



# Divide and Rule: Risk Sharing and Political Economy in the Free Port of Livorno

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In February 1671 the English resident in Florence, John Finch, presented the Tuscan Grand Duke with a memorandum.<sup>1</sup> The merchants of London had made a representation to King Charles II, complaining of ‘exorbitant’ maritime Averages being awarded in Tuscany. According to the London merchants, the *Consoli del Mare di Pisa* (the Consuls of the Sea in Pisa) frequently granted outrageous damages to shipmasters by means of these

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<sup>1</sup> John Finch to Cosimo III, 4 February 1671 (1670 in the Tuscan style where the year began on 25 March—both dates are given on the letter), Archivio di Stato di Firenze (ASF), *Miscellanea Medicea* (MM), Piece 358, Insert 17 (358-17).

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Averages.<sup>2</sup> While the abuses were various, the motivation behind them was clear: ‘the same *Consoli*, with every ease, agree unto the pretensions of the masters of the vessels to invite them to the port of Livorno, though with damage to those that employ them’.<sup>3</sup> In short, the Tuscans were accused of having transformed a routine legal procedure into a tool of political economy. In order to redress these abuses, Finch requested that maritime jurisdiction over English merchants and mariners be transferred to the English national consul in the port.

This essay shows how the humble, quotidian procedure known as General Average (GA) was in fact repurposed by the Tuscan authorities to promote the commercial vitality of Livorno, the Grand Duchy’s chief port. In doing so, it demonstrates how commercial justice—or perhaps more accurately, administration-as-justice—helped to constitute the free port’s wider political economy, which was at once highly creative and intensely pragmatic. Just as Maria Fusaro has found in the case of Venice, commercial justice, and particularly the procedural element, could be utilised to achieve political-economic ends.<sup>4</sup> Finch was wrong, however, in claiming that GA was being used to ‘invite’ masters to the port; GA procedures were rather a defensive measure. Through an examination of seventeenth-century Tuscan GA documentation, this essay demonstrates how the Grand Duchy was able to successfully fend off threats posed by larger nation-states which had adopted increasingly protectionist, mercantilist policies.<sup>5</sup> By using GA to divide the cost of the French *cottimo* tax between all financially-interested parties, the Tuscans not only blunted the impact of a levy designed to squeeze Livorno out of trade with the

<sup>2</sup> John Finch to Cosimo III, ASF, MM, 358-17 (4 February 1671), ‘*l’esorbitanze frequenti del Tribunale di Pisa nel conceder Avarie sopra le mercanzie alli capitani di vascelli*’.

<sup>3</sup> John Finch to Cosimo III, ASF, MM, 358-7 (4 February 1671), ‘*li detti consoli con ogni facilità accordando alli capitani di vascelli le loro pretenzioni per invitarli al Porto di Livorno, benché con danno di quelli chi li impiegano*’.

<sup>4</sup> M. Fusaro, ‘Politics of Justice/Politics of Trade: Foreign Merchants and the Administration of Justice from the Records of Venice’s Giudici del Forestier’, *Mélanges de l’Ecole Française de Rome*, 126 (2014): 139–160.

<sup>5</sup> The following analysis is principally based on analysis of GA cases housed in the Archivio di Stato di Pisa, specifically on cases from four sample years: 1600, 1640, 1670, and 1700. For each of these years, all GA cases adjudicated in that year were examined. Transcriptions of these cases can be found in the *AveTransRisk* database, accessible at <http://humanities-research.exeter.ac.uk/avetransrisk>.

Levant, but in fact ensured that merchants in Marseille helped to foot the bill. By clandestinely granting English and Dutch merchants in the port free rein in negotiating GA damages with shipmasters, they successfully resisted English attempts to win consular jurisdiction for themselves in Livorno. These findings not only demonstrate the limitations of nationalist commercial policies; they also serve as a reminder that commercial history cannot be analysed solely through the lens of national narratives.

### THE FREE PORT OF LIVORNO AND ITS INTERNATIONAL COMPETITION

The ‘free port’ of Livorno embodied a myriad of policy innovations geared towards attracting international shipping to a part of the world where it had little business being otherwise. In lieu of conspicuous natural advantages, Livorno had to find other ways to sustain commercial interest. Tuscany did not have much in the way of raw materials to offer the international customer. Its traditional textile industry, while somewhat diminished, continued to operate, but its survival depended on having access to imported primary materials like wool.<sup>6</sup> Livorno’s position in the Mediterranean was somewhat strategic, not least because it was one of the few Italian ports not under Spanish domination. Its remarkable success in the seventeenth century can be attributed firstly to investment in infrastructure and otherwise to policy innovations.<sup>7</sup> These included Grand Ducal protection for minority communities, targeted immigration policies and the famous ‘free benefit’, a law which allowed goods to be stored for up to a year and re-exported without the payment of duties.<sup>8</sup> Protection

<sup>6</sup> C. Tazzara, *The Free Port of Livorno and the Transformation of the Mediterranean World* (Oxford 2017), 30–31; P. Malanima, *La decadenza di un’economia cittadina: l’industria di Firenze nei secoli XVI–XVIII* (Bologna 1982), 294–295.

<sup>7</sup> For a summary of the development of Livornese infrastructure, both physical and institutional, see L. Frattarelli Fischer, ‘Lo sviluppo di una città portuale: Livorno, 1575–1720’, in M. Folin ed., *Sistole/Diastole: Episodi di trasformazione urbana nell’Italia delle città* (Venice 2006), 271–334; Some classic academic studies of the early modern port include J.-P. Filippini, *Il Porto di Livorno e La Toscana (1676–1814)*, 3 vols. (Naples 1998); M. Baruchello, *Livorno e il suo porto: Origini, caratteristiche e vicende dei traffici livornesi* (Livorno 1932); a recent single-volume history of the port is L. Frattarelli Fischer, *L’arcano del mare: un porto nella prima età globale: Livorno* (Pisa 2018).

<sup>8</sup> A. Addobbati, *Commercio, rischio, guerra: Il mercato delle assicurazioni marittime di Livorno, 1694–1795* (Rome 2007), 66; Tazzara, *The Free Port of Livorno*, 25.

from debts incurred in foreign states, for example—a privilege technically reserved for those intending to settle in the port—was routinely extended to anyone who asked for it.<sup>9</sup> Safe conducts which were initially intended to apply only to people were also applied to pirated goods which were resold on the Piazza.<sup>10</sup> By the mid-seventeenth century these protections, innovations and indulgences had given rise to a conception of Livorno as a ‘free port’. Livorno can plausibly claim to be the world’s first, though since there was no universally accepted definition of a free port in the seventeenth-century, the point is debatable. The institutional make-up of the port continued to evolve throughout the seventeenth century, culminating in the 1676 reforms, which saw the complete abolishment of import and export duties, with only an anchorage fee being levied on ships, and a flat fee—the *stallagio*—levied on every parcel brought into the city.<sup>11</sup>

By the second half of the seventeenth century, Livorno, little more than a fortress in a swamp one hundred years earlier, had become the boom town of the Mediterranean, but competition was intensifying. Livorno’s rivals were emulating the free port’s successful example, with customs reforms at Nizza Villafranca in 1667, Marseille in 1669, and Genoa in 1670.<sup>12</sup> While these reforms had severe limitations in practice, Livorno’s comparative advantage was clearly being challenged, and not just by imitation alone. In 1664 the French authorities had instituted a new tax, the ‘*cottimo*’ and a levy of around 20% on all ships flying the French flag who visited the Levant ports. Originally publicised as an *una tantum* (an extraordinary measure to be applied just once) to pay for the expenses incurred by the French nation in the Levant, it soon became a standard imposition. More worryingly, it also took on a protectionist aspect, since ships that sailed directly from the Levant to Marseille were exempted. The not-so-subtle aim of this measure was to starve Livorno, often an

<sup>9</sup> Tazzara, *The Free Port of Livorno*, 82–84.

<sup>10</sup> *Ibid.*

<sup>11</sup> L. Frattarelli Fischer, ‘Livorno 1676: La città e il porto franco’, in F. Angiolini, V. Becagli and M. Verga eds., *La Toscana nell’età di Cosimo III* (Florence 1993), 45–66.

<sup>12</sup> G. Calafat, ‘Livorno e la camera di commercio di Marsiglia nel XVII secolo: consoli francesi, agenti e riscossione del cottimo’, in A. Addobbati and M. Aglietti eds., *La città delle nazioni: Livorno e i limiti del cosmopolitismo (1566–1834)* (Pisa 2016), 237–276, here at 238.

intermediary stop on the way back from the East, of its Levant traffic.<sup>13</sup> The English meanwhile, through the diplomatic efforts of their resident, John Finch, were attempting to wrest maritime jurisdiction over Englishmen away from the Grand Duchy, and to secure jurisdiction for their own national consul. One response to these various pressures was made manifest in commercial justice and administration, specifically in the administration of Averages.

At this point, it is necessary to briefly explain this important but rather technical branch of maritime law. Maritime Averages are little-known outside of the shipping industry, but these humble procedures were and indeed remain an important lubricant in the vast machine of global transportation, determining who should bear the various extraordinary costs and damages sustained by ship and cargo during a sea voyage.<sup>14</sup> Such costs were part and parcel of the difficult and dangerous business of moving goods across the high seas. The word Average itself is used to refer to both the damage or expense itself and the procedure used to determine who pays. There were several different types in the early modern period, corresponding to different types of expense or damage, but the principal division was between Particular Average (PA) and General Average (GA). PAs were those damages incurred unintentionally as the result of a *force majeure*. GAs, on the other hand, were those damages voluntarily incurred in order to save the ship or cargo or to bring about the successful completion of the voyage, the archetypal example being a jettison, when cargo is thrown overboard to save the ship in a storm. While PA had to be borne by the owner of the damaged property alone, GA costs were shared over all stakeholders, both ship and cargo owners, in proportion to their financial interest in the voyage. (It is in this sense that ‘average’ gained its common contemporary meaning of a mathematical mean.) The Tuscan sources refer to both types using the word *avaria*, though the way that damages were divided points to a clear conceptual boundary between the two. While PAs could usually be resolved privately, since they concerned only one party and were usually non contentious, requests for declarations of GA could become more complicated.

<sup>13</sup> Calafat, ‘Livorno e la camera di commercio di Marsiglia’, 249.

<sup>14</sup> See Maria Fusaro’s contribution in this volume.

In Tuscany, GAs were dealt with by the *Consoli del Mare di Pisa* who continued to retain jurisdiction over many commercial and maritime matters in Tuscany even after the port of Pisa was eclipsed by nearby Livorno.<sup>15</sup> These *Consoli* were two in number, both Florentine nobleman appointed by the Grand Duke, and were assisted by a chancellor who was a university-trained lawyer.<sup>16</sup> Though the court of the *Consoli* was thus a court of law, its function with regard to GAs might more accurately be described as ‘administration-as-justice’. This is a concept rather foreign to our own world view, accustomed as we are a clear separation of powers, and autonomous administrative machinery.<sup>17</sup> GAs could indeed give rise to conflict and, on occasion, what can properly be described as ‘litigation’, and in these cases the *Consoli* did indeed have to adjudicate; in general, however, their role in GA cases was one of certification. Since voyages and hence GAs usually involved merchants from more than one port, it was necessary that the process be certified by a recognised judicial body in order that payments might be obtained from absent merchants. Since private agreements were only held to be binding upon those actually present, it was necessary that the decision to award a GA be officially recognised. Insurers might likewise refuse to pay towards Average contributions if they were not party to a private agreement.<sup>18</sup> It is for this reason that, though GAs could technically be dealt with privately, masters and merchants seem to have rarely availed themselves of this option in Tuscany. Livorno was often an intermediate stop which formed part of a longer voyage, in particular for those ships travelling from Northern Europe through the Mediterranean to the Levant, and thus there were frequently interested merchants located elsewhere.<sup>19</sup> Though we have

<sup>15</sup> On the court of the *Consoli* see A. Addobbati, ‘La giurisdizione marittima e commerciale dei consoli del mare in età medicea’ in M. Tangheroni ed., *Pisa e il Mediterraneo: Uomini, merci, idee dagli Etruschi ai Medici* (Milan 2003), 311–315; M. Sanacore, *Consoli del Mare a Pisa, dall’età medicea alle riforme leopoldine* (Unpublished tesi di laurea University of Pisa 1983); G. Calafat, ‘La somme des besoins: rescrits, informations et suppliques (Toscane 1550–1750)’, *L’Atelier du Centre de recherches historiques*, 13 (2015), available at: <https://journals.openedition.org/acrh/6525> (last accessed 30 December 2021).

<sup>16</sup> ASE, *Auditore poi Segretario delle Riformagioni*, 116.

<sup>17</sup> L. Mannori and B. Sori, *Storia del diritto amministrativo*, new edn (Rome 2013).

<sup>18</sup> Balthazard-Marie Emerigon, *Traité des Assurances et Des Contrats à la Grosse*, 2 Vols (Marseilles Jean Mossy 1783) Chapter 12, 1: 652–653.

<sup>19</sup> Addobbati, *Commercio, rischio, guerra*, 52–56; Filippini, *Il Porto di Livorno*, 1, 45.

evidence of cases which were brought before the *Consoli* after participants had failed to resolve the matter between themselves, in most of these examples there were usually only one or two merchants involved, and in all cases Livorno was both the origin and final destination of the voyage, with all interested parties thus located in the port.<sup>20</sup>

### TO THE BENEFIT OF THE SHIPMASTER?

The full circumstances of Finch's letter, raised in the context of a particularly tense moment in Anglo-Tuscan relations, merit their own separate treatment.<sup>21</sup> The complaint about Averages was just one part of an ongoing struggle between England and Tuscany over questions of commercial justice and jurisdiction, the most pressing of which was control over seamen's wages, a thing for which the English had long lobbied without success.<sup>22</sup> The dispute over Average was part of this ongoing struggle. On this occasion, analysis will be confined to the use of Averages more broadly.

Though Finch had correctly identified these as a tool of Tuscan political economy, he was wrong about exactly how this worked: his claim that the *Consoli* 'agree[d] unto the pretensions of the masters of the vessels to invite them to the port of Livorno' was somewhat wide of the mark. Although GA procedures were weighted in favour of the shipmaster, this was probably not a Tuscan peculiarity but was to an extent a structural feature of all Average procedures. What is more, seeking to favour shipmasters would have been a fairly ineffectual way of attracting traffic to the port.

<sup>20</sup> Archivio di Stato di Pisa (ASP), Consoli del Mare (CM), Atti Civili (AC), Register 27, Case Number 30 (27–30), Case adjudicated on 31 November 1600; ASP, CM, AC, 418–11 (14 May 1700).

<sup>21</sup> Finch's request and the circumstances surrounding it will be dealt with in full in a separate essay, co-authored with A. Addobbati: 'One hundred barrels of gunpowder: General Average, maritime law, and international diplomacy between England and Tuscany in the second half of the seventeenth century', *Quaderni Storici*, 168 (forthcoming); see also M. Fusaro and A. Addobbati, 'The Grand Tour of Mercantilism: Lord Fauconberg and his Italian Mission (1669–1671)', *English Historical Review*, 137 (2022): 692–727.

<sup>22</sup> See M. Fusaro, 'The Invasion of Northern Litigants: English and Dutch Seamen in Mediterranean Courts of Law', in M. Fusaro, B. Allaire, R. Blakemore and T. Vanneste eds., *Law, Labour, and Empire: Comparative Perspectives on Seafarers, c.1500–1800* (Basingstoke 2015), 21–42, 31–34.

Shipmasters held several advantages in Average procedures, one of which was a large degree of control over the evidence on which the case was based. GA cases in Tuscany began, as elsewhere, with the production of a narrative which explained how the damage or expense in question had been incurred. This document was generally referred to as the *consolato*, deriving from the fact that it was often made in front of a consular authority. It seems to have been widely understood that such a document should be made at the first available opportunity after the accident.<sup>23</sup> As such, a Tuscan Average procedure could be initiated using an accident report which had been produced elsewhere. About half the cases in the year 1670 were cases of this sort. The other half had *consolati* which had been produced in Tuscany itself, and here the proper forum for the creation of this document was the court of the Governor of Livorno and his *auditore*. Once the master brought the case before the *Consoli*, a second document was drawn up, referred to as a *testimoniale e domanda*, which was usually an exact copy of the narrative in the *consolato* with an official request for GA attached.<sup>24</sup>

Thanks to the nature of a sea voyage, it was difficult for merchants to challenge this narrative.<sup>25</sup> Since the incident usually happened far from land, it was almost always impossible to independently certify what had happened. When examined individually, the *consolati* give a striking sense of immediacy and human drama.<sup>26</sup> When examined collectively, however, it is very clear that these documents were created with legal help and

<sup>23</sup> There does not appear to have been any specific written norm concerning this. Nevertheless, masters filed their reports in the first port they could enter as a matter of course. The importance of making the *consolato* at the first available opportunity is likewise demonstrated by instances in which the shipmaster, forced to take shelter somewhere outside of a port, made a short provisional statement in front of a local castellan before later making a standard *consolato*. See ASP, CM, AC, 196-37 (2 January 1639/40); ASP, CM, AC, 25-3 (28 June 1600).

<sup>24</sup> This nomenclature is not rigidly observed by the sources. The *consolato* is sometimes referred to as a *testimoniale* and vice versa. Sometimes the *consolato* is also referred to as a *relazione* or *dichiarazione*. They are, however, the most common labels applied to these documents and have been adopted for the sake of clarity.

<sup>25</sup> See also the contribution of Antonio Iodice in this volume.

<sup>26</sup> On the *consolati* see P. Castignoli, 'Struttura e funzione dei consolati per fortune di mare a Livorno', *La Canaviglia*, 8 (1983): 39-42; M. Berti, 'I rischi nella circolazione marittima tra Europa nordica e Europa mediterranea nel primo trentennio del Seicento ed il caso della seconda guerra anglo-olandese (1665-1667)', in S. Cavaciocchi ed., *Ricchezza del mare ricchezza dal mare: secc. XIII-XVIII* (Florence 2006), 809-839.



naturally converged towards a formulaic standard specifically designed to trigger a GA declaration. The resulting account usually takes the form of a series of pre-fabricated modules stacked on top of one another, designed to counter the most predictable objections to the sacrifice. These begin with the unimpeachable condition of the ship at the outset of the voyage, followed by the unavoidability of assuming voluntary damage, and then relating the active decision of the master to assume that damage, usually with the consultation or at least consent of the rest of the crew.<sup>27</sup> A master had a strong incentive to make sure that his actions were portrayed in the best possible light: since there had been damage to the ship and/or cargo, he had to prove in the first instance that he was not culpable if he wanted to receive his freight.<sup>28</sup> A declaration of GA could also benefit the master financially if there had been damage to the ship and he was a shareholder, since the damages would also be shared with the cargo interests.<sup>29</sup>

The master's account had to be supported by the testimony of witnesses, usually between two and five depending on the jurisdiction in which the *consolato* was drawn up. The merchants were also represented by a *procuratore* (attorney) in front of the *Consoli*, who submitted a list of interrogatories on which the witnesses could be examined. Yet in the vast majority of cases encountered in the Pisan archive the only witnesses produced were the other seamen on board.<sup>30</sup> Since the master might handpick which witnesses he produced, we should not be surprised that these replicated their master's testimony in the vast majority of cases. In one particularly contentious PA case, that of *La Madonna del Rosario, San Domenico, e Sant'Antonio di Padova*, the master appears to

<sup>27</sup> For example, the majority of the narratives begin by describing the condition of the ship at the beginning of the voyage, 'good, strong, watertight, provided with the things necessary for navigation, ready to undertake whatever voyage', e.g. ASP, CM, AC, 319-13, (28 February 1669): 'Il comparente il S. Giuseppe di Nicolò Olandese, Capitano della nave S. Gio. in suo proprio nome, et in ogni miglior modo quale brevemente dice come il di 26 settembre prossimo passato fece partenza dal porto d'Arcangelo con detta sua nave, buona, forte e stagna, atrassata [sic] e corredata per fare qualsivoglia viaggio'.

<sup>28</sup> See G. Rossi, 'The Liability of the Shipmaster in Early Modern Law: Comparative (And Practice-Oriented) Remarks', *Historia et Ius*, 12 (2017): 1-47.

<sup>29</sup> C. Cipolla, *Il burocrate e il marinaio: La 'Sanità' Toscana e le tribolazioni degli inglesi a Livorno nel XVII secolo* (Bologna 1992), 101.

<sup>30</sup> There appears to be no discernible pattern regarding the selection of witnesses. Sometimes a mixture of crew and officers are selected, sometimes all officers, sometimes all crew.

have deliberately selected witnesses he knew would be unavailable for re-examination on arrival in Livorno.<sup>31</sup> The ship had headed to Crete with a cargo of wine, where the Christian fleet was fighting the last, desperate stages of the War of Candia. According to the *consolato*, the ship had been at anchor in the bay of Standia when the vessel of the ‘generalissimo’, Vincenzo Rospigliosi, had come into sight. The French and Papal ships at anchor in the bay had given the customary salute, and such was the explosive force of these repeated blasts that many of the boxes of wine came loose and scattered, ruining the contents.<sup>32</sup> A list of twenty-one interrogatories to be put to the witnesses, asking them whether they felt such a thing would have been possible had the wine been properly secured in the first place. Unfortunately, the two witnesses were not available for comment, one having left the ship in Milazzo, and the other having left in Genoa. In their stead, the master put forward two new witnesses, who, rather than responding directly to the interrogatories, simply affirmed the testimony of their former colleagues.

The *Consoli* were thus beholden to the carefully curated information with which they were presented. The only thing against which the narratives could be checked was the physical evidence of the ship itself, if it had not already been repaired (and this was no use at all in a jettison, of course). Such examinations were sometimes carried out by the master carpenters assigned to the galleys of the Order of St Stephen.<sup>33</sup> These were hardly definitive, since the experts might easily be bribed to give a certain verdict.

Similar difficulties beset other maritime procedures, of course—insurance claims, for example—but the problem was particularly acute with regard to Averages because of the nature of the conceptual dividing line between PA, paid by the affected individuals, and GA, which was paid for collectively. PA was used when damages had been incurred involuntarily

<sup>31</sup> ASP, CM, AC, 319-6 (5 February 1669).

<sup>32</sup> ASP, CM, AC, 319-6 (5 February 1669), ‘et essendosi cominciati a visitare li genti delle galere di Malta et altri capitani de vascelli per le visite delli quali si sparorno diversi tiri di cannone dalle galere et essendo il comparente con tutti gli altri vascelli che quivi si ritrovassero ancorato fra il mezzo della dette galere per le vicinanza per lo sparo che esse facevano... la nave travagliò in maniera che le botti si allentorno e si sparorno senza poterni porte rimedio alcuno’.

<sup>33</sup> ASP, CM, AC, 319-25 (18 April 1670); ASP, CM, AC, 320-2 (9 May 1670); ASP, CM, AC, 321-25 (25 August 1670).

as the direct result of a *force majeure*; GA was used when damages had been incurred intentionally to avoid total loss or even greater damages. In reality, however, this line was far from clear cut. From the right point of view, almost any event could be made to seem the result of a voluntary action, and the master's control of information could ensure this was the case.<sup>34</sup> The case of the French ship *Cavallo Marino* is a case in point, demonstrating how damage resulting from a storm might be recast as the result of human action with a few narrative convolutions:

and because [bailing out] was not enough, there being always more water in the bilge in such a way that the ship was in evident danger of sinking and being lost with all its cargo, with... the advice of his officers and mariners and for the universal benefit, to save the ship, he resolved to run before the wind towards Baffa, and in order to round the point that he found there, and thus enter into the harbour, he made to make all sail, during which [manoeuvre] the mizzen mast broke.<sup>35</sup>

We cannot be sure whether all sail was necessary or not (the *Consoli* could not be sure either, and that was partly the point). What is clear is that an event which might more obviously be related as the direct result of natural forces ('storm breaks mast') could equally be presented as the result of human endeavour ('master breaks mast through evasive actions'). Since a master would most likely be making *some* proactive steps in a crisis, the scope for such reframing was large. Since the decisive criterion for dividing PA from GA was that the action be voluntary—an internal decision on the part of the master—this could not be easily disproved.<sup>36</sup>

Though GA cases were challenged on occasion, these features meant that the master entered the procedure from a position of strength, and he could be fairly certain of getting at least some of what he asked for. Masters could not afford to develop a reputation for abusing Averages,

<sup>34</sup> See Andrea Addobbati's contribution to this volume.

<sup>35</sup> ASP, CM, AC, 319-20 (18 March 1669), 'perché ciò non era bastante essendo sempre più l'acqua nella sentina di modo che la nave si ritrovava in evidente pericolo di sommergersi e perdersi con tutto il suo carico, e però con il consiglio de suoi officii e marinari e per beneficio universale per salvare la nave suo carico, risolse poggiare verso Baffa, e per montare la punta che ci ritrovava avanti di potere entrare in quella spiaggia fece fare tutta forza di vele mediante la quale si ruppe l'albero della mezzana'.

<sup>36</sup> See Andrea Addobbati's contribution to this volume.

but considerable leeway was on offer. If the *Consoli* favoured the shipmaster, therefore, this was not necessarily the result of deliberate policy but was rather a reflection of these structural advantages. What is more, even had the *Consoli* been particularly friendly to masters, this could not, as Finch had claimed, have increased traffic to the port. In order to declare a GA, it was necessary to be a port where at least some of the receivers were present; doing otherwise would have been highly irregular, and no instance has been found in which a master attempted to do so. While the *consolato* needed to be made as soon as possible after the accident, this document then had to be taken to a scheduled stop in order to actually carry out the GA. It was therefore impossible for a master to make a declaration in a port which was not already a scheduled stop. Decisions about where to stop were based on merchants' calculations about markets and profits, not by masters themselves.<sup>37</sup> GA alone was thus unable to augment port traffic because any ship declaring GA in a particular port had been due to stop there anyway.

### THE FRENCH *COTTIMO*

When GA was used as a political tool, it was used in a way which benefited both masters and merchants—or, at least, those merchants present within the port of Livorno. One of the ways it did so was by allowing the French *cottimo* tax to be shared through GA, even though it could not be described as a voluntary sacrifice. The *cottimo*, as mentioned, was a levy of around 20% on all ships flying the French flag who visited the Levant ports, with the exact amount determined by a ship's tonnage and port of origin. The term had originally been used by the Venetians in Alexandria to describe an imposition levied to fund the debts of the community; the French *cottimo* was likewise originally instituted to fund the activities of the French nations in the Levant in 1664. In subsequent years it was strengthened and took on protectionist aspects, in that any ship which travelled directly to Marseille from the Levant was made exempt.<sup>38</sup> The intention was to cut Livorno, a great rival of Marseille, out of the trade with the Levant. Guillaume Calafat has noted however, that despite the

<sup>37</sup> See Sabine Go's contribution to this volume, where she argues that the Chamber was a means of persuading masters/merchants to finish the voyage in Amsterdam.

<sup>38</sup> Calafat, 'Livorno e la camera di commercio di Marsiglia', 249; on the rivalry between Marseille and Livorno see Filippini, *Il Porto di Livorno*, 1, 93.

imposition of this ‘French Navigation Act’, and despite the large funds it raised for the Marseille chamber of commerce, ships flying the French flag continued to call at Livorno.<sup>39</sup>

The evidence of maritime Averages demonstrates how the use—or abuse—of GA helped the Tuscans to offset this new handicap. There are several instances in the Tuscan documentation of ships flying the French flag placing the cost of the *cottimo* payments into GA, thus sharing them with the other interested parties in the voyage. The justification for doing so under existing GA norms and practices was not obvious. Firstly, normative material on GA was ambiguous as to whether GA should be used only to save a ship in peril, or whether it can be used more widely for the ‘general benefit’ in order to aid the onward progress of the voyage through the payment of extraordinary expenses.<sup>40</sup> The *Lex Rhodia de Iactu*, the section of Justinian’s *Digest* which deals with GA, contains contrary statements on the matter, with most jurists claiming that the procedure was for ship’s saved from peril, and others suggesting that GA was any sacrifice made for the general benefit.<sup>41</sup> The evidence of the Tuscan accident reports, which make frequent reference to sacrifices made for the ‘universal benefit’, show that, in practice, the latter conceptualisation prevailed, but even here there was a clear expectation that the expense should be incurred voluntarily or intentionally.<sup>42</sup> Even if the

<sup>39</sup> Calafat, ‘Livorno e la camera di commercio di Marsiglia’, 252.

<sup>40</sup> This is, essentially, the issue which divided English GA practice from GA elsewhere at the time of the compilation of the York-Antwerp Rules. See R. Cornah, ‘The Road to Vancouver: The Development of the York-Antwerp Rules’, *Journal of International Maritime Law*, 10 (2004): 155–166. Islamic jurisprudence ruled that the ship had to be in a state of peril, on this see Hassan Khalilieh’s contribution in this volume.

<sup>41</sup> A. Watson, *The Digest of Justinian*, 4 vols (Philadelphia 2011), 2: 419–422; for analysis of the *Lex Rhodia de Iactu*: J. J. Aubert, ‘Dealing with the Abyss: The Nature and Purpose of the Rhodian Sea-Law on Jettison (*Lex Rhodia de Iactu*, D 14.2) and the making of Justinian’s Digest’, in J. W. Cairns and P. J. du Plessis eds., *Beyond Dogmatics: Law and Society in the Roman World* (Edinburgh 2007), 157–172. On these issues see also Daphne Penna’s contribution in this volume.

<sup>42</sup> In the cases from 1640, every single judgement and *testimoniale* contains this phrase (8 out of 8). In the cases from 1670 just over half (10 out of 19) of the *testimonialii* contain it, as do around a third of the judgements (6 out of 19). In the 1700 cases, 11 out of the 12 judgements contain a reference to the universal benefit, and it is mentioned in either the *testimoniale* or the *consolato* in 9 of those cases. The exception to the rule is, interestingly, the cases from 1600, where it finds its way into only 3 *testimonialii* or *consolati* out of a possible 12 cases and is mentioned in only 1 judgement.

*cottimo* might be described as an extraordinary expense necessary for the successful prosecution of the voyage, it could hardly be described as a sacrifice voluntarily or intentionally incurred. The fact that the placement of the *cottimo* into GA was unorthodox, even abusive, is suggested by the fact that the accident reports—the *consolati* and *testimonialiali*—never mention the *cottimi* in their account of the voyage. Although there are reports contained in the files signed by the French consul which attest that the *cottimo* was in fact levied, and although they appear in the final GA calculation, there is no mention of its payment in the official report and call for GA, and thus no explicit justification for why GA should have been used.<sup>43</sup>

Despite its somewhat dubious legality, however, the use of GA to divide these costs was an ingenious decision on the part of the Tuscan authorities. Most straightforwardly, the use of a cost-sharing device like GA blunted the impact of the imposition by sharing it; rather than being borne by the shipmaster or ship-owners, or those who had freighted the ship, the cost was now equitably borne in by all interested parties in a straightforward manner using existing procedures which were understood by all. Moreover, the involvement of all interested parties meant that it was not just the Livornese merchants who bore the cost. Those merchants who were resident in Marseille—the final destination of many of the ships flying the French flag—would likewise be called upon to make their contribution. The effect was to involve those same merchants which the protectionist measure was designed to protect. The use of GA could not entirely neutralise the effect of the *cottimo*, of course; it still, ultimately, increased the cost of including Livorno in any voyage. But these costs now fell in a more convenient manner and in a way far less prejudicial to the interests of the Tuscan port. The evidence certainly suggests that the result was bearable for the affected merchants, since French traffic continued to land at Livorno as before.

Co-opting the port of Marseille into paying for its own protection was possible because of the full mutual recognition granted to different jurisdictions in matters of GA, despite differences that might have existed in the way that those different centres adjudicated Averages. This was a necessary concession if the system was to work at all. A ship might touch in several different ports under several different jurisdictions during the

<sup>43</sup> ASP, CM, AC, 319-20 (18 March 1669); ASP, CM, AC, 322-33 (16 December 1670); ASP, CM, AC, 322-39 (23 December 1670).

course of the voyage, and in an age of slow communications, the GA contributions decided upon in one centre had to be respected in others. There was little chance for redress in this context. If the system was to work at all, most decisions had to be accepted as *fait accompli*. This problem is illustrated by the case of the *Madonna di Monte Nero*, a ship which had carried out a large jettison in order to escape a corsair in 1671. The original *consolato* had been made in Zante and the GA itself was processed in Messina. When the ship arrived in Livorno, it was discovered that a few items of jettisoned cargo had not been accounted for in the original *calcolo* made at Messina, and the cost of these was added into the Average by the Pisan *Consoli*.<sup>44</sup> A few months later one of the interested merchants, Giovanni Francesco Cardi, petitioned the case to the Tuscan Grand Duke, arguing that the Average ought to be struck down.<sup>45</sup> In their response to his petition, the *Consoli* argued that, on a practical level, reversing the case would be impossible:

since many receivers in Messina will have come up with and paid the said Average and [this] being not really their interest but that of their correspondents, they will have passed on the debt of the payment... it would not be right if the receivers were held to account when they have acted in good faith and in execution of a sentence and calculation passed in judgment of the tribunal...it does not seem appropriate to retract a sentence and calculation of Average done in the tribunal of the *Consolato del Mare*...otherwise would follow from it that which is never done, that a sentence and calculation given and made in the tribunal of their magistrate would be retracted, and it would bring great confusion to navigation and mercantile commerce.<sup>46</sup>

<sup>44</sup> ASP, CM, AC, 326-13 (26 June 1671).

<sup>45</sup> ASP, CM, Suppliche (S), 985-333 (Decision by Florentine Ruota, 8 February 1671).

<sup>46</sup> ASP, CM, S, 985-333 (8 February 1671). 'Perché non pare conveniente si possi retrattare [sic] una sentenza et calcolo di Avaria fatto nel Tribunale del Consolato dell [sic] Mare della Città di Messina, altrimenti ne seguirebbe quello che mai si è praticato, che verrebbero retrattate le sentenze et calcoli che vengono date e fatti nel tribunale del magistrato loro, et apporterebbe grandissima confusione alla navigazione [sic] et commercio mercantile... ancora perché molti ricevitori di Messina che haveranno [sic] riscosso e pagato detta Avaria et essendo l'interesse non proprio ma delli mercanti loro corrispondenti, à quali haveranno dato debito del pagamento... non sarebbe giusto che fussero [sic] tenuti del proprio, quando ciò hanno fatto in virtù et esecuzione [sic] di una sentenza e calcolo di quel tribunale passato in giudicato'.

Similarly, we find GAs adjudicated in Marseille being given full legal recognition in Tuscany. On one occasion, a shipmaster brought a case before the Pisan *Consoli*, claiming that he was having trouble extracting payments from merchants in Livorno for a GA which had been originally adjusted in Marseille.<sup>47</sup> The *Consoli* commanded that the merchants in Livorno pay the contributions without hesitation, and the merchants themselves did not even bother to object.

### TUSCANY'S 'NORTHERN' POLICY

The use of GA for the *cottimo* strained the contemporary understanding of GA and the norms which governed it; the Tuscan policy regarding GAs requested by English and Dutch shipmasters, on the other hand, was irregular in procedural terms. As has been noted, when the ship had sustained damage as part of the 'sacrifice', it was customary that the court should appoint experts to assess the ship, itemising damage and deciding how much compensation should be received for each. Yet here appears to have been a clear distinction in this regard between the treatment given to the majority of shipmasters and those who originated from Northern Europe. Whereas Italian masters continued to receive a visit from experts to assess damage, 'Northerners' were often allowed to submit their own damage reports, detailing what they thought their claim should be worth. In some cases, these damage reports were not even notarised.<sup>48</sup>

The *Consoli* were careful to give these irregularities the outward appearance of probity. In these cases in which they allowed Northerners to submit their own damage assessments, the *Consoli* awarded an explicitly 'reduced' level of compensation for the shipmaster in their final judgment.<sup>49</sup> At first glance then, it would seem that, far from penalising

<sup>47</sup> ASP, CM, AC, 322-16 (8 November 1670).

<sup>48</sup> Notarised examples: ASP, CM, AC, 319-13 (28 February 1669); ASP, CM, AC, 320-7 (28 May 1670). Unnotarised examples: ASP, CM, AC, 319-28 (28 April 1670); ASP, CM, AC, 321-30 (30 August 1670).

<sup>49</sup> It is of course difficult to say that a ship 'belonged' to a particular nation before the practice of registered home ports. Even after the advent of this practice, labelling a ship 'Dutch' or 'English' (other than in a narrow legal sense) would be of questionable analytical value and validity, since the owners of the ship, its crew, and its cargo might all be of different nationalities (none of which might be the same as the registered nationality). The Tuscan documents give 'national' labels only to persons, i.e. shipmasters and seamen, which may or may not reflect these actors' own identification. I therefore



Northern merchants as Finch's letter suggests, the *Consoli* were being especially diligent in safeguarding their interests. They even appointed a *curatore* to represent those who were absent. The choice of *curatore* and the objections raised are revealing however. Let us take just two examples: the GA case of the *Principe Enrico Casimiro*, a ship with a Dutch master, and the GA of the English ship, the *Alice and Francis*, which both unfolded in the year 1670, the year before Finch's complaint.<sup>50</sup> In both cases, the ship had survived combat with a corsair, occasioning not only damages but also large expenses for material used in combat. In both cases, the choice of the court for the position of *curatore* fell upon a Doctor Michele Moneta. This character was certainly no stranger to the *Consoli*, since we later find him attesting a citation in the position of vice-chancellor of the court.<sup>51</sup> In both cases, this Moneta railed rhetorically against the 'null and invalid request' which he solemnly promised to oppose in 'beginning, middle, and end', refusing to validate 'even one of the intentions of the present adversary'.<sup>52</sup> In each case, he then made the following identical objections: that the things related in the *testimoniale*

restrict myself to talking of Northern masters rather than ships. That said, the five ships in question clearly had strong associations with Northern Europe:

ASP, CM, AC, 318-26 (22 January 1669). *Speranza Incoronata*: Master and all three witnesses from Hamburg, list of damages submitted in Dutch and translated by the 'consule Amburghese' in Livorno.

ASP, CM, AC, 319-13 (28 February 1669). *San Giovanni*: Master and all three witnesses from the Netherlands,

ASP, CM, AC, 319-28 (28 April 1670). *Mercante Fiorentino*: Master and all three witnesses from England, final destination was London.

ASP, CM, AC, 320-7 (28 May 1670). *Principe Enrico Casimiro*: the ship bears a Dutch name, list of damages submitted in Dutch, Master from the Netherlands, two witnesses from the Netherlands, two from Hamburg. Final destination was Amsterdam.

ASP, CM, AC, 321-30 (30 August 1670). *Alice and Francis*, Master and all witnesses from England, Voyage began in London, Finch's letter attests the involvement of English merchants.

<sup>50</sup> ASP, CM, AC, 320-7 (28 May 1670); ASP, CM, AC, 321-30 (30 August 1670).

<sup>51</sup> ASP, CM, AC, 322-16 (9 November 1670); ASP, CM, AC, 322-27 (9 December 1670).

<sup>52</sup> ASP, CM, AC, 321-30 (30 August 1670), 'nulla et invalida domanda alla quale l'habbia [sic] impugnativa relatione [sic] e premesso solenne pretesto in principio, mezzo, e fine della presente scritta et di non convalidare cosa alcuna dalli intentione [sic] del presente l'avversario [sic]'. ASP, CM, AC, 320-7, 'nulla et invalida domanda alla quale l'habbia impugnativa relatione e premesso solenne protesto in principio mezzo e fine della presente scritta et di non convalidare cosa alcuna dall'intentione del predetto signore avversario'.

were not true, that the master had not made his request in the proper form, nor proved that the *consolato* was true, but had rather done everything fraudulently. That is to say, he made the most bombastic and least specific objections he possibly could have done. Such objections padded out numerous exceptions raised by merchants against GA claims, but were usually accompanied by at least one far more concrete objection.<sup>53</sup> What is more, the truth or otherwise of the events outlined by the *consolato* was hardly the pertinent issue in these specific cases. No one could reasonably doubt the essential truth of what had happened because both ships were in convoy with other vessels including a ship of war. By the time the *Alice and Francis* was filing for Average in Livorno, the news of its battle with Algerian corsairs had already reached the London Gazette.<sup>54</sup> The devil, if he were to be found, would be in the detail, i.e. in the specific amounts requested by the master. But on these specifics Moneta's objections were conspicuously lacking.

In the light of these objections, the *Consoli's* 'concession' to the Northerners begins to reveal itself as illusory. This was not legal wrangling but rather a conspicuous simulacrum of it. The *Consoli* made a show of resistance and probity before settling on a stern but fair compromise. It seems likely that many masters were aware of the role assigned to them in this courtroom melodrama: in the case of the *Principe Enrico Casimiro*, it was the master who formally requested the *curatore*. In reality, what seems most likely is that in cases involving 'Northern' shipmasters, the shipmaster and the merchants in the port were resolving the GA claim between themselves, and that the reduction offered by the *Consoli* in fact reflected a compromise figure agreed by the various parties; the *Consoli* were simply fulfilling the function of certification which was necessary in order to export the judgement abroad and were accepting these agreements at face value without carrying out the investigative functions with which they were ostensibly charged.

In at least one GA case, that of the English ship *Alice and Francis*, it is certain that the case had been agreed between master and merchants beforehand.<sup>55</sup> There are several discrepancies in the chronology of the

<sup>53</sup> E.g. ASP, CM, AC, 320-7; ASP, CM, AC, 197-29 (26 April 1640); ASP, CM, AC, 196-37 (2 January 1639).

<sup>54</sup> *The London Gazette*, n.495 (11 August–15 August 1670).

<sup>55</sup> This case as explored in greater detail in Addobbati and Dyble, 'One hundred barrels of gunpowder'.

case which can only be explained by prior agreement between master and merchants. For instance, the *testimoniale* which initiated the case at the court of the *Consoli* states that the master of the vessel ‘came before’ the court on 20 August 1670; but the master, Stephen Dring, only received permission from the *Magistrato di Sanità* (health board) to disembark from his vessel on 21 August. Travelling to another city to present oneself in a court of law would have been impossible without this permission. The case must therefore have been initiated by the receiving merchants rather than the master.<sup>56</sup> What is more, another legal dispute preserved in the Florentine state archive in the files of the lawyer Andrea Capponi demonstrates that the merchants involved in the GA of the *Alice and Francis* were later convicted of trying to defraud the customs house by trying to smuggle merchandise into the city undeclared, a thing they could only have attempted with the shipmaster’s help.<sup>57</sup> In the case of the *Alice and Francis*, the reduction mandated by the court was a mere 5%, the lowest reduction mandated by the *Consoli* in the cases examined. It is not difficult to understand the connection between the two cases; the smuggling operation was part of a wider deal struck between the interested merchants in Livorno and the English shipmaster: they would agree to the majority of the damages he requested in return for help in avoiding customs charges. Nor is the case of the *Alice and Francis* the only concrete evidence for this kind of rubber-stamped, out-of-court settlement. In another case, that of the *Mercante Fiorentino* bound for London, the English master’s request for damages—unnotarised—is even countersigned by ‘Giacomo Gould’, one of the receiving merchants.<sup>58</sup> In this case too, the master was clearly proceeding with his suit with Gould’s cooperation from the start, rather than as his adversary as the rhetoric of the court case would suggest.

The decision to concede *de facto* control over GA to the ‘Northern’ communities in the port while maintaining *de iure* jurisdiction makes sense within the economic context of the free port and the political context of the Grand Duchy. Livorno lacked a strong native merchant corps, instead depending largely upon foreign merchants working as

<sup>56</sup> ASP, CM, AC, 321-30 (30 August 1670); Archivio di Stato di Livorno, *Sanità*, 68-338.

<sup>57</sup> ASF, *Auditore dei Benefici Ecclesiastici poi Segretaria del Regio Diritto*, 5682-40.

<sup>58</sup> ASP, CM, AC, 319-28 (28 April 1670).

commission agents for principals located abroad: such was the economic reality of a port of deposit.<sup>59</sup> The English and Dutch were the most important of these, but the English made frequent threats to decamp to other ports such as Genoa.<sup>60</sup> Such threats may have been empty in reality but could be used as leverage for more favourable treatment from their Tuscan hosts. Keeping hold of both these merchants and political and judicial autonomy became a central policy goal of the Tuscan state. By tacitly conceding jurisdiction over GAs to the master and the merchants, the Tuscans met both these aims. They pacified resident merchants, who were thus dissuaded from siding with their sovereign in requesting jurisdiction; at the same time, they maintained the principal of Tuscan jurisdiction, which not only maintained the Grand Duchy's prestige, but also allowed the Tuscans to use their jurisdictional powers in a situation of dire need.<sup>61</sup> The losers were the merchants in other ports, who had neither a say in the process nor effective representation.

It is not entirely clear how this process of unofficial delegation worked when there were considerable numbers of merchants from various different ethno-religious communities involved. In the case of the *Alice and Francis*, the majority of the merchants seem to have belonged to the English *natio*. In the case of the *Principe Enrico Casimiro*, many of the interested merchants were Jewish or Armenian, and both Jewish and Armenian representatives made official objections to the GA in the

<sup>59</sup> F. Trivellato, *The Familiarity of Strangers: The Sephardic Diaspora, Livorno, and Cross-Cultural Trade in the Early Modern Period* (New Haven 2009), 106; Tazzara, *The Free Port of Livorno*, 48–77; Filippini, *Il Porto di Livorno*, 1: 87, 90–91; R. Ghezzi, 'Il porto di Livorno e il commercio mediterraneo nel Seicento', in A. Prosperi ed., *Livorno 1606–1806: luogo di incontro tra popoli e culture* (Turin 2009), 324–340.

<sup>60</sup> Cipolla, *Il burocrate e Il marinaio*, 103–106; T.A. Kirk 'Genoa and Livorno: Sixteenth and Seventeenth-Century Commercial Rivalry as a Stimulus to Policy Development', *History*, 86 (2002): 2–17; M. Fusaro, *Political Economies of Empire in the Early Modern Mediterranean: The Decline of Venice and the Rise of England 1450–1700* (Cambridge 2015), 95; on the growing importance of Northern shipmasters in Genoa, and in the Mediterranean in general, see Luisa Piccinno's contribution in this volume; on the importance of commercial institutions like Average for commercial competition between port cities see Sabine Go's essay in this volume.

<sup>61</sup> A. Addobbati, 'Until the Very Last Nail: English Seafaring and Wage Litigation in Seventeenth-Century Livorno', in Fusaro et al. eds., *Law, Labour and Empire*, 43–60, at 49–51; in the same volume see also D. Pedemonte, 'Deserters, Mutineers and Criminals: British Sailors and Problems of Port Jurisdiction in Genoa and Livorno During the Eighteenth Century', 256–271.

form of exceptions and a request that the assessor—a legal expert attached to Pisa University—be involved in the case. In this case, the reduction offered in the judgement of the *Consoli* was very large: a 57% reduction of the master's original request. Perhaps these official interventions were made by the Jewish and Armenian communities to prevent their being cut out of the process; perhaps they were a negotiating tactic to persuade the master to accept a lower total. Sometimes, then, resolution was arrived through a mixture of formal acts and informal discussion outside of the courtroom, even if Northern masters do seem to have enjoyed a greater degree of autonomy in this respect.<sup>62</sup>

Regardless of the extent to which the GA had been presented to the *Consoli* as a *fait accompli*, the result of this Tuscan approach towards Northern masters was an abnegation of responsibility: everyone could blame everyone else for the outcome. When ships from England or the Netherlands touched in Livorno it was rarely as the voyage's final destination; Livorno was an intermediate stop on the way to the Levant, North Africa, or some other Mediterranean destination. Those who were negotiating these sorts of GA were not those who were directly interested in the cargo but rather commission agents, rewarded with a percentage of each transaction they undertook on behalf of their principals. Masters and the court itself were insulated from the dissatisfaction of principals by the agents resident in the port who had benefitted from negotiating the GA; the agents could excuse themselves with reference to the decision of the court. They most likely disassociated themselves from the process, presenting the imposition as an arbitrary and unavoidable injustice on the part of the *Consoli*. This helped to undermine faith in the Tuscan authorities. Every player needed to protect his individual reputation, of course, and this imperative must have acted as a brake on repeated or egregious abuse: but when Livorno's reputation as a 'free port' renowned for generosity towards those who trafficked there clearly preceded it, those abroad were willing to believe that it was the *Consoli* who were in the wrong.<sup>63</sup>

The strength of this system was that existing networks could be used to co-ordinate an inherently international procedure in a world where

<sup>62</sup> See Marta García Garralón's contribution in this volume for similar conflict resolution practices.

<sup>63</sup> L. Lillie, 'Commercio, cosmopolitismo e modelli della modernità: Livorno nell'immaginario inglese a stampa, 1590–1750' in Addobbati and Aglietti eds., *La Città delle Nazioni*, 337–357.

communication was difficult and slow. The unavoidable weakness was that it encouraged an abnegation of responsibility. While masters had to maintain good relationships with the factors, and factors had to maintain good business relations with their correspondents, middlemen were always less likely to contest a demand than the merchants ultimately footing the bill. The suggestion of Finch's letter, that the 'principal merchants' should have been able to object, was nevertheless unworkable on a practical level, with information flows being far too slow to contemplate such a cumbersome back-and-forth, and masters waiting in port while time-sensitive cargoes spoiled in warehouses. As so often was the case in early modern long-distance trade, finding a trustworthy agent was the best one could hope for.<sup>64</sup>

## CONCLUSION

GA relied on cooperation across large distances, but this was cooperation without trust. It was necessary to recognise the decisions made in other jurisdictions because the process was inherently transnational. The natural propensity of GA was to favour ship interests because this side enjoyed advantages in both information and coordination, and it is thus no surprise that concerns were periodically raised about malpractice. In a way then, Finch's complaints about Average to the Grand Duke have a universal quality to them, and the complaints of the London merchants may not be unfamiliar to the modern-day Average adjuster. If the high degree of blind trust and cooperation which was required led to a certain degree of corruption and leniency towards masters, this was to a large degree inevitable if the system was to function at all. In the midst of all the squabbling, it should be remembered that GA was ultimately 'a good thing'. It allowed masters to take positive action to avoid greater damage without fear of reprisal while ensuring a more even distribution of unforeseen costs across the trading community, complementing the work of premium insurance. The result of less generous procedures from a business point of view would have been higher upfront costs in the form of freight charges, a possible brake on commercial growth. That said, the Tuscan authorities were indeed manipulating GAs, both in doctrinal and procedural terms, to best suit their own political economy.

<sup>64</sup> Trivellato, *The Familiarity of Strangers*, 153.

This political economy did not seek to deny the multilateral nature of commerce, but rather used GA to leverage that same quality in order to defend against the aggressive unilateral policies of more powerful nation-states. The language of John Finch's letter suggests that GA was under the direct control of Princes, who by their benevolent laws protected the commerce of their subjects. Its vague references to the King of England's laws on the subject suggest an important role for sovereign law and sovereign intervention in GA's operation—all this despite the fact the most important normative texts concerning Averages at this point were not royal collections, but collections of customary law, the most important in the Mediterranean being the *Consolat de Mar*.<sup>65</sup> Here, we can clearly perceive the influence of that phenomenon which Istvan Hont, following David Hume, labelled the 'Jealousy of Trade'.<sup>66</sup> To this way of thinking, commercial success was central to national greatness and survival and state power should be brought to bear to ensure it. At the root of these princely pretensions over GA was a desire to assert political sovereignty over economic forces.

In reality, the Tuscan use of GA was effective precisely because it reflected the interconnected nature of the maritime economy. In seeking to protect the port of Marseille, the French *cottimo* tax was in fact harming the interests of French subjects in Marseille and in Livorno; sharing the costs via GA merely made sure of this fact. By conceding tacit jurisdiction to the English merchants inside the port, moreover, the Tuscans exploited the fact that the interests of English subjects in the port, English national consuls, the London merchants and the English state were not necessarily aligned. English merchants in Livorno relished the autonomy they were offered and did not necessarily welcome the prospect of English consular jurisdiction.<sup>67</sup> It should be remembered

<sup>65</sup> John Finch to Cosimo III, ASF. MM, 358-17 (4 February 1671). On the importance of the *Consolat de Mar* as a normative source see O. F. Robinson, T. D. Ferguson, and William M. Gordon, *An Introduction to European Legal History* (Abingdon, 1985), 158; Addobbati, *Commercio, rischio, guerra*, 117-118; 225. See also the contribution of Antonio Iodice in this volume.

<sup>66</sup> I. Hont, *Jealousy of Trade: International Competition and the Nation-State in Historical Perspective* (Cambridge, MA 2010).

<sup>67</sup> Marta García Garralón likewise finds that the consular court was not necessarily the preferred forum for resolving Average cases in Seville, see her contribution to this volume.

that, when the French attempted to enforce their own consular jurisdiction in Livorno in 1713, it was the concerted resistance of the French merchants in the free port that ended the attempt.<sup>68</sup> By allowing English merchants and masters to negotiate their GAs, the Tuscan state not only helped placate those merchants but prevented them from siding with their own states against the Grand Duchy. GA was not so much an active strategy to attract traffic, as Finch had suggested, but a defensive weapon; the ideal weapon, in fact, for a weak state seeking to defend its economic and political advantages over determined rivals.

<sup>68</sup> M. Aglietti, *L'istituto consolare tra Sette e Ottocento: Funzioni istituzionali, profilo giuridico e percorsi professionali nella Toscana granducale* (Florence 2012), 43.



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