In recent years, a good deal of scholarship on pre-industrial economies has been formulated by adopting or at least partially appropriating theoretical assumptions of the scholarly tradition founded by Douglass C. North and known as New Institutional Economics (NIE). From a neo-institutional perspective, the «rise of the West» and global inequalities tend to be explained through models distinguishing virtuous institutional paths, which grant property rights and the enforcement of contracts, to non-virtuous ones of which Mediterranean absolutist monarchies are considered to be paradigmatic examples. This essay retracts the emergence of this grand narrative, examining its Anglo-centric leanings and its use of the concept of «absolutism». By reviewing historiographical studies dealing with southern Italy’s economic decline during the early modern age and by investigating the reforms enacted during the eighteenth century in the Kingdom of Naples, it challenges dichotomous images opposing predatory absolutist states to development-enhancing institutional models dominated by merchants and entrepreneurs. Through an archive-based analysis of the reforms of the judicial and the customs system, we argue that economic and political power asymmetries between different states can affect institutional configurations within individual states.

By focusing on the relations between institutions, entrepreneurial behaviour, economic performance and – in some cases – culture, NIE has catalysed an important wave of theory-based empirical inquiries on the early modern emergence of northwestern Europe as the leading region within a progressively globalised economy. According to NIE, in order to explain the «success story» of the West, one has to take into account the «virtuous» trend leading to the development of increasingly efficient and thus growth-enhancing institutions. From a historical perspective, the growing European economic power and the birth of commercial empires in the early modern age are explained as consequences of the rise of social groups that achieved political reforms restricting the power of central governments and developing institutions designed to

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enforce contracts, secure property rights and reduce agency costs. This thesis, which states that the development of international markets and the creation of efficient institutions have exerted a reciprocal positive influence, has indeed emerged as one of the most influential grand narratives of economic history.

A new version of this outline has been proposed by Daron Acemoglu and James A. Robinson in *Why Nations Fail*, a multiple award-winning book that has been translated into more than twenty languages, stimulating lively debates among scholars and – even more remarkably – in the broader public sphere. Basing their argument on an impressively vast array of case studies concerning different historical periods and cultural areas, the authors expand on some of the assumptions of North’s theory. Their strong message is that «inclusive political institutions» – which need to be «sufficiently centralised» and at the same time «pluralistic», and which thus basically resemble North, Wallis and Weingast’s «open access orders» – are indispensable factors to ensure «inclusive economic institutions», to the extent that they defend private actors from the predatory bias of the state by enforcing property rights. They consider centralised states to be necessary and potentially virtuous factors with regard to the development of property rights institutions, provided that centralization emerges together with the rulers’ accountability. As in North, the main empirical evidence used to underpin this argument is the case of England after the Glorious Revolution: the «Turning Point» in the rise of the West. According to them, political transformation was directly linked to the emergence of an economically powerful merchant class tied to Atlantic trade – a class that obtained institutional changes favourable to sustained long-term development.

As in classical liberal theory, in NIE prosperity is fundamentally connected to political and economic freedom, whereas the Leviathan (Hobbes’s metaphor for absolute state power) tends to be seen as an irreconcilable enemy of Hermes (the Greek god of trade). In particular, the early modern divergence between the «success» of the West and the «backwardness» of the Rest – including the intra-European «Little Diver-


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The explanations for «failures» – that is, for unsuccessful institutional paths of development – provided by this model bear some problems.

With regard to the question of why international trade (apparently) did not foster favourable institutional innovations in Latin Europe, for example, the answer provided by the grand narrative of NIE is tautologically homogeneous: «Absolutism» prevented the rise of representative and inclusive institutions. North has distinguished two models that developed in response to the fiscal crisis of the seventeenth century: a virtuous north-western path (Netherlands, England), where voluntary and independent economic organisations developed thanks to political reforms aimed at restricting central sovereignty; and a vicious Latin one (Spain, Portugal, France) in which centralised monarchies with large bureaucracies emerged and inefficient institutions weakened commercial power. Thus, while a pluralistic institutional framework characterised by competition among different political bodies is said to be a key element of north-western Europe’s success, suffocating centralised political control over the economy is identified as a crucial factor of the economic decline of the Iberian Peninsula. And although Acemoglu and Robinson recognise that the absence of centralisation also prevent the development of property rights institutions and limit the state’s ability to enforce contracts, they still see «absolutist regimes» as the major factor condemning countries to «backwardness» and «underdevelopment».

Another important contribution to neo-institutional scholarship is represented by the work of Avner Greif, who has produced a considerable theoretical refinement of NIE over the last twenty years, fuelling intense debates about formal and informal mechanisms adopted by merchants to enforce contracts. Focusing on the medieval period, the fundamental opposition in Greif’s analysis is not between Mediterranean and north-western Europe, but between the «Maghribi», a network of Jewish traders based in Fatimid northern Africa, and the Genoese. Enlarging the semantic field of the

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12 More recently, he has expanded his model in order to provide a binary interpretative model for all of «recorded human history», distinguishing «natural states» from «open access orders»; cf. North / Wallis / Weingast, Violence.

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term ‘institutions’, defined as ‘a system of rules, beliefs, norms and organisations that together generate a regularity of (social) behaviour’,\textsuperscript{15} he has argued that the Maghribi – influenced by the ‘collectivist’ culture of the Islamic umma\textsuperscript{16} – developed an alternative to formal contract enforcement thanks to a community responsibility system in which fraudulent agents were sanctioned multilaterally by all the other members of the Maghribi ‘coalition’.\textsuperscript{17} In this view, evolution and growth of trade were empowered by intra-diasporic ties, and not formalised by written rules and organizations. By focusing on the otherwise largely neglected Middle Ages, and by recognising the relative effectiveness of extra-legal enforcement mechanisms, Greif’s analysis adds complexity to historical reconstruction. At the same time, his juxtaposition of the Maghribi and the Genoese still echoes North’s comparison between Latin and north-western Europe. And like North, he adopts an evolutionary and culturist vision, arguing that the alleged modern ‘individualistic cultural beliefs’ of Genoese merchants, using formal contracts and judicial mechanisms of bilateral enforcement, finally proved more efficient and thus contributes to explain the economic superiority of Christian Europe over the Arab countries.

The use of the concept of ‘absolutism’ in the grand narrative of NIE is particularly problematic. Notably, the term emerged in nineteenth-century German scholarly literature to describe a specific stage of European state-building processes, leading from composite monarchies to modern representative states.\textsuperscript{18} In historiography, ‘absolutism’ is usually associated with a limited period spanning from the late sixteenth to the late eighteenth century, and to phenomena such as the creation of standing armies and centralised bureaucracies, a significant reduction of feudal and ecclesiastical power, and an ideology that stresses the unrestricted nature of monarchic power. Moreover, at least since Nicholas Henshall claimed that ‘absolutism’ is basically a historiographical myth, a rich revisionist debate has taken place.\textsuperscript{19} Given the heterogeneity of governmental forms and state-building processes in Europe, and considering the striking
discrepancies between the centralizing ambitions of monarchical governments and the persisting autonomous power of what Montesquieu had defined as «intermediate powers» (e.g. the nobility, the Church, courts of justice, city councils), lots of historians do not consider «absolutism» a useful concept any longer. And although many others still use the term, the structural incongruities between monarchical aims and self-representations on the one hand, and the actual implementation of absolutist structures on the other, as well as the largely negotiated exercise of political power, are widely acknowledged among historians.

In sharp contrast with historical research of the last two decades, Acemoglu and Robinson actually expand the semantic field of «absolutism», both in geographical and chronological terms. In their book, an impressive variety of states – ranging from the Ethiopian Empire to the People's Republic of North Korea – are labelled as «absolutist». The term simply designates states in which «the distribution of power is narrow and unconstrained». Of course, transforming the conceptual meaning of academic categories can foster innovation. And comparing state formations from distinct cultural areas can be extremely fruitful. Yet if this is the aim, then the actual features of individual historical states need to be taken seriously. Now, even if Why Nations Fail is written for a broader audience – and not specifically for the notoriously pedantic guild of academic historians –, the nonchalance with which its authors lump together extremely heterogeneous states under the label of «absolutism» is astonishing. The question of to what extent states such as eighteenth-century France (where the king was confronted with strong competing powers such as a hereditary nobility and the Church, where political offices were put up for sale and where the monarchy tried to implement confessional homogeneity), the Ottoman empire (with its formalised religious pluralism, granting vast autonomy to non-Muslim communities), Ming China (where no hereditary nobility and no structure resembling the Church existed and where the state was managed by a bureaucracy based on meritocratic co-optation), the pre-colonial Kingdom of Kongo (where there was no bureaucracy operating through written communication), and the Tokugawa shogunate (with its weak emperor and its strong feudal daimyo) can be analysed through a single concept merits some discussion. As the latter is lacking, Acemoglu’s and Robinson’s assertion that «absolutist regimes» were characterised by the absence of «inclusive political institutions» is extremely vague and risks being tautological.

In our article, we will focus on the Kingdom of Naples in the eighteenth century. Thereby, we will take up the argument about absolutism and centralisation by examining two specific institutions concerned with the enforcement of contracts and property rights: the Supreme Magistracy of Commerce and the Royal Customs House. Our goal is not to develop a general critique of historiographical works that, to one degree or another, have worked with neo-institutional approaches and which are indeed very

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20 Acemoglu / Robinson, Why Nations Fail, 80.
21 While the Tokugawa shogunate is said to be «absolutist», the Meiji Restoration, which reinforced the emperor’s power vis-à-vis the daimyo landlords, is described as an anti-absolutist turn (Acemoglu / Robinson, Why Nations Fail, 366). Paradoxically, «absolutism» in Japan seems thus to mean exactly the opposite of «absolutism» in France.
heterogeneous. Our purpose is to challenge some specific assumptions, namely that «absolutist» regimes were essentially predatory and unwilling to guarantee property rights, and that relations between the state and merchants were based on the vertical imposition of constraints impeding the development of external trade. By doing that, on the one hand we propose a revision of the historiographical image of eighteenth-century monarchies in Latin Europe as it is conveyed by the grand narrative of NIE. On the other hand, far from refuting the importance of examining interdependences between institutional factors and the economy, we aim to contribute to a refinement of analytical frames and to the dialogue between historically interested economists using mostly cliometric methods and historians interested in economic phenomena working with rather qualitative approaches. In the following sub-chapters, we will look both at «institutions» – a term we employ to refer to formal state organisations charged with the enforcement of rules and contracts – and at the way these institutions are handled by different kinds of actors, such as merchants, magistrates, leaseholders, and consuls. We will try to take into account the fact that, in the realm of international trade, the regulative interventions of different states often tend to overlap and produce complex configurations. The institutional framework in which economic transactions take place cannot be reduced to the nation state: It is inherently transnational. Thus structural asymmetries in inter-regional relations play a crucial role with regard to the emergence, consolidation and transformation of institutional mechanisms. In this regard, it is useful to retrieve the Wallersteinian suggestion considering that there is a connection between the role a given region plays within the «world-economy» and the socio-political conditions within this region. This perspective, which highlights that the relative weakness of peripheral states goes along with the peripheralisation of productive processes, allows for a more complex understanding of the interdependencies between institutions and trade. We argue that the hierarchical position of a given territory in the context of an integrated world-economy can impact significantly on its institutions. Institutions are both a crucial factor in and a result of distributive dynamics. Thus, asymmetric trade relations do not only affect the productive system and the internal distribution of resources but also the functioning of institutions.


1. Naples from Spanish Rule to Independence: An Absolutist Monarchy Hostile to Trade?

During the sixteenth century, the economic centres of the Italian Peninsula faced a loss of international influence caused by the (partial but nevertheless significant) reorientation of long-distance trade from Mediterranean to Atlantic routes. Moreover, in political terms the century was marked by the Great Italian Wars between Spain and France, and finally by the affirmation of the Spanish Habsburgs as the hegemonic regional power. In the context of major transformations on a global level, the peninsular centres were thus shifted from a rather propulsive position to a subaltern one.

The Kingdom of Naples – the largest territorial state of the Peninsula – lost its independence in 1503, becoming a province of the Spanish Empire under the authority of a viceroy appointed by Madrid. It was thus integrated into the area that – according to Acemoglu, Johnson and Robinson – was marked by the lack of an influential merchant class, by a suffocating absolutist power and, consequently, by the inability to develop efficient and trade-enhancing institutions. Complaints about the parasitic nature of Spanish rule in Italy have been around for a long time: They began during the Spanish period itself, were widely popularised during the Risorgimento of the nineteenth century and still persist in part today. Indeed, the Spanish Empire has often been «used as the picture postcard case of a predatory colonial state».

However, on this behalf it is important to stress that, rather than a rigidly centralised monarchy, the Spanish Empire was a composite or, as has been recently suggested, even a polycentric monarchy. The Spanish Crown did not aim to transform southern Italy by imposing a new order and replacing the old elite with a new one. Madrid's political goal was not to control in detail every aspect of social life in the Neapolitan provinces. Rather, it established a compromise with local aristocrats and magistrates (togati). Madrid left the previous institutional assets of the Neapolitan state essentially intact and respected the economic interests and legal privileges of feudal landlords. In exchange, the Neapolitan elite allowed Madrid to drain fiscal revenues from continental southern Italy. In this context, the Neapolitan merchant class as such did not become a first-rank political force, although foreign merchants such as the Genoese – who played a major role in financ-
ing the Spanish Crown and in the export trade, and who bought feudal estates and obtained political offices – often attained considerable influence.\textsuperscript{32}

During the seventeenth century, merchants from those European countries that were dominating the Atlantic trade – England, France and the United Provinces – undertook intensive (and on the whole successful) attempts to penetrate Mediterranean trading routes.\textsuperscript{33} Southern Italy became integrated into an inter-regional system of long-distance trade, marked by shrinking exchanges with northern Italy and increasing relations with north-western Europe.\textsuperscript{34} In the eighteenth century, when the Kingdom of Naples experienced a considerable expansion of maritime trade, its role as a supplier of raw materials and an importer of textiles and colonial commodities was already well consolidated. And as a result of growing imports of manufactured products, southern Italy suffered a partial but significant weakening of its industries.\textsuperscript{35}

In 1707, Madrid’s rule came to an end. Sovereignty over southern Italy passed from the Spanish Habsburgs to the Austrian Habsburgs. In Naples, this regime change was greeted by a new generation of Enlightenment philosophers and jurists as an opportunity to «modernise» the country. The new political context and the intellectual stimuli offered by German cameralism catalysed debates about mercantilist doctrines and fuelled the hope that the economy of southern Italy could profit from Charles VI’s attempt to establish the Habsburg monarchy as a Mediterranean trading power. The results of Austrian rule (1707–1734) were ambivalent in this respect. On the one hand, continental southern Italy became indeed increasingly involved in international trade, especially after the end of the plague crisis in Provence (1720) and the subsequent upswing in maritime traffic. On the other hand, the hopes of Neapolitan reformers were generally frustrated by Vienna’s unwillingness to engage in a conflict with the feudal aristocracy and to impose the institutional reforms that were deemed indispensable to improve the country’s economic potential.

When in 1734 the Kingdom of Naples once again became an independent state ruled by a branch of the Spanish Bourbons, the intellectual seeds of the Austrian period seemed to have the necessary political support to blossom. In the first years of his reign, the new sovereign, Charles of Bourbon, established a firm alliance with Neapolitan reformers and tried to implement innovative policies.\textsuperscript{36} The Crown attempted to reduce the manifold legal privileges of the Church and the aristocracy, to systematise and codify the sources of law, to gain more direct control over the tax system and to


reduce jurisdictional exemptions. Aiming to establish unrestrained monarchic power and reduce the influence of intermediate bodies, these Bourbon reforms may indeed be described as «absolutist» – both in a traditional historiographical sense and in its extended definition by Acemoglu and Robinson. Moreover, since it was now an independent state, Naples started to develop mercantilist policies of self-centred economic improvement, inspired by the experiences of the Dutch, British and French. The Crown attracted artisans from Vienna and Meissen (porcelain), from Florence (pietre dure and tapestry), from Malta, Liège and Barcelona (fire-arms), from Lyons (silk), from Murano and Bohemia (glass), as well as mining engineers from Austria and Saxony, to develop the kingdom’s productive capacities. In line with contemporary mercantilist doctrines, the goal was «active trade», i.e. the primacy of local merchants and vessels in import-export commerce and an active balance of trade. Attempting to emulate the case of Livorno (where at the end of the sixteenth century the Medici had granted extensive privileges to the Jews and succeeded in establishing a prosperous Sephardic community), and inspired by the old stereotype linking Jewish communities to trade, in 1739 the Bourbons opened their territories to the Jews (who had been expelled two centuries earlier during the Spanish period) and actually attracted numerous Jewish merchants from different countries.

2. Judicial Reforms, Contract Enforcement and Its Manipulators

Neapolitan reformers shared a central concern with present-day NIE: the quest for efficient institutions that catalyse development. Absolutist reforms promoted by the Bourbon monarchy in the sphere of justice were closely linked to their mercantilist policies. Neapolitan jurists such as Pietro Contegna and Francesco Ventura, as well as high-ranking ministers such as the Spanish-born José Joaquín de Montealegre, considered the existing institutional structure a core obstacle to the expansion of trade.

As there was no clear-cut hierarchy between different sources of law, the Kingdom of Naples constitutes an excellent example of Old Regime legal pluralism. Roman law, natural law, ius gentium, international treaties, positive laws promulgated by former dynasties and customary mercantile law all coexisted in a chaotic stratification. Moreover, the power to enact norms was disputed by a multitude of competing courts. In the capital, there were at least 39 different jurisdictions, each of which claimed specific competences defined by space (the localisation of the disputed transaction), the type of disputed cases («the nature of things») or the status of the persons involved («the qual-

ity of persons»). And in the rural provinces the majority of the population was subject to courts controlled by feudal lords. In this context, the preliminary jurisdictional disputes about the assignment of a cause to this or that court of justice were often more important than the judicial phase itself. The Enlightenment economist Giuseppe Maria Galanti explained,

Each tribunal has its own judging style. One cannot become better aware of this disorder than by considering that [judicial] causes are treated differently according to the different tribunals. The same criminal cause is treated severely by the Udienze [the royal provincial courts], less severely by the Vicaria [the main ordinary court of the city of Naples, charged with civil and criminal justice], and indulgently by the Sommaria [the court of justice for causes concerning fiscal matters]. The same civil cause will certainly be won before the Sacro [Regio] Consiglio [the supreme court of the kingdom], and will certainly be lost before the Sommaria.

Forum-shopping was a pervasive feature of the early modern Neapolitan judicial system. Social actors constantly struggled to have judicial causes assigned to tribunals from which they could expect a favourable treating. And as each cause brought social power and monetary revenues to individual courts, the latter participated actively in these disputes, trying to extend their jurisdiction over the largest possible number of causes. Often, plaintiffs, defendants and magistrates used a heterogeneous array of legal fictions (e.g. false declarations regarding the professional status and the national origin of involved persons) as strategic instruments in order to achieve their goals. To a certain extent, this helped to bypass the structural inertias of the judicial system.

On a whole, however, eighteenth-century observers – unlike some historians of the twentieth and twenty-first centuries – expressed a clearly negative judgement about this situation: In their opinion, such subterfuges further exacerbated inter-institutional competition that tended to make judicial conflict resolution lengthy and expensive. As the reformers recognised, the lack of efficient state mechanisms of contract enforcement led to a decrease in trust and an increase in transaction costs. As Contegna wrote to Montalegre in 1740, «coming to trade in the Kingdom of Naples was» – for foreigners – «the same as going to trade in the country of the Laestrygonians and the Cyclops».

45 While in the case of southern Italy most historians have endorsed the opinion of Enlightenment reformers, considering institutional fragmentation as a structural evil (e.g. Ajello, _Il problema_), in the case of the Holy Roman Empire and of early modern England inter-institutional competition and legal fictions have been depicted as positive factors of innovation; cf. O. Volckart, «Politische Zersplitterung und Wirtschaftswachstum im Alten Reich», in: _Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte_ 86 (1999), 1–38; D. Klerman, «Legal Fictions as Strategic Instruments», working paper, 13.5.2009, http://extranet.isnie.org/uploads/isnie2009/klerman.pdf (25.6.2015).
because [...] when they [the foreigners] tried to get paid for the commodities sold, the Neapolitan merchants could arbitrarily decide never to pay».  

To solve this problem, in 1739 Charles of Bourbon established twenty new mercantile courts named Consulates of the Sea (Consolati di Mare, CM) in the provinces as well as a Supreme Magistracy of Commerce (Supremo Magistrato di Commercio, SMC) in the capital. The CM were charged with judging first-instance mercantile causes up to a disputed sum of 5000 ducats, whereas the SMC functioned as court of appeal for different first-instance jurisdictions (the CM, the craftsmen guilds, the port authorities, the judge-delegates, inter alia) as well as a court of first instance for causes above 5000 ducats. The function of these new tribunals was explicitly economic: They were charged with «granting to all traders, both foreigners and citizens, such a precise, rapid and rigorous justice for all kinds of disputes which may arise between merchants, that their business and commerce would not suffer any grievance or obstacle».  

In order to achieve this, all the other tribunals had to refrain from claiming jurisdictional competence over mercantile disputes. The latter had to be assigned uniquely to the CM and the SMC, whose jurisdiction was meant to be status-blind. The CM and the SMC adopted the so-called «summary procedure», which was speedier, less expensive and more apt to grant efficient contract enforcement in mercantile transactions. From the beginning, this reform was opposed by the other courts (to whom the CM and the SMC subtracted causes and thus power and revenues) as well as by the aristocracy, who feared that the new tribunals would diminish the feudal courts’ power in economic disputes. But thanks to the monarchy’s support, for a few years it could function according to its original objectives. The War of Austrian Succession, however, forced the king to revoke many of his ambitious reforms, which had caused much discontent among the kingdom’s secular and ecclesiastic elites. In her attempt to re-conquer Naples, Maria Teresa had promised to re-establish the status quo ante prior to the Bourbon period. Thus, in order to secure the loyalty of the Church and the aristocracy, as well as the latter’s financial support for the war, Charles of Bourbon yielded to conservative pressure. The most blatant effects of this crisis were the expulsion of the recently arrived Jews, the abolition of the new CM and the drastic curtailing of the SMC’s jurisdiction. In fact, the latter’s competence was reduced to judging only disputes over transactions of international trade, especially those involving foreign merchants. Traditionally, scholars have interpreted the counter-reform of 1746 as the complete failure of the SMC.

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Indeed, it was a severe backlash against the absolutist/mercantilist reform programme and an important victory for conservative forces. After all, like the Spanish Empire, the Neapolitan monarchy was merely a «bounded Leviathan». As it has been highlighted by Stephen Epstein for other cases in continental Europe, the main obstacle to the implementation of (supposedly) development-enhancing reforms was not the «abuse» of power by strong absolute rulers but – on the opposite – the fragmentation of the political system.

The sample quantitative analysis of the causes treated by the SMC shows however that the SMC succeeded in recovering from the 1746 crisis. This recovery was due to a strategic reorientation on the part of the SMC, which began increasingly focusing on foreign merchants’ need for efficient mechanisms of conflict resolution. In the first phase (1740–1745), foreigners played only a marginal role in the SMC’s activity. In actual fact, they still relied on an older judicial mechanism: the judge-delegates (giudici delegati delle nazioni). According to this mechanism – which was first established in Spanish port cities in the early seventeenth century (where they were called jueces conservadores) and later brought to Spanish-ruled Naples – the French, Britons, Dutch, Venetians, Greeks and Tuscans were subject not to ordinary Neapolitan tribunals but to special judges who were chosen by their consuls and ambassadors from among the Neapolitan judges and charged with all causes concerning members of a given nation. On a formal level, these judge-delegates were subordinates of the viceroy and from 1734 onwards of the king. On a practical level, however, as their appointment depended on the choice of the consuls and ambassadors, and as their salary was directly paid for by the foreign nations, they actually tended to deliver sentences favourable to the foreigners’ interests. These judge-delegates constituted a mechanism that was perfectly integrated into the Old Regime’s legal pluralism and that simultaneously allowed foreign merchants to bypass the structural difficulties arising from that system. It constituted an asymmetric institutional solution or, one could even argue, a mechanism of institutionalised corruption. After all, Hermes was not only the god of trade but also a notorious trickster.

After 1746, the SMC was in desperate need of judicial causes. Thus, it gradually eroded the jurisdictional sphere of the judge-delegates, imposing its power on all disputes involving foreigners. The reactions of the French and British consuls were harsh. Although the foreign merchants were among the social actors who, according to the

50 Ajello, Il problema; Natale, «Per una «pronta e sped–


52 Epstein, Freedom, 8, considers that that «limita–
tions to, rather than excess of, state sovereignty, are what restrained the rise of competitive markets».

53 We borrow this apt metaphor from Grafe / Irigoin, «Bounded Leviathan».

54 On the jueces conservadores in the Spanish Empire cf. A. García Montón, «Corona, hombres de nego–
cios y jueces conservadores. Un acercamiento en

55 escala transatlántica (s. XVII)», in: Revista de Histór–
ia Jéronimo Zurita 90 (2015), 75–112; F. Zamora

intentions of the Neapolitan reformers, were meant to profit from the reform embodied by the SMC, the consuls perceived the SMC as a threat to their merchants’ interests. In their view, only the mechanisms of the judge-delegates could protect foreigners from harassment by Neapolitan judges. As the chargé d’affaire of the French consulate pointed out, «the businesses of the French cannot be judged favourably in front of other tribunals, where our privileges are ignored, where partiality is the rule, where the procedural costs are driven to the most intolerable excesses». In his eyes, no modernising reform was possible. The solution was not to subordinate French merchants to a more efficient Neapolitan justice. Rather, the only solution possible was to grant them quasi-total immunity from Neapolitan tribunals and to subordinate them to the more serviceable judge-delegates. If the latter were abolished, he warned, «our merchants will be exposed to infinite delays, which are extremely harmful to commercial operations, and to ruinous vexations, so that they will soon lose the habit of coming to this kingdom for trade». And the Marseilles merchant Toussaint Combe presaged that «not a single French merchant will remain in Naples and Sicily, and our ships will no longer be able to come here for trading».

In this case, the government of a subaltern Mediterranean country was trying to impose innovative, status-blind institutions specifically designed to offer speedy and cheap procedures of contract enforcement, whereas the representatives of affluent Atlantic powers of north-western Europe were defending the status quo in order to maintain an old privilege that granted a loophole of institutionalised corruption. At the same time, although the Neapolitan reformers and the consuls disagreed about the respective efficiency of the SMC and the judge-delegates, they shared one central assumption: According to both, the mechanisms of judicial conflict resolution had a direct influence on the development of external trade.

After a prolonged judicial and diplomatic struggle, the Neapolitan judges and ministers imposed their will, allowing the SMC to increase its judicial activity. Following the 1746 counter-reform, the SMC’s annual average number of cases had dropped from 45 (in 1745) to seven (from 1746 to 1760). The abolition of all judge-delegates, accomplished by 1760, opened the way for a sustained recovery of the SMC’s activity. From 1761 to 1791, it oversaw an average of 17 causes per year. And from 1792 to 1799 – i.e. even during a period marked by the wars of the French Revolution, by the expulsion of many French from Naples, and thus by a dramatic reduction of trust – there was booming demand for judicial conflict resolution, and the SMC oversaw an average of 58 causes per year.

56 This quantitative analysis is based on the 1294 judicial cases contained in the series Archivio di Stato di Napoli (henceforth ASN), Processi antichi, SMC, 1–25, (years: 1739–1799).
The predictions of the French proved to be entirely ungrounded. From the 1730s to the 1770s, the growth of export trade from the Kingdom of Naples to Marseilles basically remained constant. Moreover, from 1760 to 1773 (i.e. in the years immediately after the abolition of the judge-delegates), both exports to Marseilles and imports from Marseilles witnessed particularly intense acceleration.\textsuperscript{57} Furthermore, the number of French merchants residing in Naples continued to rise until the early 1790s.\textsuperscript{58}

Can the abolition of the judge-delegates thus be interpreted as a victory for the absolutist reform programme that aimed at establishing status-blind jurisdiction over all commercial transactions? Not really. The result was, once again, very ambivalent. Until 1760, Neapolitan subjects initiated most of the legal actions taken up by the SMC (1740–1745: 94 per cent; 1746–1760: 75 per cent). But once foreigners definitively came under the SMC’s jurisdiction, they transformed it into a tool that served their particular interests. The change was impressive: from 1761 to 1791, foreigners initiated 73 per cent of all legal actions taken up by the SMC. The foreigners’ evident position of strength can be explained by different factors. First, the foreigners were subject to the SMC by virtue of their status («equality of persons») – i.e. they had to be judged by the SMC even in cases not relating to external trade –, whereas Neapolitan subjects could only sue somebody in front of the SMC when the disputed cause concerned external trade («nature of the cause») or when the legal action presented was against a foreigner. Thus, being a foreigner constituted a crucial legal privilege. Secondly, foreigners had, generally speaking, a strong position on the Neapolitan commercial credit market: a position that was further consolidated by their debt strategies. When a foreigner was unable to satisfy a Neapolitan creditor with his own resources, he borrowed the money from a countryman, whom he would pay back later. Foreign merchants tended to bind locals by issuing them commercial credit and to avoid binding themselves to locals through contracted debts. In this way, the foreigner avoided being drawn into Neapolitan tribunals by local subjects. The internalisation of long-term debts was linked, thirdly, to the use of extra-judicial contract enforcement mechanisms. The disputes arising from transactions between different foreigners continued to be solved primarily outside Neapolitan courts of law, especially when the disputed transaction concerned two merchants belonging to the same nation.\textsuperscript{59} The unwritten (but largely respected) rule forbade a foreign merchant from undertaking legal action against a countryman in front of a Neapolitan tribunal. Instead, disputes were resolved through private agreements mediated by notaries or through arbitration by the consuls. Transgressions of this informal norm could be sanctioned by expulsion from the mercantile nation and thus deprive the transgressor of both legal privileges and consular protection – two

\textsuperscript{58} Romano, Napoli, 107–110.
\textsuperscript{59} R. Zaugg, Stranieri di antico regime. Mercanti, giudici e consoli nella Napoli del Settecento, Rome 2011, 143–156.
resources that were very precious to foreign merchants when dealing with Neapolitan authorities.

Community-based mechanisms of conflict resolution and bilateral judicial mechanisms were thus used as complementary tools of contract enforcement. Neapolitan legal pluralism constituted, in the words of Grafe, «a market for institutions» on which social actors «picked, chose and combined different institutional solutions» according to circumstances.\(^{60}\) And the SMC itself became one of the institutional places where the economic power held by foreign merchants on the Neapolitan market was more evident. To put it into the terms recently proposed by Ogilvie and Carus,\(^ {61}\) The SMC was initially conceived by absolutist reformers as a «generalised institution» but, due to the consecutive effects of conservative political opposition and pressures exerted by merchants and consuls, it ended up functioning as a largely «particularised institution». This example thus shows that the asymmetrical balance of power that structures international relations is essential to understanding the building process of institutions. The latter are not just made by formal organisations; they do not necessarily function according to the goals for which they were initially created. In practice, the ways in which actors perceive and use them can lead to these institutions being manipulated. In this sense, the transformed SMC did not simply function as an institution that ensured the enforcement of pre-established rules, but was also deeply influenced in its actual functioning by extra-institutional power relations.

3. Tax Farmers, Smuggling and the Failed Reform of the Customs System

Another central field of (planned and partly enacted) institutional reforms was the customs system. Following a widespread institutional perspective *ante litteram*, the renowned Neapolitan economist Antonio Genovesi, in his «Lessons on Trade», addressed the importance of a clear definition of duties as one of the preconditions of a flowering trade.\(^ {62}\) His claim was just one of the complaints expressed by many observers of the day against the intricate mechanisms of the cumbersome system the Bourbon monarchy had inherited.\(^ {63}\) During the Spanish era, and especially from 1649 onwards, the leasing of customs duty collection to private «tax farmers» (arrendatori) and the sale of offices (in the port and customs administration, inter alia) had often been used to fill the financial holes of Madrid's Treasury.\(^ {64}\)

The consequences of the private management of tax collection were ambiguous. According to some observers, competition among ports resulted in a lowering of tariffs

\(^{60}\) R. Grafe, «Was There a Market for Institutions in Early Modern European Trade?», in: Christ et al. (eds.), *Union in Separation*, 607.


in order to attract traders;\textsuperscript{65} according to others, the system discouraged traders because of the greed of collectors.\textsuperscript{66} Indeed, the arbitrary management of the system was the source of great confusion for traders and mariners: No one could predict the exact amount of money that was needed to overcome the many commercial barriers (levies for anchoring vessels, import duties, export duties, etc.). A reform of the system was perceived as necessary and as being both in the public interest, since money was not flowing into the state treasury, and in the interest of traders, since the merchants’ property rights were not guaranteed against the «grabbing hands» of individuals to whom the state had contracted out tax collection, port administration and even the legal use of violence.\textsuperscript{67}

Following the suggestions of the Regia Giunta di Commercio,\textsuperscript{68} in 1739 Bourbon rulers attempted to dramatically simplify the system by abolishing many redundant port offices and by levelling and publishing tariffs due from vessels anchoring in Neapolitan ports.\textsuperscript{69} However, public authorities did not succeed in nationalising tax collection. Thus, the upstream question that had to be addressed in order to abolish arbitrary extractions and guarantee legal and reliable norms in the sphere of commercial duties remained unresolved. Too many parties had vested interests in the existing system – tax farmers, leaseholders (consegnerati, assegnerati), as well as office holders and their employees all profited from the status quo and opposed reforms – and the treasury’s need for immediate revenues through revenue leasing and office selling was too strong. For these reasons, the attempt to nationalise rent and tax collection was often pursued haphazardly and with little resolve.\textsuperscript{70}

The Royal Customs House (Regia Dogana) of Naples, where most of the foreign merchants cleared their imports and exports, deserves particular attention in this context. Sold in 1648, it returned to state control in 1726, during the Austrian period. Yet the Customs House was immediately contracted out. In 1734, Charles of Bourbon decided that the Secretary of State for Public Finance (Segreteria d’Azienda) should appoint the Customs House’s administrators, but the single levies imposed on imported goods remained contracted out to the tax farmers.\textsuperscript{71} The merchants had to pay the Customs House a multiplicity of duties, corresponding to approximately 15 per cent on edible...
goods and 20 per cent on manufactured goods.72 And although corporate exemptions granted to specific categories – such as Neapolitan merchants or, for other duties, merchants belonging to privileged foreign nations, especially the French, the British and the Dutch – partially mitigated this burden, the overall weight of Neapolitan customs duties was undoubtedly high compared to other Mediterranean ports such as Genoa, Livorno and the Levantine cities.

The burdensome duties and the uncertainty about the exact amount of these duties remained major question for the whole of the century. And at the same time, as pointed out above, external trade grew and an increasing number of foreign merchants established themselves in the kingdom. How could such a positive trend take place in the context of an institutional framework characterised by the absence of clear legal norms? Although the records of the customs administration are very fragmentary, archival evidence suggests that the system of the Central Customs House was by no means an unregulated one. Transactions between merchants, tax farmers and officers followed regular patterns rooted in consolidated interpersonal relationships. Significantly, when Montealegre wanted to know the precise procedure for importing commodities, he could not refer to codified legal norms: Instead, he had to ask the «experts» of the Customs House for detailed information.73 The procedures were actually defined through compromises that concealed the interests of the merchants, who aimed to pay as little as possible, and those of the tax farmers, who were interested in hiding their real earnings from the Treasury in order to pay lower rents once the tax farming contracts were renegotiated. Over time, these compromises consolidated relationships of trust between tax farmers and merchants. And when conflicts arose between them, it was very easy for merchants to buy the complicity of the officers.

During the 1760s, for example, the British plenipotentiary in Naples, Sir William Hamilton, wrote that merchants could actually negotiate the concrete amount of the customs duties with the tax farmers and that because of these negotiations they sometimes only had to pay half the official sum.74 Actually, the tax farmers were clever enough to understand that it was more advantageous to come to terms with the merchants rather than discouraging trade by insisting stubbornly on the payment of the full amount of the duties. In 1773, when the Central Administration of the Customs House (Soprintendenza generale d’Azienda) enacted stricter controls over the import of salted codfish from Newfoundland, British merchants complained about it, asserting that they had always been exempted from customs duties whenever their cargo had gone partly bad.75 Likewise, the customs officers classified imported white sugar as red.

72 See F. Ventura, «Osservazioni sopra il commercio de’ francesi nel Regno di Napoli» (25.7.1736), in: ASN, Affari Esteri, 4863.
73 «Sopra i contrabbandi che si commettono da vascelli francesi, inglesi e olandesi» (8.6.1740), ASN, Segreteria d’Azienda, 10, 14.
75 The Secretary of State for Public Finance, Marquis de Goyzueta, to the Secretary of State Bernardo Tanucci (11.6.1773), in: ASN, Affari Esteri, 4864.
sugar, as the duties on the latter were lower. In practice, the British merchants admitted that the customs officers had actually altered a common rule to favour their interests. French merchants also adopted fraudulent strategies. For example, they used Neapolitan merchants as dummy partners in order to profit from the latter’s privileges.\textsuperscript{76}

The government instructed its officials to fight these elusive practices and the So-printendenza actually tried to prosecute those responsible for the fraud, including some of the highest-ranking public officials of the kingdom. But the extenuating jurisdictional competition between different courts of law on the one hand, and the social power of the accused merchants (including several of the main exporters of the kingdom’s oil, silk, and grain) on the other, meant that the government’s attempts to enforce legal norms and punish fiscal fraud were ineffectual.\textsuperscript{77}

Thanks to the strong relations established with local officials and to transversal solidarities inside the transnational mercantile milieu, the oligopoly, which was comprised mainly of foreign merchants and a few Neapolitans, gradually managed the dynamics of trade against the «grabbing hands» of the Customs House. In this sense, the widespread representation of the customs system as a cumbersome and irrational one indirectly served to legitimise illicit practices. Actually, neither the common people nor the intellectual elite thought of these acts of fraud as being morally reprehensible. According to the economist Giuseppe Palmieri, smuggling was simply an «imaginary» crime: No merchant would have survived without it and trade would not have flourished.\textsuperscript{78}

Bearing this situation in mind, one understands why absolutist reforms of the customs system garnered only minimal support. All the actors involved were largely satisfied with the existing system. The only loser in this ongoing game was the state (or, to be more precise, the Treasury). But the state was not a clearly distinguishable and monolithic entity. Rather, it was composed of a multiplicity of tribunals and offices, each of which had different interests and different perceptions of social phenomena. And all of these elements could be influenced by the social actors interested in conserving the status quo.

4. Conclusions

The Kingdom of Naples tried to emulate the mercantilist policies of the Dutch Republic, Great Britain and France, but it did so within an international framework that was already marked by the commercial hegemony of these countries. Thus, as the eighteenth-century economist Giovanni Battista Maria Jannucci remarked, Neapolitan mercantilism was a kind of reverse mercantilism to the extent that it facilitated the import-

\textsuperscript{76} Ventura, «Osservazioni».
\textsuperscript{77} A. Clemente, «Quando il reato non è «peccato». Il contrabbando nel Regno di Napoli tra conflitti diplomatici, pluralismo istituzionale e quotidianità degli scambi (XVIII secolo)», in: Quaderni Storici 48 (2013), 378–379.
\textsuperscript{78} G. Palmieri, Osservazioni sulle tariffe con applicazione al Regno di Napoli, in: Scrittori classici italiani di economia politica. Parte moderna, vol. 38, Milan 1805, 10–11.
The kingdom was too weak to engage in an open commercial conflict with its more powerful partners. The government knew that if it applied protective tariffs on English textiles, the British would presumably react by no longer importing Neapolitan raw silk and oil, two commodities that could also be purchased from other parts of the Mediterranean region. Moreover, the nascent industries of Naples were substantially hampered by the dumping strategies of the British merchants and by the French ambassador, who succeeded in recalling home those French artisans hired by Montealegre to improve silk manufacturing in Naples. And finally, France and Great Britain refused to sign commercial treaties with the Neapolitan Crown or to accept the kingdom’s right to enact customs controls on their vessels. The Neapolitan government was thus basically forced to pursue the growth of international trade by supporting the foreign demand for its domestic commodities, especially the growing French and British demand for oil, raw silk and wheat, and by favouring the increasing importation of luxury and semi-luxury goods such as textiles, furnishings and colonial commodities. Far from exerting a dirigiste control on trade – a feature too often associated to «absolutism» –, the monarchy of this semi-peripheral country actually refrained from systematic state interventions and tended to second the asymmetrical dynamics of international trade.

For the eighteenth century, there are no comprehensive long-term estimates concerning the volume of trade. On the one hand, the available quantitative reconstructions suggest that international trade experienced sustained growth. The value in livres of exports from France to southern Italy (including Sicily) witnessed a tenfold increase between 1759 and 1788, and the value of exports from southern Italy to France doubled over the same period. The number of ships sailing from the Kingdom of Naples to Marseilles between 1765 and 1792 increased fivefold when compared to 1710–1750, while the tonnage increased tenfold. British consular correspondence between 1765 and 1784 attests to the continued growth of exports to southern Italy and an increasingly negative balance of trade on the Neapolitan side. Foreign demand sustained the development of export-oriented crops in regions such as Apulia and Calabria, catalysing internal labour migrations and the emergence of a multiplicity of small trading

82 Romano, Napoli, 92.
84 Clemente, «Quando il reato», 361–362.
87 Romano, *Napoli*, 74.
88 Salvemini / Visceglia, «Marsiglia».
89 Losardo, *Napoli e Londra*, 293–300.
spots on the coast. Moreover, the inter-regional shipping capacity of small Neapolitan entrepreneurs improved. These entrepreneurs played a growing role on the core Tyrrhenian routes and even predominated on the minor Adriatic routes. On the other hand, however, the primacy of foreign merchants and shipping remained unchanged. The growth of external trade only reinforced the kingdom’s role as an exporter of raw materials and, as in other semi-peripheral regions, international trade remained closely linked to the labour-intensive feudal system of production, thus fostering rent-seeking positions rather than innovative sectors characterised by increasing returns. Significantly, the growth of external trade was not accompanied by corresponding growth in the GDP per capita, which – according to Malanima’s figures for all Italian states – began to decline in the 1750s.

In this sense, the Neapolitan case allows us to draw some more general conclusions:

- Far from suffocating trade and blocking the diffusion of technological innovation, in Naples – and also in very different territories such as Protestant Prussia, absolutist policies were linked to the mercantilist goal of economic growth through commercial expansion and the development of manufacturing. The Leviathan actually aspired to be a benevolent promoter of Hermes. The problem is that the success or failure of policies aimed at reforming a deep-rooted «extractive system» did not unilaterally depend on the sovereign’s will to change the «rules of the game». In spite of «absolutist» ambitions, monarchical power was strongly limited: by a plurality of competing political institutions, local powers and social groups – as both scholars of economic history and political institutions have rightly emphasised – but also by international power asymmetries in the economic and political spheres.

- The development of trade does not necessarily presuppose or necessarily foster the development of efficient institutions. As Vries argues, the «existence of «wrong institutions» [is] not (exclusively) a domestic problem but one of global political economy in which states with inclusive institutions at home often supported extractive institutions abroad». The influence exerted by international trade on the quality of institutions is not necessarily a positive one. It can reinforce rent-seeking positions and, consequently, hinder virtuous dynamics of economic and social development.

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93 Visceglia, «Sistema feudale».
95 B. Nolte, Merkantilismus und Staatsräson in Preußen.
96 Vries, »Does Wealth?«, 86.
We cannot assume «one best way» of institutional development. History is not a linear progression toward increasingly efficient institutions. Neither can «virtuous» institutions simply be exported from one context to another. In order to explain the emergence and persistence of global economic inequalities, we have to focus on the ways in which economic and political power asymmetries amongst different states affect the consolidation of conventions and, more broadly, processes of socio-institutional change and resilience within these states.

**Hermes, the Leviathan and the Grand Narrative of New Institutional Economics: The Quest for Development in the Eighteenth-Century Kingdom of Naples**

The scholarly tradition of New Institutional Economics has tended to explain the «rise of the West» and global inequalities through models distinguishing virtuous institutional paths, which grant property rights and the enforcement of contracts, to non-virtuous ones of which Mediterranean absolutist monarchies are considered to be paradigmatic examples. This essay retraces the emergence of this grand narrative, examining its Anglo-centric leanings and its use of the concept of «absolutism». By reviewing historiographical studies dealing with the question of southern Italy’s economic decline during the early modern age, and by investigating the reforms enacted during the eighteenth century in the Kingdom of Naples in order to create economically efficient institutions, it challenges dichotomous images opposing predatory absolutist states to development-enhancing institutional models dominated by merchants and entrepreneurs. Through an archive-based analysis of the reforms of the judicial and the customs system, it argues that economic and political power asymmetries amongst different states deeply affect the attempts at institutional reform within individual states.

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**ABSTRACT**

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