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A Transnational Empire Built on Law: The Case of the Commercial Jurisprudence of the House of Trade of Seville (1583–1598)

1. Introduction

The Castilian political culture of the Early Modern period was built upon the figure of the monarch, progressively conceived as the main source of jurisdiction of the kingdom. The king was the head of the social body, a position which had the essential duty of the administration of justice. The justification of the royal institution in Castile – already manifested in the medieval tradition of the *Siete Partidas* – was based on the monarch's duty of keeping the kingdom in peace and justice. The king was a guarantor of the justice of the kingdom, a task that could be verified in practice through different ways: on the one hand, judging, legislating, punishing criminals, and protecting Christianity.¹ On the other hand, he was conciliating the plurality of jurisdictions that resulted from the different corporations that coexisted inside the Hispanic Monarchy.

Power in Castile was naturally distributed among the different corporations that integrated the kingdom. All these corporations recognized the king as the external representation of the unity of the social body, who was in charge of keeping the harmony among the plurality of jurisdictional privileges.² In this manner, in Castile prevailed a contractual conception of the royal power, where the justice assignment of the king was corresponded with his recognition as the main source of jurisdiction in the kingdom by all the members of the social body.³ Still in the 16th century, the recognition of the royal power alludes to a feudal past, in which lord and vassals mutually corresponded with reciprocal obligations; that reciprocity was the core of

1 *Siete Partidas* 2.1.1 and 3.1.3.

2 HESPAÑA (1992) 28–31.

3 PIANO MORTARI (1982) 95–112; THOMPSON (1990) 69–98; PRODI (2008) 155–161.

their relationship. The sovereign was neither the exclusive source of jurisdiction in the kingdom nor the owner of the kingdom's wealth; he was only a guarantor and an administrator, a head whose actions affected all the members of the social body.⁴

To satisfy the duty of justice was not an easy mission in the Hispanic Monarchy, especially in the 16th century. To the varied jurisdictions, laws and privileges that coexisted inside the kingdom (i.e., manorial, ecclesiastical, professional, etc.), it was necessary to add the jurisdictions of the territories that had been incorporated into the crown since the Middle Ages. The territorial expansion of the Hispanic Monarchy reached its climax in the 15th century, first with the annexation of the Kingdom of Aragon as a consequence of the marriage of the Catholic Kings; then with the conquest of Granada and the discovery of America in 1492. During the 16th century the expansion continued. The Emperor Charles V received from his father the European possessions of the royal houses of Habsburg and Burgundy. Later, in 1581, his son Philip II was crowned as the King of Portugal and all its colonial possessions.

Steadily, the Iberian Castile was replaced by a kingdom with global dimensions. During the kingship of Philip II, the crown was constituted by heterogeneous communities settled not only in Castile or in Europe, but also in America, Africa and Asia.⁵ How did the king achieve the guarantee of law and justice to all the corporations of the social body in a kingdom with territories spread all over the world? Since the figure of the monarch was not enough to keep in peace the varied jurisdictions of the territories that were part of the crown, it was necessary to provide enough judges and institutions for the administration of justice. The king acted through his magistrates which were an extension of him, forming an inseparable unit.⁶

4 While in the Middle Ages the essence of the royal institution in Castile was founded on its divine origins, the late 16th century was a period of transition from that medieval tradition, to the understanding of the king as a guarantor of social order. This idea is consolidated in the 17th century, as it is shown by the ideas expressed by the jurist Diego de Saavedra Fajardo in 1640. According to Saavedra, the king's power arose from the community's need to have a unique power to keep it in peace. For this reason the prince had the power of the administration of justice; a task that he had to observe in order to preserve his royal position. SAAVEDRA FAJARDO (1819) 216–218.

5 VAN KLEFFENS (1968) 264; SUBRAHMANYAM (2007) 1359–1385.

6 CLAVERO (1996) 27–33; GARCÍA MARÍN (1986) 27–82; ALONSO (2001) 15–42.

In this sense, the institutional peak reached in Castile in the end of the 15th century responds to the huge increase of its dimensions. Each one of the regions incorporated into the Crown had an exclusive institution in charge of its matters.⁷ Obviously, the New World was not an exception. In 1503 the first justice institution for the Indies was founded, the House of Trade of the Indies (*Casa de la Contratación de las Indias*),⁸ followed in 1524 by the Royal and Supreme Council of the Indies (*Real y Supremo Consejo de las Indias*).⁹ Through these institutions and their judges, the Spanish monarchs ruled the overseas lands from the Peninsula. The House and the Council of the Indies were the highest authorities in Indies matters; however, they were settled in Castile. It was necessary to establish in America other institutions that could observe their decisions leading to the creation of the different American audiences.¹⁰

2. The House of Trade of Seville: A transnational institution of government

The immediate years that followed the Columbian discoveries were enough for Europeans to realize the economic and material importance of the Indies. Awareness of the continent's treasures stimulated the development of a commerce in which everybody wanted to participate, causing its exponential growth. The Spanish kings also understood that expeditions to the Indies had become more and more frequent and that the exchange of goods and values required institutional and legal regulation. Thus, in Alcalá de Henares on January 20, 1503, the monarchs ordered the creation of the House of Trade of the Indies in Seville.

7 The Council of Castile had existed since 1385, and in 1494 the Council of Aragon was created. In the 16th century Navarra had its own council as well. The Council of Italy was founded in 1555, and in 1588 one was established in Flanders. Because of the union of the crowns, in 1580 the Council of Portugal was created. MOLAS (1984) 80–114; ALDEA (1980) 189–205; CANET (1999) 565–598.

8 De CARLOS BOUTET (2003); ACOSTA (2003); CERVERA (1997).

9 To this day the most prominent monograph dedicated to the Royal Council of the Indies is that made in the 1930s by SCHÄFER (2003).

10 Throughout the 16th century, the majority of the Indies audiences were created: Santo Domingo, New Spain, Panama, Guatemala, Lima, Santa Fe, New Galicia, Charcas, Quito, Chile and Manila. In the 17th century the audience of Buenos Aires was founded, and in the following century those of Cuzco and Caracas appeared.

On its origins the House was only an institutional mediator in the administration of the commerce with the New World. During the 16th century, the institution progressively became the most important official center of the Castilian commerce and its Atlantic diffusion.¹¹ The consolidation of the commercial routes and the exchange of goods between those lands, propelled the institution in an undeniable international prominence, highlighted in 1569 by the jurist Tomás de Mercado: “The House of Trade of Seville and its businesses are the richest and most famous of the world. The House is like the center of all the merchants of the world, because the truth is that before, Andalusia and Lusitania used to be the end of the world; but discovered the Indies, they became the middle.”¹²

The House emerged as a coordinating institution of the trade with the Indies, a position that included a plurality of powers. The purpose with which the House was created consisted of the establishment of a space that served as a warehouse and account office for trading.¹³ Its main responsibility was the organization of commerce, serving as an authority in charge of the registration of the goods loaded in the merchant ships, and of the people circulating between the New World and the Peninsula. The House of Trade also operated as a tax collector, and its officers received all the consignments of gold and silver that arrived in Spain from America.¹⁴

The House of Trade also had to organize the protection of the *Carrera de Indias*, monitoring the security conditions of the ships and the oceanic trade routes. In this sense, the institution constituted a *chamber of knowledge*¹⁵ which concentrated all the theoretical and practical information obtained from navigation. The House was a scientific center that promoted the development of cosmography, where the pilots of the *Carrera de Indias* had to design maps and elaborate nautical handbooks and treatises. With all this information they depicted the official map of the world called *Padrón Real*.¹⁶

11 GARCÍA-BAQUERO (1992) 348.

12 MERCADO (2008) 38.

13 SERRERA (2003) 50.

14 CERVERA (1997) 65–155.

15 Some historians of science consider that the House of Trade was a chamber of knowledge. This means that the House constituted an authentic scientific center in charge of the collection, analysis, and diffusion of the information coming from the New World in many different fields of science like botany or cosmography. BARRERA (2006) 35–55; CAÑIZARES-ESGUERRA (2006) 19.

16 PÉREZ-MALLAÍNA (1983) 307–317.

Likewise, the House of Trade had jurisdictional power to punish infractions of the norms that regulated the Castilian commercial monopoly over the Indies colonies. This condition converted the House into *the most important court of the Indies established in Castile*, quality that from 1524 onwards had to be shared with the Council of the Indies.

Since its creation, the House had the competence to resolve the civil and criminal disputes that arose from the *Carrera de Indias*,¹⁷ even if the institution was not conceived as a court. The first ordinances of the House of Trade were not considered to be any kind of jurisdiction, circumstance that caused conflicts of competence with other Sevillian tribunals.¹⁸ However, the repeated jurisdictional practice of its officers caused the legal recognition of its competence.¹⁹ In 1583 the House of Trade acquired the category of audience. The growth of commerce with the Indies needed a tribunal in Seville for efficiently settling its problems. In this manner, the ordinances of 1583 gave jurisdictional autonomy to the House in all civil and criminal trials related to the Indies.

Originally, the audience of the House comprised two judges (*letrados*), but in 1596 a third judge was added. From 1583 onwards, the House of Trade and the Council of the Indies were the only peninsular tribunals with legal competence over the Indies: The House with regard to civil and criminal matters, and the Council of the Indies as an appeal court for the lawsuits that concerned more than 600,000 *maravedis*. The trials concerning an inferior amount were settled by the judges of the House in the second instance as well.²⁰

The judges of the House of Trade could judge in any lawsuit coming from the *Carrera de Indias*. As the city of Seville was the only authorized port from which the Indies could be navigated, as well as the compulsory destination on the return to the Peninsula, it was not rare that those who participated in the overseas enterprise, after trading in varied points around the world, presented their lawsuits before the jurisdiction of the House. This was because the institution had direct control over the goods that arrived

17 CUESTA (2001) 36–42; TRUEBA (1988) 21–61; TRUEBA (1982) 93–131.

18 PETIT (2003) 119–130.

19 This jurisdiction was recognized by a royal decree published in Burgos on September 25, 1511, confirmed as well by the ordinances of 1530. CERVERA PERY (1997) 138.

20 SCHÄFER (2003) 152–154; CERVERA (1997) 137–141; HEREDIA (1970) 220.

from the Indies. All the commodities transported in the fleets *had to be deposited in the House of Trade*, increasing the possibilities of the creditors to recover payments with the goods that their debtors received in the fleets.²¹

3. The House of Trade of Seville:

A transnational institution of justice

The House of Trade had administrative and judicial influence in different regions, which immediately alludes to the transnational character of the institution. The use of the term transnational is not accidental, even if the term could be anachronistic to some historians. The term has caused particular discontent among scholars who see in the concept the limits of the nation state.²² They consider that the transnational perspective is only valid to explain interconnected phenomena between nation states, being incorrect when applied to prior historical contexts. Nevertheless, other historians have shown the benefits reported by the transnational approach even in the Early Modern period.²³

Certainly, the national part of the term does not intend to connote the existence of nation states in the modern era. The term needs to be used with certain nuances in mind: Firstly, its etymological root. Nation derives from the Latin *nascere* or *natio*, referring to the persons that are born inside of a concrete community. Secondly, considering nations as *imagined communities*,²⁴ whose members are provided with a collective conscience based on the common cultural links that constitute their identity.

That understanding of the term nation is present in the Castilian sources of the Early Modern period, as it is evidenced by some of the trials of the House of Trade of Seville. For example, in 1584 the public prosecutor of the House denied a Portuguese merchant permission to trade in the Indies because he belonged to a nation different from Castile.²⁵ Only Castilian

21 MARTIRÉ (1997) 229–235.

22 BAYLY (2006) 1441–1464.

23 YUN (2007) 88–98.

24 ANDERSON (2006) 6.

25 “Tratar y contratar en las yndias de su magestad del mar ozeano solo se permyte a los vezinos y originarios destes rreynos y no a los estranxeros de estos como lo es la parte contraria de naçion portuges.” A.G.I., Escribanía 1070 A, f. 1 verso. Arguments of the public prosecutor Busto de Bustamante to deny the legal permission of trading in the Indies to the Portuguese merchant Manuel Correa.

natives – those born within the Castilian nation – were able to trade in the Indies; others were considered as foreigners.²⁶

The novelty of using the transnational approach to analyze the effects that the jurisdiction of the House of Trade had in different nations does not involve the study of the global interactions maintained by the institution with other European or American courts. These kinds of contributions are not new, and they have been already exploited by historiographical trends like the Atlantic history, the history of the empires or the history of commercial relations on a global scale.²⁷

The main contribution of the transnational perspective lies in the study of the local effects of those interconnections in the House of Trade. Indeed, the integration of the local into the transnational is crucial to understanding the transnational projection of the justice administered by the judges of the House.²⁸ Only considering the concrete political, economic and social context in which the House's audience performed its activities will be possible to demonstrate its transnationality.

The transnational approach highlights very well the particularities of the context of the House of Trade of Seville. The prefix *trans* indicates something that goes across or beyond something, in this case, nations, offering a sense of constant movement that recreates the global dimension of the judicial mechanisms of the institution.²⁹ The jurisdictional powers of the House of Trade had practical effects in different nations: On the one hand, the Spanish monarchy was a composite monarchy.³⁰ Politically, the monarchy was a composite of different kingdoms (i.e., Navarra, Aragon, Flanders, Portugal, etc.) that demanded the recognition of their own laws and privileges, despite having the same sovereign in common. On the other hand, the *Carrera de Indias* was an economic enterprise in which many interests like French, Genoese, Portuguese, or English were intervened,³¹

26 HERZOG (2003) 64–68.

27 YUN (2007) 90.

28 YUN (2007) 94–95.

29 The adjective international could be preferred to the transnational one. Nevertheless, this concept shares the same problems of the transnational terminology with regard to the use of the nation for explaining the culture of the Early Modern period. Likewise, the term international has acquired a special meaning that alludes to the diplomatic relations between states, a connotation that the adjective transnational does not have.

30 ELLIOT (1992); ELLIOT (2009) 1–24.

31 VILA (2009) 57–74.

and whose members were deeply involved in commerce with the Indies, as well as the problems this entailed.

The local effects of the transnational jurisdiction of the House of Trade will be shown through its commercial lawsuits in a period that spans the official foundation of the audience in 1583 up to the end of Philip II's kingship in 1598. Lawsuits are preserved in the General Archive of the Indies (*Archivo General de Indias*),³² and they constitute the main analytical instrument to investigate how the jurisdiction of the House of Trade had to be in practice in order to effectively resolve the problems in which many nations were involved. Thus, the main purpose of this paper will be to emphasize the qualities of that jurisdiction and their contribution to the legal maintenance of transnational commerce with the Indies through a specific case: the foreign participation in the *Carrera de Indias*.

4. Trading in the Indies: A Castilian privilege

The Hispanic monarchy organized the economic exploitation of the Indies upon the basis of a monopoly. Such monopoly had two essential characteristics: First, Seville was the only authorized port to trade and navigate in the Indies. Second, only Castilian natives were allowed to trade with the New World.

The structure of the monopoly faced some difficulties in practice. On the one hand, the advantages originally offered by the city of Seville as a unique port were progressively surpassed by a more demanding commerce. The increasing mercantile flows necessitated the opening of other Spanish ports³³ and in the 18th century the accessibility of Cadiz definitely replaced the city of Seville as the most important mercantile center of Andalusia.³⁴ On the other hand, the huge dimensions of the New World prevented Castilians to meet the commercial demands of the colonies all on their own.

The American businesses legally had to be national, an exclusive of Castilian natives.³⁵ The rule was not coherent with the commercial reality

32 The sources that have been used in this paper are the court records of the House of Trade. They are located in the sections *Escribanía de Cámara de Justicia* (files 1069 A to 1074 B) and *Contratación* (files 723 to 746) of the General Archive of the Indies (A.G.I.).

33 PÉREZ (2000) 85–90.

34 GARCÍA-BAQUERO (1988); CRESPO (1996); BERNARD (1955) 253–285.

35 GARCÍA-BAQUERO (1992) 19–53; OLIVA (2004) 15–23; BUSTOS (2010) 41–44.

of the Carrera de Indias, in which many imagined communities intervened. Even the members of kingdoms that in the end of the 16th century were part of the Hispanic composite monarchy were excluded of the privilege (i.e., Sicily, Naples, Flanders or Portugal).³⁶

Notwithstanding, the participation of foreign capitals was already present in the support of the first American exploratory voyages.³⁷ Foreigners introduced themselves into the Carrera de Indias until they became a crucial part of it. In this manner, the urgency of their presence implied important administrative procedures. The principal consequence was the establishment of a formally closed commercial policy that in practice was provided with some legal channels through which foreigners could access the Carrera. Otherwise, neither the Crown nor Castilian merchants could support a solid trade with the Indies. The cost of the commercial adventure was very high and entailed a lot of risks; therefore, alien capitals were indispensable for funding commerce.

Naturalization was one of the alternatives that permitted foreign participation in the Indies' trade. The processes of naturalization consisted of the official confirmation by which a person who was not born in Castile could be considered as Castilian and have the same rights as natives.³⁸ To gain the status of a native it was necessary to observe certain formalities. These changed throughout the colonial period, normally to make them more demanding.³⁹ During the last years of the 16th century, petitioners were asked to live continuously in Castile for more than ten years, married to a Castilian woman, and have enough wealth for self-sufficient trading.⁴⁰

However, naturalization was a complex process, whose requisites could not be satisfied by everybody. Between 1583 and 1598, 27 processes of

36 Since the Hispanic monarchy was a composite monarchy, it could be thought that the natives of kingdoms like Aragon were not authorized to trade with the Indies. Their condition was clarified very soon by the Catholic Kings through a royal decree made on May 30, 1495, by virtue of which the natives of Castile, Aragon, Navarre and the Basque Country received the same rights for trading with the New World. KONETZKE (1945) 276; GARCÍA-BAQUERO (2003) 73–99.

37 The cooperation of Genoese and Florentine interests in the Columbian travels is very well known. A symptom of their presence is the Genoese origins of Francisco Pinelo, the first *factor* of the House of Trade. BERNAL (1992) 99–102; HERZOG (2011) 13–19.

38 HERZOG (2003) 43–118.

39 DOMÍNGUEZ (1959) 227–239; GARCÍA-BAQUERO (2003) 73–99.

40 KONETZKE (1945) 269–299.

naturalization were issued, preserved in the General Archive of the Indies, of which 14 correspond to Portuguese merchants, 6 to Flemish traders, 2 to French merchants, 5 to Italian merchants, and 1 to a Corse trader.⁴¹ Only 17 naturalizations were granted, some of them after annoying lawsuits before the House of Trade and then before the Council of the Indies.⁴² In the disputes concerning naturalizations, the judges of the House always resolved the applications in accordance with the legislation. If the foreign merchant did not fulfill the legal requisites, his petition was rejected by the court. Singleness was the most common reason of defeat.

Even if foreign participation in the Indies' commerce was legally forbidden, it is notable that the judges of the House assiduously settled the disputes in which foreigners were involved, *despite knowing the illegal situation of some merchants* and the evident trade with America revealed by the sources. The paradox can be expressed in the following terms: On the one hand, the judges of the House of Trade were the guarantors of the Spanish commercial monopoly. On the other hand, *they accepted the illegal foreign intervention in the Indies' trade through the resolution of the foreigners' disputes*. A lot of foreign merchants litigated in the House's audience and many of them never received legal permission for trading. The rigidity of the laws intensified illegal commerce as well as the use of mechanisms that concealed foreign access to the *Carrera de Indias*.⁴³ An example is the Portuguese merchant Lanzarote de Sierra, who had already litigated in the House some years before he obtained the Castilian naturalization.⁴⁴

41 DOMÍNGUEZ (1960) 137–163; VILA (2005) 279–296.

42 It was the case of the Genoese merchant Julio Negrón, who started the process of naturalization in the House of Trade on January 9, 1584. In his petition Negrón argued that he had arrived in Seville 22 years ago, where he permanently settled, living there with his family in their own house. These arguments did not convince the judges, who rejected the merchant's request on September 24, 1584. Negrón appealed the judgment of the House's judges before the Council of the Indies, where the naturalization was also rejected, so the Genoese merchant demanded the review of the Council's judgment. Finally, on July 12, 1585, he obtained the Castilian naturalization. A.G.I., Escribanía 1069 A.

43 Smuggling was a very profitable alternative for many merchants, although during the first half of the 17th century the Crown sold naturalizations in order to finance its military expenses. DÍAZ BLANCO (2011) 314–328.

44 Lanzarote de Sierra and his brother, Antonio Rodríguez de Sierra, started the process of naturalization on August 14, 1590, before the House of Trade. On June 1, 1591, the Council of the Indies finally recognized their right to trade in the Indies. A.G.I., Escribanía 1072 A.

It could be supposed that the attitude of the judges of the House in the resolution of the disputes that non-Castilians presented before their jurisdiction was very negative due to the illegal nature of such disputes. However, *the judicial treatment that foreigners received does not seem discriminatory*. The disputes in which foreigners intervened – as plaintiffs or as defendants – *were resolved on the basis of the evidences presented by the parties*. Consequently, the parties that better demonstrated the legitimacy of their pretensions would be the winners.⁴⁵

The magistrates of the House followed the jurisprudential model demanded in their epoch, which implied judging according to the evidence presented by the parties.⁴⁶ The *iurisdictio* of the judges of the House was practiced following this principle, which cannot be understood in merely legal terms, limiting the role of the magistrates to the simple application of laws. The jurisdictional culture had been deeply rooted in the Hispanic Monarchy since medieval times, where judges were public persons whose jurisdictional power and authority was recognized by society to adapt law to the circumstances of the case.⁴⁷

The adaptation of the law to the conditions of the concrete case admitted the non-application of legislation. This was the essential virtue of the Castilian jurisdictional culture, which had as its core the magistrates' faculty of communicating the law. Judges were the decisive element in law production, in charge of the administration of justice through the interpretation and understanding of what was just for the parties.⁴⁸ Judges declared the law, defining the equity of the parties in a trial; that meant the solution of the dispute. It could be said that magistrates were the interpreters of equity, a faculty that authorized them to ponder the most adequate legal instruments to effectively administrate justice.⁴⁹ In this

45 The judgments of the House of Trade are written in a style that suggests that the decision of the judges was the result of the assessment of the evidence presented by the parties. It is very common to find expressions like: "We judge that A did not prove his demand as it was advisable, and that B proved his exceptions"; "we judge that despite the evidence presented by X, we have to condemn him."

46 This idea was expressed by Jerónimo Castillo de Bovadilla: "judging according to the truth, on the basis of the evidences." CASTILLO DE BOVADILLA (1759) 94.

47 GARRIGA (2006) 86; DOMINGO (1987) 142.

48 GARRIGA (2006) 87; D'ORS (1953) 301–330.

49 VALLEJO (2009) 1–13; BRAVO (1991) 111–163.

manner, judges, as equity experts, were capable of identifying iniquity as well. When an instrument of justice like legislation contravened the equity required by the case, judges were able to derogate.⁵⁰

In the case of the Portuguese merchant Lanzarote de Sierra, his assimilation to the Sevillian mercantile culture is evidenced by his lawsuits with other Castilian and foreign merchants as a consequence of the businesses that they had in common. In 1588, Sierra brought a suit against Francisco Friesco, presumably an Italian merchant, because he did not deliver 52 bovine leathers to Seville that one of the Sierra's partners in New Spain had sent him in a ship governed by Friesco. Sierra presented to the judges the contract in which Friesco's obligation was stated. A few weeks later, the judges of the House ordered the seizure of the properties of the defendant, forcing him to pay the debt.⁵¹

In the same year another Portuguese merchant, Gonzalo Pérez, brought a suit against Lanzarote de Sierra and other merchants. Pérez was the owner of a vessel which Sierra used to transport his cargo. A big storm occurred when the ship was coming back to Seville from Santo Domingo. Apparently the ship was very damaged by the storm and to avoid its sinking, it was necessary to throw overboard some merchandises to lighten the load and save the vessel. Gonzalo Pérez wanted that the owners of the goods accept the gross average, paying proportionally the damages of the ship as well as the goods that had to be thrown into the sea. The judges sentenced that all merchants had to pay their correspondent part of the damages. Sierra rejected to pay, so the judges ordered the confiscation of his goods to force the payment.⁵²

Laws were compatibilized with the particularities of the concrete case or even derogated when they contravened justice through the jurisdictional faculty of the judges. *Iurisdictio* implied the transformation of equity, as an objective reality, to a specified reality expressed in clear precepts declared by the judges through their decisions.⁵³ *Iurisdictio* meant specifying the equity of the case as a consequence of the interpretation made by the judges that intended to solve the dispute. Such interpretation was made upon the basis of a cultural context that considered all the members of Castilian society as

50 VALLEJO (2009) 11–13.

51 A.G.I., Contratación 729, number 9.

52 A.G.I., Contratación 729, number 2.

53 VALLEJO (2009) 8; VALLEJO (1992).

part of a bigger unit or social body. If one of the members of the body malfunctioned – in this case, all the persons and economic interests that were involved in the commerce with the Indies – this fact affected the entire body.

It is essential to keep in mind that the jurisdictional power of the magistrates was not reduced to the simple application of general norms to the case. The migratory legislation of Castile was obsolete in the face of dynamism and complexity of the transnational trade. In this manner, the judges of the House of Trade had to administered justice in a commercial context in which foreigners were deeply involved. Solving foreigners' disputes according to the law, where illegal trade was evident, would have meant applying the appropriate sanctions. These penalties could include fines, seizures, or even jail.⁵⁴ Notwithstanding, punishing illegal merchants was not always a good measure for the *Carrera de Indias*. That not only was detrimental to foreign commercial interests, but also to their partners, regardless of their national origins. Hence, *to observe law could cause more damages than benefits*; the decisions of the judges could be according to law, but contrary to justice.

The deep compenetration of Spanish and foreign economic interests was essential to support the *Carrera de Indias*. Only foreign intervention enabled the overcoming of the financial and logistics deficiencies of Castile as the holder of the overseas monopoly. In this regard, the virtues of some foreign communities – such as Genoese and German banking, or the Portuguese control over the slave trade – were very welcomed in Spain.

Castilian merchants were willing to become partners with foreign traders, because of the possibility to share the economic risks of the long distance trade. Moreover, the goods that foreigners sent to Seville from their countries were very appreciated and well paid in the New World.⁵⁵ At the same time, Castilian merchants could be the main opponents to a foreign

54 The case of the Portuguese merchant Francisco Barroso is very illustrative. Since Barroso was trading with the Indies without legal permission, he was imprisoned in the House of Trade's jail. The merchant was condemned to the confiscation of the goods that he was trading, and to the payment of a one-thousand-ducats fine, as well as the expenses of the trial initiated against him by the public prosecutor of the House. A.G.I., Escribanía 1069 B. El fiscal de su majestad con Francisco Barroso, portugués, sobre tratar en Indias.

55 OLIVA (2006) 400.

presence in the Indies trade; principally the prominent merchants of the Consulate of Seville. The members of the Consulate considered that foreign intervention was a menace to their own businesses, due to the progressive power that they were acquiring.⁵⁶

Foreign intervention was likewise necessary for the Castilian kings. The requirement of external resources to support the military commitments of the Spanish monarchy was crucial. During the 16th century, mainly Genoese and German bankers financed the Spanish imperial projects.⁵⁷

But fair judgments were not enough for a transnational trade that needed the effective expression in practice of the justice declared by magistrates. The *Carrera de Indias* also demanded an efficient jurisprudence that could follow the rhythms of transnational trade, capable of offering the legal protection that the mercantile transactions required. Such jurisprudence had to enforce the contracts derived from the Atlantic commerce through low cost procedures. The purpose of the following lines will be to describe the characteristics of the jurisdictional procedures of the House of Trade as they are shown in the sources, in order to determine whether they offered an adequate jurisprudential answer to transnational trade with the Indies.

5. An adequate justice for the *Carrera de Indias*:

The justice administered by the magistrates of the House of Trade

Since the Middle Ages, commercial law had been created in special institutions called merchant guilds or consulates, which emerged as a consequence of the revival of trade experienced in Europe from the 10th century onwards. These institutions developed the necessary attributes to enforce agreements.⁵⁸ The merchants settled in the most important Spanish commercial centers, like Barcelona, Valencia, Burgos or Bilbao, had their own guild or consulate, and Seville was not an exception.⁵⁹ Sevillian traders asked the king for the creation of a summary jurisdiction in which they could resolve their disputes briefly and inexpensively, in order to avoid the delays

56 VILA (1999) 3–34.

57 CARANDE (1987) 255–264; GARCÍA (1997) 204; MARTÍN (2000) 405–423.

58 GRAFE/GELDERBLOM (2010) 477–511; LADERO (1994) 149–174.

59 SMITH (1978); SOUTO (1990) 227–250.

and costs of ordinary justice.⁶⁰ On August 23, 1543, in Valladolid, the Prince Philip ordered the foundation of the Consulate of Seville.⁶¹

The essence of the commercial law created by the consulates consisted of two elements: Its sources were the usages of commerce and the resolution of disputes was based on arbitration.⁶² Nevertheless, the benefits of the commercial law created within consulates were a privilege of its members. The majority of the Indies traders were not members of the consulate despite requiring a summary jurisdiction, too. Some foreign communities founded their own consulates, but it still was a privilege reserved for its members.⁶³

Besides the consular jurisdiction, all Castilian and foreign merchants were under the jurisdictional power of the House of Trade in all civil and criminal matters related to the *Carrera de Indias*. This fact was very convenient in practice. Due to the lack of a consulate, merchants could take profit from the *jurisdictional offer* of Seville, especially from the House of Trade. However, *this fact contradicts the image of the Castilian administration of justice* in the late 16th century. The malfunctioning of royal tribunals would have caused merchants who did not have the consulate's privilege to refrain from presenting their lawsuits in royal courts. The uncertainty of the royal justice – its delays and expenses – was opposite to litigants' needs, increasing the use of *more trustable solutions* like arbitration.

But arbitration had its own defects; the most significant was the arbiters' impossibility to enforce their judgments, requiring the coercive intervention of royal courts.⁶⁴ Apparently, the outlook of the Spanish administration of justice was deplorable. Not only royal courts were considered as an example of inoperativeness, but also private mechanisms for resolving disputes were unreliable. Moreover, the jurisdiction of the consulate was not as effective in practice as it was in theory. Even if the procedure of the consulate was based on arbitration, it progressively adopted the formalities of the ordinary justice.

60 The Castilian administration of justice was always the object of the litigants' critics, not only because of the abundant and confusing legislation, but also because of the interpretative labor of the judges, who used to be accused of judging arbitrarily. KAGAN (1991) 146–155.

61 HEREDIA (1970) 219; FAIRÉN (1969) 1293–1318.

62 GALGANO (1993) 38; CORONAS (1994) 251–279.

63 During the 16th century there existed different national consulates in Seville like the Genoese, French, Hanseatic and Flemish. LÓPEZ BERNAL (2004) 189; DOMÍNGUEZ (1960) 45; LÓPEZ MARTÍN (2006) 435–440; MONTOJO (1992) 47–66.

64 GACTO (1971) 128–153; CORONAS (1979) 108–124; FAIRÉN (2006) 517–518.

In spite of this defencelessness situation, the high litigation rate in royal tribunals should be taken into account. Some historians have already pointed out the litigious tendency of the Castilian society,⁶⁵ but *the presence of Spanish and foreign merchants litigating in the House of Trade, including members of the Consulate of Seville is quite surprising.*⁶⁶ From 1543 onwards, the House of Trade *legally lost* its powers “to settle all the debates and differences among merchants and their partners, masters and boatswains, caulk men and sailors, and other persons, regarding the companies that they have had or have among themselves in the Indies, and also about the contracts of affreightment (...), insurances (...), and all the contracts that they had made (...). And they can resolve the lawsuits as it is done by the Consulate of Burgos.”⁶⁷ Yet, in practice the House of Trade resolved commercial disputes: Between 1583 and 1598, preserved in the archive are 349 lawsuits between merchants; 236 lawsuits correspond to debt claims, 33 to corporate dissolutions, 32 are related to gross average, 33 related to contracts of affreightment, and 15 are about insolvency proceedings.⁶⁸

The high number of mercantile controversies settled within the House of Trade indicates that the judges of the House attributed themselves a certain commercial jurisdiction which legally did not have. This fact can be only understood in light of the *jurisdictional culture existent in the Hispanic Monarchy of the Early Modern period*. Explaining this phenomenon as a simple *overlapping of jurisdictions* does not justify the fact that the judges of the

65 KAGAN (1991) 21–27.

66 That is the case of the merchant Pedro Aguilar de la Sal, who was an important member of the Consulate of Seville in the last decade of the 16th century. VILA (2002) 139–191. Despite having the privilege of the consulate, Pedro Aguilar de la Sal assiduously litigated in the House of Trade as it is shown by the sources. A.G.I., Contratación 736 B, number 4. Autos presentados en 1593 por Juan Bernaldo, maestre, con Pedro de Aguilar de la Sal y Juan Bautista de Molina sobre satisfacción de fletes; A.G.I., Contratación 741, número 11. Autos presentados en 1596 por Pedro de Aguilar de la Sal, vecino de Sevilla, contra Cristóbal Coello, dueño y maestre de nao, sobre cobranza de una partida de reales que le trajo registrados; A.G.I., Contratación 746, número 14. Proceso presentado en 1598 por Pedro Aguilar de la Sal, vecino de Sevilla, con Jerónimo de Zamora, maestre, sobre el importe de una partida de jengibre, que no le entregó, y el valor de 16 cueros, resto de mayor partida, que igualmente le traía registrada.

67 Quoted by CERVERA (1997) 138.

68 These lawsuits are located in the section *Contratación* of the General Archive of the Indies, file 723 to 746.

House had the habitual power to settle disputes that legally were the competence of the Consulate of Seville.⁶⁹

The delimitation of competences in the Hispanic Monarchy was not definitive or strict. The jurisdictional practice of the House's magistrates included not only the civil and criminal matters that legislation considered part of its competence, but also commercial matters that legally corresponded to the jurisdiction of the Consulate. The limits of the jurisdictional practice were casuistic and the existence of a specialized jurisdiction in mercantile matters responded, indeed, to procedural criteria.⁷⁰ Actually, the definition of the competence was a problem that emerged when it affected the interests of one of the parties.⁷¹

Normally, the creation of a special jurisdiction resulted from *the need of having a suitable court that optimized the course of the processes*. Thus, the mercantile jurisdiction of the consulate responded, according to its ordinances, to the need of having agile judicial solutions, formulated by experts in the usages of trade. Despite the jurisdictional offer of the Consulate, many times *merchants tried to resolve their disputes in the House of Trade*. The ordinary utilization of the House as a commercial court could be interpreted as a symptom of the *trust that merchants had in the judges' decisions* because of *its relative effectiveness in the protection of the patrimonial rights of the litigants*.

69 The fact that the judges of the House of Trade settled mercantile disputes has been explained by historiography as an overlapping of jurisdictions. According to this, it was necessary to define the specific competences of the Sevillian courts, causing the huge amount of legislation that was promulgated all over the 16th century. TRUEBA (1988) 27; DEL VAS (2004) 73–97; CERVERA (1997) 137–141.

70 GARRIGA (2006) 79–80.

71 The circumstances of the case determined the convenience of bringing a suit before one or another tribunal, since the jurisdictional benefits could not be equal for both parties. In the lawsuit that Martin Monte Bernardo brought in 1583 before the House of Trade against the members of the Consulate of Seville, he explicitly said that litigating in the House of Trade was the most convenient official channel for his interests: “lo qual pido por aquella via y forma que mejor aya lugar y me convenga, y lo necesario ynploro e suplico de vuestra magestad.” Clearly, initiating a trial in the House of Trade was not favorable for the Consulate's members. They could advantageously resolve the dispute through their own jurisdiction, being at the same time judge and party. In this sense, the Consulate's representative, Sebastian Navarro, indicated that the case had to be settled within the Consulate, arguing that it was the Consulates' competence: “No se puede acusar por este pleyto hordinario, y assi contradigo todo lo qve pide la parte contraria.” The lawsuit was finally resolved by the judges of the House of Trade. A.G.I., Escribanía 1069 A, folios 7–8.

When merchants brought their lawsuits before the House's judges, they were expecting to receive an adequate jurisprudential answer to their commercial needs. Otherwise, their presence as litigants in the House of Trade is very difficult to explain.

It seems that the House of Trade offered an acceptable justice for merchants. The jurisdiction of the House was not only a privilege, being an accessible court for all the merchants involved in the *Carrera de Indias*, but its audience also administered a justice that had similar procedural characteristics to the consulates' justice. Even if the judges were not experts in the usages of commerce, *litigants presented to the judges the arguments that supported their pretensions*, including usages of commerce, documents, court records, etc., which constituted the basis of the judges' decision.

Furthermore, not all the lawsuits resolved in the House of Trade were expensive due to their delays. In 1360, Sevillian merchants received a special privilege from the King Peter I.⁷² This privileged consisted of a summary procedure called *juicio ejecutivo*, by which all creditors that had demonstrated through an authentic document⁷³ the existence of a pending debt could ask for the seizure of their debtors' properties. Once the seizure was made, judges had to order the auction of the goods confiscated to guarantee the payment. In the *Leyes de Toledo* of 1480, the use of the *juicio ejecutivo* was extended by the Catholic Kings to all the kingdoms of Castile, including later the Indies.⁷⁴

The *juicio ejecutivo* was a very common procedure used by merchants in the House of Trade due to its benefits. 60.5% of the commercial disputes settled in the House between 1583 and 1598 were resolved through the *juicio ejecutivo*. 73% of these trials were finished inside of six months, and only 9% lasted more than one year; but they never exceeded two years. In addition, the *juicio ejecutivo* was not an expensive procedure. The costs of this kind of processes never exceeded 20% of the total amount claimed by creditors. Yet, this percentage does not reflect the costs of a majority of trials. In 76% of the cases, the costs of the trial did not surpass the 3% of the debt's value.

72 SÁNCHEZ (1946) 716–717.

73 According to the laws, during the 16th century the documents that caused the seizing of the debtors' properties were royal decrees, tribunals' judgments, confessions, the recognition of the debt by the debtor before the judge, and the public instruments signed by notaries. MONTERO (1994) 90.

74 SÁNCHEZ (1946) 716–717; LUMBRERAS (1960) 250–251.

Hence, the context of litigation in the House of Trade was not so bad in practice. The benefits of the *juicio ejecutivo* could encourage merchants' litigation in the House. This special procedure, in addition to the written culture that flourished in Castile by the end of the 15th century,⁷⁵ constituted the juncture needed by the *Carrera de Indias*. Almost all merchants tried to protect their businesses with documents, making it easier to pursue the debtor's payment in a court through the *juicio ejecutivo*.

It is necessary to add that the participation of lawyers in the consulate's disputes was forbidden. Their education in law contradicted the simplicity of the consulate's procedure making it more complex and technical.⁷⁶ However, the *juicio ejecutivo* was not complex and rarely required the intervention of lawyers. In the House of Trade the parties had the possibility to consult lawyers for better preparing the arguments of their pretensions. This alternative was very attractive for litigants, especially when lawsuits became complicated, for example, by the appeal of the counterpart.

The participation of lawyers in the lawsuits of the House of Trade was caused by the litigants who wanted to protect their interests trying to guarantee a favorable judgment using the arguments made by legal experts. Normally merchants wrote their own lawsuits. The narrative style of the petitions was very simple, limited to the description of the facts and mentioning the reasons of justice that support the pretension. Even though, documents written by lawyers preserved a simple style, they were likewise limited to the facts, and briefly highlighting the legal arguments that were useful for the litigant.

The *decisions made by the judges of the House of Trade had to be observed*, if their jurisdiction wanted to have a *real impact* in practice. Apart from declaring law, judges were royal officials with special powers to *enforce their judgments*.⁷⁷ The *juicio ejecutivo* was an excellent legal mechanism to pressure debtors. Almost immediately after creditors brought their lawsuits before the magistrates of the House, the judges ordered the seizure of the debtors' properties.⁷⁸ Sometimes the judgment of the tribunal was not even required.

75 HERZOG (1996) 15–16.

76 GACTO (1971) 122–124.

77 DOMINGO (1987) 142.

78 In 77% of the *juicios ejecutivos* developed in the House of Trade, the judges ordered the seizure of the debtors' properties within the first twenty days that followed the presentation of the lawsuit in the court.

Debtors neither wanted to lose their properties, nor pay the expenses of the trial; two conditions that accentuated the agreements between the parties outside the court. Additionally, the threatening effects of the *juicio ejecutivo* could go beyond the seizure and the auction of the debtor's goods. If the debtor did not have enough wealth to pay his debts, creditors could ask for his imprisonment as a form of coercion.⁷⁹

6. Conclusions

The local context in which the practice of the jurisdiction of the House of Trade took place reveals its transnational dimension. To support a transnational enterprise like Atlantic trade, it was necessary to have a transnational jurisprudence that served as a mirror of its historical circumstances.⁸⁰ To this purpose, the labor of the judges as law experts – interpreters of reality who were endowed with enough power to enforce their decisions – was crucial for supporting the commercial enterprise with the Indies.

The Castilian jurisdictional culture, in which the House of Trade was involved, permitted the development of the Atlantic commerce over centuries. This jurisdictional culture is clear in the case of the foreign participation in the Indies trade, as well as in the need of foreigners to have an efficient mercantile legal procedure. The essential characteristic of the jurisdictional culture was the role played by magistrates in the law production. Judges were interpreters of equity able to ponder the adequate instrument of law to formulate a judgment. Such interpretation could imply the derogation in practice of the legal instruments used in the administration of justice when their rules contravened justice, in order to *preserve the equity of the case*.

In the case analyzed here, the real penetration of foreigners in the *Carrera de Indias* caused the jurisprudential attitude of the House of Trade's judges to respond to *reasons of justice that violated legislation*. Judging against foreign merchants according to legislation *would affect the Spanish economic interests as well*. The *Carrera de Indias* was the principal economic source for Castile during the modern age; however, it was an enterprise controlled by national and foreign merchants. In this manner, to effectively protect the transna-

79 TOMÁS Y VALIENTE (1960) 249–490.

80 GROSSI (2007).

tional commerce with the Indies, the jurisprudence of the House had *to correct the limitations of the legal system* creating new law, not applying existent laws, and developing efficient legal procedures with the intention of expressing the equity of the case through their decisions.

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