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NAVIGATING THE HISTORICAL ORIGIN AND CONTEMPORARY RELEVANCE OF INTERNATIONAL COMMERCIAL LAW

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Abstract
This research article examines the historical origin and contemporary relevance of International Commercial Law. It proposes that international commercial law originated from the medieval lex moratoria, a system of merchant customs and tribunals developed to regulate trade independently of territorial legal systems. It further proposes that these instruments were designed to harmonize divergent national laws and ensure legal certainty in cross-border transactions. In analyzing today's context, the article contends that international commercial law remains central to regulating global supply chains, digital trade, foreign direct investment, and international arbitration. It proposes that in 2026, its relevance is heightened by challenges including e-commerce governance, trade wars, economic sanctions, and climate-related trade policies. This article adopts a doctrinal and analytical research methodology based on secondary sources. It examines historical texts, treaties, and academic literature to trace the origin of International Commercial Law.

INTRODUCTION

Jeremy Bentham contended that property and state-made law are born and must die together. Before the state's law there was no property: take away the law, all property ceases. Most economists have taken this argument to heart. Clearly, some system of defining and then protecting and enforcing property rights (property law) and rules of exchange contract law is needed for a market system to develop. But does the state have to develop and enforce property and contract law? One purpose of the following presentation is to demonstrate that the commercial sector is completely capable of establishing and enforcing its own laws. A second purpose is to illustrate that moder commercial law is, in fact, largely made by the merchant community despite governmental efforts to take over provision of such law. Commerce is an evolving process of interaction and reciprocity which is simultaneously facilitated by and leads to an evolving system of commercial law. Carl Menger proposed that the origin, formulation and the ultimate process of all social institutions including law is essentially the same as the "spontaneous order" Adam Smith [20] described for markets. Markets guided by Smith's invisible hand coordinate interactions, and so does customary law . These systems develop because, perhaps through a process of trial and error, it is found that the actions they are intended to coordinate are performed more effectively under one institutional arrangement or process than

under another. The more effective institutions and practices replace the less effective. In the case of customary commercial law, traditions and practice evolve to produce the observed spontaneous order. As Hayek explained, however, while Smith's and Menger's insights are firmly established in economics, the study of jurisprudence has been almost completely unaffected by their arguments . One reason, of course, is that the invisible hand explanation for the emergence of market order is highly plausible because there is an obvious mechanism-the mechanics of individual but interrelated market prices-which provides the necessary coordination we call the price system. The mechanism of evolution for a legal order is much less obvious. Thus, the legal positivist view, which holds that law is the product of deliberate design, has a strong following among economists. Another major purpose of this discussion of commercial law, therefore, is to demonstrate that the rules of property and contract necessary for a market economy, which most economists and legal scholars feel must be "imposed," have evolved without the design of any absolute authority. Commerce and commercial law have developed conterminously, without the aid of and often despite the interferences of the coercive power of nation-states because there is a mechanism in place. Commercial law itself is analogous to the price system in that it facilitates interaction and makes exchange more efficient. The underlying mechanics are also analogous. Commercial law develops directly from the market exchange process as business practice and custom evolves.

Background.

International Commercial Law traces its origin to the medieval lex mercatoria, where merchants developed customs and merchant courts to regulate cross-border trade beyond state laws.These practices evolved through trade fairs, codifications, and later into modern treaties and institutional frameworks in the 20th century.Key developments include the UNCITRAL Model Laws, the 1980 CISG, and the establishment of the WTO and ICC arbitration rules.This body of law emerged to create uniformity, predictability, and trust among traders from different legal systems.Today, it plays a vital role in governing global supply chains, foreign investment, and digital commerce.Its relevance has grown with e-commerce, trade disputes, sanctions, and the need for neutral dispute resolution through arbitration.For developing economies, it provides access to global markets and helps attract foreign investment under standardized rules.

With the fall of the Roman Empire, commercial activities in Europe were almost nonexistent relative to what had occurred before and what would come after. Things began to change in the eleventh and twelfth centuries. Rapid expansion in agricultural productivity meant that less labor was needed to produce sufficient food and clothing to sustain the population. Agricultural commodities were produced at levels which stimulated greater trade and population began to move into towns, many of which rapidly became cities of substantial size. One consequence of (and simultaneously, one impetus for) the increased productivity in agriculture and the urbanization which followed was the emergence of a class of professional merchants. There were significant barriers to overcome before substantial interregional and international trade could develop, however. Merchants spoke different languages and had different cultural backgrounds. Beyond that, geographic distances frequently prevented direct communication, let alone the building of strong interpersonal bonds that would facilitate trust. Numerous middlemen were often required to bring about an exchange, including buyer, seller and shipping agents. All of this, in the face of localized, often contradictory laws and business practices, produced hostility towards foreign commercial customs and led to mercantile confrontations. There was a clear need for Law as a "language of interaction It was during this period, because of the need for uniform laws of commerce to facilitate international trade, " that the basic concepts and institutions of moder Western mercantile law-lex mercatoria ("The Law Merchant") were formed, and, even more important, it was then that mercantile law in the West first came to be viewed as an integrated, developing system, a

body of law". Virtually every aspect of commercial transactions in all of Europe (and in cases even outside Europe) were "governed" by this body of law after the eleventh century. In fact, the commercial revolution of the eleventh through the fifteenth century that ultimately led to the Renaissance and industrial revolution, could not have occurred without the rapid development of this system of law. This body of law was voluntarily produced, voluntarily adjudicated and voluntarily enforced. In fact, it had to be. There was no other potential source of such law, including state coercion Recall Fuller's three conditions for reciprocity providing "optimal efficacy of the notion of duty." Fuller also noted that the kind of society in which these conditions are most likely to be met "is a surprising one: in a society of economic traders" Traders enter into voluntary exchange. The market determines the value of disparate goods so that "equal" exchanges are possible. Of course, without market determined prices the concept of equality in value has little substance. Furthermore, traders frequently change roles as buyers and sellers so that the duties which arise out of exchanges are reversible. Indeed, such analysis led Fuller to conclude that it is only under capitalism that legal duty can become fully developed . The Law Merchant did not spring from a void. A considerable part of it was based on Roman commercial law. Nonetheless, Roman law as it was passed down through the centuries was not adequate to meet the kinds of problems that arose in the early commercial revolution.2 Furthermore, none of the other systems of law that existed or were being formulated during this period were sufficient to meet the needs of the merchant class either.3 The development of commercial law was almost entirely left up to the merchants themselves. This meant that the Law Merchant was customary law, and the "customary nature of the Law Merchant was by far the most decisive factor in its development: it made the law eminently a practical law adapting to the requirements of commerce" When new forms of commercial activity developed, evolving business practice framed the new law. The emergence of the commercial society was spontaneous and undesigned. Its development on an international level required simultaneous and complementary evolution of the mechanics of market exchange and of commercial law.

Furthermore, as the norms of commercial law became more precisely specified they were increasingly recorded in writing. These written laws were not statutory codes, although many governments ultimately did adopt the Law Merchant in their commercial legislation, as noted below. Rather, they were written commercial instruments and contracts . In this regard, note that "contract law" refers to the "law" parties in exchange bring into existence by their contractual agreement rather than to the law of or about contracts. Thus, customary law and contract law are closely linked.As a contractual form came into common usage it actually became part of the Law Merchant. When it is recognized that individuals had to voluntarily adopt a certain practice (enter into a contract) before it could develop as common usage it becomes clear why the Law Merchant had to be objective and impartial. Reciprocity, in the sense of mutual benefits and costs, is the very essence of trade. However, the legal principle of reciprocity of rights, as it was developed in the late eleventh and early twelfth centuries and still is understood today, involves more than mutual exchange. It involves an element of fairness of exchange. Thus, mercantile law required that exchanges had to be entered into "fairly". Fraud, duress or other abuses of the will or knowledge of either party in an exchange meant that the transaction would be invalidated in a merchant court. Beyond this however, "substantively, even an exchange which is entered into willingly and knowingly must not impose on either side costs that are excessively disproportionate to the benefits to be obtained; nor may such exchange be unduly disadvantageous to third parties or to society generally". Fairness was a required feature of the Law Merchant, of course, precisely because its "authority" arose voluntarily from recognition of reciprocal benefits. No one would voluntarily recognize a legal system that was not expected to treat him fairly. The objectivity and impartiality of the Law Merchant, reflecting this emphasis on

fairness, was further reinforced by impartial adjudication which manifested itself in the rise of participatory merchant courts.

Significance.

The article highlights that it facilitates global supply chains, foreign investment and digital commerce in an interconnected economy.It is also significant for providing neutral dispute resolution through international arbitration, avoiding bias of domestic courts.With reference to current challenges, the article notes its role in addressing e-commerce, trade sanctions, and climate-related trade regulations.Thus, the article concludes that International Commercial Law remains the core legal infrastructure for trust, efficiency and growth in global trade. International Commercial Law is significant as it evolved from the medieval lex mercatoria to provide merchants with customs-based rules independent of state laws.

Research Methodology.

This article adopts a doctrinal and analytical research methodology based on secondary sources. It examines historical texts, treaties, and academic literature to trace the origin of International Commercial Law from lex mercatoria to modern frameworks. Key legal instruments such as CISG, UNCITRAL Model Laws, WTO agreements and ICC rules are analyzed to understand legal harmonization. The study uses a qualitative approach to interpret the evolution and principles underlying international commercial norms. Contemporary relevance is assessed by reviewing current issues like digital trade, arbitration, trade sanctions and global supply chains. Comparative analysis is applied to show how different legal systems interact within the international commercial framework. The article also draws on case law and institutional reports to support its arguments on practical application.Thus, the methodology combines historical analysis with current legal developments to evaluate the role and significance of International Commercial Law today.

The Absorption of the Law Merchant into Common Law

Beginning around the twelfth century, governments in Europe began systematically "enacting" the customary rules established by the Law Merchant. England was no exception wit codification of the Carta Mercatoria in the fourteenth century. Such enactments were not new law. Established custom still provided the rules of commerce, so even where a government legislated, the rules that had already been established by merchants were simply confirmed or slightly modified. Merchants continued to use their own courts despite state codification of commercial law, so governments also began to make laws which would attract merchants into the royal courts and/ or make merchant courts less desirable. In England, for example, the Statute of the Staples of 1353 presumably gave "merchant strangers" protection in the fourteen major trading centers for "staple" products-mainly wool, leather and lead. Trade in these goods was handled primarily by Italian, Flemish and German merchants and bankers. Of course, such protection already existed under the Law Merchant so this was largely a codification of custom. Similarly, the statute specified that disputes involving these foreign merchants would be settled under the Law Merchant, rather than royal law or any law of the city which might apply. Significantly, however, appeals could be taken to the chancellor and the King's council. By giving merchants access to royal appeal the appearance of royal enforcement of commercial law was created, while simultaneously a roll for the royal courts in enforcement of commercial law was established. And perhaps more importantly, by creating the possibility of appeal, the authority of the merchant courts and the Law Merchant itself was weakened. The potential for appeal made the Law Merchant appear to be less decisive law. Thus, through a gradual process of absorption by creating governmentally backed institutional arrangements and laws which would be acceptable to the merchants, and by weakening the authority of the merchant courts, commercial law began to become part of common law. In fact, common law institutions

were relatively more acceptable because the authority of Law Merchant institutions was undermined. The Statute of Staples also began a process of focusing and concentrating foreign trade flows so they would be easier to control by the state. Most foreign trade was compelled to pass through a few important towns in the fourteenth century, and special courts were created in these "staple" towns to administer the Law Merchant . The makeup of these courts was dictated to consist of the mayor of the town, two constables and two merchants. It was only from these staple courts that appeal could occur. Fairs and markets still held their own merchant courts, however.

The Subjugated Law Merchant.

The Law Merchant did not die. It changed in the seventeenth century, becoming less universal and more localized under state influence; it began to reflect the policies, interests and procedures of kings. Merchant custom remained the underlying source of much of commercial law in Europe, and to a lesser degree in England, but it differed from place to place. "National states inevitably required that their indigenous policies and concerns be given direct consideration in the regulation of commerce. As a result, distinctly domestic systems of law evolved as the official regulators of both domestic and international business" . The changes were most striking in England where the courts rejected many of the underpinnings of the Law Merchant after Coke's 1606 ruling. Merchants became increasingly constrained under the common law system as the informal, speedy institutions they had developed disappeared for well over two centuries. Furthermore, English common law courts either refused to admit custom into law, or custom was required to satisfy onerous admissibility tests. In particular, the origins of a business practice had to be demonstrated to be truly "ancient" and the practice had to be consistently employed for a long period in order for it to be considered as law -this despite a rapidly changing business environment. Thus, English common law restricted the evolution and use of business practice as a source of commercial law. "In this way, the Law Merchant became rigid as post-medieval English judges sought to integrate the Law Merchant into the established confines of a centralized common law" . Many of the desirable characteristics of the Law Merchant in England had been lost by the nineteenth century, including its universal character, its flexibility and dynamic ability to grow, its informality and speed, and its reliance on commercial custom and practice. Still, the Law Merchant could not be completely eliminated for a very good reason. Custom prevailed in international trade, and England was a great trading nation. English judges had to compete with other national courts for the attention of international merchants' disputes so they had to recognize commercial custom in cases involving international trade if they hoped to attract such cases. One important reason for this, in the context of such competition, was that the European countries' civil law had been much more receptive to the Law Merchant than had English common law. There was some fragmentation in the form of the Law Merchant across Europe, but there was little difference in its substance.

Modern Legislation of Commercial Law: Customs and Contracts.

The commercial sector continues to develop an expanding base of customary law. Order clearly arises from contractual agreements, for instance. Thus, contracts negotiated and voluntarily entered into by private individuals provide one form of privately created law. If a contract is a standard one based on long standing tradition, it simply reflects existing customary commercial law; if a contract develops an effective new business practice in the face of a new situation, it is likely to add to customary law. Since commerce operates in a dynamic continually changing environment, new contractual arrangements are always being mediated-new law is being created. Arbitration also can, and often does, create law by setting precedents which become part of customary law. This contradicts Landes and Posner (among many others) who contended that commercial arbitration does not set precedents, but simply applies laws established by

government courts and legislation . That they are wrong can be superficially demonstrated by the fact that when individuals wish to agree to something which may not stand up in government courts, they frequently write an arbitration clause into the contract. Private commercial arbitrators will consider the contractual agreement to be valid. Furthermore, recall the competition between public and private courts. Public courts managed to take a dominant position in commercial dispute resolution by first enforcing laws the merchant community developed in a fashion consistent with merchant needs (e.g., quickly).10 When the common law and/ or public court procedures departed too far from what merchants desired and began to raise costs to merchants such as the delay arising with court congestion, however, commercial arbitration surfaced again. Commercial arbitration should enforce virtually the same laws recognized by the public sector under these circumstances, but causation actually flows in the opposite direction to that suggested by Landes and Posner. When government courts do not enforce merchants' law, the public court bureaucracy loses even more of its commercial business as more businessmen use their own courts (as indeed they are). Thus, commercial law precedents are largely being set by the private sector in the process of developing customary law, even if some laws become articulated in the context of litigation before a common law court. If a dispute arises because a contract did not anticipate a change in business environment, the arbitrator will have to determine what business practice should be under the new conditions based on what custom and practice has been under related but not identical circumstances. When this occurs, as it frequently does, then without any formalized state doctrine set out by legislation or public judicial precedent, the private adjudicative determination will enter into the litigants' future relations as well as the future relations of other possible litigants before the same type of tribunal. A statement by the private tribunal of the reasons for its decision is not even necessary, because a reason will be perceived and people will govern their conduct accordingly [7, 90]. In other words, a new law has been created that begins to "govern" the behavior of parties entering into similar circumstances in the future. Such a law is likely to be recognized very quickly when the arbitration involved was internal to a trade association. It may take longer to spread through the relevant commercial population if the group is more diverse, but if it is an effective remedy to a now frequent potential conflict it can catch on quite quickly anyway [3], becoming part of customary law. It is often difficult to see the important role that customary law plays in determining commercial order since so much of custom has been codified or coopted by common law courts, and claimed as state law. One instance of order through customary law remains relatively free of state-interference, however. International trade is still largely ruled by customary commercial law as it has evolved from the medieval Law Merchant

Universality of International commercial law.

International commercial law is a universal law. The merchants themselves are the only potential source of legal uniformity, of course. Their agreements have to produce it since agreements between governments are not likely to. Many international trade associations have their own conflict resolution procedures. Other traders rely on the International Chamber of Commerce (ICC) which has established a substantial arbitration institution. ICC arbitrators are experts in international commerce; their procedures are speedy and flexible reflections of commercial interest. These private commercial adjudication processes are moder versions of the medieval fair and market courts. The decisions and agreements that arise are backed by the reciprocal arrangements of the international commercial community. The International Law Merchant has certainly grown and changed substantially since its medieval beginnings." However, the primary principles underlying customary business law are not likely to change . The basic rules of private property and freedom of contract developed centuries ago. As international commercial law continues to develop, the need for extensions of these basic

principles to cover unanticipated circumstances always arises, however, and customary law adapts, building on the existing base of substantive principles. The point is that customary law grows, it does not change in the sense that an old law is suddenly overturned and replaced by a new law. That growth tends to be gradual but fairly continuous, through spontaneous collaboration.' Beyond its ability to grow and adapt, the international Law Merchant has proven to be a very effective source of order. The fact is that the international Law Merchant, free from the dominant influences of governments and localized politics, has developed and grown much more easily and effectively than has intranational commercial law constrained by the government imposed laws of most (probably all) nation-states.

Conclusions.

The article concludes by proposing that for developing economies, alignment with international commercial law norms is essential for market integration, dispute resolution efficiency, and attracting investment.Thus, the article asserts that from medieval merchant practices to modern treaty regimes, international commercial law continues to function as the core legal infrastructure of global.Most economists have assumed that for markets to work government must define and enforce "the rules of the game"-private property rights, contract law, etc. An exploration of the rise and continued domination of the Law Merchant casts considerable doubt on this widely held premise. The merchant community actually developed its own law in order to avoid the inefficiencies and political nature of royal law and government (e.g., common law) courts. Indeed, as Hayek explained "the growth of the purpose-independent rules of conduct which can produce a spontaneous order will . often have taken place in conflict with the aims of the rulers who tended to turn their domain into an organization proper. It is in the ius gentuim, the law merchant, and the practices of the ports and fairs that we must chiefly seek the steps in the evolution of law which ultimately made an open society possible" . Adam Smith described the spontaneous order evolving out of market processes as developing as though guided by an "invisible hand." The market process could not develop and evolve without a coterminously evolving, clearly defined and enforceable set of rules of property and contract, of course. Thus, the invisible hand guiding the development of the market's spontaneous order had to be supported by another invisible hand which guided the evolution of commercial law. Neither of these evolutionary processes could have been achieved by intentional design. Development of trade required simultaneous development of law, but commercial law could not develop without changing requirements in trade. Thus, evolving trade practices provided the primary rules of evolving commercial law. Both were "produced" by the same people-the merchant community. They had to be, and they continue to be cooperating evolutionary processes-two invisible hands, fingers intertwined to produce commercial order. Customary law continues to "govern" most commercial interaction even today. It is difficult to visualize this, in part because customary law "owes its force to the fact that it has found direct expression in the conduct of men toward one another". Customary law's authority is based on voluntary recognition of rules of obligation because of reciprocal gains from recognition. Thus, it is much less likely to be violated than enacted law, imposed by a state and lacking reciprocity. Its role and impact are simply less likely to be noticed as a consequence. Nonetheless, customary commercial law flourishes and promotes order in most of our modern merchant society, much as it did in the medieval period. Differences arise only because various governments have been partially successful at subjugating the Law Merchant, not because government has had to provide and enforce certain rules of the game.

Actually, the private sector has to be the primary source of law necessary for the support of a market system. Politically dictated rules are not designed to support the market process; in fact government made law is likely to do precisely the opposite. Indeed, it appears that the increasing governmentalization of law making has been associated with increasing transfers of property

rights from private individuals to government, or perhaps more accurately in representative democracies, to interest groups.In other words, public production of law undermines the private property and contract arrangements which support a free market system. Government statutes may appear to be creating and enforcing private rights and contract law in many countries, but that simply reflects the demands of powerful interest groups (the business community naturally prefers to shift the cost of enforcing their laws onto others), and/or the competitive/ coercive efforts of public courts to attract/takeover business disputes.

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