

# **Merchants and Citizens: On the Making and Un-making of Merchants in Early Modern Spain and Spanish America**

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## **1. Introduction**

The question who merchants were is at the centre of this analysis, in which I wish to argue that they were perhaps defined by their economic activity but that, being a merchant, was also a juridical status that was determined according to factors that could have very little to do with professional pursuits. As with all other early modern juridical status, the category of “merchant” was not necessarily granted to individuals because of their pre-existing conditions but instead was the result of claim-making. It involved the vindication of privileges (as well as, on occasion, of duties) and implied subordination to a particular jurisdiction. Consequently, who merchants were was an issue that unleashed lengthy negotiations whose result could change over time and depend on the identity of the individuals or groups asserting this condition. It also hinged on who was asking this question, what for, and under which circumstances.

In order to approach these issues, in what follows, I will analyze several debates regarding who merchants were in Spain and Spanish America. Mainly concerned with deter-

mining mercantile status in order to ascertain or negate the right of residence or citizenship, they tied together two questions that were usually studied separately. They also allow speculation that what appeared to be (and was usually interpreted) an economic phenomenon could have explanations that did not depend on economic activities or at least not on them alone<sup>1</sup>.

## 2. Mercantile Status and Citizenship: A Few Basic Guidelines

In a book published in 2003 (translated into Spanish in 2006) I argued that the institution of a Spanish monopoly in the Americas that restricted trade in the New World to “natives of the kingdoms of Spain,” produced endless discussions regarding who Spaniards and foreigners were<sup>2</sup>. These discussions, I maintained, heavily involved merchants because more than any other social sector, merchants were interested in ensuring that the smallest number of people

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<sup>1</sup> On the role of religion in defining merchants see Tamar Herzog, “Can You Tell a Spaniard When You See One? ‘Us’ and ‘Them’ in the Early Modern Iberian Atlantic”, in Pedro Cardim, Tamar Herzog, José Javier Ruiz Ibáñez and Gaetano Sabatini (eds.), *Polycentric Monarchies. How did Early Modern Spain and Portugal Achieve and Maintain a Global Hegemony?*, Sussex Academic Press, Brighton, 2012, pp. 147-161.

<sup>2</sup> Tamar Herzog, *Defining Nations: Immigrants and Citizens in Early Modern Spain and Spanish America*, Yale University Press, New Haven, 2003, Spanish translation, *Vecinos y extranjeros. Hacerse español en la edad moderna*, Alianza Editorial, Madrid, 2006. *Recopilación de Indias*, law 28, title 27, book 9 refers to “natives of our kingdoms of Castile, León, Aragón, Valencia, Catalonia, Navarra, Mallorca and Menorca”. Nonetheless, contemporary documentation identified these people as “natives of the kingdoms of Spain” or simply “Spaniards”.

possible would be admitted to this trade. As a result, merchants in both Spain and Spanish America pressured the king and the local authorities to apply a restrictive meaning to Spanishness that would exclude as many individuals as possible from the commercial monopoly<sup>3</sup>. Not only did they manage to affect policies – in 1608 they were able to bring about an important change regarding how Spanishness would be defined vis-à-vis the New World—they also influenced the way these policies were implemented. Either as individuals or through their respective guilds, merchants denounced their rivals as foreigners. They requested local authorities to locate merchants illegally trading in the Americas and expel them, they instructed these authorities who foreigners were, and they petitioned the courts in order to ensure a result to their liking<sup>4</sup>.

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<sup>3</sup> Theoretically, the House of Trade, a royal court established in Seville in 1503, was the only body responsible for classifying people as Spaniards or foreigners for the sake of immigration and trade in the Americas: the *Recopilación de Indias*, book 9, titles 27 and 46 and Auke P. Jacobs, *Los movimientos migratorios entre Castilla e Hispanoamérica durante el reinado de Felipe III, 1598-1621*, Rodopi, Amsterdam, 1995 and in “Legal and Illegal Immigration from Seville 1550-1650”, in Ida Altman and James Horn (ed.), *To Make America. European Migration in the Early Modern Period*, University of California Press, Berkeley, 1991, pp. 59-84. However, in 1633, the crown recognized the merchant guild as an interested party in these debates and by the end of the century its role was so preeminent that crown officials voiced their disappointment when the guild failed to intervene. This rarely happened. In most cases, the merchants responded eagerly, contacting in the courts, writing allegations, presenting petitions, and identifying foreigners. On the changes introduced following mercantile activity see Cédula of October 2, 1608, Biblioteca Nacional, Madrid (hereby BNE), Mss. 20047-12, fols. 1-9 that reproduces both the merchant’s petitions and royal responses. The changes negotiated in 1608 were reproduced in the main Spanish American legal code (*Recopilación de Indias*) book 9, title 27, laws 31, 32 and 34.

<sup>4</sup> Archivo General de Indias (hereby AGI), consulados, books 445 and 446 and

Mercantile engagement in discussions on Spanishness and foreignness, which I can only describe here very briefly, was not restricted to Spain. Although the merchant guild of Seville and Cádiz was the most active discussant, guilds and merchant associations were extremely influential also in Spanish America<sup>5</sup>. The activities of Lima's merchant guild in the 1750s and 1760s were most illuminating in this respect, al-

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legajos 788 and 892A; AGI, Indiferente General (hereby IG) 1538 and 2301; AGI, Escribanía de Cámara (hereby EC) 1057A; and AGI, contratación 50B include documentation generated by such controversies, as do *consultas* of the council of the Indies of February 9, and November 9, 1742 in Biblioteca del Palacio Real, Madrid (hereby BPR), II 2755 Nos. 23 and 24, 149V-160V and the dissertation of Juan Antonio Enrique, minister of the navy in San Sebastián, dated October 10, 1785 in BPR, II 12.868 No. 4, 39R-46V. Also see Joseph Gutiérrez de Rubalcava, *Tratado histórico, político y legal del comercio de las Indias occidentales. Primera parte: compendio histórico del comercio de las Indias desde su principio hasta su actual estado*, Imprenta Real de la Marina, Cádiz, 1750, pp. 122-128, Manuela Cristina García Bernal, "Los españoles, hijos de extranjeros en el comercio indiano", in *La burguesía mercantil gaditana (1650-1868): Ponencias en el XXXI Congreso Luso-Español para el Progreso de las Ciencias*, Instituto de Estudios Gadiranos, Cádiz, 1976, pp. 175-182, Juan M. Morales Álvarez, *Los extranjeros con carta de naturaleza de las Indias durante la segunda mitad del siglo XVIII*, Academia Nacional de la Historia, Caracas, 1980, pp. 119-246 and Margarita García-Mauriño Mundi, *La pugna entre el consulado de Cádiz y los jenízaros por las exportaciones a Indias (1720-1765)*, Universidad de Sevilla, Seville, 1999.

<sup>5</sup> The merchant guild of Seville, established in 1543, was a corporation made up of all the merchants legally trading in the city. Meant to serve primarily as a court for commercial litigation, the guild also functioned to defend certain practices and to lobby for legislation that would protect and favor its members: Robert Sidney Smith, *The Spanish Guild Merchant. A History of the Consulado 1250-1700*, Duke University Press, Durham, 1940, pp. 91-111. José Joaquín Real Díaz, "El consulado de la universidad de cargadores a Indias: su documento fundacional", in *Archivo Hispalense*, nn. 147-152, 1968, pp. 179-291 and Antonia Heredia Herreran, "Apuntes para la historia del consulado de la universidad de cargadores a Indias en Sevilla y Cádiz", in *Anuario de estudios americanos*, n. 37, 1970, pp. 219-274.

though evidence suggests that similar activities may have taken place in Cartagena, Havana, Buenos Aires, Mexico City, and Cuzco<sup>6</sup>. Lima's guild petitioned the Crown in 1759 and 1760 to launch campaigns against the presence of foreign merchants in Peru<sup>7</sup>. It insisted that better control be

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<sup>6</sup> Lima's guild was studied by Manuel Moreyra y Paz Soldán, *El tribunal del consulado de Lima, sus antecedentes y fundación*, Lumen, Lima, 1950 and in *El tribunal del consulado de Lima, Quaderno de juntas (1721-1727)*, Instituto Histórico del Perú, Lima, 1959, Oscar Malca Olguín, "Gobierno colonial: Tribunal Mayor del Consulado de la Ciudad de los Reyes", in *Revista del Archivo Nacional del Perú*, n. 20, 1956, pp. 3-41 and 273-288 and in "El Tribunal del Consulado y los grandes servicios prestados con sus entradas y empeños a la Corona española", in *Revista del Archivo Nacional de Perú*, n. 20, 1956, pp. 6-10, María Encarnación Rodríguez Vicente, *El tribunal del consulado de Lima en la primera mitad del siglo XVII*, Cultura Hispánica, Madrid, 1960, John T. S. Melzer, *Bastion of Commerce in the City of Kings. The Consulado de Comercio de Lima 1593-1887*, Concytec, Lima, 1991 and Robert Sidney Smith, "Estudio histórico del consulado de Lima 1593-1887", in *El índice del archivo del tribunal del consulado de Lima con un estudio histórico de ésta institución*, Ministerio de Hacienda y Comercio, Lima, 1948. On pages 139-144 and 155 Smith studies the guild's involvement in the prosecution of foreigners during the eighteenth century. Mercantile activities in other parts of the Spanish America were described in AGI, consulados 788; Archivo General de la Nación, Buenos Aires (hereby AGN/BA) 9-33-3-7; AGN/BA, 9-39-7-3; Town council meetings of February 6, July 1, November 24, 1730, October 23, 1732, in *Acuerdos del extinguido cabildo de Buenos Aires*, serie II, v. 6, libros XI-XIII, 17-18, 241, 294 and 554-558; meetings of April 12, 1734 and June 9 and 17, 1738, in *Acuerdos del extinguido cabildo de Buenos Aires*, serie II, v. 7, libros XXIII-XXIV, 51, 63-66, 281, 470 and 472-473; meetings of June 30, July 6 and 14, 1740 and May 24 and July 1, 1743, in *Acuerdos del extinguido cabildo de Buenos Aires*, serie II, v. 8, libros XIV-XXV, 151-155, 420-421 and 427-428 and so forth.

<sup>7</sup> Archivo General de la Nación, Lima (hereby AGN/L), Real Tribunal del Consulado (hereby RTC), contencioso 252, cuaderno 61, 51-52; Document of March 1, 1760 in AGI, consulados 892A and the guild's letter of March 1, 1759 in AGI, consulados 794. Also see Leon G. Campbell, "The Foreigners in Peruvian society during the eighteenth century", in *Revista de historia de América*, n. 73-74, 1972, pp. 153-163, 156.

exercised in Spain before ships left port, and it requested authorization to investigate and prosecute merchants suspected of being foreign. In 1761, it was charged with verifying the native status of people arriving in Buenos Aires' port and in the 1760s it supplied the viceroy with lists of individuals to be expelled from the realm<sup>8</sup>. Lima's merchants also inspected ships arriving at Callao (Lima's port) to determine if any illegal foreigners were on board<sup>9</sup>.

The influence which mercantile interests and mercantile associations had over the classification of individuals as Spaniards was clear to contemporaries. Those categorized as foreigners and thus as individuals who should be expelled from Spanish America, often complained that economic competition or merchant animosity was the only reason for their being in these rolls. They were included in the lists because someone, somewhere, objected to their presence for economic, not social or political reasons. They blamed their misfortune on the guild: "What kind of harm did I do to the merchant guild, or the commerce of this city and kingdom, if, since I came from Spain, I spent most of my time helping the most important [local] merchants?"<sup>10</sup>. Or they argued

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<sup>8</sup> *Cédula* of May 10, 1761, in AGN/L, Secretaría General (hereby SG), varios 4, cuaderno 122 and Decision of February 23, 1764 in AGN/L, RTC, contencioso 252, cuaderno 77, 10-11. In his memoirs, viceroy Manuel de Amat y Juniet recognized the guild's contribution to the expulsion campaigns: Vicente Rodríguez Casado and Florentino Pérez Embid (eds.), *Manuel de Amat y Juniet – virrey del Perú 1761-1776. Memoria de gobierno*, Escuela de Estudios Hispanoamericanos, Seville, 1947 [1776], pp. 225-226. Also see the representation of the merchant guild of Cádiz, dated 1789 in AGI, consulados 62, 6 bis and AGI, consulados 92, No. 3.

<sup>9</sup> AGN/L, SG, varios 4 cuaderno 148.

<sup>10</sup> The original version reads: "Qué daño es el que hago yo al tribunal del con-

that their inclusion served the interests of particular individuals, their commercial rivals, who wanted to see them ruined<sup>11</sup>. On occasions, commercial competition was openly admitted: In 1754, 134 merchants residing in Panama requested the expulsion of a merchant, whom they considered “very prejudicial to the local trade”<sup>12</sup>.

During the seventeenth and the eighteenth centuries, therefore, merchants, mainly operating through their guilds, affected the way Spanishness was defined both legally and in practice. Their role was clear to contemporaries, was gladly embraced by merchants, and was openly confessed by the King and his courts, who considered merchants an interested party to these debates. Because at stake was the operation of a commercial monopoly, mercantile influence created a permanent distinction not only between Spaniards and foreigners but, paradoxically, also between Spaniards of Spain and Spaniards of Spanish America.

These conclusions, which I reached in 2003, focused on the distinction between natives and foreigners. Yet, as the merchant guild of Lima sustained in 1764, the rights, which monopolist merchants denied to their rivals, depended not only on nativeness and foreignness but also on their professional activities. While the presence of those who “traded and did business” (*tratar y contratar*) was prohibited, foreigners who were employed in other offices, mainly artisans and others occupied in “mechanical offices” (*oficios mecáni-*

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culado ni al comercio de esta ciudad y reino, cuando desde que vine de España la mayor parte del tiempo la he ocupado en asistir y ayudar a los principales mercaderes”: AG/L, RTC, contencioso 252, cuaderno 66.

<sup>11</sup> *Cédula* of March 11, 1723 in AGI, consulados libro 445.

<sup>12</sup> AGN/L, RTC, contencioso 252, cuaderno 61, 3.

cos), soldiers, sailors, and miners, could be tolerated<sup>13</sup>. As a result, discussions regarding who could sail to Spanish America and who could remain there required not only defining who natives of Spain were, but also identifying merchants. This second feature of the debate, which I had not studied earlier, is at the centre of the analysis here. I would like to ask how were merchants identified and how were they distinguished from other professionals who were allowed

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<sup>13</sup> “Las causas pendientes son aquellas que consisten en calificar la naturaleza o el ejercicio. En calificar la naturaleza cuando la cuestión rueda sobre si es español o es extranjero el individuo de quien se trata; el ejercicio cuando la cuestión rueda sobre si es mercader el extranjero o de oficio mecánico. Pero una vez que conste seguramente que el individuo es extranjero y que es comerciante, no puede admitirse pleito porque entonces fuera poner en cuestión la ley y no la cusa particular; entonces se dudara si los extranjeros mercaderes podía residir en este reino y la sentencia hubiera de hacer la ley o revocarla”: El tribunal del consulado, 10.3.1764, AGN/L, RTC, contencioso 252, cuaderno 77, fol. 26v-29v. The main Spanish American law code (the *Recopilación de Indias*), book 9, title 27 defined these criteria in the following way: Law 1: “ordenamos y mandamos, que ningun extranjero, ni otro cualquiera prohibido por estas leyes pueda tratar y contratar en las Indias, ni dellas a estos reinos, ni otras partes, ni pasar a ellas, si no estuviere habilitado con naturaleza y licencia nuestra... asi en particular, como en compañía publica, ni secreta, en mucha ni en poca cantidad, por si ni por interpositas personas”. This included “los extranjeros que habitaren en las Indias y en ella con estos reinos trataren o contrataren sin nuestra licencia”; Law 10: “declaramos que la expulsión de los extranjeros, que residieren en las Indias, no se entienda en cuanto a los que sirvieren oficios mecánicos, útiles a la república, porque la principal prohibición comprehende a los tratantes y a los que viven de vecindad en pueblos particulares, especialmente marítimos. Y ordenamos a los gobernadores y justicias que dispongan esta material en la forma, que los particulares en quíenesa la razón no padezcan porque la principal causa consiste en purgar la república de personas que no convienen y conservar las que fueren útiles y necesarias, guardando la integridad de nuestra santa fe católica”. Laws 11 and 22 also excluded from these measures foreigners who were soldiers, sailors, ship builders and *encomenderos*.

entry and presence in Spanish America. I will mainly refer to debates that took place in Lima in the 1760s, although similar questions were also asked elsewhere in Spanish America<sup>14</sup>. I will end by briefly surveying how some of these questions also found resonance in conversations taking place on Peninsular Spain.

### **3. Merchants and Non-Merchants: How Citizenship Affected the Debate**

#### *3.1 Merchants and Artisans*

The way the prohibition of immigration and trade in Spanish America was defined affected the debate about who merchants were to a great degree. The first and most important discussion evolved around the need to distinguish them from artisans, whose presence in the Americas was not only allowed, but even welcomed. The potential for confusion was great because, like merchants, artisans also had shops in which they sold and bought raw materials, as well as finished products to the public at large. The question of who was a merchant and who an artisan pitted individuals who were included on expulsion rolls against local merchants, who insisted that they were both an interested party and expert witnesses in these proceedings<sup>15</sup>. The case of Felix Conforto, who

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<sup>14</sup> Nunn Charles F. "Naturalization in New Spain, 1700 to 1760: the Case of Jean Malibran", in *Secolas Annals*, n. 8 (1977), pp. 61-71 and Gómez Pérez, Carmen, "Los extranjeros en la América colonial: Su expulsión de Cartagena de Indias en 1750", in *Anuario de estudios americanos*, n. 37, 1980, pp. 279-297.

<sup>15</sup> "El comercio, por su práctica, comunicación y dependencia que tiene con todos es en quien más ciertamente reside el conocimiento de las casas de negocios, naturalezas y calidad de los sujetos que tratan y contratan en España

the merchant guild of Lima identified in 1762 as a foreign trader whose expulsion was required, can serve as an example. Conforto, of Genovese extraction, argued in his defence that he was a master goldsmith, not a merchant<sup>16</sup>. He presented to the judges reviewing his case a decision made by the viceroy in 1759 according to which soon after his arrival to Lima some fifteen years earlier he opened a shop, in which he worked personally fabricating gold ornaments and jewelry and where he trained many assistants. Classified in these proceedings as one of the best artists in the city, he was declared a “useful” foreigner, whose residence in Lima was legal. Nevertheless, three years later the local merchant guild insisted that he was also a merchant. According to its version, he might have created pieces of his own, but he also dealt with gold and silver, buying and selling goods. The merchants

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y en las Indias”: “Acuerdo del comercio de Cádiz en 21.8.1721,” AGI, Consulado libro 892A, fol. 15r.

<sup>16</sup> His petitions, examined on 25.4.1759 and 4.1.1762, the investigation that took place in Lima on March 1759, and the response of the consulado dated Lima, 23.1.1762, AGN/L, RTC, contencioso 252, cuaderno 67. The original opinion of the consulado argued “respecto de quien convino el tribunal en que se le permitiese con la prohibición de comercio en oro y plata, esto es, en orden a comprar y vender piezas labradas por otra mano, sujetándose precisamente a vender la maniobra que trabajase en su tienda, como artífice, que es el fin del privilegio o dispensa de la ley, pero este don Phelix tiene algo más que el dicho ... porque no solo compra y vende maniobras de plata, sino que comercia por el Cabo [de Horno] remitiendo dineros para que le vengán Anchetas y esto es abusar del privilegio de la dispensa de la ley y hacer fraude al comercio con el artificio. Si esto se le tolerase sería muy fácil que los plateros y herreros de París y Londres viniesen a ser comerciantes a Indias... debería v señoría notificarle se abstenga de todo comercio así en ropa de Castilla como en cuanto a piezas de plata mandándole quitar el tendejón que tiene de ella. De modo que tenga entendido que a la primera queja o noticia de que comercia será expulsado sin embargo de ser artífice...”.

particularly resented his custom of purchasing in Europe bargain merchandise (*anchetas*), which he then sold in the city. If this were allowed, the guild declared, “all the silversmiths and blacksmiths of Paris and London” would come to the Americas to sell their products. If Conforto wanted to remain in Lima, it suggested, he must “stop all commerce in cloths originating in Castile or in artifacts of silver,” and he must be warned that upon receiving notice that he was dealing again, he would be immediately expelled. In 1785 Potosí, Francisco Gastó, a Frenchman, experienced a similar fate. The investigation that followed his request to remain in the jurisdiction despite his classification as merchant revealed that he was a music teacher. Yet, although his main interest was his teaching career, he might have also engaged in some limited mercantile activities (*comercio corto*) whose nature and extent was not specified in the proceedings<sup>17</sup>. The guild suggested that he could remain in the jurisdiction under the strict condition that he would cease doing this.

While some artisans might have on occasion attracted the attention of the guild because already having a shop to which customers habitually came allowed them to sell not only their own products but also goods – perhaps very few – made by third parties and sometimes not even related to their own craft, others might have alternated between artisanal and mercantile activities. Francisco Carte y Linze whose name was included in the list of foreigners to be expelled from Peru in 1761, was perhaps one such case. In his request to remain in Lima he attested that he was an expert miner. This version was supported by the declaration of se-

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<sup>17</sup> AGN/BA, 9-33-3-7 exp. 907.

veral individuals who testified that having discovered silver mines, they appealed to his expertise, otherwise extremely rare in the district<sup>18</sup>. Carte y Linze helped one of them to build a very expensive conduit that supplied the necessary water to work the mine. Expert in submitting ores to metallurgical processes, he greatly improved the quantity of silver produced in the mines of another witness. Carte y Linze also presented a certificate demonstrating that the officials of the minting house (*casa de moneda*) of Lima who had examined his qualifications had recognized him as mining engineer (*ingeniero perito en minas*). Nonetheless, the merchant guild insisted that his residence in the mining districts of Upper Peru was mainly an excuse to undertake commercial dealings. For all the guild knew, he might well be an expert miner, he might also have worked on occasions as such, but he was mostly a *tratante*. That he was an Englishman (according to the guild) or an Irishman (according to his own testimony) was a relevant factor in this debate because the guild argued that it was well-known that expert miners originated in Germany, not the British Isles, where no real mining tradition existed. The judges, however, recognizing his professional qualifications, allowed Carte y Linze to remain in the jurisdiction. Similar accusations were also made against Arturo Alejandro Bordón, who was classified in the same campaign as a foreign merchant<sup>19</sup>. His allegations that

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<sup>18</sup> Petitions of Santiago Fernández de Medina and Francisco Maeda, undated, response of the consulado, Lima 3.1.1764 and petition of Francisco Carte y Linze, received by the judge on 4.4.1764, all in AGN/L, RTC, contencioso 252, cuaderno 76.

<sup>19</sup> "Pero la mayor maldad es que dejando aparte si en su tierra manejó el estuche de ese arte, aquí no es cirujano, sino un gran comerciante, y en su casa no

he was a surgeon, as his English titles attested, were rejected by the guild that defined him instead as a “great merchant” (*gran comerciante*). If he had surgical knives (*postemero*) in his house, the guild argued, it was in order to sell them alongside other merchandise, not to use them professionally. Indeed, he might have once been a doctor, but his residence in Buenos Aires was not aimed at exercising this profession but instead at running a public shop, in which he received and sold merchandise. Allowed to remain in the jurisdiction, in his case too, the judges ruled that the potential damage he could cause the “republic” was smaller than the potential benefit it could produce. Perhaps what tilted the decision in both cases was the fact that Carte y Linze and Bordón were both supported by many locals who insisted on their “usefulness”. Perhaps it was also the acknowledgement that both had engaged with commerce only randomly, or that the guild had accused them of activities they did not commit. That this might have been the case is clear from other examples, in which the ruling tended to be otherwise. Juan Flores, whom the merchants of Trujillo in Peru accused of completely abandoning his profession as a cook and instead becoming a peddler who trafficked cloths he bought in Cartagena de Indias in Trujillo, found another response<sup>20</sup>.

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se hallara un postemero sino es que lo tenga como mercería entre los fardos que maneja en su almacén público; su residencia no es para curar sino para atrapar consignaciones, como las que ha recibido en el último navío”: Information supplied by the consulado of Lima on 16.12.1761, AGN/L, RTC, contencioso 252, cuaderno 61, fol.2v. Also see declaration of Juan Antonio Bustamante y Quijano, in the investigation conducted by the consulado of Lima on 17.11.1761, AGN/L, RTC, contencioso 252, cuaderno 61 fol. 21v.

<sup>20</sup> Petition of the merchants of Trujillo, undated, inserted in AGN/L, RTC, contencioso 252, cuaderno 61, fols. 46r-49r.

The judges reviewing his case agreed that being a foreigner and a merchant, he must leave the jurisdiction. Contrary to Carte y Linze and Bordón, Flores had no local supporters. Instead, against him was a coalition of local merchants from Trujillo that insisted that he had continuously engaged in commerce. The members of this group also argued that he must be expelled because he was of “perverse habits” (*pravedad de costumbres*) and exercised a “freedom of conscience” (*libertad de conciencia*) that could not be tolerated. Naturally proud (*genio altivo*) and a known drunkard who had libertine public association with women, he also reduced prices in a manner that was completely unacceptable. Yet, good relations with local merchants were not necessarily sufficient. Joseph Valois discovered this fact in 1764 when he attempted to argue against his inclusion in the list of merchants to be expelled. While he suggested that as a member of the local militia who indeed participated in the suppression of an indigenous rebellion he was a soldier rather than a merchant, the guild responded that in his case the uniform was a disguise (*disfraz*)<sup>21</sup>. True, Valois might have participated in the defense of the region, but he was also clearly a merchant. If this was not the case, how would he explain the fact that he had paid the *de iure* voluntary but *de facto* obligatory contribution to the feasts the guild organized only a few years earlier? This payment proved that he was considered by others a merchant and that in the past when his expulsion was not anticipated he willfully accepted this classification by paying these fees.

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<sup>21</sup> Petition of Joseh Valois and response of the tribunal del consulado, 10.3.1764, AGN/L, RTC, contencioso 252, cuaderno 77, fols. 26v-29v.

### 3.2 *Infra-Mercantile Activities*

While the above-mentioned cases testified to the difficulty of distinguishing those who occasionally sold and bought from those who were true merchants, those who lived of their profession and those that also earned money by selling fabricated goods, they also advanced the well-known fact that many individuals who resided in Peru were at least to some degree involved in mercantile activities. This was true of crown officials, ecclesiastics, and noblemen and it was certainly true of artisans and mechanical officials, both native and foreign<sup>22</sup>. Yet, while such activities were tolerated when involving natives, they could cause – although not necessarily motivate – persecution in the case of foreigners.

While some foreigners attempted to legalize their presence by pointing out the difference between artisans (whose residence was allowed) and merchants (who were excluded), others suggested that the legal prohibition only included “true” merchants, not their aides, assistants, and helpers<sup>23</sup>. The guild, however, refused to institute such a di-

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<sup>22</sup> Bronner F., “Church, Crown and Commerce in Seventeenth-Century Lima. A Synoptic Interpretation”, in *Jahrbuch für geschichte von staat wirtschaft und gesellschaft lateinamerikas*, n. 29, 1992, pp. 75-89. On the pervasive exercise of petty commercial activities among foreigners see Leon G. Campbell, “The Foreigners in Peruvian society during the eighteenth century”, in *Revista de historia de América*, nn. 73-74, 1972, pp. 153-163, 155.

<sup>23</sup> “De no hacer perjuicio en este comercio, donde pasa en una tienda de mercadería, sirviendo a otros en sus comercios... porque la prohibición de residir, no solo comprende a los mercaderes gruesos, sino también a los de poco manejo y a los sirvientes de los mercaderes, porque ese es el ensaye de los comercios grandes y perjudiciales. Los españoles son los que deben comenzar sirviendo en las casas para ser mercachifles, pasar de allí a una tienda y graduarse después en un almacén. Este individuo aun sin pasar por los menores

stinction. It maintained that the legal prohibition was absolute because it included all merchants, independently of the question whether their activities were small or great. It also asserted that, as was well-known, all merchants began their training as servants in a shop. They then acquired their independence by opening their own store and eventually they “graduated” (sic) by establishing a warehouse (*almacén*). If foreigners were allowed to work as shop assistants, natives would have nowhere to train. It would also enable the former to accumulate the expertise required to manage larger mercantile negotiations, which was certainly not a development the guild would support.

### 3.3 *Transatlantic, Inter-Provincial, and Local Trade*

Another differentiation that individuals on expulsion rolls attempted to institute was between useful and dangerous merchants, those whose activities prejudiced the republic and those who helped it (gave it *socorro*). Following this route, in 1731 Quito, Pedro de la Cuesta suggested that his trafficking, which brought necessary supplies, mainly of local production (*frutos de la tierra*) to an Amazonian region (Macas), which was otherwise badly supplied, should be allowed<sup>24</sup>. Establishing a distinction according to where the

comercios se ha puesto en una tienda, donde maneja miles de pesos y aunque eso no sea un comercio máximo, es un gran comercio, que le es prohibido tanto en poca como en mucha cantidad una vez que la prohibición es absoluta... con el preciso apercebimiento de que al primer comercio que actuase, sin mas documento, que una justificación de plano, se le haría salir del reino o con mujer o sin ella”: response of the Consulado to the petition of Pedro Vidarte y Juane-  
they, Lima, 3.4.1762, AGN/L, RTC, contencioso 252, cuaderno 66.

<sup>24</sup> Undated petition of Pedro de la Cuesta, Archivo Nacional Quito, Gobierno 12, exp. 25.6.1731, fols.1-3.

goods came from and whence they were destined, he thus asserted that only merchants who were engaged in inter-provincial or transatlantic trade were prohibited. Although this differentiation had no direct backing in the law that, as the guild rightly suggested indeed included a general and categorical ban on all merchants of all types, it is nevertheless clear that even royal orders did distinguish between long distance and local trade allowing, for example, “tolerated foreigners” who had acquired residence permits (*composición*) to remain in the jurisdiction despite their foreignness to engage in the latter, but not the former<sup>25</sup>. It was perhaps for that reason, as well as a certain real-politik, that the protector of royal interests at the court of Quito (*fiscal*) agreed with de la Cuesta, suggesting that because of his “usefulness” his presence and activities should be tolerated.

While the utility of merchants, who would be willing to supply a remote and dangerous region, might have led on occasions to leniency, in general, attempts to make distinctions according to the origin and destiny of goods failed. Also unsuccessful were claims that distinguished between retail and wholesale, arguing that only the second was prohibited. Pointing out to the colonial legislation (*recopilación de Indias*) that mandated that “no foreigner can trade or do business in the Indies, or between it and these kingdoms [Pe-

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<sup>25</sup> Recopilación de Indias, book 9, title 27, law 20 determined that foreigners who had *composición* could “residir en las indias y tratar y contratar en las provincias de su residencia” pero “no en España, ni los de Perú en Nueva España, ni los de Nueva España en el Perú, ni Filipinas, sino en las provincias donde residieren”. On *Composiciones* see Tamar Herzog, *Defining Nations: Immigrants and Citizens in Early Modern Spain and Spanish America*, Yale University Press, New Haven, 2003, pp. 110-111.

ninsular Spain], or in other parts, nor move to it, unless he was authorised to do so by a letter of naturalization and our license" and that specified that he could not do so personally, or as part of a company of merchants, public or secret, in a prominent or reticent position, nor by third parties. The merchants insisted that this prohibition was general and absolute<sup>26</sup>. Including in expulsion rolls were both retail and wholesale merchants. Lima's guild habitually complained against individuals engaged in interprovincial trade who imported goods from Buenos Aires to Peru and Chile and against others who traded within these provinces or who sold goods in grocery shops (*pulperías*) and taverns<sup>27</sup>. Agreeing with them, in his 1797 book on colonial commerce Rafael Antúnez y Acevedo explained that because on occasions it was difficult to determine whether certain negotiations were "true commerce" (*verdadero comercio*), Spanish laws that initially banned commerce in an "absolute and general" way, then listed particular examples<sup>28</sup>. Their aim was to en-

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<sup>26</sup> Recopilación de Indias, book 9, title 27, law 1: "ordenamos y mandamos, que ningun extranjero, ni otro cualquiera prohibido por estas leyes pueda tratar y contratar en las Indias, ni dellas a estos reinos, ni otras partes, ni pasar a ellas, si no estuviere habilitado con naturaleza y licencia nuestra... asi en particular, como en compañía publica, ni secreta, en mucha ni en poca cantidad, por si ni por interpositas personas". This prohibition, elaborated between 1591 and 1616 also included "extranjeros que habitaren en las Indias y en ella con estos reinos trataren o contrataren sin nuestra licencia".

<sup>27</sup> Power given by the merchants of Buenos Aires (125 signatures) to Francisco Antonio de la Riva, Buenos Aires, 16.6.1749. AGN/BA, 9-39-7-3 exp. 7.

<sup>28</sup> "Como de algunas partes de este giro podía dudarse si eran verdadero comercio comprehendido en la prohibición a extranjeros, no satisfecho nuestro gobierno con la absoluta y general, expedificó algunas particulares. Así por cedula de 13.1.1596 se ordenó que ningún extranjero pueda vender ni venda mercaderías fiadas a pagar en las indias... también se ordenó en la misma ce-

sure the exclusion of foreigners from “both active and passive commerce” (*comercio activo y pasivo*), “Spanish sovereigns insisting on declaring [as included in the prohibition] all the cases that, because they were not listed literally in previous orders, could be considered [erroneously] exempt from the spirit of the general prohibition.”

In all these cases, allegedly defending royal and general advantage – aimed at accumulating capital by not allowing its exportation – the guilds also openly protected their own interests. The presence of Flores was unacceptable in the Americas because he was accused of unorthodox behavior but mainly because he reduced prices in an inadmissible way. Francisco Vásalo, others argued, was not only a prohibited foreign merchant, but was also a person who “should be excluded from human contact, because he was a man of bad faith, as several people with whom he had dealings in Cádiz would affirm”<sup>29</sup>. Jacobo Bube, another alleged forei-

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dula que no se pueda traer de las indias ningún oro, plata, perlas ni demás cosas en cabeza de extranjeros ni consignado a ellos”. Repetidas las prohibiciones en 1592, 1605, 1608 y 1616, se formó la ley 1, título 27, libro 9 de la recopilación de indias en la que se mandó que “ningún extranjero ni otro cualquiera prohibido pueda tratar y contratar en las Indias, ni de ellas a estos reinos ni otras partes, ni pasar a ellas sino estuviere habilitado con naturaleza y licencia del rey... así en particular, como en compañía pública ni secreta, en mucha ni en poca cantidad, por si ni por interpósitas personas... pues parece que nuestros soberanos se empeñaron en declarar todos los casos que, por no comprendidos literalmente en sus anteriores cédulas, pudieran creerse exceptuados del espíritu de las prohibiciones generales”: Rafael Antúnez y Acevedo, *Memorias históricas sobre la legislación y gobierno del comercio de los españoles con sus colonias en las Indias Occidentales*, De Sancha, Madrid, 1797, pp. 273-275.  
<sup>29</sup> “Debía ser repelido, no solo del comercio, sino de la comunicación de las gentes, por hombre de mala fe como lo podrán afirmar varios sujetos que con él trataron en Cádiz”: declaration of Joseph Guirasola, AGN/L, RTC, contenido 252, cuaderno 61, fol. 44.

gner included on expulsion rolls, should also be removed “for his false and simulated operations, which were truly undignified”. He appeared, the guild argued, as a decent human being but deliberately managed his affairs “with art and diabolical foundations without ever stopping because of the harm he may be causing others”<sup>30</sup>. Precisely because not only public interest was at stake, but also the needs of the guild, its members suggested that they had “right to act to exclude from their association any foreigner”<sup>31</sup>. To accomplish this task, different merchant associations and guilds collaborated with one another: the merchants of Trujillo asked the Lima’s consulado to act on its behalf, Lima’s merchants received instructions from Seville, and Seville was informed by Lima. A transatlantic body of denunciation, prosecution, and action was thereafter instituted, whose explicit goal was to protect the commercial monopoly, but whose functioning, as often happened in such cases, was greatly affected by personal rivalries or personal loyalties, and the fierce competition for resources. Because of these factors, foreigners were most likely to be identified and persecuted when they were wealthy merchants or when their engagement in the Spanish American trade was deemed un-

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<sup>30</sup> “Es de sentir el declarante debía ser desterrado de la comunicación de las gentes por sus falsas y simuladas operaciones, indignas aunque aparenta la mayor sencillez de ánimo porque todo lo maneja con arte y máximas diabólicas sin reparar en los ajenos perjuicios”: declaration of Joseph Guirasola, AGN/L, RTC, contencioso 252, cuaderno 61, fol. 45.

<sup>31</sup> “Resulta de aquí que el comercio tiene derecho y acción a excluir de su gremio cualquier extranjero”; Petition of the “gremio de los mercaderes de la ciudad de Trujillo”; undated, signed by 11 persons, and inserted in AGN/L, RTC, contencioso 252, cuaderno 61, fols. 46-49, on fol. 46.

favorable to the ambitions of individual merchants or the guilds. Because this was the case, the monopolist merchants constantly came up with new ideas on how to exclude people while those singled out for exclusion responded by defending their rights. This dialogue, often taking place between neighbours and competitors, lasted for two hundred years. As mentioned earlier, it involved issues of nativeness and foreignness, but it also contributed to the elaboration of distinctions between artisans and merchants, merchants and their helpers, and different types of merchants.

### *3.4 Back to the Iberian Peninsula*

While the operating assumption was that in the Americas all foreign merchants were prohibited, in Peninsular Spain the contrary was true as the presence of these foreigners was not only allowed, but even welcomed. Nonetheless, there too, eighteenth-century discussions on nativeness and foreignness were greatly affected by debates regarding the presence of foreign merchants. During this period, native merchants often complained that foreigners benefited from many advantages which they, natives and vassals, could not. They were free to enter and leave Spain, with or without goods, to open shops and carry arms<sup>32</sup>. Foreigners could also

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<sup>32</sup> This regime was called *fuero de extranjería*. A list of the benefits enjoyed by foreign merchants is included in Manuel Álvarez y Valdés, *La extranjería en la historia del derecho español*, Universidad de Oviedo, Oviedo, 1992, pp. 401-413; Eugenio Larruga y Boneta, "Historia de la Real y General Junta de Comercio, Moneda y Minas y Dependencias de Extranjeros", Madrid, 1799 (Mss. Bell Library, University of Minnesota-Twin Cities Campus), v. 3, book 2, chapter 2, 133R-8R; the prologue to the "Índice cronológico de los reales decretos, consultas, órdenes y expedientes que existen en el Archivo de la Secretaría de De-

trade with enemy nations, even selling them Spanish goods. They either paid reduced taxes or none at all. They were exempt from lodging soldiers in their houses, could freely decide on the price of their goods and their shops and books could rarely be inspected by local officials. Foreigners could also have their own lawyers, representatives, agents and notaries and usually had their own consul and judge (*juez conservador*) and were thus not subjected to the jurisdiction or rules of the local guilds. In fact, the only serious disadvantage they suffered was their exclusion from the Spanish American trade. This protest, voiced by merchants and merchant guilds, was especially directed at foreign merchants who often resided on Spanish soil for generations, but who nevertheless refused to consider themselves natives, or who alternatively adopted nativeness or foreignness according to their convenience and needs. This allowed them, so native merchants claimed, to benefit from the privileges of both natives and foreigners, and to comply with hardly any duties<sup>33</sup>.

The accumulation of such grievances encouraged the Spanish royal authorities to codify in 1716 a distinction between foreigners who were truly based in Spain (*avecindados y arraigados*) and should thus be considered natives, and

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pendencias y Negocios de Extranjeros", in *Archivo Histórico Nacional*, Madrid (hereby AHN), estado, libro 683. The origin of these privileges was mentioned, for example, in "Índice de los capítulos de la obra Comercio de extranjeros en España...", in AHN, estado 647/16. The fuero de extranjería was studied by Enrique Percourt García, "Una institución singular en la historia del derecho internacional privado español: el 'fuero de extranjería'", in *Estudios de derecho internacional público y privado, Homenaje al prof. Luis Sela Sampil*, v. 2, pp. 883-904, Universidad de Oviedo, Oviedo, 1970.

<sup>33</sup> Letter of the Junta de Comercio of Valencia, dated April 3, 1773, AHN, estado 629-3/66.

those who temporarily resided there (*transeuntes*) and should continue to be treated as aliens<sup>34</sup>. Unleashing classification campaigns all over Spain, attempts to elaborate lists that would classify all foreigners as either domiciled and thus native or transient and thus foreign were particularly important in the 1750s, 1760s and 1770s. They provoked endless debates, as some foreigners who the authorities considered based in Spain argued that they were transient, while others who, on the contrary, complied with the requirements of alienness nevertheless solicited recognition as natives<sup>35</sup>. At stake was the clarification of the rights and duties of each type of foreigners, but also were posed questions regarding jurisdiction, as transient merchants were under military commanders, whereby domiciled merchants, now considered Spaniards, were subjected to ordinary royal and municipal authorities<sup>36</sup>.

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<sup>34</sup> The text of the 1716 instruction how to distinguish temporary from resident foreigners was reproduced in the *Novísima Recopilación*, law 3, title 11, book 6. On the basis of these instructions, lists distinguishing transient from domiciled foreigners were elaborated in Orán, Madrid, San Sebastián, Jaén, Puerto Santa María, San Lúcar, Cádiz, Málaga, Teruel, Palma (Majorca), Pamplona, Campo de Gibraltar, Tenerife, Aragón, Catalonia, La Coruña, León, Valladolid, Torde-sillas, Segovia, Zamora, Valencia, Ciudad Real, Bilbao, Seville and Murcia: see AHN, Estado, 629-1/3 to 629-1/19; 629-2/20 to 629-2/57; and 629-3/61 to 629-3/79. These issues are treated in greater length in Tamar Herzog, *Defining Nations: Immigrants and Citizens in Early Modern Spain and Spanish America*, Yale University Press, New Haven, 2003, pp. 82-91.

<sup>35</sup> Such reactions were clear, for example, in the letter of Marquis de Croix to the *Junta de Comercio, Moneda y Dependencias de Extranjeros*, dated March 16, 1765 in AHN, estado, 647/21. Also see: discussions concerning the *cédula* of June 28, 1764 in AHN, estado 629-1/2, AHN, estado 629-1/4 and AHN, estado 629-3/63.

<sup>36</sup> AHN, estado 629-1/1, petition of Gregorio Portora, La Coruña, 19.4.1766 in AHN, Estado 629-2/39 and *Novísima Recopilación*, law 4, title 11, book 6.

According to royal orders, one of the features distinguishing domiciled from transient foreigners was the type of activities each sector could conduct. Wholesale merchants, who theoretically only exported and imported goods in bulk, could indeed be considered temporary, but artisans and retail shop-keepers, who had permanent establishments in which they sold goods, could not. As a result, on the Iberian Peninsula too, the elaboration of the lists enumerating foreigners and distinguishing between them according to whether they were transients or not, among other things, by referring to their professional activities, was mainly in the hands of merchant association and guilds. Although not always – in some jurisdictions they were elaborated by royal judges (*corregidores*) or military commanders – in the 1750s, 1760s and 1770s in Spain's main commercial emporium, merchants called foreigners to appear before them, and they ruled on their identity as natives or foreigners<sup>37</sup>. In order to do so, as in the Americas, they pronounced judgment on their origin, affiliation, and behaviour, but they also classified their activities according to whether they were merchants and specified the type of merchants.

The involvement of merchants in classifying individuals as Spanish and foreign, merchant or non-merchants, however, was also exercised in other ways. From as early as the mid-sixteenth century, the merchant guild of Seville, for example, required its members to be natives and citizens (*vecinos*) of that city, Cádiz, and the surrounding area. Processes of admission to the guild, as a result, often hinged also on the

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<sup>37</sup> See, for example, the proceeding that took place in San Sebastián on January 1764, AHN, estado 629-1/6.

question whether petitioners were or were not foreign, and were or were not citizens. Here too, considerations of mercantile protectionist policies found ample expression. A clear example of such tendencies could be found in the discussions taking place in Madrid, Seville and Cádiz in the 1720s, 1730s and 1740s. The excuse for these debates was the new rules (*nueva planta*) that the merchant guild of Seville elaborated in 1729 as to who could become a member<sup>38</sup>. Authorized by the King, these norms suggested that belonging to the guild depended on a certain professional competence that only the organs of this association could rightfully judge. Thereafter, membership in the guild would no longer depend on the identity or origin of the person requesting admission but on his integrity, correct conduct, good connection (*probidad, arreglo proceder, buena correspondencia*), experience, dedication, and knowledge. Although apparently focused on professional competence, according to a group of merchants of foreign descent that had clashed with the guild earlier over their eligibility to engage in the transatlantic trade, these rules were specifically elaborated in order to exclude them. Although de facto they did, the merchant guild insisted that this was an accidental and unforeseen result. After all, these rules were applied not only to the members of that group but also to “true Spaniards” (*verdaderos or originales españoles*), many of whom were also excluded in the aftermath of their application. According to the guild, its motivation was not the exclusion of a specific group but the wish to protect the

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<sup>38</sup> “Noticias de las diligencias hechas entre el consulado y los hijos de extranjeros en grave dependencia, que se subscitó en el año de 1719 y se feneció en el de 1728”, undated, AGI, Consulado 892A, fols. 29-38.

overseas commerce that required particular competence, as well as a heightened sense of trust among its participants. Indeed, whereby before these rules were elaborated the guild was mainly a voluntary association to which all merchants could join (if native and citizen) and that mainly acted as a court for mercantile litigation, it was now a closed association with members who were to deal with one another. Nonetheless, perhaps because these discussions demonstrated how the powers of the guild could be abused, in 1742 the new regulations were abolished and Seville's merchant guild returned, *grosso modo*, to the position and mission it originally enjoyed. Yet, foreignness and occupation again collided in the city in the 1770s, when merchants identified as originating in Malta were instructed by the city council that if they wanted to continue engaging in retail activities they must renounce their foreignness as well as become members of the corresponding guilds, thus subjecting themselves to both royal and municipal law as well as to the guilds' jurisdiction<sup>39</sup>. Those who refused would, in the future, only be allowed to deal wholesale. And, because the guild protested to the King that applying military jurisdiction to commercial activities undertaken by transient foreigners made no sense and was against its privileges, in the 1780s the Monarch ordered the guild to act as a court of first instance even in cases involving foreigners, with appeals going to the Council of War (*consejo de guerra*), not the Council of Castile, as would be the case with native or domiciled foreign merchants<sup>40</sup>.

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<sup>39</sup> ANH, Estado 629-3/63.

<sup>40</sup> Petition of the consulado de Cádiz, undated (1789?), AGI, Consulado 62, 6 bis.

#### 4. Conclusions

In both Spain and Spanish America, recognition as merchant mainly operated to subject individuals to a particular jurisdiction and to associate them with a specific set of privileges and duties. It thus involved claim-making regarding who deserved (or not) this status and was mainly a means to ascertain or negate rights and/or obligations. While mercantile activities greatly modified the meaning and extension of citizenship, questions involving membership in the community greatly affected whether individuals would or would not be classified as merchants. The link between citizenship and certain occupations therefore clarifies that, rather than reflecting pre-existing situations. Debates on the categorization of individuals as merchants or non-merchants could help us penetrate into an early modern reality, in which status was the product of long negotiations that involved not only certain activities but also their reception and validation by those observing whose judgment was affected by how the question was asked, who by, and for which end.