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

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Abstract

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

The present contribution analyzes how a rather small, non-profit, elite association drafted and implemented the rules for the global cereal markets, and which archives have been thoroughly explored. In practice, the London Corn Trade Association (LCTA), established in 1878, did three main things: it adopted and updated grain standards, which transformed mere farm produces into globally traded commodities; it arbitrated disputes between merchants, primarily related to the qualities of the grains; and it drafted and continuously amended tens of Standard Contracts that were offered to merchants from all origins. Standard Contracts established in general the market rules: there was no other support where their adhesion to collective rules and the possibility of sanction were written down. Three dimensions of this contractual strategy then come out in particular:

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

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

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

1. Avoiding Conflicts of Laws.

The legal and economic history of the First Global Era, between 1870 and 1914, raises an intriguing paradox. While this period was marked politically by a hard, self-contained conception of sovereignty and by the often brutal competition between States, it also witnessed a high degree of commercial and financial integration across borders. During these decades, flows of goods and capital reached relative levels that had never been seen before, either among Western countries or with other regions, colonized or not [Ref].

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

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

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

This article offers an answer based on the case of the London grain market, first because the costs imposed by a fragmented international legal landscape should have weighted particularly heavily on wholesale trade in low unit-costs commodities, like grain.[1] As important, a large body of archives was left over by the *London Corn Trade Association* (LCTA), a private, non-profit organization that established this market and regulated it, almost on a day-by-day basis from 1878 onwards[2]. One can thus read over several decades the detailed, hand-written minutes of its

[1] Its main features could however be observed in many other commodities, like Cotton, Oil and Tallow, Jute, Copra, Tea or Fur. Dowling (1929), Forrester (1931), Rees (1972).

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

Executive Committee, which made the key decisions, or those of specialized geographic committees dealing for instance with Indian or Russian trade. But there are also registers of arbitration cases (often with awards included), plus a large correspondence with counterpart institutions or with private merchants, in England and abroad. This throve of archives, which so far has never been systematically explored, opens therefore a unique perspective into how, at the apex of the Westphalian era, a tiny group of elite merchants structured this market and allowed it to work on an integrated, global basis.[3] We can thus identify both the rules they designed and, also, how in practice they discussed, negotiated and enforced them.

The key evidence that comes out is that, in order to make cross-border easier and less costly, the LCTA built a highly consistent, self-standing, private legal order that de facto worked on an extra-territorial basis, with utterly limited relation to official legal orders, especially the foreign, non-English ones. Private ordering was the answer to a fractured international, judicial landscape. This asked that the LCTA first produced grain standards that transformed mere agricultural produces into homogenous fungible commodities, so that supply and demand could aggregate on a global scale in deep, liquid markets. The Association also arbitrated disputes between merchants, either about the logistics of exchanges or the quality of grains. Lastly, it drafted, printed and continuously amended tens of standard sale contracts, that often came with such exotic names as the "La Plata Grain Contract for Sailing Cargoes" or the "Chinese Horse Beans Contract".

These standard contracts are the key to understanding how the global grain market was structured, hence how the grain was moved safely and at low cost, from the distant pampa to the London or the Hamburg docks, while the payments made the reverse voyage. Together with the specifics of each individual transaction, which the parties would fill by hand, these contracts included a substantial set of pre-printed, non-negotiable clauses that established the market's rules and regulations. The merchants thus adhered to them and joined the market as a structured order at the same time as they signed on their own, specific, private transaction.

As they formalized the successive operations on which the transactions rested, the contract drafters aimed primarily at internalizing as much as possible all risks of contractual brake-downs or legal gaps along the value chain, between exporters, ship owners and captains, insurers, grain merchants, millers and bankers. And in case of dispute, the Association' substantial market power guaranteed the execution of arbitration awards: delinquent traders lost access to the grain exchange, whether in person or via a broker.

The priority to self-enforced private market rules came with a most remarkable corollary: the parties could circumvent, and in fact to ignore entirely all the constraints and intricacies due to conflicts of laws and jurisdictions. Tellingly, over several decades, one does not find in the archives of the Association a single discussion about a specific point of Belgian or Italian contract law, or Canadian arbitration law. At no point did the Executive Committee discuss what to do with a given Dutch or Argentine judgment, neither did it call upon foreign lawyers, or counsels, when drafting or amending individual contracts. And for sure, any reference to bilateral treaties or conventions, not to mention principles of international law (public or private), is entirely absent from the LCTA's paper track. In their place, we find intense, constant exchanges and negotiations within a proprietary network of private counterpart institutions, such as the Argentine *Centro de Cereales*, the Odessa Bourse, the *Hamburg Börse*, the *Chambre Syndicale of Marseille* or the Bombay Chamber of Commerce. Extra-territoriality was thus privately established on the basis of a contract-based order, backed up by private diplomacy.

The only external legal anchor of this private order was the English legal system, as underlined by the fact that all standard contracts were subjected to English contract law, and so they fell ultimately under the jurisdiction of the higher London courts. But even at that point, in the rare

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

occasions when cases ended up there, these courts traditionally deferred to trade-base arbitration, as more generally to the authority of the trade associations. This was indeed a well-established feature of the City of London, at a time when public regulation of markets was essentially absent.

The rest of the article analyzes how the LCTA worked and how it structured its standard contracts so that, eventually, they ended up supporting an extra-territorial, though London-based private market order. In particular, three questions underlie the coming discussion: how could a straightforward (if standardized) bilateral sale contract come to govern several commercial operations, which were executed by different intermediaries, often located in several jurisdictions? *Which private interests then explain the time-consuming participation of tens of merchants to the private production of this great public good? Lastly, how can we account for the dual character of this extra-territorial market, which was by and large private though it was most clearly based and rooted in the dominant country and trading city of those times ?*

Section II thus reviews the relevant legal and socio-legal literature in the two main currents that bear on the present discussion: private orders and standard contracts. Section III discusses how the sociology and self-perception of the London Corn Trade Association as a private market authority and the following section presents its governance structure. Section V and VI then analyses respectively the structure of the LCTA standard contracts and the broader transnational order that was build on them. Section VII concludes.

2. Private Ordering and Standard Contracts

Market orders are typically envisaged through the prism of two highly contrasted models: the impersonal, competitive, publicly-ordered markets which operate on the basis of state-sanctioned law and official courts ; and the community-based, privately-ordered models, among which the better known examples are the medieval Maghribi traders, as studied by Greiff (kk), or the New York Diamond dealers, as analysed by Bernstein (1992) and Richman (2006). In this latter class, contractual discipline typically rests on the closely-knit character of an ethnic or religious community, a societal pattern that allows altogether for a high level of mutual monitoring and the credible threat of a brutal exclusion in case of delinquent behavior (Ellickson 1991). Contractual discipline then rests on the trade-off made by individual traders between the net present-value of maintaining long term access to this high-margin market (as to one's community), against the short-term benefits of opportunism (skirting, stealing, etc).

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

The pre-1914 London corn market illustrates an alternate, "third way" model where private ordering was consistent with large impersonal exchange, high levels of competition, little evidence of rents and a strong formal governance, by the LCTA. On the one hand, and like the traditional community-based variant, market discipline resulted in large part from the trade-off between the long-term benefits of participating to a superior market and the threat of exclusion. But rather than responding to *societal power* and communal authority, faithful behavior in London was founded on the specific *market power* of a highly efficient trading platform that was policed by a powerful gate-keeper. Like publicly-ordered markets, on the other hand, this

market thrived on its capacity to attract traders, hence to aggregate supply and demand on as large a scale as possible. Market size and low transaction costs then delivered liquidity, produce variety and exact pricing, so that contractual discipline had a strong endogenous dimension: the broader the market, the higher the benefits of access as the incentives to play by the rules. This is why there was no need here for rent-sharing arrangements backed up by discrimination against outsiders.

Significantly, the thousands of merchants from across the world who joined the London corn market did so *voluntarily*, so that the global preeminence of this market was an equilibrium outcome (Greif and Kingston, 2011). One could actually opt-out of the LCTA platform and contract over-the-counter on grains and sea transport, following the usual practices before the Association was launched. Similarly, a merchant could deal through the local market of Antwerp or Marseille, although, as long as he stayed there he would remain a fringe player with limited growth prospects. These cities were only port terminals, while London was the dominant hub [Liverpool].

The Champagne Fairs, in the latter Middle-Ages, rested on a similar ordering strategy where the merchants could opt-out of the official, by-default legal order and join a market platform that was founded on negotiated, or constructed, extra-territoriality. The keepers of the Fairs invested considerable efforts in maintaining a network of agreements with distant kingdoms, cities and principalities, so that the merchants who paid the entry fee to the Fairs were offered safe passages and legal protection. By all accounts, debt contracts entered into in Champagne and judgments rendered there were broadly enforceable across Europe (Sgard 2017, Edwards and Ogilvie 2012). The success of modern international commercial arbitration, on the other hand, is also founded on the possibility for businesses to opt out of official jurisdictions and join a de facto private, extra-territorial judicial order. The parties can then by and large choose the forum where they want to resolve their disputes, but also the substantive contract law and the arbitration law they rely upon. Still, the whole regime rests on the willingness of sovereigns to enforce awards, with little constraints and oversight: this was obtained with the 1958 UN Convention of the Recognition and Enforcement of Foreign Awards, which is still today the touchstone of this otherwise very private regime.

From this comparative perspective, the London corn market stands out primarily because of its vertically integrated, produce-based dimension, which allowed the Association to enforce its "commercial codes", contracts and awards very much on its own, hence without having to enter complex bargains with sovereign authorities. As a consequence, it could thus extend much more widely and in a much more sophisticated way its extraterritorial market order.[4]

Standard contracts were the instrument of this unique strategy. Usually, the specialized literature opposes standard contracts between parties with unequal level of skills, information and power: a long line of authors have defended since the 1930s that, in such circumstances, the very notion of a contract, as based on the independent will of the parties, can be entirely void so that only a crude power remains. Typical example includes of consumer [ref]. The LCTA experience falls however in the alternate category of contracts between "sophisticated parties": the minutes of the Association's Executive Committee certainly reveals patterns of power relationships between the main participants to the value chain, though no party had a de facto monopoly on contract drafting, or was in a position to impose a structurally asymmetric relationship on all others.

With hindsight, what is unique with the London Corn Trade Association is the extent to which it could used its standard contracts as instruments for complex, transnational market ordering. On the one hand, its contracts circulated across jurisdictional borders without being impaired, or loosing enforcement guarantees, thanks to the underlying network of private counterpart

[4] This move that was eventually formalized in the 1958 United Nations Convention on the Recognition and Enforcement of Arbitration Awards.

institutions that the Associated maintained in all countries and ports. On the other hand, standardization allowed the LCTA to articulate together several individual contracts with other service providers along the value chain: ship-owners and captains, insurers and bankers. Though they kept their formal legal autonomy, these standard contracts were tightly articulated together by way of ad-hoc clauses, so that they worked as an *assemblage*, or as a complex contractual vehicle, that internalized and regulated the division of labor between intermediaries along the value chain.

As said, what made this construction viable was first is its self-sustained and self-enforced character, which resulted in turn from vertical produce-based integration and a strong structure of governance - the Association. But the absence of public regulations, whether of markets or intermediaries, also had a major impact. Today, standard contracts that are traded on large financial or commodity markets are typically embedded in a more or less complex, multi-layered structure of public regulations, so that they operate in a relation of complementarity with them. This was not the case before 1914, or even before the 1930s. The LCTA was incorporated under the 1867 Statute of Company Act, its standard contracts worked under the 1893 Sale of Goods Act and its rules of arbitration followed the 1889 Arbitration Statute: but these were only broad, generic statutes which, as said, bore only indirectly on the corn trade, not least because of the practice of official London court to defer to trade associations (Allen and Gale 1994, Choi and Gulati 2004)]. [ISDA?]. Hence, the micro-management of the grain market was entirely in the hands of the Association: over decades, there is no trace in its archives of the shortest, most elementary encounter with a public regulator.

3. The London Corn Trade Association: sociology and legal consciousness

The London Corn Trade Association was founded in 1878 in the context of the emergence of a truly global market for cereals, following altogether the rapid growth of demand in Europe, the emergence of new producing regions like South Russia or Argentina, and a steep fall in information and transport costs – telegraph, railways and steamer ships (Broomhall and Hubback 1930, O'Rourke 1997). The LTCA was established at a close distance, both institutionally and spatially, from other great market institutions, like the Baltic exchange in London where merchants and brokers met and transacted, or the Lloyds. But the Association did not grow out from the domestic into the international sphere, as was then often the case: it was born global, so that from the onset its governing structure, its rules and its procedures reflected the well-identified project to better regulate cross-border transactions (Fuchs 1890, Rees 1972). The banks in particular had been quite vocal in favor of this evolution (Praschkauer 1889, Barty-King 1978).

The Association was governed by a rather close circle of 20-25 top London merchant houses, among whom a strong pattern of cooptation is clearly visible, including from father to sons. Its principals clearly shared a sociology marked by mutual recognition, cooptation, sociability network and on-the-job training (Carnevali, 2011). A well-informed German author could thus underline both the success of the LCTA and its decidedly "oligopolistic" character (Fuchs, 1890). And for sure, a hierarchy of power relations is often visible: the more powerful players are the merchant houses, then the shippers, followed by other London-based market actors; then came the other British intermediaries and the foreigners, in various order. But even when dealing with (angry) Russians or (exasperated) Indian officials, there was a sense that, at the end of the day, the Association was there to support trade as a whole, so that all parties had to keep good reasons to remain on-board.

The Chairman of the Association thus warned the 1907 General Assembly that: *« ... in view of the revision of contracts in the Autumn, I think it only wise to point out to UK friends that if we are going to be too rigidly insular, and there is not little give and take in regard to contract conditions,*

I am afraid that (…) a larger share of the grain trade will go to Continent (…) I have held very strongly that we ought not to be merely an Association for making money. We must, of course, protect the interests of the Members, but we ought to make the basis of our Association the benefit of the trade as a whole ».[5]

Rhetorically, the London Corn Trade Association saw itself as the expression of the "the trade". It often seems that in its own perception, the true check on the discretion of its principals did not derive so much from broad membership, and from rules of representation, but rather from its on-going exchanges with merchants and, ultimately, from their continuing willingness to use its contract forms and arbitration facility. In a classic Common Law approach, the Association was to be the voice that formalized immanent rules, or at least the common wisdom and implicit capitalized experience of "the trade" - importers, shippers, brokers, millers, etc. The minutes books of the various committees attest indeed to the constant attention given to the suggestions, demands and grievances of individual merchants and organizations. They are literally filled with letters received and their responses, sometimes in a few summary lines, on other occasions over several pages. Way and back exchanges can thus be followed over several months.

The notion of "the trade", with its sociological undertone, often comes with that of "the province" of the Association, which seemed to suggest a more formal notion of a socially recognized competence, plus a set of accepted rules and ways of doing business, which the Association may have received from the "the trade" but which defined its own range of institutional intervention. "Provincial" borders could thus be opposed to government officials who wanted to draw the Association into broad policy discussion: « *it is outside the province of the Association to offer suggestions upon the subjects which will be under consideration of the Dominions Royal Commission, but (…)in the event of their requiring any evidence re grain exports we will do our best to procure same for them.* »[6]

Critically, the notion of a province was also used to decline any binding pronouncement on issues regarded as legal, in the hard, State-centered sense. A merchant who had raised a problematic question of market regulation would thus answer that « *it does not fall within the Duties or province of the [Executive] Committee to decide the question whether the buyers are or are not bound by the Brokers signature* »[7]. The Association refused in the same way to interpret its own contracts, as when "*A letter was read from Mr Jacques Meyer of Düsseldorf asking the meaning of certain clauses in our contract forms. The Secretary was instructed to reply it is not within the province of the Committee to reply to such questions; suggesting that he should apply to somebody in the trade for the information he required.*"[8] As remarkable as the refusal to comment is, here, the explicit assumption that "the trade" knows best the actual rules and would be fully in its own province when answering Mr Meyer's question. One step further, the refusal to offer an answer could reflect both the perceived absence of jurisdictional competence and a avowed deficit of legal skills. So, when a merchant asked if a Dutch arbitration award could be appealed at the LCTA, in London, "*The Secretary was instructed to reply that it was hoped that the occasion would not arrive, and that the Committee was not in a position to say whether such an Appeal*

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[5] General Annual Meeting, Report, 2 may 1906.

[6] Exec. Comm. 27 August 1912.

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

[8] Exec. Comm. , 13 december 1904. The same position is expressed in almost similar terms in Exec. Comm. 3 january, 7 march 1905, 12 march 1907 ; Argentine, American and Australian Committee, 19 december 1912. The term is not specific to the LCTA, as exemplified by a similar answer made by the Baltic Exchange to the Institute of Underwriter - « this matter is outside our province ». Baltic Mercantile and Shipping Exchange, Board Meeting, 28 july 1913

could or could not be heard."[9] It seems therefore that in their own legal consciousness, the Association's principals did not deal with the law, but only with grains and disputes about grains.

At the same time, they knew very well that they could be affected by outside legal accidents and that the frontiers of their province were not immune from legal threats. They would thus better preserve peaceful relations with third parties, like courts or other professions, primarily shippers or insurers, with whom a conflict of law or jurisdiction could always end up in court and leave beyond a wrong precedent. The Association thus had its own Counsel, and also substantial financial reserves that were regularly justified by potential legal threats. As was said at an Annual Assembly, « *we never know when we may be called upon to fight a heavy law case* ».[10]

3. The governance of the London Corn Trade Association.

The formal governance structure of the Association hinged first on an annual General Assembly that elected an Executive Committee of 20, later 25 members, which met about every two weeks and was the main governing body of the Association. A Chairman was elected every year and was re-eligible once, at which point he would propose his own successor. The work of the Association then rested on some 8 to 10 Geographic committees, like the Black Sea & Danube Committee or the East Indian one. Their six to eight members had directly their fingers on the proverbial "pulse of the market": they received information on how the growing season progressed in the various producing regions and were in direct relation with the like of the Odessa Bourse, or the *Bolsa de Comercio* de Rosario, Argentina. They also had an on-going correspondence with merchants who complained for instance over the amount of dirt in the shipments arriving from a given port, or who reported on a new machine for unloading grains from boats that had been adopted in Antwerp.

Preparing Grain Standards or adopting Grain Standards sent by a recognized foreign market authority was the core task of the Geographic committees. (Hubback 1911). By 1914, there were more than 20 Quality Standards only for Argentine trade. For the main types of grain, six or eight successive Standards could be adopted each year, as the season progressed. The Association actually put a lot of its collective expertise and social legitimacy in this activity which asked, in practice, that hundreds of grain samples be kept in its premises, hence a large "grain library", or a material database, that backed up the key process that transformed grains into widely tradable commodities. Any failure in the production of this essential public good was doomed to bring into question the whole integrity and safety of the market. Although over time it gradually had to cede ground to public trade bodies in the exporting regions[11], the Association defended staunchly its right to adopt grains standards single-handedly, which it saw as an expression of its collective skills and superior levels of information.[12]

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[9] Exec. Comm., Minutes, 19 october 1920. Similarly in a earlier case of an award rendered in Rotterdam, it was answered that « *The [Executive] Committee does not feel competent to express an opinion as to the question in your letter which involve a legal point* ». Exec. Comm., 28 september 1909.

[10] Exec. Comm., 1906 Annual Report, 29 may.

[11] Canadian ∫∫∫ for instance were acknowledged quite soon as a trusted correspondent, while the Russian organizations asked for years but in vain that their own grain standards be accepted.

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

Arbitration on the quality of grain shipments or on trade logistics was not the job of Geographic Committees, although their members ended up doing a lot of it individually, just because of their superior knowledge and expertise (which was further increased by this activity). First instance arbitration was most common and was often organized directly in the port: thousands of them took place each year, which left little and uneven traces in the archives of the Association. In the standard case, each party chose an arbiter, which in practice often acted as a representative of the merchant who had solicited him, so that, at that point, arbitrations probably looked more like settlements than as judgments (Fuchs 1890, Chattaway 1907, Barker 1920). If these two arbiters could not agree, the Association selected a third one, an Umpire, who actually made the decision.

An appeal could then be lodged with the Arbitration Appeal Committee, where all the big names of the Association, including former Chairmen, used to sit. After a substantial sum of KK£ had been paid, an ad hoc Appeal Court of five members was formed, which could overturn the initial decision by a majority of four [numbers?][13]. Arbiters were shippers, grain merchants, brokers or millers – never lawyers. Neither did the parties themselves ask a counsel to advise or represent them. There is actually a palpable sense that the Appellate Courts were perceived less as an alternate or a broader source of expertise, than as a representative of the whole trade, who talked with all its incorporated social authority. The gradual strengthening of the rules of recruitment and procedure, in the Arbitration Appellate cases, can also be associated with a perceive need to give reassurance to foreign merchants that arbitration in London was not utterly biased against them – a criticism that was actually voiced in the German- and French language publications on the LCTA. [1906 reform, Austrian guy, LCA, LoN]. [14]

The execution of awards never comes up in the Association' records as a problematic issue. As a broad rule, the normal way of dealing with delinquent parties was to post a note at the entry of the Baltic Exchange mentioning that this or that trader could not trade anymore, even through a broker. This practice is still applied today (Kennedy 1977, Mustill and Boyd 1982 page 378, Cranston 2007). The fact that the LCTA and the Baltic Exchange were run in practice by the same group of market insiders, and that they relied on the same Legal Counsel, clearly made the link easier. Being expelled from the Association was also a possibility, although a rare one, which seem to have implied primarily reputation costs.

Quite clearly, access to market information, including on the whereabouts of competitors, was one important benefit of committee membership, which was not remunerated. Board members received indemnities only when they managed the time-consuming process of revising contract forms, every two to three years, or when participating to arbitration panels. Otherwise, the LCTA remained a low cost institution, with total yearly expenses of about £4700 before 1914 (or £540 000 at current value); out of this sum, one-quarter went to wages and another to office rents, the rest covering overheads. [the 'cereals']

4. Drafting and Amending contracts

The LCTA was a City-based, English institution. A legal fiction written into all Standard contracts then stated that foreign merchants were supposed to be domiciled at the Consulate of their country of origin, in London, whereas Scots were nominally hosted in the offices of the Association. A key consequence is that disputes over the contracts or arbitration awards could be subjected to trial in an official English court, following in particular, the 'Special Case' rule that asked that points of law in disputed cases be addressed to an official court. But this was a rare occurrence, primarily because the basic structure of the contracts did not change much over

[13] The Association insisted however that the awards were his own and not those of Appellate Courts. Jurisdiction derived from having signed an LTCA contract form : the Association did not accept to arbitrate other disputes (Exec. Comm., Minutes, 30 july 1907)

[14] This was also confirmed to the Russian Consul, see Black Sea Committee, 18 June 1896.

time while the courts themselves typically deferred to private market authorities. The counterparty of the ultimate judicial guarantee that the Association received from the higher echelon of the English judiciary was therefore very limited. At the same time, the association did not have apparently a copyright on its contracts or a formal, exclusive jurisdiction: Schwob (1928) comments for instance on the large body of cases that was developed by the French Tribunaux de Commerce, on "le Contrat de Londres", which was largely used by French traders without relying rely on the Association for arbitration.[15]

By 1896, 48 standard contracts had been adopted and more than 60 on the eve of World War I, so that there were much less contracts that grain standards. Corn traders would thus buy these pre-printed forms and write by hand the specifics of their transaction, like the standard of grain, the price and volume, the date of shipment, etc. But, as already commented upon, as they signed on these *Voluntary clauses,* traders also adhered to a much greater number of *Adhesion clauses* on which they had no say and which stated the broad rules of the market – its code. This included in particular the unconditional commitment to bring disputes to the Association for arbitration, plus a set of rules of civil procedure, including for appellate cases.

These standard, adhesion clauses thus established and regulated the market as a whole, inasmuch as traders adopted these contracts and traded with them. Significantly, one did not have to be a member of the Association in order to access the market, but one had to use its contract forms. As already said, it was also possible to trade on the Baltic Exchange with ad hoc, personal contract forms rather than with the Association's ones, but this would have implied considerably higher transaction costs, as the trader would have had to negotiate personally the terms of his contracts with the foreign grain exporters, shippers, insurance companies and banks. Hence the standard contracts were not exactly the key to the market, but they implied so large savings in transaction costs that they de facto established the massively dominant standard of transaction, so that global supply and demand were coordinated by adhesion to these contractual instruments.

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

The geographic Committees were the first to consider these contributions and to report on them. Then, an adhoc "Sub-Committee", presided by a member of the Executive Committee, coordinated the whole work as a kind of clearing house – or, say, a *curiae* that made sure that amendments across contracts would remain consistent. But the Executive Committee had the last word. The Association also refused to share with outside institutions the final writing of amended clauses, even if in practice considerable way-and-back discussions took place with foreign partner institutions, especially the most trusted one: the Argentine *Centro de Cereales* was a constant interlocutor, while the relations with the Russian bourses and exchanges always remained difficult. Lastly, the amended clauses were published in the profession's newspapers, in London and abroad.[16] Paper slips could also be pasted into the contract forms, unless a wholly new form was printed.

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[15] Exec. Committee, Minutes, 13 december 1904 and 8 may 1906.

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

Here lied in fact the essential challenge for the Association in its on-going relations with "the trade": keeping the adhesion of merchants to its contracts was necessary in order to "carry the market" and maintain the dominance of its trading platform. If a given contract was rejected when launched, or after it had been revised, or again if another trade organization successfully issued its own contracts, then the Association had no mean to compel them. There are evidence for instance that the Berlin trade association launched a standard contract for trade with Russia, which became the standard for German grain merchants; but when it issued a contract for Argentine grains, it was not adopted by the market [Ref]. Being an equilibrium outcome, market coordination might have declined or moved away from the LCTA platform. This concern was clearly on the mind of the Association's leaders.

There is actually no documented occasion when the London Association launched a contract or amended a given clause and did not "carry the market". But the disruptive potential of changes in given clauses was well perceived. For example, after a change had been introduced in the insurance clause, the Chairman admitted publicly at the 1906 General Assembly that there had been « *a little misapprehension* » among merchants, which was however undue as there was no « *arbitrary introduction of fresh matters in the policies; it is imply the collection into one concrete clause, of all conditions that have hitherto been scattered over the entire policies* »[17]. In another occasion, a merchant sent to the Association a copy of a Bill of Lading (ie a maritime transport contract) "*which included an unusual deviation clause* ». The UK Chamber of Shipping was immediately contacted and it soon answered that it had made an inquiry and that the ship owner would immediately correct the said clause.[18] On yet another occasion, in 1909, the Executive Committee initiated a discussion on whether or not, and to which extent, clauses within the Association's various contracts should be unified. This proposal, which could have been seen as a reasonable step in a process of standardization and simplification, was however rejected quite soon and never discussed again, the Chairman having concluded that « *to build up new forms was very dangerous and not desirable* ».[19]

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

At the same time, individual could also reveal powerful conflicts of interests. Take for instance a clause stipulating that the quality of Argentine grains in individual shipments should be appraised on the basis of a criteria of "*Fair average quality of the seasons shipments at time and place of shipment »*, a clause known as *faq rule.* Literally, it says that once a grain standard has been adopted by the Association, it is the only benchmark for arbiters when appraising all deliveries from the same place and for the time being. Yet, at a point, the revision committee suggested that the Argentine contracts should adopt the "*about faq rule*", which was relied upon in many other LCTA contracts. This implied more flexibility on the actual quality of deliveries, therefore less constraints on exporters and shippers. The suggestion thus triggered strong and eventually successful reactions among London-based buyers and millers, who anticipated an adverse distributive impact on them.[20] Reopening discussions on such sensitive clauses proved

[17] General Annual Meeting, Report, 29 may 1906.

[18] Exec. Comm. Minutes, 15 january and 19 february 1907.

[19] Exec. Com., Minutes, 9 february 1909. See also, the East Indian Committee, rejecting that changes in contracts could be introduced « *merely for the sake of a visionary uniformity* »[date to be added].

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

indeed “*dangerous and not desirable* ». This pattern might explain, in turn, why the London Association kept printing so many different Contracts.[21]

A similar, but even more brutal conflict emerged after strikes had become quite common across the world, after 1905. Initially, from Russia to Argentina, London merchants and millers were strong enough to put all the costs and constraints on the Exporters or the Shippers, rejecting in particular the principle of *force majeure*, that would have implied a de jure suspension of the contract. But after a long and protracted conflict, during which some shippers even refused to attend the Executive Committee, a more balance “Strike Clause” was adopted and generalized, with similar writing, across the whole universe of LCTA contracts.[22] [More, ref].

6- The architecture of a privately-ordered transnational market.

If we look in details at the structure of the LCTA standard contracts, two remarkable features stand out: each contract was minutely adjusted to the legal and institutional environment of its exporting region or port (hence the La Plata family of contracts, or the Persian one). And these sale contracts were also closely articulated, by way of ad hoc clauses, to three other standard contracts, namely for shipping, insurance and trade finance. This way, the LCTA worked as a coordinating instrument across jurisdictions and along the value chain.

Conflicts of laws and usances.

At least till the end of the nineteenth century, international merchants and shippers followed the so-called *usances* proper to each port were they traded. Dozens of handbooks collected those customary rules, which can be seen as the very last ramification of the old Law Merchant. Which units of measures for weights and volumes apply in Bristol, Cadix or Bergen? What is the tolerance regarding the percentage of dust in grain deliveries in the upper La Plata regions? Which institution is the legitimate authority to announce, by telegram, that the ports of Odessa or Novorossisk have frozen so that traffic (hence the execution of contracts) is interrupted?[23] Who has the material responsibility over the grain when it is transferred from silos or trains carriages into boats? And when does the responsibility of the ship’s captain starts?

Drafting Standard Contracts asked that all such local rules be collected, not necessarily in order to reproduce them entirely in the contracts, but in order to make sure they would be consistent one with the other, so that the flow of grains, as directed by the execution of the contract would be as safe and continuous as possible. In practice, the best-established and the most-knowledgeable merchants would first be interviewed or directly co-opted into the drafting Committee. But the London Association also typically entered into informal negotiations with local market authorities – Exchanges, Chambers of Commerce, etc. The point was not to impose on them the rules followed in the Port of London, for instance: the Association largely recognized the local trading customs and it conceded often when a local authority argued that it

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

[22] In June 1906, for instance the Executive Committee received for answer a telegram from the Port of Nikolaieff, South Russia, saying « *The Committee of the Exchange recognises ‘force majeure’ as applying to loading not being completed in time* ». After what « *The Secretary was instructed to thank them for their communication, notifying them that ‘force majeure’ is not recognised by the Association* » (Exec. Committee, Minutes, 12 june 1906).

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

had long been accepted practice to take option B rather A, on this or that specific issue.[24] We also find often a clause stating "Vessel to discharge afloat according to the custom of the Port".[25] The point, again was to guarantee legal continuity and safety in the execution of the transaction. Eventually, discussion with the local authorities could thus lead to a formalization or codification of these local *usances* that might have remained till then customary and non-written. The objective however was less formalization for its own sake than as a condition for adjusting tightly one to the other the local usances and the sale contract, so that the latter would be literally "plugged into" the local legal and customary environment.

Three other Standard Contracts

The drafters of the LCTA also articulated the Association's own Sale contract to two other English-law contracts which had also been subjected to a process of standardization: the Bill of Lading (maritime transport contract) and the Maritime Insurance policy. These three contracts thus worked as a cluster, or a package of standard contracts, that integrated the successive operations of international commerce, from source to destination (Thorpe 1924). In practice, this package boiled down to a so-called *Cost, Insurance and Freight* (CIF) model of contracting: all costs incurred until the grain was delivered to the Buyer were entirely taken by the Seller and included in the price initially agreed with the former (Schwob 1928, Thayer 1940, Rothstein 1983). Yet transport and insurance remained formalized by separate contracts. This set of "Documents" as they were called, was construed as a legally valid representation of the grain before it was actually delivered, so that it could be used for instance as a collateral for a trade credit. Alternately, the importer could sell the grain before arrival at the port of destination by transferring the Documents to a final buyer which, in turn, would present them to the captain.

This contractual *assemblage* rested in practice on the unique set of specialized professions and market institutions that made the London market place unique: an Italian or a German merchant who imported grain for Russia would often rely on the LCTA sale contract because of its recognized safety and consistency, but most often he would also contract in London for shipping, insurance and ultimately for credit. The cluster of contracts that the LCTA had assembled thus gave access to these network externalities, hence it leveraged them and so it increased further the benefits for merchants of conducting business in London, and nowhere else.

Bills of Lading are the generic contract form for maritime freight services. They are altogether a transport contract, they are proof that the ship's captain has received the goods (hence that they have been loaded on the ship), and they formalize the transfer of property on the goods to the Buyer (Tongeman, 1947). Bills of Lading, whose legal history goes back to the Middle Ages, have traditionally presented large variations across countries, ports, types of ship, goods, etc. A lot of *usances* norms thus shaped these Bills. During the later decades of the nineteenth century the expansion of transport by railways and steamer ships exercised considerable pressure on this family of contracts, or « *a kind of Darwinian process of development* », as the LCTA Chairman once noted.[26] This Association thus had to give great care to insure that inconsistencies between changing Bills of Lading and its own Sale contracts would not expose the parties to legal risks. It was thus in almost continuous discussion with the UK Chamber of Shipping, which was the main professional organization of ship-owners, so as to make this articulation as legally secure as possible.[27] These negotiations only converged however on a series of regional Bills of Lading, for instance for Australia, the Danube Berth, etc. For the North Atlantic trade no Standard Bill at all

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[24] See a deliberation of the on the inclusion of a customary rule within the Baltic Oat Contract (Executive Committee, Minutes of 1st november 1904).

[25] La Plata Parcels, 1896, n° 17.

[26] Annual General Assembly, Report of the Chairman, 13 may 1902.

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

was adopted, so that each Shipper kept using his own contract forms within the CIF framework. The resistance of Bills of Lading to standardization thus became a factor in the continuing large number of Contract forms that the LCTA adopted.

Insurance policies are also old, well-known contracts that accept large variations in their degree of standardization vs. bespoke approach. The main interlocutor of the LCTA here was not directly the Lloyds, but the Institute of Underwriters with which it was also in regular discussion (Thorpe 1924, Copeman 1947, Hewer 1984). Negotiations could go on for months so as to settle minute details in the Association's contracts that, in turn, might have large potential distributive effects between the parties in case of losses. In 1901 for instance, the two organizations had lengthy discussions on the implication of the adoption of elevators in order to on-load and down-load grain in bulk. In 1906, an ad hoc LCTA Committee on 'Rules for Policies of Insurance' drafted a standard Average Clause dealing specifically with the evaluation and sharing of losses after an accident at sea. This clause was then sent to the Institute of Underwriters and the Lloyd's for discussion and approbation, so that once included in the LCTA Standard Contracts it would be entirely consistent with the standard insurance police for grain traders.[28]

Trade finance**,** lastly, was strategic because most grain merchants did not have the working capital needed to finance the huge contracts typical of international commodity trade. The three standardized "Documents" made access to credit considerably easier and cheaper, because less clerical work would be needed and also because protection against default was seen as watertight. In practice, the nexus between trade and finance was an operation called "acceptance" whereby high-reputation merchant banks endorsed (i.e. they gave their guarantee to) three- to six-months Exchange Bills drawn by first quality importers on the back of the above-mentioned three "Documents" (Spalding 1924 & 1925, Warburg 1914, Chapman 1984). These merchant banks often had a geographic specialization and had a superior knowledge of the reputation and current position of all individual merchant or importer within this market segment. Having their bills "accepted" by such banks against a commission then offered the additional advantage that they could be discounted (resold) on the London Money market. (Dowling 1929, Truptil 1936).

Accepted commercial bills on export and import trade became at that point an asset of choice of large British deposit banks, when they had excess short term resources on their hands. These bills thus became one of the most widely traded and liquid short-term asset on the London money market: the great German-American banker, Paul Warburg, saw in the development of an equivalent short-term market as a key priority for the New York money market (Warburg, 1914). Its safety and liquidity reflected the expertise of the London merchant banks, who had screened the primary issuers, but also the legal strength of the underlying contractual 'Documents' that formalized the whole transaction - the Bill of Lading, the Insurance police and the Invoice which was a direct by-product of the sale contract per se (Thorpe 1924). But holders of trade bill also relied on a general "letter of hypothecation" on the goods being traded. Lastly, Bills representing commodity imports were seen as particularly secure because the goods traded were still present on British soil when the bills matured and could be easily resold.

We now find the last element of this construction: accepted trade bills, especially those corresponding to commodity trade, were unconditionally re-discounted by the Bank of England in case of liquidity crisis, i.e. when it intervened as a lender of last resort. This should be seen as the ultimate vindication of the solidity of this privately-ordered contract. But in turn this protection against payment crisis just made the whole machinery of British commodity trade stronger and more resilient.[29] The initial attempt to construct a private contractual pathway around the difficult problems of Conflicts of laws ended up producing a core financial asset

[28] Exec. Comm., Minutes, 20 and 27 March 1906.
[29] See however a detailed discussion on the difficulties of obtaining credit in London banks on the basis american contractual documents. Exec. Comm., Minutes, 17 mars 1908.

which liquidity was ultimately backed by the most powerful monetary authority of that age - the Bank of England.

7. Conclusion: a transnational private legal order

This is how a mere agriculture produce was eventually transformed into the near equivalent of gold. After the grains had become a certified commodity fit for global trade, Standard contracts allowed it to be sold and transported across the world with great ease and legal safety. The private market authorities in exporting countries, the Shipping Chamber, the Institute of Underwriters and the Banks all voluntarily entered structured, horizontal agreements with the Association, eventually formalized by ad hoc clauses. These four matching contracts remained independent one from the other (they were materialized by different documents) but they were so strongly tied together, that they worked together as a package. As a late commentator said, "the fungibility of the produce leads to that of the contract" (Dauphin-Meunier, 1940). Then, acceptances absorbed the idiosyncratic financial risk carried by each individual importers, so that the short-term debt that financed trade operations also became highly fungible and safe, the material commodity being here a perfect collateral. Yet, eventually, the Bank of England guaranteed last resort equivalence between these short-term financial contracts and money, in the form of the most liquid and most widely circulated currency of these times, the pound sterling : a currency that was "as good as gold", it was then said.

Here lies the beauty of this most remarkable construction. The whole global pre-1914 grain market worked on the basis of private rules and private contracts, issued by non-regulated private trade organizations and subjected to private arbitration and private enforcement. This allowed for a strong contractual integration of the whole value chain, though without exposing the parties to the costs and uncertainties caused by conflicts of laws and jurisdictions. As underlined, trade operators had little concern for non-English, foreign laws and foreign courts, whereas this concern should have been a defining one, had the market been established on the Westphalian principles that governed in those times the relations between states.

At the same time, it appears that this whole construction was thinly though decisively anchored on two superior public institutions, established at the core of the British state: the high London courts and the Bank of England. Law and money, both essential attributes of sovereignty, ultimately confirmed and backed-up this transnational, private market order. Hence, they made clear that it was not as independent from political hegemony as could have been suggested by this essentially private structure of governance.

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