seek justice for his losses. Indeed, the final exhibit in his case file, labelled «AA», provides a detail of his losses, amounting to 5,668 Algerian *zecchini* in lost capital, and a further 2,267 *zecchini* in expenses incurred on legal, travel, and living costs between September 1764 and August 1765 caused by «the unjust sentence» (*la ingiusta sentenza*) passed by Craig<sup>53</sup>.

### *Implications of the case*

One question poses itself quite clearly from this whole mess. At the beginning of Craig's judgement, he had given Xeno two options: either to pay Hayes the money owed, or that the cargo would be taken as security for the debt and sold if necessary. Why could the cargo not simply act as a security until its arrival at Algiers? During his initial case at the Gibraltar court, Xeno had offered to pay 400 *zecchini* of his own money towards the supposed debt in order to show good faith, with the rest of the cargo acting as security until the completion of the voyage in Algiers. This was refused by Craig, and he seized Xeno's money and deposited it with the Court to avoid Xeno trying to offer it again. Craig provided a further narrative to his judgement that explains why this would not be possible. First, he saw the corn not as the property of Ben-Taleb or of 'Ali Hoca, but of Charron & Lefroy through Cruise, meaning that he saw Xeno's role not as supercargo, but as «the person who procur'd leave to load in Barbary, such licenses being often produc'd by Moors or Jews»<sup>54</sup>. He sided with Hayes's version of events, that the cargo was too much for the ship to carry, meaning that it was not his fault that the departure from Mahdiya was delayed.

The most telling revelation, however, comes with his third observation. Craig reported that Ben-Taleb had written from Tetouan to the governor of Gibraltar, General Cornwallis, proposing to arrange payment of security via a Mr Pariente, a Jewish resident of Gibraltar acting as Ben-Taleb's agent, to be witnessed by Cruise and Hayes's business associate Francis Butler and a Moroccan envoy passing through the town, but the scheme fell through. The reason given by Craig was that «the security of a Moor residing in Barbary being refus'd by the

Plaintiff, was not thought sufficient or responsible to the Judge», and that he did not wish to refuse «a British subject what appear'd to him [Craig] and in the opinion of the merchants of Cadiz and Gibraltar to be his just right»<sup>55</sup>. Here, we are not dealing with a case based on legal proof, but on the judge's decision that Ben-Taleb's security was not sufficient, despite his great wealth and international connections simply because he was a «Moor», that Hayes's account was more convincing than Xeno's despite his significant documentation, and that he had interpreted the charter-party as being a contract between Hayes and Cruise on behalf of Lefroy & Charron, rather than acknowledging Cruise's own statement registered in the British consulate in Algiers that the hire of the ship had been made solely on the order of Xeno<sup>56</sup>. This seems to be an example of a judge making his ruling along national lines to protect a national interest, rather than following legal processes based on documentation and impartiality.

Reflecting on Xeno's case, consul James Bruce wrote that «I have heard that by our laws, even the strongest conviction of a judge is not to sway him in time of trial where all is to be determined by evidence»<sup>57</sup>. Clearly, Craig made a conscious decision not to favour Xeno's case, based on his prejudice towards the reliability of North African merchants and his concern of ruling against a British merchant in favour of an Ottoman subject. Whilst I have unbeen able to find much detail on Craig himself, Stephen Constantine's study on the history of Gibraltar shows the importance of British privateering to the town's economy, and so it is not inconceivable to imagine Craig condemning a North African shipment for economic benefit<sup>58</sup>. Yet beyond prejudice or conviction, there is also the question of legal basis. No law was cited in his judgement, be it admiralty or state, and no legal methodology was presented. In part, I suspect, this is due to a lack of familiarity on Xeno's part with the British legal system, but also due to the lack of Ottoman or Algerian diplomatic representation to protect mercantile interests. Given that Xeno was a resident of Algiers freighting goods on behalf of 'Ali Hoca, a major Algerian merchant who also worked for the Dey, it is not unreasonable to suppose that some care might have been taken to examine the treaties between Algiers and Britain. Had this treaty been taken into account, then a number of infractions would have appeared. For instance, article 14 of the 1686 version of the treaty, which continued into later agreements, specifically that:

*English text:* No captain or commander of any ship or vessel belonging to his said majesty's subjects shall be obliged against his will to take any goods, to carry them, or make a voyage to any place he shall not have a

mind to go to: And neither the English consul nor any other subjects of the said king shall be bound to pay the debts of any other of his majesty's subjects, except that he or they become sureties for the same, by a publick act.

*Ottoman text:* Moreover, [the subjects of Algiers] may not consign [British ships] on journeys if it is not with their own consent; and moreover, if any of the British subjects, whether it is the British consul or any other, is a debtor, and there is not a surety for the payment of the debt, the debt of the aforesaid may not be paid by [the Algerians] transferring the debt to another person; if it appears to be voluntary, a number of individuals can act as surety for the debt<sup>59</sup>.

And if the British authorities wanted to treat Xeno by his origins and go by the Ottoman Capitulations rather than the Algerian treaties, they would have found a very similar article (number 4 by the Ottoman reckoning and 8 by the British) on the subject of debts:

*English text:* If any Englishman, either for his own debt, or for his suretyship, shall absent himself, or make escape away, or shall be bankrupt, the creditor shall only pretend his debt upon his own debtor, and not of any other English; and if the creditor have not authentick Hoget or Bill of Suretyship made by an Englishman, he shall not pretend his debt of any other Englishman.

*Ottoman text:* If one of the British debtors or guarantors flees or becomes bankrupt, the obligation of the debtor can be demanded. In taking legal action, if there is not a guarantor together with a legal proof holding another person [responsible], the said debt may not be demanded from another<sup>60</sup>.

Algerian and Ottoman treaties with Britain made it very clear that ships should not be taken on voyages without the express consent of their owners and passengers, and that individuals could not be responsible for the debts of others. Although these articles speak specifically about rights accorded to British subjects, reciprocity was to be inferred, especially in the Algerian treaty that was more explicitly bilateral. As such, by taking 'Ali Hoca's cargo and Xeno to Gibraltar without their permission, and by confiscating Xeno's money and making him personally responsible for the payment of the freighting charges, Hayes and Craig were going against the spirit, if not the letter, of the British commercial agreements with Algiers and the Ottoman Empire designed to ensure peaceful commerce. Such a legal background gives an extra degree of urgency to Xeno's



declaration to the Gibraltar admiralty court, that «having been brought to this place by the said captain [Hayes] against the course of his voyage and against his will, [Xeno] comes to interrogate the said captain by the means of this Court, for the release of the ship, and for the completion of his voyage»<sup>61</sup>. However, despite petitioning the British monarch and seeking justice for many years after the events of 1764 and 1765, Giovanni Xeno never found justice.

Taking a microhistorical approach to the question of the legal proofs of Ottoman merchants, and particularly North African merchants, in European courts, of course presents some problems. With Xeno's case so unusual in the quantity of documentation preserved and its complicated and convoluted nature, any temptations to draw more general conclusions must be tempered. Further comparative case studies are needed, particularly with a view to examining the different sorts of documentation involved. However, if we are to take economic spaces as relational spaces, defined by habitual and customary practices as Wolfgang Kaiser has proposed, then cases such as this are important examples of what happens when voyages are interrupted, and when the motivations of the practitioners of economic activities, commercial and legal, do not act as they ought<sup>62</sup>. Xeno, an Ottoman Greek, was navigating a complex commercial and legal space, travelling from (not really very Ottoman) Algiers to Moroccan Mahdiya to British Gibraltar, working on behalf of an Algerian and a Moroccan freighting wheat on a ship captained by an Irish subject of Britain under the auspices of a British resident of Algiers and a British trading house in Livorno. In gathering his legal evidence, he compiled papers in Italian, English, Spanish, and Arabic, witnessed by British, Dutch, and Genoese consuls and bringing the testimony of Moroccans, Genoese, Livornese, Gibraltarians, and British together to construct a robust legal defence. The documentation he provided was standardised, with statements sworn by set phrases such as *attestiamo con nostro giuramento* («we attest by our oath») and witnessed by important legal figures in the consuls, and the use and adaptation of the Livornese bill of lading demonstrates that these proofs as objects circulated around the Mediterranean, widely accepted and widely used. This, then, is the world in which Xeno was a small but integral part, multi-lingual, legally plural, and intensely interconnected.

What part, then, do the Vice-Admiralty Court at Gibraltar and individuals like Hayes and Craig play in such a world? Hayes, with

his debts across the Mediterranean, attempted insurance fraud, and falsification of documents and narratives, represents a merchant, of which doubtless there were many, attempting to use the complexity of this commercial space against his fellow traders. He saw opportunities, not least with the grain over which Xeno meant to keep watch, and used them to his advantage. Craig, however, perhaps represents something quite different. In defending his ruling, he claimed that «if any error has been committed by him during the course of this affair, it will appear not intentional, and will be imputed an error of the head and not of the heart»<sup>63</sup>. Yet, clearly, his judgment was made precisely on instinct and prejudice, of the heart rather than the head. The head would have understood that major mercantile players 'Ali Hoca would have been perfectly capable of paying Hayes's freighting costs in Algiers, that the evidence presented by Xeno taken from a wide range of sources shows that he was blameless for the delay at Mahdiya and was undermined by Hayes, and that, at the very least, the public auction of Xeno's cargo should have been held openly. It was the heart that took Xeno's 400 *zecchini* to avoid a swift resolution of the case, that judged the surety of a «Moor» merchant not «sufficient» or «responsible», and that refused to acknowledge the strength of the legal case presented by Xeno.

More than this, there was an absence of legal principle. Not only did Craig ignore the multiple assertions in the charter-party agreement that Hayes was bound to obey Xeno's commands, he also ignored the wads of evidence testifying that Hayes had indeed ignored Xeno's instructions by not allowing Salha Reis to take the ship out of Mahdiya, and by going to Gibraltar rather than to Algiers. This is where Xeno's world hits a brick wall. Were this case reversed, and a British plaintiff taking an Algerian respondent to court over a commercial dispute in Algiers, the case would have been heard by the dey's divan with the consul in attendance, in accordance with the provisions of the Algerian-British treaty. With no Algerian or Ottoman consuls in Gibraltar, and no attempt by the British authorities to consider treaty obligations, Algerian or Ottoman, Xeno was stuck. This, perhaps, raises the most significant issue brought out by this episode. For Craig, it was more important that a British subject secured justice in a British court, than it was for an Ottoman subject to have his proofs considered fairly, and, what is more, he could choose this course of action with impunity; Algerian warships were not likely to wreak fiery vengeance against Gibraltar in the 1760s, and Bruce's voice of dismay seems to have been a lone one. Without the protective net provided by consular networks ensuring the fair application of legal principles and articles found in commercial treaties, pluralistic commercial practices would find themselves challenged by

monolithic judicial (or not so judicial) authorities and monochromatic national interest.

A di 6 di Maggio 1764 In Livorno Mamora  
Ha caricato con il Nome di DIO, e di buon salvamento una volta tanto in questo Porto di Livorno Mamora il Sig<sup>re</sup> Giovanni Xeno p Ordine del Sig<sup>re</sup> S. Petro Cruce d'Algeri p Conto è Resigo dell' Ss. Lefroy è Charron di Livorno  
sopra La Nave nominate Esperimento Cap<sup>no</sup> Patrizio Hays Bretanico  
per condurre, e consegnare in questo suo presente viaggio in Algeri al' sud<sup>o</sup> Sig<sup>re</sup> Cruce ò chi p esso sarà le appiè nominate, e numerate Mercanzie, asciutte, intiere, e ben condizionate, segnate come di contro, e così promette detto Cap<sup>no</sup> a suo salvo arrive consegnarle, e di nolo li sarà pagato a Tenor Del' Contratto e per fede del vero sarà questa con alter simili fermata da detto Cap<sup>no</sup> e non sapendo scrivere, per lui da terza persona, ed una complita, l' altre restino di nullo valore. N.S. l'accomagni a salvamento. Amen.  
N<sup>o</sup>203 : Dicco due Cento tre Saffe di Grano Con almudi trente otto, è due terzi che Corrispondono a due Terzi del' Carico del' Sud<sup>o</sup>  
N<sup>o</sup>1: Dicco una Cassa Merci  
N<sup>o</sup>1:340: Dicco un' Groppo Segnato Come di Contro entrovì Zecchini di Algeri tre Cento quaranta Con due Sigilli.  
Là misura del' Grano no sà Nula Scendendo devo Circa dal' Carigo y la Cassa dè Merci nò sa que Che – Patrizio Hays

On the 6th day of May 1764 In Livorno Mahdiya  
On this occasion, In the name of God, and of good safety, has shipped in this port of Livorno Mahdiya Mr Giovanni Xeno on the orders of Mr S. Peter Cruise of Algiers on the account and risk of Messrs Lefroy and Charron of Livorno  
onto The ship called The Experiment, Captain Patrick Hayes, British [subject]  
to carry and consign in this his present voyage to Algiers to the said Mr Cruise or those who might act for him there  
the below named and numerated merchandize, dry, complete, and in good condition, checked off, and as such the said Captain promises on his safe arrival to consign it, and the freight charges will be paid to him  
In accordance with the contract  
and by true faith this will made be as with other similar [documents] by the signature of the said Captain and, not knowing how to write, for him by a third person, and the one being completed, the others remaining are of no value; our Lord accompany him in safety. Amen.  
No. 203: Item, two-hundred-and-three saffes of grain with thirty-eight-and-two-thirds almudis, which corresponds to two-thirds of the cargo of the aforementioned  
No.1: Item, one crate of goods  
No.1:340: Item, a marked packet, containing three-hundred-and-forty zecchini of Algiers with two seals not know the measure of the grain, I must put it in the hold, I do not know about the rest of the cargo and the crate of goods. – Patrick Hayes

FIG. 2. The Bill of Lading between Xeno and Hayes (handwritten text in *italics*).

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## Notes

<sup>1</sup> Ch. BAYLY, *The Birth of the Modern World, 1780-1914: Global Connections and Comparisons*, Oxford 2004, part 1 in particular. See also: A. THOMSON, *Barbary and Enlightenment: European Attitudes towards the Maghreb in the 18th Century*, Leiden 1987, especially pp. 123-42.

<sup>2</sup> An interesting, and in some ways comparable, case has been examined by G. CALAFAT, *Ramdam Fatet vs John Jucker: Trials and forgery in Egypt, Syria, and Tuscany, 1739-1740*, in «Quaderni Storici», 143 (2013), pp. 419-39.

<sup>3</sup> D. PANZAC, *Les Corsaires barbaresques: La fin d'une épopée, 1800-1820*, Paris 1999; M. HOEXTER, *Endowments, Rulers, and Community: Waqf al-Haramayn in Ottoman Algiers*,

Leiden 1998; T. SHUVAL, *La ville d'Alger vers la fin du XVIIIe siècle*, Paris 2002; L. MEROUCHE, *Recherches sur l'Algérie à l'époque ottomane*, Paris 2002; F. LOUALICH, *In the Regency of Algiers: The human side of the Algerine Corso*, in M. FUSARO, C. HEYWOOD, M.-S. OMRI (eds), *Trade and Cultural Exchange in the Early Modern Mediterranean: Braudel's Maritime Legacy*, London-New York 2010, pp. 69-96; F. LOUALICH, *La vie urbaine au Beylik de l'Ouest Algérien au XVIIIe siècle*, in «Revue d'Histoire Maghrébine», 85/86 (1997), pp. 199-203; M. HOEXTER, *Charity, the poor, and distribution of alms in Ottoman Algiers*, in M. BONNER, M. ENER, A. SINGER (eds), *Poverty and Charity in Middle Eastern Contexts*, Albany 2003, pp. 145-64; M. AMINE, *Conditions et mouvements des échanges de la Régence ottomane d'Alger*, in «Revue d'histoire maghrébine», 69/70 (1993), pp. 11-48.

4 S. BEN-MESSAHEL, *Médiation interculturelle et interdisciplinarité*, in ID. (ed.), *Des frontières de l'interculturalité. Étude pluridisciplinaire de la représentation culturelle: Identité et altérité*, Villeneuve d'Ascq 2009, pp. 9-12, p. 9. «Ainsi, le fait d'établir des liens de sociabilité entre des personnes issues de cultures différentes et qui résident ou non sur le même territoire frontalier, constitue une transgression de la frontière séparant les microcosmes culturels, et génère un dialogue interculturel dont l'objectif est de prendre en compte la diversité et la caractère hybride du monde moderne».

5 M. FUSARO, *After Bruadel: A reassessment of Mediterranean history between the Northern Invasion and the Caravane Maritime*, in *Trade and Cultural Exchange* cit., pp. 1-22, p. 7.

6 For example on «fluidity»: D. CATTERALL, *Interlopers in an intercultural zone? Early Scots ventures in the Atlantic World, 1630-1660*, in C. WILLIAMS (ed.), *Bridging the Early Modern Atlantic World: People, Products, and Practices on the Move*, London-New York 2009, pp. 75-96, especially pp. 75-6.

7 T. FABRE, *Frontiers and passages*, in «Review of Mediterranean Politics and Culture», 2 (1997), pp. 8-16, pp. 12-3.

8 On legal proofs in the Ottoman context see: B. ERGENE, *Evidence in Ottoman courts: Oral and written documentation in early-modern courts of Islamic law*, in «Journal of the American Oriental Society», 124/3 (2004), pp. 471-91; M. VAN DEN BOOGERT, *Capitulations and the Ottoman Legal System: Consuls, Qadis, and Beratlis in the Eighteenth Century*, Leiden 2005, especially pp. 207-62.

9 [Jacques Phillippe] LAUGIER DE TASSY, *Beschryving van het Koningrijk en de Stadt Algiers*, trans. unknown, Amsterdam: Marten Schagen, 1725; ID., *Historia del Reyno de Argel*, trans. Don Antonio de Clariana, Barcelona: En la Imprenta de Juan Piferrer, 1733; ID., *A Compleat History of the Piratical States of Barbary: Viz, Algiers, Tunis, Tripoli, and Morocco*, trans. Joseph Morgan, London: For R. Griffiths, 1750.

10 ID., *Histoire du Royaume d'Alger*, Amsterdam: Chez Henri du Sauzet, 1725, p. 245. «La justice tant pour le civil que pour le criminel se rend sur le chap, sans écritures, sans frais et sans appel, soit par le dey, soit par le cady, le chaya ou le rais de la marine; et dans les affaires contestées par les parties, il n'y a de délai que le tems nécessaire pour aller chercher les témoins, s'il n'y a pas des preuves suffisantes d'ailleurs».

11 For some recent examples, see: A. TINNISWOOD, *Pirates of Barbary: Corsairs, Conquests and Captivity in 17th-Century North Africa*, London 2010; F.C. LEINER, *The End of Barbary Terror: America's 1815 War Against the Pirates of North Africa*, Oxford 2006.

12 For comparison, see: M. AGLIETTI, *L'institutio consolare tra Sette e Ottocento: Funzioni istituzionali, profilo giuridico e percorsi professionali nella Toscana granducale*, Pisa 2012.

13 The National Archives, London, *State Papers* (hereafter TNA/SP), 108/13.

14 İvi: «On beğinci faşılıñ kâvl ve kararı oldur ki İngiliz kraluñ re'ayasından bir kimesne bir müsülmân ile veyâhûd Cezâ'ir hükmünde olan kimesneler ile da'vâları olsa mezkûrlaruñ da'vâları devletlü veyâhûd dîvân taraflarından faş olunur gayr-ı kimesneden olunmaya ve eğer beyninlerinde da'vâları olur ise ol zamânda İngiliz balyoz olan kimse da'vâları faş éder gayr-ı kimesneden olmaya».

15 Başbakanlık Osmanlı Arşivleri (hereafter BOA), Topkapı Sarayı Müzesi Defterleri (hereafter TS.Md) 7018/0002, fol. 8. «Ve İngilterelü ve añā tab'î olan yerlerin bâzargānları adamları ve tercümānları ve simsārları ile memālik-i mahrûsede bey' ve sirā ve virası ve ticāret ve kefalet-i huşuşları ve sâ'ir umûr-u şer'iyeleri vâk'a olduğda murādları olur ise kâzîye varub sebt-i sicil éderüb hüccet olalar ba'adehu nizā' olur ise hüccet ve sicile nazār olunub da'vāları hüccete muvāfık ise müceb-i hüccet-i şer'îye ile 'amel oluna ve mādāmki kuzātđan hüccetleri olmayub mücerred şāhid-i zūr ikāmet etmekle da'vāları istimā' olunmayub dā'imā hüccet-i şer'îye muqtāzāsınca icrā-yı hākk oluna [...] Ve İngilterelü ve añā-tābî' olanların da'vā ve huşümetleri ve sâ'ir umûr-u şer'iyeleri olduğda tercümānları veya vekīlleri hāzır olmadıkça hükkām-ı da'vāların istimā' ve faşl elemeyeler ve İngilterelüler'in birbirleriyle nizā'ları olduğdan elçileri ve konsolosları görüb kâzîler ve sâ'ir zābıt-ı kullarım karışmayub dā'imā āyîn ve 'ādetleri üzere faşl ve kıta' nizā' elemeyeler».

16 G. CHRIST, *Trading Conflicts: Venetian Merchants and Mamluk Officials in Late Medieval Alexandria*, Leiden 2012, pp. 239-41.

17 For instance: M. GREENE, *Catholic Pirates and Greek Merchants: A Maritime History of the Mediterranean*, Princeton 2010, pp. 38-45; M. GRENET, *A business alla Turca? Levantine trade and the representation of Ottoman merchants in eighteenth-century European commercial literature*, in M. ROTENBERG-SCHWARTZ, T. CZECHOWSKI (eds), *Global Economies, Cultural Currencies of the Eighteenth Century*, New York 2013, pp. 37-52; G. CALAFAT, *Osmanlı-speaking diasporas: Cross-diasporic relations and intercommunity trust between Marseilles, Tunis, and Livorno (1600-1650)*, in G. CHRIST et al. (eds), *Union in Separation: Diasporic Groups and Identities in the Eastern Mediterranean (1100-1800)*, Roma 2015, pp. 613-24; D. DO PAÇO, *Identité politique et grand commerce des marchands ottomans à Vienne, 1739-1792*, in «Mélanges de l'École française de Rome - Italie et Méditerranée modernes et contemporaines», 125/1 (2013); I. BAGHDIAZT MCCABE, *Opportunity and legislation: How the Armenians entered trade in three Mediterranean ports*, in V. ZAKHAROV, G. HARLAFTIS, O. KATSIARDI-HERING (eds), *Merchant Colonies in the Early Modern Period*, Abingdon-New York 2012, pp. 61-84.

18 D. PANZAC, *The Barbary Corsairs: The End of a Legend, 1800-1820*, Leiden 2005, p. 4.

19 C. HEYWOOD, *Book review of PANZAC: La caravane maritime: Marins européens et marchands ottomans en Méditerranée (1680-1830)*, in «International Journal of Maritime History», 18/1 (2006), pp. 411-3.

20 Indeed, the subject of this study, the vice-admiralty court in Gibraltar, seems yet to receive thorough scholarly attention.

21 BOA, Düvel-i Ecnebiye Defterleri, İngiltere (A.DVN.DVE(3)), 81/55; BOA/A.DVN.DVE(3), 81/56.

22 TNA/SP, 71/11, James Bruce to the Earl of Halifax, 18 March 1765.

23 TNA/SP, 71/11, Italian memorial of Xeno to Hew Craig, 5 October 1764; Bruce to Halifax, 18 March 1765; Memoriale di Giovanni Xeno sudito Ottomano contro il cap[ita]no Patrizio Hayes e contro il Giudice della Vicearmiralità di Giberalta, 5 August 1765.

24 Y. AYALON, *Natural Disasters in the Ottoman Empire: Plague, Famine, and Other Misfortunes*, Cambridge 2015, p. 18.

25 See, for example: M. VAN GELDER, *Supplying the Serenissima: The role of Flemish merchants in the Venetian grain trade during the first phase of the Straatvaart*, in «International Journal of Maritime History», 16 (2004), pp. 39-60.

26 On the role of the supercargo, see: R. DAVIS, *The Rise of the English Shipping Industry in the Seventeenth and Eighteenth Century*, London 1972, pp. 170-3.

27 There is an extensive literature on Livorno and its trade. See, for example: M. FUSARO, *Political Economies of Empire in the Early Modern Mediterranean: The Decline of Venice and the Rise of England, 1450-1700*, Cambridge 2015, pp. 90-109; C. TAZZARA, *Managing free trade in Early Modern Europe: Institutions, information, and the Free Port of Livorno*, in «The Journal of Modern History», 86/3 (2014), pp. 493-529; M.-Ch. ENGELS, *Merchants, Interlopers, Seamen and Corsairs: The «Flemish» Community in Livorno and Genoa, 1615-1630*, Hilversum 1997, especially part 1; F. TRIVELLATO, *The Familiarity of Strangers: The Sephardic Diaspora, Livorno*,

and *Cross-Cultural Trade in the Early Modern Period*, New Haven 2009, especially chapters 3 and 4; A. ADDOBATI, *Livorno: Fronte del porto. Monelli, carovane e bergamaschi della dogana, 1602-1847*, in *I Sistemi Portuali della Toscana Mediterranea: Infrastrutture, scambi, economie dall'antichità a oggi*, Pisa 2011, pp. 245-314; C. CIANO, *Uno sguardo al traffico tra Livorno e l'Europa del Nord verso la metà del Seicento*, in *Atti del Convegno «Livorno e il Mediterraneo nell'età Medicea»*, Livorno, 23-25 settembre 1977, Livorno 1978, pp. 149-168; D. SCHROETER, *The Sultan's Jew: Morocco and the Sephardi World*, Stanford 2002, pp. 39-44

28 A. ADDOBATI, *Commercio, rischio, guerra; Il mercato della assicurazioni marittime di Livorno, 1694-1795*, Roma 2007, *passim*; A. LEONARD, *Introduction: The Nature and Study of Marine Insurance*, in A.B. LEONARD (ed.), *Marine Insurance: Origins and Institutions, 1300-1850*, Basingstoke-New York 2016, pp. 3-24.

29 TNA/SP, 71/11, legal paper marked «A», Italian copy of the declaration of Cruise and Hayes at the British chancery in Algiers dated 11 January 1764, copy attested by Bruce 26 February 1765: «e d'esequier intieram[en]te il di lui ordine».

30 TNA/SP, 71/11, legal paper marked «B», English statement of Peter Cruise, dated Algiers, 2 August 1765.

31 TNA/SP, 71/11, legal paper marked «C», Italian statement of Antonio Gaibisso, attested by Bartolomeo Dagnino, dated Gibraltar, 15 December 1764. «dunque, la d[itt]a disperata entrata fù disapprovata dà ogni uno non essendovi l'ordine del' Rè di Marocco, né del Nollegiatore per entrare». There had long been a Genoese community in Gibraltar, which formed a significant part of the population, resulting in the need for a Genoese consulate in the territory.

32 TNA/SP, 71/11, legal paper marked «DE», Spanish letter of Hayes to Xeno dated Mamorra (Mahdiya), 25 April 1764: «estamos tropa carcada por sortir dè esta porta y dar ordina dè nò carcar mas [...] il' trigo ci que peso tanto de meter il bastimento tanto abasho».

33 MIGUEL DE CERVANTES, *El Ingenioso Hidalgo Don Qixote de la Mancha*, nueva edición, Madrid: Por Don Jaquin Ibarra, 1780, parte primera, tomo 2, 278. On *lingua franca*, see: G. CIFOLETTI, *La Lingua Franca Barbaresca*, Roma 2011; H. KAHANE, R. KAHANE, *Lingua France: The story of a term*, in «Romance Philology», 30/1 (1976), pp. 25-41.

34 To give a taste from Hayes's letter («DE»): «El pilote veni abordo esta mañana por mesurar quanto aqua pisca mè nave y trovata tredice è inidia y poca mas piedio el dico sè estamos tropa carcada por sortir dè esta porta y dar ordina dè nò carcar mas y que tenir poro de no pode surtir con el cargo que tener abordo».

35 TNA/SP, 71/11, legal paper marked «F», Italian statement of Suchitta, 'Abd al-Sadiq, and Ben-Taleb, dated Salé, 5 May 1764, attested (in Spanish) by Fransisco Rossignol, 8 May 1764.

36 Ivi, legal paper marked «G», Spanish letter of Hayes to Xeno dated Mamorra, 26 April 1764: «mi bastimento portarlo il caricco del contrato [...] non piscar tanto aqua comao adeeso».

37 Ivi, legal paper marked «I», Spanish letter of Hayes, dated Mamorra, 30 May 1764; ivi, legal paper marked «K», English letter of Hayes to Bruce, dated Salé, 27 August 1764.

38 Ivi: «mi contrato dicho di cargar ala Costa dè Sallè... no diho ala barre dè Mamorra».

39 Ivi, English translation of the charter-party between Cruise, Hayes, and Xeno, dated Algiers, 24 December 1763.

40 Ivi, letter from Cruise to Hayes appended to the charter.

41 Ivi, legal paper marked «H», extracted record from the British consulate in Algiers, dated 22 February 1765, extracted by order of James Bruce, 26 February 1765.

42 Ivi, legal paper marked «K».

43 Ivi, English translation of the charter-party.

44 Ivi, judgement of Hew Craig, dated Gibraltar, 20 September 1764, copy attested by John Morrison, 1 June 1765.

45 Ivi, legal paper marked «N», English memorial of Xeno to Craig, dated Gibraltar, 6 November 1764.

46 *Ibid.*

47 Ivi, legal paper marked «Q», English statement of Henry Corness (Master of Gibraltar), dated Gibraltar, 13 December 1764.

48 Ivi, legal paper marked «L», Italian statement of Giuseppe Mortedo, dated Gibraltar, 25 January 1765.

49 Ivi, legal paper marked «M», Italian statement of Angelo Palmaro, dated Gibraltar, 7 December 1764, attested by Bartolomeo Dagnino, 10 December 1764.

50 Ivi, legal paper marked «R», Italian statement of Giovanni Battista Vasado and Giovanni Manzani, dated Gibraltar, 5 December 1764, attested by Don Bartolomeo Dagnino (Genoese consul), 10 December 1764: «non si disbarcò tutto il detto carico mà bensì si misurò nella stiva, è buona parte di grano fù lasciato nella nave».

51 Ivi, legal paper marked «V», Italian voucher of lading, dated Mamora (Mahdiya), 6 May 1764.

52 Ivi, legal papers marked, «X», «Y», and «Z», quotes of the value of grain sales, dated Livorno, all dated 27 April 1765.

53 Ivi, legal paper marked, «AA», account of monies owed to Xeno by Hayes and the Gibraltar Court, dated Algiers, 8 August 1765.

54 Ivi, further observations of Hew Craig, undated.

55 *Ibid.*

56 Ivi, legal paper marked «A»: «tal noleggio non li ha fatto per ordine de Sig[no]re Lefroy & Charron: ma solamente per ordine conto del Sig[no]r Gio[vanni] Xeno».

57 Ivi, Bruce to Halifax, 18 March 1765.

58 S. CONSTANTINE, *Community and Identity: The Making of Modern Gibraltar Since 1704*, Manchester 2009, pp. 51-5.

59 TNA/SP, 108/17/2. «Ve bir budurki kendüleri rızâ olmayan seferlere göndermeyeler ve bir daği budurki ne İngiltere balyoz ve ne gayrîne İngiltere re'ayalarinde bir ise borclu olsa ve borcu ödemeğe kudreti yoğsa mezkûruñ borcunda oturu bir gayrîsine yapışub ödetdirmeyeler meğer gönüllü olub ve borcluya birkaç kimesne kefil ola».

60 *The Capitulations and Articles of Peace between the Majesty of the King of Great Britain, France, and Ireland &c. and the Sultan of the Ottoman Empire*, London: For J.S., 1679, 9; BOA, Topkapı Sarayı Müzesi Arşivi Defterleri (TS.MA.d), 7018/0002, fol. 8. «İngilterelünün biri medyün veyahud kefil olub firâr eydiler ise veya müflis olur ise deyn-i borcludan taleb olunub alında müdde'iniñ hüccet-i şer'îye ile kefil olmayacak aher kimesne tutulub deyn-i mezbûr aherden taleb olunmaya».

61 TNA/SP, 71/11, legal paper marked «N», Italian testimony and petition of Xeno to the Gibraltar Vice-Admiralty Court, 5 October 1764, presented to the Court of 8 October 1764: «essendo stato condotto in questa piazza dal sud[itto] cap[ita]no contro il destino dell' suo viaggio e contro sua volonta, viene interpellato dal d[itt]o cap[itan]o per mezzo della Corte, p[er] la liberazione della nave, e p[er] il finimento del suo viaggio».

62 W. KAISER, *Introduction*, in ID. (ed.), *La loge et le fondouk: Les dimensions spatiales des pratiques marchandes en Méditerranée, Moyen Âge-époque moderne*, Paris 2014, pp. 9-13, p. 12. «Cette couverture d'un espace économique plus ou moins vaste se traduit concrètement dans des pratiques solidifiées par la routine: l'espace économique est un espace relationnel. On songe aux trajets des voyages maritimes en droiture ou en caravane avec leurs parcours, leurs circuits, et leurs rythmes spécifiques, déterminés en partie par les "praticiens" dont les motivations restent implicites».

63 TNA/SP, 71/11, further observations of Hew Craig.