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Maria Fusaro

Politics of justice/Politics of trade: foreign merchants and the administration of justice from the records of Venice's *Giudici del Forestier*

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Politics of justice/Politics of trade: foreign merchants and the administration of justice from the records of Venice's *Giudici del Forestier*

- 1 Nearly sixty years ago Christopher Hill pleaded with scholars that it was «time to take legal history out of the hands of the lawyers, as religious history has been taken away from the hands of the theologians, and to relate both to social development»,¹ and shortly afterwards the records of the criminal courts started being appreciated as incredibly rich documents for historians to use. However, the records of the civil courts were largely ignored, and only more recently have they become the subject of historical investigation, as scholars in different historiographical traditions turned their attention to tracing the connections between the development of legal systems and social and economic history. Two main investigative strands have emerged: one analyses the interaction between social structures, culture and legal institutions in the early modern period,² and the second one mostly concentrates on the connections between legal and economic history, focusing on the origins and nature of *lex mercatoria*.³ In all these studies, which cover a wide chronological span and frequently have a strong comparative aspect, the Republic of Venice – notwithstanding its wealth of documentary material on these issues – is absent. There are good reasons for this absence, as the Venetian legal system was particularly complex and idiosyncratic, therefore not easily lending itself to comparison.⁴ Still, the embeddedness of the administration of politics and justice in Venice means that its absence from the comparative historiographical literature is all the more lamentable, particularly as in the Republic these issues were debated at length and the whole problem of the administration of justice was for centuries the subject of an exercise of thinking and self-fashioning, also known as the «myth of Venice».⁵ Whilst Venice's idiosyncratic legal system has restricted its comparison with the rest of Italy and Europe,⁶ I nevertheless believe it is important to introduce it into these debates. The analysis of these Venetian peculiarities represents an interesting example of the legal solutions which the Republic devised throughout its history to manage its economy, which was, from its inception, based mostly on the service sector and on the management of a complex, long-distance trading system that connected the Italian peninsula with the Levant and Northern Europe. The goal of this essay is to present and describe one of the oldest courts of law of the Republic of Venice, the *Giudici del Forestier*, contextualizing it within both the Venetian judicial system and that of other Italian and European courts that had civil jurisdiction over foreigners during the Middle Ages and the early modern period.
- 2 I will begin this essay by explaining the connection between the *Forestier* and the English presence in Venice which, although it will remain somewhat in the background of my analysis, is essential, as the status of the English within the Venetian state exemplifies the early modern development of this magistracy.⁷ Then I shall describe the jurisdiction of the *Forestier* within the Venetian *Corti di Palazzo* and elaborate on the three major issues (foreigners, summary procedure and mercantile law) that are intertwined in its documentary material. To properly appreciate the complexities of the interplay between the politics of justice and the politics of trade, I will discuss the origins and success of summary procedure and the frequent overlap between the categories of «merchant» and «foreigner». This section will be followed by a short survey of the courts that had a similar area of jurisdiction to the *Giudici del Forestier* in other Italian and European states, as the comparative aspect can highlight the Venetian peculiarities. I will then move back to Venice, first explaining the embeddedness of its political and judicial system, and then showing how this affected the Republic's attitude towards granting justice to foreigners, with the English – again – providing an excellent example. I will then conclude

the essay by demonstrating, through the jurisdictional fight between the *Giudici del Forestier* and the new magistracy of the *Cinque Savi alla Mercanzia*, how Venice's economic policy played a critical role in its administration of justice.

English Merchants in the *Giudici del Forestier*

3 Unlike most other foreign groups active in the city, English merchants in Venice lacked a physical centre of association, which normally entailed a specific magistracy with jurisdiction over their activities, like the *Visdomini* of the *Fondaco dei Tedeschi*.⁸ The nature of their commercial presence, their mobility between Venice and its Greek dominions, as well as their low social profile, conspired to make their activities difficult to follow. The Venetian government resented and opposed the presence of English merchants, as they were rightly perceived as a threat against Venice's commercial interests, particularly because of their strong economic links with the Republic's Greek subjects.⁹ In this essay I will argue that the English permanence within the jurisdiction of the *Giudici del Forestier* was the direct result of the Republic's will to not grant them any privileges, amongst which the most important was the ability to resort to summary procedure. In other words, the advantages deriving from being able to use summary procedure in the courts were denied to the English longer than to any other nation commercially active in Venice and its territories; my argument is that this is proof of Venice's instrumental use of judicial procedure as a way to defend commercial interests that were threatened by the English presence.

4 Where courts for foreigners were established in Italy, they normally operated using summary procedure, a privileged type of procedure, the inception of which has been associated with the influence of canon law on secular law.¹⁰ In Venice this was not the case, and although foreigners were granted their own court of justice, they were not given any procedural privilege. The Republic's government granted such privileges only on the basis of what it judged to be in its own commercial interests; they were given either on the basis of reciprocal pacts with other states, or to encourage specific trading groups whose activities the Republic deemed beneficial. English merchants did not fall into either of these categories. When the Republic finally bestowed these privileges on the English, as late as 1698, this was effectively the public admission of a commercial policy defeat. The Venetian court of the *Giudici del Forestier* therefore represents the conjunction of two separate issues: mercantile logic and judiciary logic. The issue of granting justice to foreigners in Venice was inseparable from the commercial policies of the Republic and, unlike in the rest of Italy and Europe, detached from the powerful influence of canon law.

5 The *Giudici del Forestier*, one of the most ancient institutions of the Republic, like the other *Corti di Palazzo*, represents an extraordinary case of survival and adaptation. The long-term survival of these courts and the very strategies that permitted this – despite continuous attacks on their jurisdictions by newer magistracies – are still awaiting proper and specific study.¹¹ Notwithstanding the chaos in which its documents lie nowadays, it is possible to use the material extant in the *Forestier* – integrating it with other documentary sources, particularly from the notarial archives – to reconstruct the dealings of foreign mercantile communities. Commercial practices and mercantile networks emerge vividly, enriching the portrait of the foreign presence in Venice and its dominions, not only for the history of commercial relations, but also more widely for the investigation of the social and economic behaviour of these merchants. The types of controversies brought before the *Giudici del Forestier* are extremely helpful for this kind of analysis, as being a court of first instance it provides us with a wide variety of the most common problems occurring in everyday commercial life.

The *Corti di Palazzo*

6 The reason why the material of the *Giudici del Forestier* has reached us in such an utter state of confusion lies in a sentence issued in 1773 by the *Conservatori ed Esecutori alle Leggi*. Five years earlier, Antonio Antelmi *quondam* Valerio had been appointed as the Custodian of the old archive of the *Corti di Palazzo* and had immediately asked for – and obtained – additional funds to reorganize it. With no results after one year, the funding was discontinued. Antelmi

seems to have missed this extra source of income, which he pocketed himself, never employing the extra staff for which it was intended, and so he decided on a more radical strategy. He started to sell the old documents of the courts and, at the price of $4/5$ *soldi* per pound, he disposed of them as pulp. His actions did not go unnoticed; however he defended himself from inquisitive buyers by either saying that they were his family papers – so pretending to be a «patrizio veneto»¹² – or that he was acting under «superior orders». When the authorities were finally informed of his activities, he fled Venice and was condemned *in absentia*, permanently banished from all of the Republic's territories, and further sentenced to beheading if he was caught within its borders.¹³ In the aftermath of the trial, an estimate of the losses was drawn up: in total some 4,222 registers and 1,428 files were missing from the archives of the *Corti di Palazzo*.¹⁴ The surviving material was then hastily reorganized and reshelfed, often mixing up documents originally belonging to different stages of trials, or even to different courts, leading to its current state of confusion. Most likely the *Forestier* was the most heavily depleted by Antelmi's rampage, as of all the *Corti* it was the one that had lost most of its jurisdiction throughout the centuries and, with it, most of its importance. Therefore it was the perfect candidate for pulping, as it was least likely that its losses would have been noticed, had Antelmi's activities not been discovered.

7 Of the twelve *Curie* in which the *Curia ducis* had been divided from the twelfth century, we have documents for only six (*Proprio*, *Esaminador*, *Petizion*, *Mobile*, *Procurator*, and *Forestier*). They were all first instance tribunals with civil jurisdiction; their sentences were appealed to the *Quarantia*¹⁵ after a preliminary examination by an intermediate judge, normally the *Auditori*.¹⁶ In the early modern period the *Proprio* had jurisdiction over payments of dowries and their restitution in cases of annulled marriages, of *ab intestato* successions, and of division of inheritances and controversies amongst brothers and relatives.¹⁷ The *Esaminador* dealt with admission of witnesses in civil trials, publication of real estate contracts, and seizure of goods, properties and revenues of debtors, but it also started procedures for the recognition of «testamenti per breviario», that is, to legally recognize wills that had been expressed orally on the deathbed.¹⁸ The *Petizion* had a larger scope, having been created to deal with disputes that could not be resolved with the strict application of a juridical norm (*ratio*), needing instead greater flexibility (*iustitia*); its cases included atypical commercial and patrimonial situations, and the administration of inheritances (*commissarie*), particularly of orphaned children¹⁹ and of the disabled; it could even take upon itself the right to judge cases which had started in another *curia*, in situations where there was reason of *defectus iustitiae*.²⁰ The *Mobile* was to some degree an aid for both *Proprio* and *Petizion*, judging on minor controversies up to the value of 50 ducats. The *Procurator* dealt with controversies arising from the *Procuratori di San Marco* and had some jurisdiction over marital litigation.²¹

8 Before embarking on the analysis of the *Giudici del Forestier*, a consideration needs to be kept in mind: it is impossible to give a précis of pre-modern jurisdictions that achieves the level of rationality expected by today's observer, as the overlapping of competencies in early modern judicial systems was an important aspect of those societies. It is only in a given local context²² that this plurality of institutions and jurisdictions²³ is historically intelligible, as the coexistence of several hegemonic groups – ecclesiastical, mercantile, cultural and political – all striving to carve out their own jurisdictions, mirrored the stratification and experiences of the different social ranks in each local context. The issues presented by a multiform society, made up of different segments with a strong social reality and a correspondingly strong juridical one, is something we need to constantly remind ourselves of when dealing with Ancien Regime societies.

9 Therefore if some of the jurisdictions I describe seem confused, and in some cases overlapping, it is because they were. This was a frequently lamented problem of the administration of justice in the early modern period. In Venice this was particularly evident in the older magistracies like the *curie*, where the competencies of the courts described in the *capitolari*²⁴ had been modified through the centuries both by usage and by new legislation. The passing of time had left an inextricably mixed-up heap of new and old jurisdictions and this, paired with

the substantial documentary losses I mentioned above, makes this material rather complex to understand. Another added complication for the scholar is that these courts collaborated closely and could offer assistance to one another in each proceeding depending upon their various competencies.²⁵ To give a single example, the *Esaminador* played a central role for all the other *Corti*, concerned as it was with the examination of witnesses and the freezing of debtors' assets pending a trial before another magistrate.

The Giudici del Forestier

10 The *Giudici del Forestier* was founded around the beginning of the thirteenth century in a period when the expansion of private holdings by Venetians in the *Terraferma*, and growing commercial relations with countries bordering the Mediterranean, created the need for providing access to justice for foreigners present in Venice and for defending the rights of Venetian citizens abroad. Initially bilateral agreements were stipulated with other towns and states,²⁶ and later a permanent magistracy was set up to deal with foreigners, regardless of the existence of pacts.²⁷ In other words, a specific court of justice was created to deal with all foreigners, but it was only on the basis of reciprocal pacts between two polities that foreigners could be granted special privileges, such as having their controversies delegated to a court that used summary procedure.

11 The statutes promulgated by doge Jacopo Tiepolo in 1229-31 clarified how cases were to be divided between the *Forestier* and the other *curie*. The decisive factor was the nationality of the defendant; if he was a foreigner then the case fell within the jurisdiction of the *Forestier*, if he was a Venetian then the case belonged to the *Proprio*.²⁸ In time the *Maggior Consiglio* decided that those cases that involved two foreigners also were to be handled by the *Forestier*.²⁹ It is clear from both the surviving documentation and from the manuals of Venetian civil procedure that the attribution of controversies with a foreign plaintiff to the *Giudici del Proprio* did not last for long.³⁰ In 1244 the *Giudici di Petizion* were created to provide relief to both the *Proprio* and the *Forestier*, and also to decide over «*omnes petitiones et quaerimonias Venetorum et forinsecorum*». ³¹ In 1286 the situation changed again, and the *Maggior Consiglio* decreed that «lawsuits between Venetians and foreigners which were [delegated] to the *Petizion* will be now delegated to the *Forestier*». ³² This is one of the situations in which the absence of documents produced by the *Forestier* before the sixteenth century creates serious problems. Notwithstanding the fact that all lawsuits involving foreigners were attributed to the *Forestier*, we still find plenty of them in the papers of the *Petizion*. There is a simple explanation for this: the *Petizion* had been established to deal with disputes that could not be resolved with the strict application of a juridical norm (*ratio*), needing instead greater flexibility (*iustitia*). That is why some lawsuits involving foreigners continued to be delegated to it. ³³ Some controversies should have been delegated to other courts even if foreigners were involved; for example all controversies over debts would have been heard by the *Petizion*. ³⁴ Once more, these theoretically clear attributions do not always correspond with the surviving documents of the *Forestier*, which unfortunately start only from the late sixteenth century; by that time, cases regarding debts are indeed rather frequent amongst its papers. ³⁵

12 Most Venetian works on civil procedure in describing the jurisdiction of the *Forestier* simply repeat what was in the statutes and *capitolari*,³⁶ sometime integrating them with later legislation recorded in the archival series of *Compilazione delle Leggi*, which – though incomplete – remains a pillar of archival research, and was for these authors the most important 'primary source'. Therefore these authors state that only lawsuits with a foreign defendant were attributed to the *Forestier*, which is inconsistent with the controversies actually present in this court. From its surviving papers, it is instead evident that lawsuits with a foreign plaintiff were also regularly brought in front of the *Forestier*; direct confirmation of this can be found in the documents which relate to the long jurisdictional conflict by the *Forestier* and the *Cinque Savi alla Mercanzia*,³⁷ which will be analysed in the last section of this essay.

13 When Filippo Nani in the seventeenth century described the types of cases that involved foreigners in his manual on civil procedure, he listed «controversies regarding commercial

companies, their management and dissolution, deeds between individuals, execution of those and pacts between individuals». It appears that commercial matters were the most common reason for foreigners to find themselves in court.³⁸ It is important to keep in mind this connection between foreigners and commercial issues, as it is central to the relevance and development of the *Giudici del Forestier*. It should also be stated that the *Forestier* never had general jurisdiction over merchants and commercial controversies as such; in Venice this was the jurisdiction of the *Consoli dei Mercanti*.³⁹

14 Although *Giudici del Forestier* literally means «Judges for Foreigners» its area of jurisdiction did not only cover foreigners. On several matters its jurisdiction also covered Venetians: These included all issues arising from the chartering of ships; all controversies between shipowners, captains and mariners, instances for which the magistrate had to use summary procedure;⁴⁰ problems arising from selling a ship with shared ownership;⁴¹ and all cases relating to nautical averages (*avaree*⁴²). The *Forestier* was also where all litigation between landlords and tenants were to be brought; these cases required ordinary procedure instead.⁴³ It is interesting to note how the original competence of the court over foreigners was pivotal in directing the later expansion of its areas of jurisdiction: foreigners were forbidden from owning real estate in Venice,⁴⁴ consequently they were all tenants or subtenants. To include these controversies in the *Forestier* jurisdiction was thus perfectly aligned with its original vocation of ensuring that even non-citizens received justice.

15 This quick description of the jurisdiction of the *Forestier* shows how, throughout its history, there was a strong interconnection and coexistence between the legal categories of *ratio personarum* and *ratio materiae* and an interesting fluidity between the two, though neither achieved primacy for long, at least not in Venice.⁴⁵ Another aspect that needs to be emphasized is the existence within the *Forestier* of both summary and ordinary procedure. In Venice the adoption of a kind of summary procedure was required in specific cases, especially for ones connected with trade. However this was not the default mode of legal action when foreigners were either of the parties in court, unlike other Italian statutes.⁴⁶ I shall elaborate more on this point, and discuss the reasons why this was so.

Theory and practice in the administration of justice

16 In the documents of the *Giudici del Forestier* three major issues are intertwined: foreigners, summary procedure (or lack thereof) and mercantile law. When such different and complex issues coincide within a single source, it is not easy to disentangle them, especially since they relate to two different judicial systems: one concerned with administering justice to foreigners, the other with the management of commercial activities. These two systems, although formally distinct, are so interconnected as to be frequently confused in both the primary and secondary literature.

17 The gap between the normative aspect of jurisprudence and the practical functioning of the courts represents a serious obstacle in studying magistracies with such complex competencies; it is an old problem, and not at all exclusive to Venetian history. Scholars of law have traditionally been more interested in the normative and doctrinal aspects; Mario Ascheri astutely commented how economic historians focused on merchants, markets and goods rather than on the legal institutional frameworks of mercantile activities, whilst legal historians concentrated on the doctrinal side of institutions: «doctrines last (and even today can be useful in the courts), institutions die and it is pointless to pursue them».⁴⁷ Economic and social historians have only recently begun to analyse the everyday activities of courts, and the bibliography on this subject is relatively small. These divergent interests have hampered dialogue between economic and legal historians, leading to certain important topics being overlooked. An example is the clash between jurisprudence and court practice in mercantile law. This is connected with a subject today at the forefront of Anglo-American jurisprudential literature: the lively debate on the (re?)-implementation of *lex mercatoria* and whether its real nature was substantial or procedural. The central questions of this debate are most topical today, as they concern which system of law would better deal with globalization

and the growing complexity of international trade, particularly in the case of «international commercial disputes when parties from different countries are involved».⁴⁸ Historians have a lot to say on the history of both these issues, and they are now entering the debate.⁴⁹

18 Summary procedure has always been closely connected with mercantile law. In contemporary society's near instantaneous electronic trading environment, speed is considered a paramount factor for success and for lowering the cost of business. In earlier times, when both communication and trade were constrained by lengthy movements and high transactions costs, this was just as true. Thus summary procedure offered a quicker method to handle mercantile controversies and it was adopted throughout Europe as a feasible practical solution nearly everywhere at the beginning of the thirteenth century, when medium- to long-distance trade was entering a long phase of expansion.⁵⁰ Summary procedure has recently been the subject of several studies. The umbrella of «summary procedure» though, covers a wide range of judicial proceedings, and clearly defining them in all their local variations is still a work in progress.⁵¹ Throughout this essay I interpret summary procedure in Venice as a purely procedural mechanism that allowed for a faster and cheaper trial and, as such, it was considered a privilege.

19 In common parlance, «summary justice» has today acquired a negative connotation that needs to be outlined. Both Gaetano Cozzi and Simona Cerutti have explained how, in the eighteenth century, summary justice started to be addressed as «arbitrary justice».⁵² This is not the place to elaborate why this happened, as this essay is concerned with earlier periods when there was little doubt that summary procedure was a privilege, but it is important to underline that such a shift occurred.

Foreigners and merchants, foreigners as merchants

20 The status of foreigners before the courts is a very large subject which still has a relatively sketchy literature.⁵³ According to it, foreigners from the Middle Ages on seem to have been granted summary procedure by default, at least wherever special courts for foreigners were established. I will argue that Venice, unlike other medieval and early modern Western European states, did not accept the influence of canon law precepts regarding the treatment of foreigners. The Republic adopted its own forms of summary procedure for commercial litigation, but granted this privilege to foreigners only when it suited its own commercial interests.

21 Granting summary procedure to foreigners derives from the tradition of canon law that perceived foreigners as weak and put them alongside those needing protection, such as pilgrims, widows and orphans. Pilgrims had enjoyed the right of hospitality at least from the Carolingian period, and merchants were equated to them thanks to their itinerancy. This idea, expressed in the first Lateran Council (1123) and included by Gratian in his *Decretum* (1140), did not mean that the Church gave merchants favourable treatment in canon law; quite the opposite in fact, because this classification originated from the classic and patristic tradition that placed merchants at the bottom of the social ladder, at the same level as the poor – *miserabiles personae* – those «weaker and more needy of protection».⁵⁴

22 Summary procedure was useful for both merchants and the «weak» because it allowed for a speedy resolution of controversies without all the expenses associated with a regular trial.⁵⁵ It was widely successful in medieval Italy, and from the ecclesiastical tribunals it spread to civil tribunals all over the peninsula, and then to the rest of Europe thanks to Italy's extensive trading relations.⁵⁶ It was an extremely simple procedure: there was no need for citations, *positiones* or *responsiones*; the idea was to proceed «*simpliciter, de plano, sine strepitu et figura iudicii*».⁵⁷ It was an ideal procedure to use in controversies regarding modest sums, and thus well suited for many categories of people who were all definable as weak (poor, widows, orphans, pupils, prisoners, soldiers). Above all it was deemed suitable for non-citizens, amongst which merchants were probably the largest category making use of civil courts. Trade was smoother if this procedure was applied, and traffic would increase if controversies regarding ships were dealt with quickly.⁵⁸

- 23 Simona Cerutti has argued that in the early modern period the weakness of merchants was not intrinsic to their status, but based upon their mobility and their consequent lack of the protective net that members of a «society of orders» (*società degli ordini*) had. Still they were *miserabiles personae*, not through lack of money but because of poor relational resources, which the law had to acknowledge and provide for. In her argument, the opposite of *miserabiles personae* in an Ancien Regime society is not the rich man but the citizen, because he was «included in a stable web of social relations, and enjoying a full juridical statute». ⁵⁹ I agree with her statement that «summary procedure is directed to foreigners (i.e. non-citizens) as it can act as a safeguard against the discriminations of positive law. In the name of a general principle of equity, [summary procedure] annuls the privileges connected to locality, and re-establishes a formal image of equality before the law». ⁶⁰ This is certainly a fascinating interpretation, but I do not believe that it provides the full picture. For example, in Venice, it would be extremely difficult to argue that merchants – albeit foreign – were considered socially weak individuals.
- 24 This is a central point of my argument: in Venice, foreign merchants were never perceived as weak. Therefore the need to grant them summary procedure as an act of mercy was never felt, and this procedure was bestowed upon them only as an economic privilege. Foreign merchants were regarded as dangerous, needing to be strictly controlled; they were not protected as weak. Legislators were always concerned about losing control of commercial activities and of Venice losing its mediating role between East and West, on which it had built its fortune. Citizens and subjects of the Republic could always resort to summary procedure, but the foreigner, who in Venice happened to almost always be a merchant, was granted this only when it was advantageous for the Republic. Though the *Giudici del Forestier* was especially established to guarantee justice for foreigners, it operated with all the formalities, lengthy times and expenses of ordinary procedure. Apart from nautical controversies where summary procedure was mandatory, a quicker procedure was available to foreigners only if this was specified in reciprocal pacts with their place of origin, or when the Republic bestowed it upon specific groups of foreigners whose presence it wanted to encourage. The length and cost of litigation in the *Corti di Palazzo* was well-known in Venice; from the beginning of the fifteenth century a derogatory verb was coined to describe this kind of litigation: *palazar*. ⁶¹ English merchants frequently complained about the cost and length of litigation in the *Corti*, where a relatively simple controversy could take several years to be resolved to the detriment of the parties involved. ⁶² Apart from the length of ordinary procedure, another serious problem was the almost endless possibility of appeals; another of the advantages of summary procedure was that sentences were not open to appeal. ⁶³ To be more precise, as in other Italian states, one should say, «not easily open to appeal», as it was always possible to appeal directly to the *Serenissima Signoria* in «special circumstances».
- 25 The *Giudici del Forestier* was created also to indirectly provide protection to Venetian merchants abroad by guaranteeing foreign merchants relatively easy access to justice in Venice. ⁶⁴ The government of the Republic had always been careful and fair in legislating on issues relating to the rights of foreigners. Some common European legal institutions never existed in Venice, such as the *jus albinagij*, which automatically transferred the property of a foreigner to the government of the country where he died, or the *ius naufragii*, which transferred the property of shipwrecked goods to the lord of the place where these landed. ⁶⁵ What is unique in Venice is that the creation of a specific magistracy to provide justice for foreigners was not paired with the automatic grant of a privileged procedure. The granting of summary procedure was seen from the beginning as a privilege, not as a means to achieve equity for those who lacked resources. Not granting it automatically should therefore be interpreted as a disincentive for the presence of foreigners not deemed useful by the Republic. It was a very pragmatic and utilitarian approach towards the administration of justice.
- 26 Legal procedure, and particularly civil procedure, have not traditionally been popular subjects, although this is changing. ⁶⁶ Historians' interest in criminal trials, as opposed to civil, has fostered a continuous interest in the issue of «evidence» whilst overlooking the issue of «procedure». ⁶⁷ This is understandable, as evidence and its admissibility is, ideologically

and methodologically, a structural load-bearing column of both the judicial and historical professions. But procedure – and its connection with status – is also important; if the contextualized study of a criminal court and its cases is extremely enlightening about the social practices and the hierarchical structure of a given society,⁶⁸ then the analysis of a civil court is even more relevant for the study of the horizontal conflicts within social groups, something that is difficult to achieve otherwise and which is central to the analysis of any socio-economic reality.

Beyond Venice: foreigners, merchants and their courts

- 27 To provide some context, I will give some brief indication of similar courts in other states whose areas of competence overlapped with the *Forestier*. In doing so, it is important to bear two things in mind: firstly, Roman law was a subsidiary source everywhere (even in the Venetian *Terraferma*) but not within the city of Venice itself;⁶⁹ and, secondly, that the traditional view on this subject is that foreign merchants were granted favourable treatment in Italian cities such that, wherever courts specifically for foreigners existed, summary procedure was used.⁷⁰ This brief survey, substantially constrained by the existing secondary bibliography, will cover the courts specifically established for foreigners, and then afterwards *some* of the courts that handled mercantile matters and *specifically* included clauses regarding the status of foreigners within their jurisdiction.
- 28 Genoa presented a situation relatively comparable to Venice, as both were concerned with attracting immigrants from the hinterland for the needs of the city, whilst at the same time keeping maritime trade firmly in the hands of their citizens.⁷¹ *Consules foritaneorum* were frequently mentioned at the end of the twelfth and the beginning of the thirteenth century, and from 1215 a *consolatus civium et foritanorum* existed, inside of which a foreign *causidicus* was always present. In Genoa all merchants could resort to summary justice, regardless of whether they were foreigners.⁷² In addition to this, the greatest privilege attainable by a foreign *natio* was to have some rather limited jurisdictional prerogatives bestowed upon its consul in derogation of the town's statutes, something which in Venice or its dominions never happened.⁷³ In Genoa during the Middle Ages consuls for foreign *nationes* had to be Genoese citizens, and those representing the most important ones (Venice, Ragusa (present-day Dubrovnik), Provence and Catalonia) appear to have had some form of civil jurisdiction above the mercantile one.⁷⁴ Still there were some limits; for example, the solution of a controversy through arbitration – cheap and not open to appeal – seems to have been possible only between a citizen and a foreigner and not between two foreigners.⁷⁵
- 29 In Pisa at the end of the twelfth century – slightly earlier than in Venice, but with a rather similar pattern of development – there was already a specific court dedicated to controversies between foreigners and citizens: the *Curia foretaneorum*, built on the Roman «*praetor peregrinus*».⁷⁶ Its area of jurisdiction was somewhat different from its Venetian equivalent, encompassing criminal as well as civil cases.⁷⁷ It would be extremely interesting to have a comparative study of the Pisan, Genoese and Venetian *curiae forinsecorum*, as it could also reveal why the Genoese and Pisan *curiae* had such a shorter lifespan than their Venetian counterpart. In Pisa the decay of the *comune* played a central role, as by the fifteenth century the rare cases which involved foreigners were once again brought to ordinary magistracies.⁷⁸
- 30 In Sicily, consuls of privileged nations had some form of civil jurisdiction from the thirteenth century, but when the litigation was between a foreigner and a citizen, jurisdiction reverted back to the ordinary courts of the kingdom. In this instance it is arguable that the absence of a specific magistracy for foreigners was compensated for by the possibility of being judged by one's own consul with one's own law. In commercial controversies, foreigners frequently utilized arbitration before a notary.⁷⁹
- 31 The *Mercanzia* of Siena (1338) was a tribunal with a broad area of jurisdiction encompassing all mercantile issues irrespective of who raised them.⁸⁰ Interestingly for our purposes, it also had jurisdiction over rent controversies, although this derived from the monetary nature of the dispute and, as such, it fell within the area of mercantile transactions.⁸¹ Its immense archive

followed a similar fate to that of the *Forestier*; after the abolition of the magistrate in the eighteenth century most of it disappeared and the remaining part was badly reordered without any understanding of its workings, so that using it now is fraught with difficulties.⁸² In Siena there doesn't seem to have been a court with jurisdiction exclusively over foreigners; Mario Ascheri described the *Mercanzia* as «the court by nature competent to deal with controversies involving foreigners». I take this to be a judgement on the practical reality, rather than on the jurisdiction of the court itself.⁸³

32 The *Mercanzia* of Florence (1308) had jurisdiction over commercial issues and controversies between Florentines and foreigners.⁸⁴ Later on, foreigners could also appeal directly to the Grand Duke and his Supreme Magistrate, and in this way their controversies would be judged with summary procedure.⁸⁵ No court with specific jurisdiction over foreigners existed in Milan.⁸⁶

33 The institution of a «court of guests» (*Gastgericht*) in Hagenau in 1164 was designed specifically to improve the condition of foreign merchants, guaranteeing that a case would be solved within two days. This example spread quickly to other German towns.⁸⁷

34 In England the situation was more complex; there were no courts with specific jurisdiction over foreigners as such, although they frequently received some specific privileges in charters granted by the crown.⁸⁸ Cities with fairs had «courts of piepowder»,⁸⁹ which held sessions daily during the fair and adopted summary procedure. Although not designed for foreigners, they mostly dealt with them;⁹⁰ as they had no coercive power outside the fair or market in which they sat, speed was once again paramount because a decision was needed before the accused left town.⁹¹ Another institution designed to help solve controversies involving foreigners was the *de medietate linguae* jury, composed of aliens in disputes where both parties were aliens, and composed of one-half aliens and one-half Englishmen in cases when one party was an Englishman.⁹² Foreigners could also resort to arbitration, particularly in the borough courts: «such procedures were especially suitable for settling commercial matters, particularly when one party was a foreign merchant or when business had taken place overseas».⁹³

35 Amongst the courts which had mercantile jurisdiction specifically over foreigners, one group needs to be mentioned separately. These were created between the end of the seventeenth century and the middle of the eighteenth century, aiming to facilitate international trade, and for this reason they all made use of summary procedure. Particularly interesting studies have been conducted by Simona Cerutti on the Turin *Consolato per i mercanti* (1676);⁹⁴ and these later developments have been well investigated also within the Spanish kingdoms by focusing on the Seville *Jueces Conservadores de Extranjeros*;⁹⁵ the *Nuevo Tribunal de Comercio* (1762) of Valencia,⁹⁶ and the Neapolitan *Supremo Magistrato di Commercio*.⁹⁷ I mention them only briefly here, as I believe their late establishment represents a different phenomenon from that of their medieval predecessors.

36 In conclusion, courts with jurisdiction over foreigners and over merchants were created in European countries in the twelfth and thirteenth centuries; in some cases the two categories coincided, and in others they were separated. Courts exclusively for foreigners were rarer and disappeared early, with the exception of Venice, where it survived until the end of the Republic. During the eighteenth century, at different times and in different ways, special jurisdictions tended to disappear throughout Europe; at the same time in some places – like in Turin and Spain – summary procedure was reintroduced as a short-lived experiment to handle mercantile litigation.

The Venetian peculiarities

37 For the Republic of Venice, the exclusion of Roman law from the hierarchy of legal sources was a conscious political choice, and it is the basis of what has been called the «myth of Venice».⁹⁸ It demonstrated the original freedom of the town and was reflected in its legislation; rejection of Roman law was its cornerstone as it was definitive proof not only of the independence of the Republic from imperial authority, but also of its own legislative wisdom. But whilst Roman law was formally absent from the Venetian legal system, in substance it

was the foundation upon which Venetian law was built.⁹⁹ This creates an apparent paradox that is at the root of frequent misunderstandings between legal historians and experts of Venice.¹⁰⁰ No historian of the Venetian legal system ever doubted that Roman law – *ius commune* – was the basis of Venetian law. What sets Venice apart from the rest of Europe is not so much the rhetoric behind the formal rejection of *ius commune* – something quite common to most European states during the Middle Ages and the early modern period – but the way in which the administration of justice was conceived and put into everyday practice. The contrast between Venice and the rest of Europe needs to be seen as «a contrast not so much over the content of legislation, as in the way of conceiving law and justice, of giving pre-eminence not to the technical and doctrinal, but to the political and empirical aspects».¹⁰¹ For Venice the political criterion was the essential element in the administration of the state. Gaetano Cozzi has shown how the policy of law and its culture was an essential part not only of the political and social context that expressed them, but of the particular nature of the Venetian political constitution.¹⁰² I will now outline how these peculiarities of the state organization of the Republic of Venice made its situation unique.¹⁰³ At the forefront of state organization was the robust link between the administration of politics and the administration of justice: «the only valid norms in Venice are those issued or sanctioned by Venetian legislators. The administration of justice is never delegated to a special class of jurists, and there is never any reference to a source of law external to the system. Both legislation and jurisdiction are the prerogative of a single political body, the patriciate».¹⁰⁴ This interconnection was reinforced by the absence of professional judges in Venice. The role of magistracy judge was just as much part of the *cursus honorum* of a Venetian patrician as was the administrative and political role of *Rettore* in one of the territories or the administrative and military role of *Capitano da Mar* in the fleet. Such a peculiar political and judicial structure had very useful consequences in the administration of mercantile justice, as became evident during the early modern period, when the rest of Italian mercantile courts were being taken over by jurists coming from the universities, that is to say, with strong *ius commune* training.¹⁰⁵ This is why Venice can claim to be unique: not so much because of its rejection of any external contribution to its laws, more because of its sole reliance on the *equitas* of its own administrators.¹⁰⁶ These «administrators» were the patricians who, as members of the *Maggior Consiglio*, ruled the Republic by producing and enacting legislation whilst, at same time, administering justice.

38 In the middle of the fifteenth century, Bernardo Giustinian interpreted the absence of Roman law from the hierarchy of legal sources as a necessity for the speedy administration of justice, something crucial in a town so dependent on trade and commerce.¹⁰⁷ Considering that commercial law was based on mercantile usage, and therefore on customary law, it was particularly compatible with Venetian law, which was itself dependant on customary law.¹⁰⁸ In the hierarchy of legal sources, Venetian statutes were usually integrated with analogy, approved usage, equity and, as a last resort, the *arbitrium* of the judge. All this was in open contrast with all the other statutes of the Italian peninsula; even the statutes of towns under Venetian control in the *Terraferma* included *ius commune* as a subsidiary source of law.¹⁰⁹ In Silvia Gasparini's words, for Venice, «law is *justitia* before being *lex*; law is definable as the best possible solution available in a given time in answer to the needs of substantive justice and political necessity; it is an instrument, not an immutable dogma; it is the result of political reasoning, not of a technical-jurisprudential elaboration».¹¹⁰

39 This brings us back to a point made previously: judges were first and foremost politicians, not jurists. In the words of Cozzi, the patrician government of Venice «was afraid of the technicians of law, as they were believed to be too abstract in their outlook, too inclined to pettyfoggery, reluctant about the necessary pragmatism of political action; and, on top of this, knowledgeable in a field that was perceived, especially in the case of Roman law, to be occult and exclusive».¹¹¹ In the practice of the courts, usage was favoured as it represented a guarantee of the intrinsic legitimacy of the request itself. To appeal to usage meant to also avoid suspicion of wanting to prevail using formalistic arguments, and to behave instead like a «real merchadante», trustworthy and reliable in his words.¹¹² This is an issue that repeatedly presents

itself in the documents of the *Giudici del Forestier*, where people defended themselves with *formulae* that insisted on «true mercantile usage» against the quibbles and cavils of their counterparts.

Citizens, subjects, foreigners and trade in Venice

40 It is evident from the *capitolare* of the *Giudici del Forestier* exactly how important the issue of reciprocity was for Venetian legislators, as the court's hierarchy of legal sources incorporated an extra element:

Item omnes et singulas causas, vertentes inter Venetos et Forinsecum vel forinsecum et forinsecum, audire et examinare et definire debeor et in eis procedere in formam pactorum et, si pacta non fuerit, in formam statuti, ubi statutum loquitur, et ubi statutum defecerit, secundum usum, et ubi usus mihi defecerit [sic], secundum meam conscientiam, bona fide sine fraude.¹¹³

41 In cases brought before the *Forestier*, pacts made with the place of origin of the foreign defendant, if such pacts existed, were the first source of law to be considered; in their absence, the judge was to refer to Venetian statutes, usage and, always last, his own *conscientia*. Exceptionally, statutes were not given pre-eminence here, but rather international pacts.

42 I would like to emphasize two points here: the inclusion of pacts as the first source of law is to be interpreted as a sign that the Republic wanted to discourage the presence of foreigners from states with which it had not signed reciprocal agreements. Foreign presence was welcome only if convenient for the Republic. My second point follows from the first: the creation of the *Forestier* represented what can be described as a «partial privilege». In other words, the establishment of a court specifically for foreigners should be interpreted as a way to assure foreigners that they would receive justice, even in the absence of reciprocal pacts that would have given them a more privileged status. This attitude was the logical and pragmatic solution for a city like Venice, which was building its success around its status as an international entrepôt. Foreigners in Venice were assured of receiving justice, but not of being granted any privileges automatically.

43 In Venice only «citizens» had full autonomy and full rights in taking care of their business; limitations were imposed upon the scope and the geographical areas in which non-citizens could trade.¹¹⁴ The Republic's subjects coming from its Levant dominions were *de facto* granted citizenship *de intus et extra*, allowing them to trade between Venice and the Levant. Beginning in 1406, subjects coming from the Italian mainland and Dalmatia were treated as having citizenship *de intus*, allowing them to trade within a smaller area. During the Middle Ages the Venetian government was able to effectively implement this legislation, and many foreigners – after living in Venice for the prescribed number of years and paying all their dues – successfully applied to obtain citizenship.¹¹⁵ From the sixteenth century onwards fewer and fewer foreign merchants applied for Venetian citizenship, even though the relevant policies and the formal limitations to the mercantile activities of foreigners did not change. The number of applications decreased because the legislation that limited trade had become practically unenforceable within the Republic's territories, making it easier and more convenient to simply ignore the laws rather than going through the lengthy and expensive process of acquiring citizenship.¹¹⁶ There were many ways to circumvent the laws which restricted the trades that non-citizens could participate in, the easiest being for a citizen to act as a front-man, stating that certain goods were his when they were not. These abuses became so frequent that from 1552 citizens had to swear on the Gospels that the goods were really their own before they could take advantage of the facilitations they were entitled to.¹¹⁷

44 To conclude: summary procedure was available in Venice for commercial disputes in several courts of justice, and in the *Forestier* it was required for all nautical controversies. However it was never granted automatically to foreigners, as seems to have happened almost everywhere else in Italy and Europe where courts specifically for foreigners were established. In my view, this point is absolutely crucial for the correct interpretation of the *Giudici del Forestier* and its position within the Venetian judiciary system. This interpretation also explains the privileged position given to international pacts in the hierarchy of legal sources in the *Forestier*: through these pacts Venice granted procedural privileges to foreigners whose presence it wanted to

encourage for its own economic advantage. Such a strong connection between international politics and commerce through the embeddedness of mercantile considerations within judicial policies is to be expected in a state that had a mercantile ruling class. Summary procedure was considered a privilege, and as such it was granted only when it was deemed expedient or necessary for Venice, as I will show in the last section of this essay.

Jurisdictional fights

- 45 Throughout Italy and Europe, the sixteenth century was characterized by a profound realization of a general crisis in the administration of justice, and almost everywhere – including Venice – there were serious attempts at structural reform.¹¹⁸ Throughout this century the *Giudici del Forestier* found itself on the losing side in a protracted jurisdictional fight with a new governing body of the Republic: the *Cinque Savi alla Mercanzia*. This new magistracy was established in 1506 and became permanent ten years later. Its area of jurisdiction underwent massive expansion until the middle of the eighteenth century, when it finally encompassed all matters which had some commercial relevance.¹¹⁹ The *Cinque Savi* was created to ‘rationalize’ – although maybe centralize is a better term – all matters commercial, as an attempt to solve the crisis of the Venetian entrepôt. This was openly declared as the reason why the magistracy was created: «To assist and take care of the best interests and increase of trade and commercial activities in general [...] aiming at sustaining mercantile business in this City, especially given its present condition, which is so depressed and decayed».¹²⁰
- 46 Many older magistracies of the Republic had to surrender part of their powers to the *Cinque Savi*, and this caused severe jurisdictional conflicts.¹²¹ The Venetian government was extremely reluctant to abolish magistracies, especially ancient ones, preferring instead to create new ones when needed. As new magistracies were frequently created, the jurisdictions between the new and the old courts had to be constantly rearranged, a situation that worsened with time. A complicating factor for scholars, particularly evident when studying the *Corti di Palazzo*, is that the *capitolari* give imperfect descriptions of their jurisdictions, as I discussed earlier how usage notably modified their jurisdictions in most cases.¹²² The *Forestier* found itself in a particularly delicate situation. Its main area of jurisdiction regarded foreigners, and theoretically this remained unchallenged. However as I have shown, the vast majority of its cases were mercantile in nature, and hence brought it into direct conflict with the newly founded *Cinque Savi*. It was a bitter conflict, which lasted for more than a century, and the *Forestier* emerged as the great loser.
- 47 Once again we confront the coexistence of *ratio personarum* with *ratio materiae*: the jurisdiction of the *Forestier* was quite large because it was principally based on *ratio personarum* and not on *ratio materiae*. This meant that prior to the creation of the *Cinque Savi*, controversies that normally fell within the jurisdiction of the *Consoli dei Mercanti*, when a foreigner was involved could be attributed to the *Forestier*.¹²³ Cases passed frequently from one magistrate to the other, and in cases of conflicting jurisdictions the *Serenissima Signoria* decided which court the case should be attributed to. The jurisdictional area of the *Cinque Savi* was based mostly on *ratio materiae* and immediately started to grow. Summary procedure in commercial issues was attributed to the *Cinque Savi*, at the expense of the *Consoli dei Mercanti*.¹²⁴ After the end of the Venetian-Ottoman war of 1537-40 the Senate, in an attempt to recover from the loss of trade, passed legislation designed to attract Levantine Jews, who were seen as key tradesmen of the Levant, and it put their new settlement under the supervision of the *Cinque Savi*.¹²⁵ Shortly afterwards other *materiae* started to be attributed to the *Cinque Savi*: in 1550 they shared responsibility with the *Governatori alle Entrade* for business conducted within the *Fondaco dei Tedeschi*.¹²⁶ In 1588, insurance controversies when a foreign state was involved were attributed to the *Cinque Savi*.¹²⁷ In 1591, when the Senate was trying to promote trade with Spalato (present-day Split) – in a bid to damage both Ancona and Ragusa – it delegated all commercial controversies arising from this project to the *Cinque Savi*.¹²⁸ In 1625 the issue of overlapping jurisdictions between the *Savi* and the *Forestier* arose once again, and the Senate decided that all commercial controversies involving «Turkish merchants and

subjects, Levantine and Ponentine Jews who trade in Venice» should fall under the jurisdiction of the *Cinque Savi*.¹²⁹ Eight years later, Persians, Bosnians and Wallachians were also put under the *Cinque Savi*.¹³⁰ The expansion of its jurisdiction seemed unstoppable.

48 But the *Forestier* did not give up easily, and a continuous state of friction characterized the dealings between these two magistracies, so much that in 1657 the Senate instructed the *Collegio* to analyse their respective jurisdictions and clarify their positions.¹³¹ The *Forestier* continued claiming the right to judge all controversies involving foreigners – «all, each and every controversy between Venetian and Foreigner, and Foreigner and Foreigner» – and refused to accept that, for some particular nations and in mercantile controversies, these cases had been delegated by the Senate to the *Cinque Savi*. The latter replied by stating the reasons behind the delegation, namely the necessity of providing trading privileges to some nations to improve the general state of the economy. As trade benefited from the swift resolution of controversies, being able to resort to the summary procedure of the *Cinque Savi* bestowed a great advantage upon those nations: «we have provided so that they can be able to take advantage of summary procedure as a sign of the Public benevolence towards these nations».¹³² Summary procedure was unequivocally declared to be a privilege and openly presented as a sign of benevolence on the part of the government. In the deepening economic crisis of the Venetian entrepôt, there was a desperate need to encourage the presence of foreign merchants whose trade complemented rather than damaged that of the Republic. But the fight was not over yet between the *Forestier* and the *Cinque Savi*, which we deduce from a very long and detailed memorandum dated 1703 in which the whole saga was recounted on the eve of another debate in the *Signoria*. The beginning of the memorandum dealt with the issue of «privilege»: «the persons for whom we have instituted the Magistrate of the *Cinque Savi* are to be considered privileged persons, and as such delegated to this court». As their trade was of particular interest to the Republic, they had been granted the privilege of avoiding the lengthy civil procedure. Reverting to the *Forestier* would hamper their business and ultimately damage the interests of the Republic itself.¹³³

49 The ultimate cause of the *Forestier*'s undoing had clearly been the length and cost of its ordinary procedure.¹³⁴ From the analysis of its surviving documentation, it is obvious that towards the end of the seventeenth century its area of competence had dramatically shrunk. Its jurisdiction using summary procedure – controversies involving ships – remained untouched, but all other controversies that involved mercantile transactions had slipped away. A memorandum of the early eighteenth century stated: «the *Forestier* is now only handling issues of rents and shipping».¹³⁵

Conclusion

50 I hope to have shown in this essay how the history of the development of the *Giudici del Forestier* provides an interesting perspective from which to re-evaluate the attitude of the Venetian Republic towards international trade and its protagonists. This becomes evident through the conjunction of jurisdiction over foreigners and jurisdiction over non-privileged foreign merchants. In cities and states where foreign merchants were present, they were frequently structured in *nationes*. These organizations normally had a privileged legal status that involved delegation of some mercantile and civil jurisdictions to the consul or representative of the *nationes*.¹³⁶ Organized groups of foreign merchants played an important role in the economy, and local authorities acknowledged this by regulating and supporting their activities through legal and, sometimes, fiscal privileges. In Venice the situation was slightly different; even when foreign merchants were structured (such as the Germans in the *Fondaco dei Tedeschi*), the Republic never delegated the administration of justice. When a privilege was bestowed onto foreigners it consisted not of special jurisdiction, but instead allowed them to be tried in the local courts like Venetian citizens. The mercantile communities in Venice, whose trade was somewhat controlled or accepted by the Republic and were therefore welcome in its territories, slipped out of the *Forestier*'s jurisdiction. During the Middle Ages controversies of merchants belonging to «privileged nations» were delegated to courts that used summary

procedure. From the sixteenth century, this meant the *Cinque Savi alla Mercanzia*. Only «non-privileged» foreigners active in Venice remained within the jurisdiction of the *Forestier*.

51 At the time of its creation, at the turn of the thirteenth century, a magistracy with jurisdiction over foreigners in Venice was a powerful indicator of flourishing commercial contacts and a large circulation of individuals. Its existence signified the attention of the city's authorities to providing these foreigners with justice, thereby conferring onto them a generic privilege even in the absence of a privileged procedure. Privileged nations always had special provisions to make sure that they were granted speedy and effective justice; the *Forestier* took care of the rest.

52 With the onset of the crisis of trade in the sixteenth century, Venice promulgated legislation to facilitate the business dealings of several specific nations, both with and within Venice. This was the turning point in the history of Anglo-Venetian commercial relations, which is why I started and am ending this essay by referring to the vicissitudes of the English. Their case represents the perfect embodiment of the interplay between political considerations and mercantile logic in the actual functioning of a judicial system. For a long time Venice simply refused to acknowledge that English merchants were worthy – as a nation¹³⁷ – of any commercial privileges. Their presence in the *Dominio da Mar* and their alliance with the Greek subjects of the Republic were dangerous for Venice, so granting them privileges was unthinkable. Their status as unprivileged foreigners therefore was confirmed by their remaining within the folds of the *Giudice del Forestier* throughout the sixteenth and seventeenth century when all other nations were being granted the privilege of taking advantage of the summary procedure of the *Cinque Savi*. The English remained a residual category, their foreignness unmitigated, their role in Venetian trade unwelcome and therefore not worthy of privilege. Only in 1698 did the Senate finally allow them to resort to the *Cinque Savi* «in all their mercantile business».¹³⁸ This was simply a political and public acceptance of defeat. Having held out for nearly two centuries, the Venetian government realized that the only way to keep English merchants active within its territories was to grant them this procedure.

Notes

1 C. Hill, *Puritanism and Revolution. Studies in Interpretation of the English Revolution of the 17th Century*, London, 1958, p. 28.

2 B. Lepetit ed., *Les formes de l'expérience. Une autre histoire sociale*, Paris, 1995, see especially the essay by S. Cerutti, *Normes et pratiques, ou de la légitimité de leur opposition*, p. 127-149; F. Angiolini and D. Roche (eds.), *Cultures et formations négociantes dans l'Europe moderne*, Paris, 1995, especially the essay by R. Savelli, *Modèles juridiques et culture marchande entre 16^e et 17^e siècles*, p. 403-20; the special issue of *Annales HSS, Histoire et droit*, 57, 2002. These issues are at the basis of Wolfgang Kaiser's ERC-funded project *La reconfiguration de l'espace méditerranéen: échanges interculturels et pragmatique du droit en Méditerranée, XV^e-début XIX^e siècle* (2012-2016).

3 E. Kadens, *The Myth of the Customary Law Merchant*, in *Texas Law Review*, 90, 2012, p. 1153-206; R. Harris, *The Encounters of Economic History and Legal History*, in *Law and History Review*, 21, 2003, p. 297-346; J. Baker, *The Law Merchant as a Source of English Law*, in W. Swadling and G. Jones (eds.), *The Search for Principle. Essays in Honour of Lord Goff of Chieveley*, Oxford, 1999, p. 79-96; M. E. Basile, J. F. Bestor, D. R. Coquillette and C. Donahue jr. (eds.), *Lex Mercatoria and Legal Pluralism: a Late Thirteenth Century Treatise and its Afterlife*, Cambridge (Mass.), 1998; A. Cordes, *The search for a medieval Lex Mercatoria*, in *Oxford U Comparative L Forum*, 5, 2003 accessible at: <http://ouclf.iuscomp.org/articles/cordes.shtml>. For an Italian perspective see R. Monaco, *Note sulla qualificazione della Lex Mercatoria*, in *Scintillae Juris. Studi in memoria di Gino Gorla*, 3 vols., Milan, 1994, vol. 2, p. 1249-66; F. Galgano, *La globalizzazione nello specchio del diritto*, Bologna, 2005; V. Piergiovanni (ed.), *From Lex Mercatoria to Commercial Law*, Berlin, 2005; S. Gialdroni, *East India Company. Una storia giudiziaria (1600-1708)*, Bologna, 2011.

4 A recent analysis of the administration of justice within the Venetian marketplace is J. E. Shaw, *The Justice of Venice. Authorities and Liberties in the Urban Economy, 1550-1700*, Oxford, 2006.

5 On this subject the literature is huge: a critical survey in F. de Vivo, *The diversity of Venice and her myths in recent historiography*, in *The Historical Journal*, 47, 2004, p. 169-77; a useful survey of the historiography on the interconnection of 'political' and 'legal' history in Venice in M. Simonetto, *Diritto*,

giustizia e società: la Repubblica di Venezia negli studi degli ultimi quarant'anni, in *Studi Veneziani*, n.s. XLVII, 2004, p. 235-72; see also G. Ruggiero, *Politica e giustizia*, in G. Arnaldi, G. Cracco and A. Tenenti (eds.), *Storia di Venezia dalle origini alla caduta della Serenissima. III. La formazione dello stato patrizio*, Rome, 1997, p. 389-407.

6 With the important exceptions of G. Cozzi, *Repubblica di Venezia e Stati italiani. Politica e giustizia dal secolo XVI al secolo XVIII*, Turin, 1982; and K. Nehlsen- von Stryk and D. Nörr (eds.), *Diritto comune, diritto commerciale, diritto veneziano*, Venice, 1985.

7 For a detailed analysis of the English commercial presence in Venice see M. Fusaro, *Political Economies of Empire in the Mediterranean: The Decline of Venice and the Rise of England 1450-1700*, Cambridge, forthcoming.

8 This represented the «classic case» in which, in the presence of associational structures, a specific magistracy was in charge of both protecting – and controlling – the institution. On the *Visdomini* see V. Sandi, *Principi di storia civile della Repubblica di Venezia dalla sua fondazione sino all'anno di n.s. 1700*, Venice, 1755, parte I, vol. 2, p. 768-70; A. Da Mosto, *L'archivio di Stato di Venezia. I. Archivi dell'amministrazione centrale della Repubblica veneta e archivi notarili*, Rome, 1937, p. 189; G. M. Thomas, *Capitolare dei Visdomini del Fontego dei Todeschi in Venezia*, Berlin, 1874; H. Simonsfeld, *Der Fondaco dei Tedeschi in Venedig und die deutschvenetianischen Handelsbeziehungen*, 2 vols., Stuttgart, 1887; see also C. Storti-Storchi, *Foreigners in Medieval Italy*, in V. Ferrari, T. Heller and E. Di Tullio (eds.), *Citizenship and immigration*, Milan, 1998, p. 35.

9 M. Fusaro, *Les Anglais et les Grecs. Un réseau de coopération commerciale en Méditerranée vénitienne*, in *Annales HSS*, 58, 2003, p. 605-625; Ead., *Uva Passa. Una guerra commerciale tra Venezia e l'Inghilterra (1540-1640)*, Venice, 1997.

10 For a summary of these developments see the classic A. Lattes, *Il procedimento sommario*, in P. Sella (ed.), *Il procedimento civile nella legislazione statutaria italiana*, Milan, 1927; Vito Piergiovanni's contributions on this issue can now be found together in the section dedicated to 'Diritto canonico medievale' in V. Piergiovanni, *Norme, scienza e pratica giuridica tra Genova e l'occidente medievale e moderno*, 2 vols, Genoa, 2012, vol. 1, p. 509-736.

11 There are two short articles dedicated to the beginnings of this court: R. Cessi, *Un patto fra Venezia e Padova e la Curia «Forinsecorum» al principio del secolo XIII*, in *Atti e memorie della Regia Accademia di Scienze, Lettere ed Arti in Padova*, xxx, 1914, p. 263-75; Id., *La «Curia Forinsecorum» e la sua prima costituzione*, in *Nuovo Archivio Veneto*, 28, 1914, p. 202-07. When I began working on this material, out of the 99 files which have survived and I have examined for the period up to the end of the seventeenth century, only one had been opened and the other 98 still bore the official seals of the Republic, whilst the physical state of the *registri* showed they had not been touched for centuries.

12 His father – Valerio – was indeed a nobleman, but Antonio was illegitimate. Pretending to be a Venetian patrician was a very serious offence.

13 A copy of his sentence is attached to the cover of the old (eighteenth-century) index of the *Corti di Palazzo*. Attempts at finding the original trial have borne no results so far. The sentence is dated 27 March 1773, and it was issued by the *Conservatori ed Esecutori alle Leggi* with authority delegated from the Senate.

14 Archivio di Stato di Venezia (hereafter ASV), *Avogaria di Comun* (hereafter *AdC*), *Civile*, busta (hereafter b.) 94, fascicolo (hereafter fasc.) 5.

15 Later to the *Quarantia Civil Vecchia*.

16 The *Auditori*, then the *Auditori Vecchi*, and in some cases the *Auditori nuovi*; see M. F. Tiepolo et Al., *Archivio di Stato di Venezia. Estratto dal volume IV della Guida Generale degli Archivi di Stato Italiani*, Rome, 1994, p. 987.

17 At the beginning the *Proprio* had jurisdiction over both civil and criminal, but the material extant is pertaining exclusively to the civil jurisdiction, although traces of its criminal jurisdiction can be found in the papers of other magistracies. See Tiepolo et Al., *Archivio di Stato di Venezia*, p. 988.

18 The *Esaminador* played a central role not only because of its competencies in regard to witnesses, but also because it dealt with freezing assets of debtors, for example see ASV, *Giudici del Forestier* (hereafter *GdF*), f. 48 (*Dimande*), c. 250 (9 December 1654): Gelmo Marsle, trying to recover credits from Davide Lon, resorted to the *Esaminador* for this purpose. Another very similar case in *ivi*, c. 270 (17 December 1654) where Edoardo Capel did the same to recover his £400 [around 2,400 Ducats] from Guglielmo Dale of Bristol. Similar actions were sometimes recorded also with a notary, see ASV, *Notarile Atti*, registro (hereafter reg.) 11935 (Andrea Spinelli), cc. 113r-14r (20 March 1613): Henry Parvis recorded how he had frozen assets belonging to Riccardo Beresford which were in the hands of his debtor Gio Antonio Scarpazza. Other times one could resort to the *Esaminador* to legalize a notarial document registered abroad, for example see: ASV, *Notarile Atti*, reg. 11938 (Andrea Spinelli), c. 349r (14 May 1616) where Randolph Simes validated a power of attorney signed in London.

- 19 It was with the approval of the *Petizion* that Thomaso Beringham administered the estate of the late Guglielmo Jates for his widow and daughters, see ASV, *Notarile Atti*, reg. 641 (Francesco Beazian), *decimus*, cc. 465v-67r (23 January 1636).
- 20 Tiepolo et Al., *Archivio di Stato di Venezia*, p. 990-1. On the *Petizion* see G. I. Cassandro, *La Curia di Petizion*, in *Archivio Veneto*, ser. v, 19 (I), 1936, p. 72-144; and 20 (II), 1937, p. 1-210.
- 21 Tiepolo et Al., *Archivio di Stato di Venezia*, p. 988-92. For a very clear exposition of the interlocking competencies of the *Corti di Palazzo* see R. C. Mueller, *The Procurators of San Marco in the thirteenth and fourteenth centuries: a study of the office as a financial and trust institution*, in *Studi Veneziani*, XIII, 1971, p. 105-220, especially 138-41.
- 22 M. Ascheri, *Tribunali, giuristi e istituzioni dal medioevo all'età moderna*, Bologna, 1989, p. 41; P. Prodi, *Una storia della giustizia. Dal pluralismo dei fori al moderno dualismo tra coscienza e diritto*, Bologna, 2000, p. 128.
- 23 M. Ascheri, *Istituzioni e giustizia dei mercanti nel Tre-Quattrocento: dal caso di Siena*, in M. Del Treppo (ed.), *Sistema di rapporti ed élites economiche in Europa (secoli XII-XVII)*, Naples, 1994, p. 57; Prodi, *Una storia*, p. 129-31. For a lucid analysis of these issues see also S. Cerutti, *Giustizia sommaria. Pratiche e ideali di giustizia in una società di Ancien Régime (Torino XVIII secolo)*, Milan, 2003, p. 14-22.
- 24 The *capitolare* is the document containing the norms and rules regulating the activities of a specific magistracy, see M. Roberti, *Le magistrature giudiziarie veneziane e i loro capitolari fino al 1600*, 3 vols., Padua, 1906-11, vol. 2, p. 3.
- 25 «The six *Corti di Palazzo* occupy a special place in the Venetian judicial system: they form a real *ordo iudiciarius*, as they have exclusively judiciary functions»: Da Mosto *L'archivio di Stato di Venezia*, I, p. 89; on this see also G. Cassandro, *Concetto, caratteri e struttura dello stato veneziano*, in *Rivista di Storia del Diritto Italiano*, xxxvi, 1963, p. 39-41.
- 26 A. Pertile, *Storia del diritto italiano dalla caduta dell'Impero Romano alla codificazione. IV.ii., Storia del diritto privato*, Turin, 1900, p. 117-8; G. Salvioli, *Storia della procedura civile e criminale*, in P. del Giudice (ed.), *Storia del diritto italiano*, Milan, 1925, vol. 3, part I, p. 330. On procedural privileges for foreigners in various Italian statutes and pacts in the Middle Ages: G. I. Cassandro, *Le rappresaglie e il fallimento a Venezia nei secoli XIII-XVI*, Turin, 1938, p. 15-9. On the importance of pacts as a source of law: G. Ortalli, *Tra normativa cittadina e diritto internazionale. Persistenze, intrecci e funzioni*, in G. Rossetti (ed.), *Legislazione e prassi istituzionale nell'Europa medioevale. Tradizioni normative, ordinamenti, circolazione mercantile (secoli XI-XV)*, Naples, 2001, p. 26.
- 27 Cessi, *Un patto fra Venezia e Padova*, p. 263-66.
- 28 Roberti, *Le magistrature giudiziarie*, vol. 1, p. 188-9; see also F. Argelati, *Pratica del Foro Veneto. Che contiene le materie soggette a ciaschedun Magistrato, il numero de' Giudici, la loro durata, l'ordine, che suole tenersi nel contestare le cause, e le formule degli atti più usitati*, Venice, 1737, p. 22-5, 23. B. Pitzorno, *Le consuetudini giudiziarie veneziane anteriori al 1229*, in *Miscellanea di storia veneta*, serie III, tomo 2, Venice, 1910, p. 307. On this issue see also G. Zordan, *Le persone nella storia del diritto veneziano prestatutario*, Padua, 1973, p. 145-6.
- 29 ASV, *Maggior Consiglio, Indice e repertorio generale delle leggi statutarie del Serenissimo Maggio Consiglio...*, reg. ii, c. 286: «Facoltà ai Giudici di Forestier di decider, e terminar sopra gl'Interdetti dei Beni dei Forestieri, D.III, 172 (6 June 1318)», «Gl'Interdetti sopra Beni de Forestieri siano scritti alla Corte di Forestier, D.IV, 47 (25 November 1330)». On the enlargements of the area of jurisdiction of the *Forestier* during the fourteenth and fifteenth centuries, see also Roberti, *Le magistrature veneziane*, I, p. 192-3.
- 30 Da Mosto, *L'archivio di Stato di Venezia*, I, p. 90; M. Ferro, *Dizionario del diritto comune e veneto*, 2 vols., Venice, 1845-7, vol. II, p. 548.
- 31 Tiepolo et Al., *Archivio di Stato di Venezia*, 990-1.
- 32 ASV, *Maggior Consiglio, Indice e repertorio generale delle leggi statutarie del Serenissimo Maggio Consiglio...*, reg. II, c. 286: «le cause tra Veneti a Forestieri, ch'erano alla Corte di Petizion siano de cetero devolute alla Corte di Forestier. D.II, 55».
- 33 Pansolli, *La gerarchia delle fonti*, p. 55 footnote 112. Jurisdictional conflicts between *Forestier* and *Petizion* started already in the thirteenth century, see ASV, *Compilazione Leggi*, b. 210, c. 618r (9 August 1287), other copy in c. 641r. Also Cassandro, *La Curia di Petizion*, *passim*.
- 34 Roberti, *Le magistrature veneziane*, I, p. 210; Da Mosto, *L'archivio di Stato di Venezia*, I, p. 92. Other such instances were the *Giudici del Piovego* having criminal jurisdiction over fake letters of exchange and illicit contracts, regardless of who – Venetian or foreigner – had issued them; see Tiepolo et Al., *Archivio di Stato di Venezia*, p. 958. On the *Consoli dei Mercanti* having instead jurisdiction over controversies arising from real letters of exchange and insurances, see Tiepolo et Al., *Archivio di Stato di Venezia*, p. 979; Da Mosto, *L'archivio di Stato di Venezia*, I, p. 99.

35 In the *Forestier* the English are better represented in regard to two issues: controversies arising from the chartering of ships, and wage controversies between captains and sailors. On the latter see M. Fusaro, *The Invasion of Northern litigants: English and Dutch seamen in Mediterranean Courts of Law*, in M. Fusaro, B. Allaire, R. Blakemore, T. Vanneste (eds.), *Labour, Law and Empire: Comparative Perspectives on Seafarers, c. 1500-1800*, London-New York, forthcoming. Credits versus the estates of deceased merchants (which should have been in the *Petizion*) and simple commercial controversies appear as well. Amongst these, the most frequent were cases of unpaid debts (which again should have been in the *Petizion*) or unfulfilled contracts.

36 See footnote 24 above.

37 ASV, *Cinque Savi alla Mercanzia*, n.s., b. 75, passim.

38 F. Nani, *Prattica Civile delle Corti del Palazzo Veneto*, Venice, 1694, p. 107. Sandi highlighted this same point in *Principi di storia civile*, part I, vol.2, p. 525. Considerations on mercantile courts as the place where to find foreigners in M. Ascheri, *Siena nel Rinascimento. Istituzioni e sistema politico*, Siena, 1985, p. 113-4.

39 Tiepolo et Al., *Archivio di Stato di Venezia*, p. 979; L. Pansolli, *La gerarchia delle fonti di diritto nella legislazione medievale veneziana*, Milan, 1970, p. 99-100. On the *Consoli* using summary procedure see M. Sanudo, *De origine, situ et magistratibus urbis venetae, ovvero La Città di Venetia (1493-1530)*, A. Caracciolo-Aricò (ed.), Milan, 1980, p. 135.

40 «Quali cause si spediscono sommariamente», in Argelati, *Prattica del Foro Veneto...*, p. 22-5, 22. On the use of summary justice for these cases, see also: Ferro, *Dizionario*, vol. 2, p. 762-5; Roberti, *Le magistrature giudiziarie*, vol. 1, p. 191. This is something that also Marin Sanudo underlined in his *De origine, situ*, p. 257.

41 Nani, *Prattica Civile delle Corti*, p. 119; Argelati, *Prattica del Foro Veneto*, p. 22-5, 22.

42 G. Boerio, *Dizionario del dialetto veneziano*, Florence, 1993 {Venice, 1856}, p. 779-80. It was possible to distinguish different kinds of *varee*: the *semplice* was used to describe damages caused by natural defects of the merchandise; *ordinaria* included the expenses of packing, loading and insuring; *grossa o comune* was used to indicate extraordinary expenses for damages to the ship or to the freight; *grossa* was also used to describe the circumstance in which the whole cargo had to be thrown off-board to save the ship during a storm. On this issue the jurisdiction of the *Forestier* held until the end of the Republic (1797).

43 Another competence regarded the writing of orders of seizure (*disporre il sequestro*) in town and in the *Dogado*; the magistrate for the appeal was the *Auditor vecchio*. See Argelati, *Prattica del Foro Veneto*, p. 22-5, 25. Another analysis of the competences of the *Forestier* is in Sandi, *Principi di Storia Civile*, part I, vol. 2, p. 525-9.

44 ASV, *Maggior Consiglio, Indice e repertorio generale delle leggi statutarie del Serenissimo Maggior Consiglio...*, reg. ii, c. 102: «Forastieri non possino comprar alcuna Possessione posta in Venetia D. III, 217 (17-8-1322)». Also Roberti, *Le magistrature veneziane*, vol. 1, p. 190-1.

45 Simona Cerutti has argued convincingly that the traditional interpretation of the development of commercial law – from *ratio personarum* to *ratio materiae* – is not as linear as has been previously presented; see her *Giustizia sommaria*, p. 28-9. The standard narrative is in U. Santarelli, *Mercanti e società tra mercanti*, Turin, 1998, p. 18-29.

46 C. Storti-Storchi, *The Legal Status of Foreigners in Italy (XVth-XVIth Centuries): General Roles and their Enforcement in Some Cases Concerning the Executio Parata*, in L. Mayali and M. M. Mart (eds.), *Of Strangers and Foreigners (Late Antiquity – Middle Ages)*, Berkeley, 1993, p. 105: where she argues that in the statutory legislation of some cities, «foreigners always received a fair and equitable hearing (*benigna audientia*) and were rapidly judged without the formalities required by the civil law»; see also p. 107.

47 Ascheri, *Tribunali, giuristi e istituzioni*, p. 28.

48 A. F. M. (Munir) Maniruzzaman, *The Lex Mercatoria and International Contracts: A Challenge for International Commercial Arbitration?*, in *American University International Law Review*, 14, 1999, p. 658; T. E. Carbonneau (ed.), *Lex Mercatoria and Arbitration. A Discussion of the New Law Merchant*, Boston, 1997; F. Galgano, *Lex mercatoria. Storia del diritto commerciale*, Bologna, 1993.

49 For a recent analysis of these issues see A. Stanziani, *Rules of Exchange. French Capitalism in comparative Perspective, Eighteenth to Early Twentieth Centuries*, Cambridge, 2012, especially p. 14; see also the recent contribution of S. Gialdroni, *Gerard Malynes e la questione della lex mercatoria*, in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, Germ. Abt. 126, 2009, p. 38-69 and the bibliography therein quoted.

50 Summary procedure in regard to canon law was described in the Papal decree *Clementina Saepe* (ca1307), considered to be the basis of the evolution of modern canon law; see O. F. Robinson, T. D. Fergus, W. M. Gordon (eds.), *European Legal History. Sources and Institutions*, London, 2000,

p. 86-7; on dating the *Clementina Saepe*, see S. G. Kuttner, *Medieval Councils, Decretals and the Collections of Canon Law*, London, 1980, XIII, p. 427-52.

51 M. Ascheri, *Il processo civile tra diritto comune e diritto locale: da questioni preliminari al caso della giustizia estense*, in *Quaderni Storici*, 101, 1999, p. 361. On the varieties of 'summary justice' see G. Chiovenda, *Istituzioni di diritto processuale civile*, 2 vols., Naples, 1960, vol. 1, p. 93.

52 Cozzi, *Repubblica di Venezia*, p. 341-46; also Cerutti, *Giustizia sommaria*, p. 22-9; Ascheri, *Il processo civile*, p. 366.

53 M. Ascheri, *Lo straniero nella legislazione statutaria e nella letteratura giuridica del Tre-Quattrocento: un primo approccio*, in *Forestieri e stranieri nelle città basso-medievali*, Florence, 1988, p. 7.

54 V. Piergiovanni, *Il Mercante e il Diritto canonico medievale: «Mercatores in itinere dicuntur miserabiles personae»*, in S. Chodorow (ed.), *Proceedings of the Eighth International Congress of Medieval Canon Law*, Vatican City, 1992, p. 617-31; Id., *The Itinerant Merchant and the Fugitive Merchant in the Middle Ages*, in *Of Strangers and Foreigners*, p. 86-8; Ascheri, *Il processo civile*, p. 363. The reference to Gratian is from E. L. Friedberg (ed.), *Corpus Iuris Canonici...*, Leipzig, 1979, vol. 1, C. 24, q. 3, c. 23.

55 J. Hilaire, *Introduction historique au droit commercial*, Paris, 1986, p. 42-43; G. Levi, *Reciprocidad mediterranea*, in *Hispania*, lx, 2000, p. 103-26.

56 Salvioli, *Storia della procedura*, p. 333-9; G. Salvioli, *Manuale di storia del diritto italiano*, Turin, 4th ed., 1903, p. 579-80; see also Ascheri, *Il processo civile*, p. 361; Lattes, *Il procedimento sommario*, p. 228-33.

57 The first allowed the judge to also sit on holidays. The second meant that the number of witnesses was limited, and professionals (i.e. lawyers) were excluded. The third allowed discarding all parts of the case not deriving from *ius naturale* but included by positive law. These three notes are from Bartolo di Sassoferrato, *De summaria cognitione commentarii* as quoted in Cerutti, *Giustizia e località*, p. 447-8. See also A. Lattes, *Il procedimento sommario*, in P. Sella (ed.), *Il procedimento civile nella legislazione statutaria italiana*, Milan, 1927, p. 222; A. Engelman, *A history of continental civil procedure*, London, 1928, book 4, part III, p. 791-3.

58 Lattes, *Il procedimento sommario*, p. 228-33, p. 239.

59 Cerutti, *Giustizia e località a Torino*, p. 451-52. Interestingly this was also the meaning of the word 'stranger' – ξένοσ – in Byzantine legislation on foreigners. See P. Odorico, *L'étranger et son imaginaire dans la littérature byzantine*, in *Of Strangers and Foreigners*, p. 68.

60 Cerutti, *Giustizia e località a Torino*, p. 470; Ead., *Giustizia sommaria, passim*. With the word «equity» throughout this text we do not mean «equity law», present in England from the end of the seventeenth century until 1875, which was a separate stream of jurisprudence, parallel to «common law» and deriving its authority from the Chancery Court. On this see M. R. T. Macnair, *Juge et jugement dans les juridictions anglaises d'equity' au début des temps modernes*, in R. Jacob (ed.), *Le juge et le jugement dans les traditions juridiques européennes. Études d'histoire comparée*, Paris, 1996, p. 137-54. In this text «equity» is used in its Aristotelian meaning filtered through the canon law interpretation: that is to say «equity» is intended «as a way to temper the *rigor iuris* (rigor of the law), as *benignitas* (mercy), but always within a specific order of relations and subject to clearly defined logical operations»: M. Bellomo, *The Common Legal Past of Europe, 1000-1800*, Washington, 1995, p. 162. See also E. di Robilant, *Significato del diritto naturale nell'ordinamento canonico*, Turin, 1954, p. 173-77; P. Grossi, *L'ordine giuridico medievale*, Bari-Rome, 2002, p. 210-4.

61 L. Molà, *La comunità dei lucchesi a Venezia. Immigrazione e industria della seta nel tardo medioevo*, Venice, 1994, p. 126.

62 For an example of such lengthy times see the controversy between John Erlisman and Giles Jones in ASV, *GdF*, *passim*. The case in the *Forestier* lasted for two and a half years (1659-1662).

63 Paolo Zolli defines summary justice as «not open to appeal», see his *Glossario*, in Sanudo, *De origine, situ*, p. 309.

64 G. Fedalto, *Le minoranze straniere a Venezia tra politica e legislazione*, in H.-G. Beck, M. Manoussakas, A. Pertusi (eds.), *Venezia centro di mediazione tra Oriente e Occidente (secoli XV-XVI) aspetti e problemi*, 2 vols., Florence, 1977, vol. 1, p. 143-62; Zordan, *Le persone nella storia*, p. 127.

65 E. Besta, *Il diritto e le leggi civili di Venezia fino al dogato di Enrico Dandolo*, Venice, 1900, p. 68; Roberti, *Le magistrature giudiziarie veneziane*, vol. 1, p. 22-4; Zordan, *Le persone nella storia*, p. 135-8. A quick survey of these in T. G. Watkin, *An Historical Introduction to Modern Civil Law*, Aldershot, 1999, p. 159.

66 Chris Wickham (*Courts and Conflict in Twelfth Century Tuscany*, Oxford, 2003) is particularly concerned with how «law worked in reality»; Cerutti, *Giustizia sommaria*; the monographic issue «Procedure di giustizia», *Quaderni Storici*, 101, 1999; M. Vallerani, *I fatti nella logica del processo*

medievale. Note introduttive, in *Quaderni Storici*, 108, 2001, p. 665-93; Id., *La giustizia pubblica medievale*, Bologna, 2005; Id., *Procedura e giustizia nelle città italiane del basso medioevo (XII-XIV secolo)*, in J. Chiffolleau, C. Gauvard and A. Zorzi (eds.), *Pratiques sociales et politiques judiciaires dans les villes de l'Occident à la fin du Moyen Âge*, Rome, 2007, p. 439-94.

67 R. Ago and S. Cerutti, *Premessa*, in *Quaderni Storici*, «Procedure di giustizia», 101, 1999, p. 307; S. Cerutti, *Nature des choses et qualité des personnes. Le Consulat de commerce de Turin au XVIII^e siècle*, in *Annales HSS*, 57, 2002, p. 1491-520.

68 E. Grendi, *Premessa*, in *Quaderni Storici*, 66, 1987, p. 695-700; M. Sbriccoli, *Fonti giudiziarie e fonti giuridiche. Riflessione sulla fase attuale degli studi di storia del crimine e della giustizia criminale*, in *Studi Storici*, 29, 1988, p. 491-501; E. Grendi, *Sulla «Storia criminale»: risposta a Mario Sbriccoli*, in *Quaderni Storici*, 73, 1990, p. 269-75; T. Dean and K. J. P. Lowe (eds.), *Crime, Society and the Law in Renaissance Italy*, Cambridge, 1994.

69 C. Storti-Storchi, *The Legal Status of Foreigners in Italy*, p. 101: «Such rules became universal and general: they were considered valid (with the exception of obvious local differentiation) not only by Italian jurists but by all European jurists in those countries where the system of civil law, that is the *ius commune Romanorum*, was in force».

70 Storti-Storchi, *The Legal Status of Foreigners in Italy*, p. 107 footnote; F. P. Tronca, *La condizione dello straniero e la Curia dei Forestieri in Pisa nei secoli XII e XIII*, in *Sistema di rapporti*, p. 31.

71 G. Petti Balbi, *Presenze straniere a Genova nei secoli XII-XIV: letteratura, fonti, temi di ricerca*, in G. Rossetti (ed.), *Dentro la città. Stranieri e realtà urbane nell'Europa dei secoli XII-XVI*, Naples, 1989, p. 128; G. Casarino, *Mondo del lavoro e immigrazione a Genova tra XV e XVI secolo*, in R. Comba, G. Piccinni and G. Pinto (eds.), *Strutture familiari, epidemie, migrazioni nell'Italia medievale*, Naples, 1984, p. 451-72. On this issue in Venice see M. Knapton, *Tra Dominante e Dominio (1517-1630)*, in G. Cozzi, M. Knapton, G. Scarabello, *La Repubblica di Venezia nell'età moderna*, Turin, 1992), p. 285-6; R. C. Mueller, *Stranieri e culture straniere a Venezia. Aspetti economici e sociali*, in M. Muraro (ed.), *Componenti storico-artistiche e culturali a Venezia nei secoli XIII e XIV*, Venice, 1981, p. 75.

72 G. Casarino, *Stranieri a Genova nel Quattro e Cinquecento: tipologie sociali e nazioni*, in *Dentro la città*, p. 137-50, p. 147.

73 M. Borgherini-Scarabellin, *Il Magistrato dei Cinque Savi alla Mercanzia dalla istituzione alla caduta della Repubblica*, Venice, 1925, p. 93.

74 Casarino, *Stranieri a Genova*, p. 144-7.

75 V. Piergiovanni, *Alcuni consigli legali in tema di forestieri a Genova nel Medioevo*, in *Sistema di rapporti*, p. 7. In Venice, instead, arbitration was open to everyone, see: F. Marrella and A. Mozzato, *Alle origini dell'arbitrato commerciale internazionale. L'arbitrato a Venezia tra medioevo ed età moderna*, Padua, 2001.

76 Tronca, *La condizione dello straniero*, p. 22. The date of its foundation is uncertain, but was sometime between 1163 and 1176, see G. Volpe, *Studi sulle istituzioni comunali a Pisa*, Florence, 1970, p. 150.

77 R. Celli, *Studi sui sistemi normativi delle democrazie comunali, secoli XII-XV. I: Pisa e Siena*, Florence, 1976, p. 103 footnote.

78 Tronca, *La condizione dello straniero*, 31-2. In May 2014 Cédric Quertier defended at the University Paris 1 – Panthéon-Sorbonne a PhD dissertation on these issues: *Forestieri e ceti mercantile: la communauté marchande des Florentins à Pise au XIV^e siècle*, under the supervision of Laurent Feller (Université Paris 1 - Panthéon-Sorbonne) and Giuliano Pinto (Università di Firenze).

79 P. Corrao, *Mercanti stranieri e Regno di Sicilia: sistema di protezioni e modalità di radicamento nella società cittadina*, in *Sistema di rapporti*, p. 93-4 and 98-9; G. Muto, *Cittadini e «forestieri» nel Regno di Napoli: note sulla presenza genovese nella capitale tra Cinque e Seicento*, in *Sistema di rapporti*, p. 163-78.

80 Ascheri, *Tribunali, giuristi e istituzioni*, p. 30.

81 Ascheri, *Tribunali, giuristi e istituzioni*, p. 45, footnote 18.

82 Ascheri, *Tribunali, giuristi e istituzioni*, p. 48 footnote 39; also Id., *Istituzioni e giustizia dei mercanti nel Tre-Quattrocento: dal caso di Siena*, in *Sistema di rapporti*, p. 60-61.

83 Ascheri, *Siena nel Rinascimento*, p. 132. But in the statute of the *Mercanzia* references to foreigners always refer to merchants and commercial contracts. See M. Chiantini, *La Mercanzia di Siena nel Rinascimento. La normativa dei secoli XIV-XVI*, Siena, 1996, p. 190-93.

84 A. Astorri, *Note sulla Mercanzia fiorentina sotto Lorenzo dei Medici. Aspetti istituzionali e politici*, in *Archivio Storico Italiano*, 150, 1992, p. 968. Ead., *La Mercanzia a Firenze nella prima metà del Trecento. Il potere dei grandi mercanti*, Florence, 1998.

- 85 A. Anzilotti, *La costituzione interna dello Stato Fiorentino sotto il Duca Cosimo I de' Medici*, Florence, 1910, p. 106; J. Shaw, *Writing to the Prince: Supplications, Equity and Absolutism in Sixteenth Century Tuscany*, in *Past and Present*, 215, 2012, p. 51-83.
- 86 P. Mainoni, *La nazione che non c'è: i tedeschi a Milano e a Como fra Tre e Quattrocento*, in G. Petti Balbi (ed.), *Comunità forestiere e «nationes» nell'Europa dei secoli XIII-XVI*, Naples, 2001, p. 228.
- 87 T. Szabó, *Gli stranieri nelle città tedesche del Medioevo*, in *Dentro la città*, p. 78.
- 88 A. Beardwood, *Alien Merchants in England 1350 to 1377, their Legal and Economic Position*, Cambridge (Mass.), 1931, p. 77-80; G. W. Keeton, *The Norman Conquest and the Common Law*, London-New York, 1966, p. 189-200.
- 89 Very interestingly we have documents about cases tried in them; see C. Gross (ed.), *Select Cases Concerning the Law Merchant, AD 1270-1638*, 2 vols., London, 1908, vol. 1, p. xvi.
- 90 *Select Cases Concerning the Law Merchant*, p. xxiii-xxiv.
- 91 Baker, *The law Merchant as a Source*, p. 85-7. This was a characteristic of all commercial tribunals in «fair towns», and their particular concerns were affected more by the time constraints embedded in the nature of fairs than by the status – citizen or foreigner – of the merchants taking advantage of them. On these issues see S. Cavaciocchi (ed.), *Fiere e mercati nella integrazione delle economie europee. Secoli XIII-XVIII*, Florence, 2001.
- 92 W. E. Davies, *The English Law Relating to Aliens*, London, 1931, p. 42; on this issue see also Beardwood, *Alien Merchants*, p. 77; K. Kim, *Aliens in Medieval Law. The Origins of Modern Citizenship*, Cambridge, 2000, p. 39. It is interesting to note how the nationality of the defendant and the nationality of the alien juror did not necessarily coincide; I wish to thank Mike Macnair for providing me with this information.
- 93 E. Powell, *Arbitration and the Law in England in the Late Middle Ages*, in *Transactions of the Royal Historical Society*, 33, 1983, p. 53.
- 94 Cerutti, *Giustizia e località a Torino*; Ead., *Giustizia sommaria*; further elaborated in S. Cerutti, *Étrangers. Étude d'une condition d'incertitude dans une société d'Ancien Régime*, Paris, 2012.
- 95 J. Lalinde Abadía, *L'inserimento dello straniero nelle comunità politiche della Spagna: un profilo giuridico*, in *Dentro la città*, p. 55. On the legal treatment of foreigners in Spain in the earlier period see R. Gibert, *La condición de los extranjeros en el antiguo derecho español*, in *L'étranger*, vol. X, 2 partie, Bruxelles, 1958, p. 151-99. For eighteenth-century developments in the status of foreign merchants see T. Herzog, *Defining Nations. Immigrants and Citizens in Early Modern Spain and Spanish America*, New Haven-London, 2003, p. 82-91.
- 96 A. Mora-Cañada, *Los principios del procedimiento mercantil del nuevo tribunal de comercio Valenciano de 1762*, in *Homenaje al doctor Sebastián García Martínez*, Valencia, 1988, p. 355-66; Ead., *El tribunal del Consulado de Valencia en el siglo XVIII: conflictos de competencias y legislación aplicable en los procesos*, in *Homenaje a Juan Berchmans de Goytisolo*, 5 vol., Madrid, 1988, vol. 2, p. 629-38; Ead., *Los elementos personales en el proceso mercantil valenciano del siglo XVIII: los jueces*, in *Actos del Coloquio Internacional 'Carlos III y su siglo*, 2 vols., Madrid, 1990, vol. 2, p. 335-50.
- 97 R. Zaugg, *Stranieri di antico regime. Mercanti, giudici e consoli nella Napoli del Settecento*, Rome, 2011.
- 98 The essential starting point for this subject is G. Cozzi, *La politica del diritto nella Repubblica di Venezia*, in G. Cozzi (ed.), *Stato, società e giustizia nella Repubblica Veneta*, Rome, 1980, p. 22-4.
- 99 Pansolli, *La gerarchia delle fonti*, 21. On the profoundly Roman nature of Venetian law, see also E. Besta, *Il diritto e le leggi civili di Venezia*, in *Ateneo Veneto*, 20, 1897, p. 302-3.
- 100 For an example of this see K. Pennington, *Learned Law, Droit Savant, Gelehrtes Recht: The Tyranny of a Concept*, in *Rivista internazionale di diritto comune*, 5, 1994, p. 197-209; and *Syracuse Journal of International Law and Commerce*, 20, 1994, p. 205-15. Even for legal systems that formally rejected references to Roman law, interesting comments on the pervasiveness of *ius commune*, in A. Schiavone, *Ius. L'invenzione del diritto in Occidente*, Turin, 2005, p. 5-18 and 390-9.
- 101 Cozzi, *La politica del diritto*, p. 20; Pansolli, *La gerarchia delle fonti*, p. 243-248.
- 102 A. Ventura, *Politica del diritto e amministrazione della giustizia nella Repubblica Veneta*, in *Rivista Storica Italiana*, 94, 1982, p. 607.
- 103 The atypical nature of the Venetian constitution is very clear to scholars of the subject; see for example Ascheri, *Tribunali, giuristi e istituzioni*, p. 43 footnote 6; Id., *I diritti del medioevo italiano (secoli XI-XV)*, Rome, 2000, p. 285-7 and *passim*; M. Caravale, *Ordinamenti giuridici dell'Europa medievale*, Bologna, 1994, p. 266-9 and 670-9; A. Cavanna, *La storia del diritto moderno (secoli XVI-XVIII) nella più recente storiografia italiana*, Milan, 1983, p. 59-63.
- 104 It was also forbidden to resort to opinions and *consilia* from professionals of the law, and to interpret or comment the statutes; see the exemplary synthesis in S. Gasparini, *I giuristi veneziani ed il loro ruolo*

tra istituzioni e potere nell'età del diritto comune, in *Diritto comune, diritto commerciale*, p. 67-105, especially 71 and 73.

105 Savelli, *Modelès juridiques*, p. 418. This phenomenon was also common in the Venetian *Terraferma*, where the needs of administering justice employed many graduates of the University of Padua.

106 Pansolli, *La gerarchia delle fonti*, p. 232.

107 Quoted in Ventura, *Politica del diritto e amministrazione*, p. 591. See also Pansolli, *La gerarchia delle fonti*, p. 247-248. On Justinian see P. H. Labalme, *Bernardo Giustiniani: a Venetian of the Quattrocento*, Rome, 1969.

108 Nehlsen-von Stryk and Nörr, *Introduction*, in *Diritto comune, diritto commerciale*, p. 5.

109 N. Horn, *Diritto comune e diritto particolare nella prima età moderna. Domande alla storiografia giuridica veneziana*, in *Diritto comune*, p. 7.

110 Gasparini, *I giuristi veneziani e il loro ruolo*, 72.

111 Cozzi, *La politica del diritto*, p. 148.

112 K. Nehlsen – von Stryk, «Jus Commune», «Consuetudo», e «Arbitrium Iudicis» nella prassi giudiziaria veneziana del Quattrocento, in *Diritto comune, diritto commerciale*, p. 117-8; V. Crescenzi, *Il diritto civile*, in G. Arnaldi, G. Cracco and A. Tenenti (eds.), *Storia di Venezia dalle origini alla caduta della Serenissima. III. La formazione dello stato patrizio*, Rome, 1997, p. 441-6.

113 The emphasis is mine; in ASV, *Compilazione Leggi*, b. 210, fasc. ii, cc. 619r-24r; also in Roberti, *Le magistrature giudiziarie*, vol. 2, p. 105.

114 Zordan, *Le persone nella storia*, p. 119-20.

115 R. C. Mueller and L. Molà, *Essere straniero a Venezia nel tardo Medioevo: accoglienza e rifiuto nei privilegi di cittadinanza e nelle sentenze criminali*, in S. Cavaciocchi (ed.), *Le migrazioni in Europa*, Florence, 1994, p. 842; R. C. Mueller, «Veneti facti privilegio»: stranieri naturalizzati a Venezia tra XIV e XVI secolo, in D. Calabi and P. Lanaro (eds.), *La città italiana e i luoghi degli stranieri, XIV-XVIII secolo*, Bari-Rome, 1998, p. 45.

116 M. Fusaro, *Gli uomini d'affari stranieri in Italia*, in F. Franceschi, R. A. Goldthwaite, R. C. Mueller (eds.), *Il Rinascimento italiano e l'Europa. IV. Commercio e cultura mercantile*, Treviso, 2007, p. 369-95. An overview on the issue of citizenship in Venice in A. Zannini, *Burocrazia e burocrati a Venezia in età moderna: i cittadini originari (sec. XVI-XVIII)*, Venice, 1993; A. Bellavitis, *Identité, mariage, mobilité sociale: Citoyennes et citoyens à Venise au XVI^e siècle*, Rome, 2001.

117 A. Bellavitis, «Per cittadini metterete...». La stratificazione della società veneziana cinquecentesca tra norma giuridica e riconoscimento sociale, in *Quaderni Storici*, 89, 1995, p. 361. On the seriousness of the problem see ASV, *Cinque Savi alla Mercanzia*, b. 103 n.s., fasc. iv, cc.n.n. (4 September 1546). A classic example is how Heleazar Hicman and Paul Pinder illegally exported to Alexandria with the collusion and under the name of Giovanni Peverello «mercator venetus»; for this they were condemned by the *Avogaria*, in ASV, *AdC, raspe*, reg. 3689, cc. 29v-30r; see also Fusaro, *Political Economies of Empire*, ch. 7.

118 Cozzi, *Repubblica di Venezia e Stati italiani*, p. 3-8; Id., *Politica del diritto*, p. 122-52.

119 Tiepolo et Al., *Archivio di Stato di Venezia*, p. 980-2.

120 As written in a memorandum recounting the origin of the magistrate: see ASV, *Cinque Savi alla Mercanzia*, b. 75 n.s., fasc. i, cc.n.n. (14 June 1659).

121 In a memorandum dated 1703 there is a list of magistrates that had to hand out powers to the *Cinque Savi*: «the magistracies that competed with the Cinque Savi have all lost their fight: *Piovego, Petizion, Giustizieri Vecchi, Conservatori delle Leggi, Signori di Notte al Criminal, Essaminador*»: ASV, *Cinque Savi alla Mercanzia*, b. 75 n.s., fasc. iv, cc.n.n. (20 May 1703). See also Sandi, *Principi di storia civile*, part I, vol. 2, p. 793.

122 C. Caro Lopez, *Gli Auditori nuovi e il Dominio di Terraferma*, in *Stato, società e giustizia*, p. 270; Cassandro, *La Curia di Petizion*, II, p. 12.

123 An interesting case over which *Forestier* and *Consoli* fought is detailed in ASV, *Collegio Notatorio*, reg. 97, parte ii, c. 43v (4 June 1641). See also Cassandro, *La Curia di Petizion*, II, p. 23-5.

124 Which by this period had had their jurisdiction already eroded, mostly by the *Sopraconsoli dei Mercanti*, see R. C. Mueller, *The Venetian Money Market. Banks, Panics and the Public Debt, 1200-1500*, Baltimore and London, 1997, p. 44, 123 footnote. On the competencies of the *Sopraconsoli*, see Tiepolo et Al., *Archivio di Stato di Venezia*, p. 980.

125 B. Ravid, *A Tale of Three Cities and their «Raison d'Etat»: Ancona, Venice, Livorno and the Competition for Jewish Merchants in the Sixteenth Century*, in A. Meyuhas-Ginio (ed.), *Jews, Christians, and Muslims in the Mediterranean World after 1492*, London, 1992, p. 142. On this occasion the *Giudici del Piovego* ended up losing part of their jurisdiction, see Tiepolo et Al., *Archivio di Stato di Venezia*, p. 957.

126 The *Fondaco* was previously under the jurisdiction of the *Visdomini*. It is interesting to note that the archive of the *Visdomini* was then incorporated with that of the *Cinque Savi*; see Da Mosto, *L'archivio di Stato di Venezia*, vol. 1, p. 189; Tiepolo, *Archivio di Stato di Venezia*, p. 980.

127 Borgherini-Scarabellin, *Il Magistrato dei Cinque Savi*, p. 18-19.

128 ASV, Cinque Savi alla Mercanzia, b. 75 n.s., fasc. i, cc.n.n. (20 January 1591 more veneto). In Venice the year started on 1 March. For Venetian dates between the 1 January and the end of February, the formula more Veneto shows that it is a date following the Venetian-style calendar, and therefore it is necessary to add a unit to the figure of the year.

129 On this occasion the Senate also made the *Savi's* decisions in these controversies not open to appeal, but it was still possible to appeal directly to the *Serenissima Signoria* in special circumstances; a copy of the *parte* is in ASV, *Cinque Savi alla Mercanzia*, b. 75 n.s., fasc. i, cc.n.n. (16 January 1625 more veneto). See also Sandi, *Principi di storia civile*, part III, vol. 1, p. 94.

130 ASV, *Cinque Savi alla Mercanzia*, b. 75 n.s., fasc. i, cc.n.n. (12 September 1633). In 1676 the Armenians finally also fell under the *Cinque Savi* jurisdiction; previously they were under the *Giustizia Vecchia*. See ASV, *Cinque Savi alla Mercanzia*, b. 75 n.s., fasc. i, cc.n.n. (9 May 1676), copy of the Senate's *parte*. See also the copy in ASV, *Maggior Consiglio, Indice e repertorio generale delle leggi statutarie del Serenissimo Maggior Consiglio...*, reg. ii, c. 353v in which it was specified that «La Nazione Armena sia puramente soggetta alla giurisdizione del Magistrato dei Cinque Savi alla Mercantia».

131 ASV, *Cinque Savi alla Mercanzia*, b. 75 n.s., fasc. i, cc.n.n. (11 July 1657).

132 ASV, *Cinque Savi alla Mercanzia*, b. 75 n.s., fasc. i, cc.n.n. (14 June 1659).

133 ASV, *Cinque Savi alla Mercanzia*, b. 75 n.s., fasc. iv, cc.n.n. (20 May 1703).

134 As an example, see the interesting case in which two trials were initiated on the same controversy: the one in Lyon lasted day, the one in the *Forestier* lasted instead several months, in P. Mainoni, *Un caso giudiziario: il processo di un milanese tra Lione e Venezia alla fine del Quattrocento*, in *Dentro la città*, p. 279-89.

135 Although the document does not bear a date, I am fairly confident in dating it around the first half of the eighteenth century. From a paleographic point of view the 'hand' corresponds to that period, and from its contents it is possible to see that the controversy was really over and that the *Forestier*, like other magistrates, had had to succumb to the superior powers of the *Cinque Savi*. The document is in ASV, *Compilazione Leggi*, b. 210, fasc. ii, cc. 599r-600r.

136 For a general overview, see *Comunità forestiere*.

137 Some individuals got it for themselves when their businesses were deemed to be of advantage to the state, e.g. Henry Hyde, who was the object of one of these concessions in 1635; see ASV, *Senato Mar*, reg. 93, cc. 85v-86r (29 June 1635) and ASV, *Sindici Inquisitori in Terra Ferma e Levante*, b. 67, c. 31v (24 May 1636).

138 A copy of this *parte* is in ASV, *Cinque Savi alla Mercanzia*, b. 81 n.s., fasc. vi, cc.n.n. (24 March 1698). For the reasoning behind this decision, see also *ibidem*, fasc. iv, cc. n.n. (18 March 1698).

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Résumé

The goal of this essay is to present and describe one of the oldest courts of law of the Republic of Venice, the *Giudici del Forestier*, and to contextualise it within the Venetian judicial system, and other Italian and European courts which had civil jurisdiction over foreigners during the middle ages and the early modern period. The essay argues that in Venice there was a complex interplay between the politics of justice and the politics of trade, which was embodied by the granting of summary procedure as a ‘privilege’ to encourage the presence of selected groups of foreign economic operators. This argument is developed by elaborating on the three major issues (foreigners, summary procedure and mercantile law) that are intertwined in its documentary material. The essay shall also discuss the origins and success of summary procedure and the frequent overlap between the categories of «merchant» and «foreigner».

Entrées d'index

Keywords : Republic of Venice – *Giudici del Forestier* – foreigners – merchants – jurisdictional fights – commerce – privileges.

Notes de l'auteur

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