

# What can we learn about the embeddedness of commercial relationships from the study of powers of attorney?

Fabien Eloire, Claire Lemerrier, Veronica Aoki Santarosa

► **To cite this version:**

Fabien Eloire, Claire Lemerrier, Veronica Aoki Santarosa. What can we learn about the embeddedness of commercial relationships from the study of powers of attorney?: (France, 18th-19th centuries). 2016. hal-01358364

**HAL Id: hal-01358364**

**<https://hal-sciencespo.archives-ouvertes.fr/hal-01358364>**

Preprint submitted on 31 Aug 2016

**HAL** is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

**What can we learn about the embeddedness of commercial relationships  
from the study of powers of attorney?  
(France, 18th-19th centuries)**

Fabien Eloire, Université Lille-I (fabien.eloire@univ-lille1.fr)

Claire Lemerrier, CNRS, Center for the Sociology of  
Organizations, Sciences Po, Paris  
(claire.lemerrier@sciencespo.fr)

Veronica Aoki Santarosa, University of Michigan Law School  
(aokisan@umich.edu)

Please do not cite / Comments are welcome.

This working paper is part of a wider research project, *Fiducia*, funded by the French National Agency for Research, and led by Arnaud Bartolomei. We acknowledge his contribution as well as that of other members of the team, especially Boris Deschanel, Matthieu de Oliveira, Nadège Sougy. Bartolomei and Deschanel, along with the authors, directly took part in the collection of information from archival material.

**Abstract:** This working paper gives the preliminary results of a research project on the uses of notarized powers of attorney in four large French commercial cities in the 18<sup>th</sup> and 19<sup>th</sup> centuries. Powers of attorney are often considered as symptoms of trust. We use them to test hypotheses on the embeddedness of commercial relationships. We find little support for the idea of an evolution from embedded to anonymous relationships. We therefore explore alternative hypotheses centered on the complementarity between embeddedness and formality; the importance of repeated interactions; and a broad homophily driving merchants to choose fellow merchants as proxies.

## Introduction

Powers of attorney are everywhere in the French notarial records – and very present as well, if a quick Internet search is to be trusted, in US archives. Just for the year 1851, Parisian records include 8,490 forms of proxy (14% of all notarial records).<sup>1</sup> 40% were intended to enable a financial operation on government annuities, 15% were to facilitate an inheritance process, and more than 20% enabled the attorney to manage all or most of the properties (land, houses, companies) of the principal.<sup>2</sup> Some of these contracts could therefore have an important economic impact – which probably explains why the parties paid the notarial fees in the first place.

However, forms of proxy have generally been deemed cryptic and boring, due to their legal phrasing, and hence ignored by almost all historians (and scholars in related fields). They noticed their number mostly because they had to leaf through lots of powers of attorney in order to get to the next interesting marriage contract or sale of land. As Lopez (1976, 189) put it in a short text that apparently had no impact on scholarship, “*procuratio* was the *bonne à tout faire* of medieval business. In spite of its ubiquity, however, it has never been adequately studied in its own right. This neglect is not altogether unjustifiable: though innumerable examples of proxy survive, most of them are depressingly vague and discouragingly alike. They consist chiefly of standardized, generalizing formulae, none of which really tells what is the business at hand. Hence scholars usually skip them as mere preliminaries or accessories to the more complex and specific contracts.”

We only found three exceptions to this scholarly neglect. First, Jean-Pierre Poisson (1968), an enthusiast of all things notarial, wrote an extremely short and stimulating paper that presented powers of attorney as the ultimate statement of trust, therefore worthy of sociological research. For him, studying forms of proxy would allow for the quantification of trust. Silence followed: lawyers today still constantly write about trust when they discuss powers of attorney (see e.g. Pétel, 1994), but there are no contemporary studies of the empirical use of this tool. Second, more recently, several scholars have independently found that the source testified to the economic agency of women in the early modern period, especially in the case of women who enjoyed wide discretion while their husbands were at sea or traded in a distant place (Sturtz, 2001; Dufournaud & Michon, 2006; Cyr, 2010; Grenier & Ferland, 2013). Not only did the contracts allow the wives to autonomously perform roles that were otherwise inaccessible for married women; they also proved, as Poisson would have put it, that their husbands trusted them. We will maintain a more cautious approach to the idea that a power of attorney is just the legal vehicle of pre-existing trust. However, like these authors, we consider that forms of proxy provide worthy information both on pre-existing relationships and on possibilities of economic action. Finally, Molina Jiménez (1986, 1988) offered an invaluable monograph on powers of attorney found in one region of Costa Rica in the 1800s-1840s. He was not particularly interested in trust, but provided a precise description of practices in an agricultural region. Similarities with our own results allow us to state that women gave far more powers than they received in past societies: this qualifies the findings of the previous group of scholars. Many powers were given to persons living in the same place; and powers related to debt recovery, inheritance proceedings, the sale and management of land, as well as general powers to do anything for the principal were quite frequent, in Costa Rica as well as France, in a rural region as well as in large

---

<sup>1</sup>Less than 1% of those gave the power to represent a person in court (attorney-at-law): we are talking about attorneys-in-fact. We use “form of proxy” to refer to the piece of paper recording the contract (*procuration* in French) and “power of attorney” to refer to the contract itself (*mandat* in French; it may or may not exist in writing).

<sup>2</sup>Estimates derived from the rather crude classification of the database ARNO, built by the French National Archives. We thank Gilles Postel-Vinay for access to an offline version of the database.

commercial cities.

The very ubiquity of such contracts tells us something about the way in which many aspects of economic life were (and are) managed – namely, thanks to the use of proxies. It is in fact surprising that the important discussions in economics on principal-agent relationships have not, in the last decades, fostered more interest in such contracts, as powers of attorney were the main, if not the only, legal vehicle of such relationships in the 18<sup>th</sup> and 19<sup>th</sup> centuries (similarly, Trivellato, 2009, 154, points at the centrality of commission agency both for early modern commerce and for economic theories, yet to the lack of systematic empirical studies of this practice). Some agents were mere proxies of their principals; others were also associates or employees, but had to carry forms of proxy to perform some tasks.

This working paper explores the ways in which we could leverage access to large numbers of notarized forms of proxy in order to tackle important questions in economic history. It is part of a wider investigation that aims at empirically testing the widespread narrative of commercial relationships becoming less and less personal, more and more formal, from the 18<sup>th</sup> to the 19<sup>th</sup> century, as part of the “industrial revolution.” Studying powers of attorney offers one way to test such a broad claim. In fact, 19<sup>th</sup>-century lawyers themselves viewed new uses of powers of attorney as a symptom of such a change from a traditional to a money-driven society – and fought about the desirability of this change. While we are interested in empirically testing this idea of a radical change (Hypothesis 0), we also devised more subtle hypotheses, especially regarding powers of attorney given by merchants. Hypothesis 1 states that “personal” and “formal” foundations of trust are used as complements, not substitutes, throughout our period. Hypotheses 2 and 3 question the dichotomy between personal relationships (generally thought of as embedded in a family or ethnic community) and anonymous relationships by putting forward other types that might have become more common during the industrial revolution. Hypothesis 2 focuses on relationships that are created by repeated economic interactions in a context of division of labor, whereas Hypothesis 3 suggests that signaling that one is part of the merchant community could in itself foster preferential relationships.

Part I of the paper sketches how we devised these general hypotheses from the literature. Part II gives more details about powers of attorney, and presents our strategy of data collection and the variables that we built. The size of our database is now very modest – and it is focused on three dates for four French cities –, but we consider this as a pilot study: if the results are deemed promising, it would be easy to devise comparative databases. Accordingly, parts III, IV and V present exploratory, descriptive results. Part III shows that studying the length and phrasing of forms of proxy, which are remarkably stable and leave a lot of discretion to the proxies, does not support Hypothesis 0. Part IV discusses the choice of proxies, finding some support for Hypotheses 2 (with the use of professional proxies) and 3 (a preference of merchant principals for merchant proxies). Finally, Part V focuses on the large number of blank forms and substitution clauses that we found. It hints at more complex relational chains, beyond the principal-proxy dyad, and offers some additional support to Hypotheses 1 and 2.

## I. General hypotheses

Our hypotheses were developed in the context of the wider research project *Fiducia*, that uses three sets of sources to discuss the narrative of a decreasing embeddedness of commercial relationships from the 18<sup>th</sup> to the 19<sup>th</sup> century. Along with powers of attorney, we investigate the first letters in merchant correspondence (so as to understand what allowed some of the first letters to be answered while others were not), and the use of printed circulars (a device that could be considered, at first glance, as less personal than classical merchant correspondence). Those two last sources only inform us about relationships among merchants (large-scale merchants, merchants-bankers), whereas powers of attorneys allow us to compare merchants with others. Due to this research design, some of our hypothesis will mostly be tested on other sources, yet we believe that all of them have some relevance for the interpretation of forms of proxy.

### *Hypothesis 0: from embedded to anonymous commercial relationships*

We devised this research project because we were not satisfied with the way in which most economic historians interested in our period had reacted to the broad narrative painted in broad strokes by e.g. Douglass North (2005), relying on Avner Greif's (2006) notions of collectivist and individualist cultures and their effect on the enforcement of contracts. North described the slow but inexorable move of Western societies from the former idealtype to the latter, from the simple world of personal exchange to a more complex, interdependent world that formal rules had made possible. He spoke of "an institutional structure geared to personal exchange whose cohesion and structure were built around strong personal ties," notably characterized by reciprocity and repetition of interactions, then of an "individualistic framework that evolved in response to the new human environment rel[ying] less on personal ties and more on a formal structure of rules and enforcement mechanisms." (North, 2005, 112, 156)

Whereas most economic historians in history departments, when directly asked about such a narrative, would dismiss it as too crude, the divide between early modern and modern history in fact implicitly validates it. Recent monographs in early modern history (sometimes including the early 19<sup>th</sup> century) that have offered promising new, relational views on trade have often insisted on the ways in which personal relationships could mitigate uncertainties or information asymmetries (e.g. Hancock, 1995, Gervais et al., 2014, Marzagalli, 2015). They seem to imply that such relationships were not used anymore in later periods. Conversely, studies of the mid-19<sup>th</sup> century have often been looking for the roots of 20<sup>th</sup> century modernity (e.g. modern banks and corporations) rather than trying to track what happened to the common practices of 18<sup>th</sup>-century trade (see e.g. the survey by Lemerrier & Zalc, 2012).

We therefore focus on the 1750-1850 period in order to test the common, if implicit, assumption that it was the period when trade had become more modern by becoming less personal, and especially less embedded in families or ethnic communities (Hypothesis 0). We focus on France, so as the start this pilot study (however, many of the relationships we study involve other countries). In addition, France is an interesting case because the new legal system established by the Revolution (e.g. the abolition of guilds in 1791) and the Napoleonic codification of the 1800s (making law and justice generally more accessible) are generally considered as having promoted more impersonal market relationships.

*Hypothesis 1: embeddedness and formalization as complementary resources, not substitutes*

There are of course exceptions, in the historical (and sociological) literature, to the implicit endorsement of North's grand narrative: they have provided us with alternative hypotheses to test. We found Hypothesis 1 most clearly articulated by Jean-Pierre Hirsch (1991), one of the first French scholars to study our period as a whole. For example, he insisted on the importance of names as signals for trust well into the 19<sup>th</sup> century. At the same time, he warned against an interpretation of the domination of family partnerships in terms of interpersonal trust or adherence to family norms: why would families be formalized as partnerships if family norms already made contracts self-enforcing? Our Hypothesis 1 is therefore as broadly defined as Hypothesis 0, and contradicts it in stating that formal and personal foundations of trust were generally used as complements, rather than the former gradually or brutally replacing the latter. A radical version of this hypothesis would state that it has always been the case. It could also be argued that the 18<sup>th</sup> and 19<sup>th</sup> centuries represented a transition in this regard, in that new, more formal tools were used as complements to older social norms (Chandler, 1977 gave a version of this when commenting on the reliance of 19<sup>th</sup>-century merchants on family ties).

*Hypothesis 2: beyond embedded and anonymous relationships: relationships based on repeated interaction*

Hypotheses 2 and 3 question the dichotomy between personal relationships (generally thought of as embedded in a family or ethnic community) and anonymous relationships by putting forward other types that might have become more common during the industrial revolution. Hypothesis 2 focuses on relationships that are created by repeated economic interactions in a context of division of labor. It comes from the literature in economic sociology that puts forward “weak ties,” and generally warns against the “over-socialized” and “under-socialized” visions of economic exchange, which Greif's and North's ideal types embody (Granovetter, 1985). More specifically, sociological research has demonstrated the importance of economic relationships that are not embedded in relationships of a different type (family or friendship ties, etc.), but that are not mere anonymous interactions either – namely repeated economic interactions, creating specific mutual expectations (e.g. Uzzi, 1996, 1997). A recent paper by Gervais, 2012, based on 18<sup>th</sup>-century merchant accounts points in the same direction when he focuses on the task of maintaining such long-term relationships, created in the context of a specialization of partners according to the type of goods traded. Hence, we hypothesize that if relationships that were embedded in families or ethnic communities were less important in the 19<sup>th</sup> century, it might point at a different type of specific, interpersonal relationships, rather than at anonymous “arm's length market relationships” (Uzzi, 1996). We are especially interested in the idea that such relationships could be rooted in complementarity, or division of labor, i.e. they would occur between partners who considered themselves as quite different from one another – contrary to the “personal” relationships of Greif, that are generally thought of as occurring among fellows (homophilic relationships, in sociological phrasing).

### *Hypothesis 3: beyond embedded and anonymous relationships: relationships based on a broad homophily*

Finally, Hypothesis 3 is taken from Trivellato (2009, esp. Chapter 7). Her book more generally informed our research (she also points to the importance of powers of attorney, esp. in Chapter 6, and discusses the complementarity between personal and formal tools of trade in her Conclusion), and we were especially interested in her assessment of the social and linguistic norms of correspondence. She shows that knowing the right way to write a business letter could foster the transactions between trans-Oceanic partners with different faiths and native languages. Being a merchant was something that could be learned (there were more and more handbooks of correspondence during our period), and, once learnt, could be considered as a signal of trustworthiness – certainly not a sufficient condition, but a necessary one. Whereas merchant correspondences and circulars are obviously better sources than forms of proxy to directly test this hypothesis, it provides here an interesting alternative to Hypothesis 2. Rather than a move from homophily (in the family or community) to division of labor with repeated interactions (Hypothesis 2), we could observe a move from homophily based on (more or less) innate qualities to homophily more broadly based on the fact of recognizing each other as a genuine merchant.

## **II. From powers of attorney to forms of proxy to datasets**

### *Powers of attorney as a type of contract*

An obvious caveat to considering only those powers of attorney that we can observe, i.e. notarized forms of proxy, as the direct expression of trust is the fact that a power of attorney could be granted, and considered as such in courts, without being notarized. It is therefore possible that the vast majority of powers of attorney did not survive, or even were never written, or written as such. An oral order, or the order to do something included in an ordinary letter, could be considered valid by a court, both before and after the French Revolution; and one way to make the contract more official by paying less than a notary fee was to have it registered (*acte sous seing privé*), which left very few interesting traces in the archives. Therefore, what we are working on is possibly a small, non-representative subsample of the contracts a lawyer would consider as powers of attorney. However, some powers had to be notarized (hence the large number of powers for transactions on annuities found in the archives) and it is likely that others often were, because of the stakes involved (such as general powers to manage the property of a person). It is also possible that some powers were notarized because one of the parties thought that going to court could be an option. Whereas non-notarized contracts could be admitted as evidence, the many ongoing jurisprudential debates, both before and after the Revolution,<sup>3</sup> suggest that leaving to judges the application of default rules could be a risky strategy and that devising more complete, official contracts could have its virtues. In this case, finding a notarized contract would point not to an especially high level of trust between the parties, but to some measure of distrust (e.g. because of too little information, or little likelihood of sanction by social norms) that had to be mitigated by a reliance on the legal system as a credible threat of sanction. The data at hand does not make it easy to discriminate between these interpretations as to which part of powers of attorney we are actually observing, although the length

---

<sup>3</sup>Hundreds of pages were written on the topic. This part of our paper is mostly based on Pothier, 1821, Troplong, 1846, Dalloz & Dalloz, 1853, and the surveys by Xifaras, 2004, and Pfister, 2011.

and phrasing of forms gives us some hints (see Part III).

18<sup>th</sup> and 19<sup>th</sup>-century lawyers, like their counterparts today, were not worried by such distinctions: for them, powers of attorney were based on trust, and even on friendship – the Latin *amicitia*, a voluntary relationship among equals. Some peculiar legal features of this contract, such as the fact that it automatically ceased with the death of the proxy, and that the principal or agent could renounce it at any time, could only derive from this specifically interpersonal character. If one of the parties did not feel trust anymore, the contract could be terminated. However, 19<sup>th</sup>-century lawyers had noticed that actual contracts did not always follow this template of disinterested, reciprocal gift for gift, where a friend would act as proxy for his friend while he was travelling. In fact, powers of attorneys expressing a division of labor had existed for ages – if only for attorneys-at-law; and those had been compensated, whereas the fact that no money changed hands was still viewed as part of the legal definition of the proxy contract in the early 19<sup>th</sup> century. Lawyers had therefore devised ways to maintain the boundary, especially between powers of attorney and employment for wages (*locatio conductio*). Those were essentially social boundaries: the money that was given to a barrister for his services was considered as a gift, a fee (*honoraire* – a word that refers to honor), not a wage. This boundary separated the nobles and the professions, on the one hand, from the merchants and practitioners of the mechanical arts, on the other. It however proved more and more difficult to protect. Whereas some lawyers, esp. Raymond-Théodore Troplong, complained more and more that merchants had stripped the contract of its Roman law nobility, others, esp. Jean-Baptiste Duvergier, who was close to the economists of the time, embraced modernization and looked for a new legal definition of powers of attorney (Xifaras, 2004). (They came up with the legal notion of representation, strengthening the idea that the actions of the proxy could directly be considered as actions of the principal, without a specific endorsement by him – something that was still controversial in the 18<sup>th</sup> century).

Jurisprudence evolved by distinguishing between two types of power of attorney, depending on the type of task, the social attributes of the parties and their pre-existing relationships. When the power was deemed more commercial and/or professional according to these criteria, the proxy had e.g. to report more precisely, but could also sue the principal to be paid; the opposite was true when the parties were related by “kinship or attachment” (Daloz, 1853). This differentiation did not only occur in France: continental lawyers read each other and influenced new Codes; in Prussia in 1794 and Austria in 1811, the divide had been codified (Pfister, 2011, 16). Powers of attorney between merchants were an interesting limit case in this respect: they were mercantile, but they were given among equals, without the clear hierarchy or division of labor, thus putting the powers given to traveling salesman or stock brokers unequivocally in the second type; and merchants (*négociants*, as opposed to mere traders) were part of the higher class of society.

This summary of legal disputes matters to us in that it shows that the notion of personal vs. modern/anonymous powers of attorneys, and of an evolution from the former to the latter, was important for at least some of the contemporaries and had practical legal consequences. It also points out that modern powers were thought of in terms of a division of labor (a functional rather than personal relationship), not of anonymity – contemporaries seem to have believed in our Hypothesis 2, rather than 0.



### *Data collection and description of the variables*

As little, if anything, is known about the uses of powers of attorney, our aim in this paper is mostly descriptive. We want to understand who used which type of proxy for which type of tasks, and what degree of discretion the proxies enjoyed. Our questions and hypotheses, as well as contemporary discussions among lawyers, put emphasis on distinctions (or lack thereof) between powers given by merchants, or for commercial purposes, and other powers; and on the existence (or non-existence) of other types of relationships between the principal and the proxy.

As other types of powers of attorney left little archival traces, we could only create a sample of notarized forms of proxy. Because we are interested in changes occurring between the 18<sup>th</sup> and the 19<sup>th</sup> centuries, we decided to compare three samples, in 1751, 1800, and 1851. We chose 1751 and 1851 because digital databases (ARNO) of all Parisian notarial records provide some context. 1800 seemed like a natural choice, between the two other data points and before codification.

In addition, we compare practices in four French cities: Paris, Lyons, Marseilles, and Lille. Each one had an important commercial activity (focused on different regions of the world, and tied to different industries) and prominent merchants in our period (see e.g. Bergeron, 1978; Chassagne, 2012; Carrière, 1973; Hirsch, 1991). Atlantic ports could of course also have been included; our choice was partly driven by our geographical location, and by consistency with other parts of the research project, based on the study of merchant correspondences in the same cities. By focusing on four, instead of one city, we tried to produce slightly more general results, and we were interested in the possibility of local customs in regards to the phrasing of forms of proxy. As the law changed a lot during our period and the jurisprudence was unsettled on many important points, we considered that it was likely that the notaries followed templates that, in their view, would better protect their clients. Such templates could of course be widely disseminated by the many books offering examples of notarial contracts. They could also be specific for one notary, or shared in a commercial city. Our sampling scheme, which includes three notaries for each place and date (whenever possible), was designed in order to allow us to identify such patterns. In fact, sampling notaries in our four cities also provided us with a wide variety of forms of proxy written in different place by different notaries, although in small numbers for each place and notary. This is due to the fact that some proxies deposited their forms with their notary (having him certify it), even when it had been written by the notary of the principal. Approximately 19% of our sample consists of such “deposits,” (*dépôts de procuration*) i.e. forms of proxy that did not originate with the notary in whose records we found them; 15% of our contracts were not originally written in one of our cities.<sup>4</sup> On the one hand, this decreases the size of our sample drawn from the original four cities; on the other hand, it provides us with interesting diversity at the level of more anecdotal evidence.<sup>5</sup>

We chose three notaries in each city, for each year, and collected all the forms of proxy that he registered that year, rather than using a random sample of all notarial records. This last solution would not have been practical except for Paris in 1751 and 1851. In addition, studying only some notaries allows us to discover patterns: not only contract templates, but also principals, and mostly proxies, who are present in several contracts during the year that we study. We plan to use the notaries'

---

<sup>4</sup>In addition, we found forms of proxy that had been archived by the notary along with the contract signed by the proxy (mostly sales of land, in Lille). In cities other than Lille, it was not possible to systematically look for such forms of proxy included in other records. What we mostly deal with, therefore, are the forms of proxy which were notarized and archived by the notary who wrote them, and those which were deposited, as such, with a different notary.

<sup>5</sup>In the tables below, the names of our four cities indicate the place where we found the contracts, not necessarily the place where they were originally written; the difference between the two is however marginal.

directories for the years before and after in order to get more information about such principals and proxies, in order to check for repeated interactions.

Our aim was to collect ca. 300 forms of proxy for each city and date (ca. 100 per notary), in order to be able to perform statistical tests. We have not yet, however, coded data on all those ca. 3,000 cases (less than 3,600 because Lille produced fewer records). What we present here are preliminary results, based on a small sample of ca. 600 forms of proxy (Table 1), that is reasonably spread over other notaries and reasonably random for each. All our results are therefore extremely provisional: what we offer for discussion is our hypotheses, our methods, and our interpretations (conditional on the fact that the results are confirmed afterwards). We will soon have results for all our variables on a slightly wider sample of ca. 800 forms of proxy, with a better representation of the different dates, places, and notaries. In addition, we are going to collect data on a shorter list of variables – those that seem the most interesting in our preliminary results – for the whole sample; we expect to have results at this scale during the summer of 2016. As Table 1 shows, our sample is now biased toward some cities and dates. We have weighed our calculations so as to check that it did not influence too much our current results. The weighed versions, not shown here, confirm the significant contrasts that we found with the unweighed versions. Table 2 sums up the information we have coded so far.

Table 1: Archival origins of the forms of proxy that have already been coded

City\Year	1751	1800	1851	Total
Paris	28	28	39	95
Lyons	40	125		165
Marseilles	99	48	61	208
Lille		42	100	142
Total	167	243	200	610

Boxes and notaries: Paris: Archives Nationales, MC/ET/X/495-198 (*étude 10*, 1751), MC/ET/X/838-840 (*étude 10*, 1800), MC/ET/X/1216-1220 (*étude 10*, 1851), MC/ET/XLVIII/97-102 (*étude 48*, 1751), MC/ET/XLVIII/428-433 (*étude 48*, 1800), MC/ET/XLVIII/789-793 (*étude 48*, 1851). Lyons: Archives départementales du Rhône, 3E/9688 (Fromental, 1751), 3E/4698 (Durand, 1751), 3E/22990 (Coste, 1800), 3E/9197 (Caillat, 1800), 3E/12868-9 (Voron, 1800). Marseilles: Archives départementales des Bouches-du-Rhône, 353E/155 (Bègue, 1751), 362E/189 (Coste, 1751), 362E/245 (Pin, 1800), 370E/84 (Reynaud, 1800), 364E/640 (Giraud, 1851), 390E/474-477 (Raynouard, 1851). Lille : Archives départementales du Nord, J1318/3 (Salembier, 1800), J1472/20-21 (Coustenoble, 1800), J1464/2 (Demilly, 1800), J327/17 (Desrousseaux, 1800), 2861/135 (Leroy, 1800), J953/49-50 (Watrelos, 1800), 12E48/172-174 (Lebigre, 1851), 2E83/34-36 (Gruloy, 1851), 2E86/39 (Saint-Léger, 1851)

Criteria for the choice of notaries: as we had to choose three notaries in each city (except for Lille in 1751 and 1800, where there were few surviving notarial records and even fewer forms of proxy), we decided to try to choose those who would have a lot of merchants among their customers. For Paris, we used the 1751 and 1851 databases to choose two notarial offices (*étude 76* and *étude 10*) in which forms of proxy were plentiful, seemed to include more commercial and financial tasks than average (debt recovery, dealing with annuities, managing companies), and to have had more merchants as protagonists than average (although information on this point was sketchy, especially for 1751). In addition, we included *étude 48*, which had been pointed out by Hoffman et al., 2000, as the notary of the banking/commercial/stock exchange neighborhood. For Lyons, we used the notaries' addresses to

select those who were located in the commercial center of the city, roughly between *place Perrache* and *place des Terreaux*. Then we used a combination of practical criteria (e.g. we excluded the notaries who had too few records) and cursorily identifying those with many merchants involved in forms of proxy when browsing through records. For Marseilles in 1800, we were able to use tax records in order to find which notaries produced a lot of protests on bills of exchange, the hypothesis being that those were the merchants' notaries. We focused the data collection on them. For 1751 and 1851, we tried to collect among their predecessors' and successors' records and, when this did not produce a lot of forms of proxy involving merchants, we used addresses to locate better candidates. Finally, for Lille in 1851, we were able to code the social positions of all principals and proxies, so as to choose notaries who had a lot of merchants among their clients, and various types of proxies.

Table 2: Descriptive statistics (N=610)

<i>Variable / category</i>	<i>%</i>
<i>Type of form</i>	
Form of proxy written by the notary	75
“Deposit:” form of proxy written by a different notary	19
Other	6
<i>Forms not written in any of our four cities</i>	
Written somewhere else in France	10
Written in a foreign country	5
<i>Length of form</i>	
Less than one page	25
One to two pages	63
More than two pages	12
<i>Includes restrictions to discretion for at least one task</i>	7
<i>Final clause: as the principal would have done in person</i>	21
<i>Final clause: do whatever will be necessary</i>	21
<i>Includes substitution clause of any type</i>	58
<i>More than one principal</i>	17
<i>The proxy appears at least four times in our sample</i>	11
<i>Completely blank form</i>	25
<i>Originally blank form that has been filled in with the name of a proxy</i>	8

Table 2: Descriptive statistics (N=610) (continued)

<i>Social position of the principal(s)*</i>	
unknown	30
merchant	24
other eco	16
propertied	13
civil servant	8
other	5
lawyer	2
employee	2
financial	1
<i>Social position of the proxy*</i>	
blank	25
proxy known, but position unknown	21
merchant	12
lawyer	12
financial	12
other eco	8
propertied	4
civil servant	2
other	2
employee	2
<i>Combination of positions of the principal(s) and proxy (1)*</i>	
merchant to blank	9
merchant to merchant	5
merchant to other	10
other to blank	16
other to merchant	7
other to other	53
<i>Combination of positions of the principal(s) and proxy (2)*</i>	
ECO to blank	14
ECO to ECO	16
ECO to other	14
other to blank	11
other to ECO	19
other to other	27
<i>Combination of genders of principal(s) and proxy</i>	
Man to man	46
Man to blank	17
Woman to man	15
Man and woman to man	7
Woman to blank	6
Man to woman	5
Man and woman to blank	2
Woman to woman	1

Table 2: Descriptive statistics (N=610) (continued)

<i>Explicit relationship between principal(s) and proxy</i>	
None	81
Other kin	10
Spouse	6
Other (employer-ee, neighbors, members of a partnership, etc.)	3
<i>The form of proxy was originally recorded in...</i>	
The city where the principal lives	32
The city where the proxy lives	18
The city where both live	48
A city where neither the principal, nor the proxy seem to live	3
<i>Main task to be performed by the proxy (exclusive from each other)</i>	
Recovering debts	28
Dealing with inheritance	17
Selling annuities or collecting interest	17
Managing land and/or buildings	10
Selling land and/or buildings	6
Other commercial matters	5
Other non-commercial matters	4
Representation in court	4
Managing a company	3
Selling something else (mostly merchandise)	3
Doing everything for the principal	2
<i>tasks explicitly to be performed by the proxy (each form of proxy can include many of these tasks)</i>	
Representation in court	50
Recovering debts generally, or receiving sums from a sale	38
Recovering specific debts or receiving specific sums	30
Dealing with one specific inheritance	18
Settling accounts: all the accounts related to the main task	17
Paying: all the sums related to the main task	17
Selling land and/or buildings	16
Selling annuities	11
Selling merchandise or other items	9
Managing land and/or buildings: all the properties of the principal	7
Dealing with a bankruptcy (as creditor)	7
Paying: specific sums to specific persons	6
Receiving interest from annuities	6
Other non-commercial matter (e.g. related to mortgage)	5
Managing land and/or buildings: one specific land or building	4
Buying something (land, merchandise, etc.)	4
Settling accounts: with one or several specific persons	4
Other commercial action (e.g. related to patents, lending money)	3
Petitioning the authorities	3
Managing a company	3
Other family business (dealing with curatorship, etc.)	2

Managing land and/or buildings: one type of lands or buildings	2
Borrowing	2
Dealing with a winding up	2
Dealing with inheritance generally	1

\* merchant: called *marchand* or *négociant* or *commissionnaire* in the source (denotes wholesale activity and social respectability); financial: bankers and brokers; employees: only those employed in shops or by merchants; other eco: manufacturers, workers, shopkeepers, master artisans, captains of ships, etc.; lawyers: attorneys, notaries, their clerks, judges, bailiffs, etc.; civil servants: in the military or the bureaucracy; propertied: denotes the French *propriétaires* and *rentiers*, those who live from the income of their lands or annuities. ECO: includes merchant, financial, employees, and other eco.

### III. Writing powers of attorney to give maximal discretion: beyond the embedded trust vs. formal contracts dichotomy

If we take Hypothesis 0 at face value, the evolution from embedded (commercial) relationships, enforceable through collective sanctions, to more formal (commercial) relationships enforceable thanks to legal institutions should appear in our sample. More precisely, it seems likely that powers given to members of the same family or community would be less lengthy and detailed, whereas powers given to complete strangers should try to provide a more complete version of the contract, and especially include clauses limiting the discretion of the proxy. As we only observe notarized powers of attorney, i.e. the most formal of all and those that might have been intended to be used as evidence in courts, it would also seem likely that we generally find a lot of lengthy clauses limiting the proxies' discretion.

#### *The length of contracts: modernization does not imply more formalization*

Of course, the size of our sample does not yet allow us to properly test these consequences of Hypothesis 0, especially as it should be done by controlling for the main type of task to be performed. The length of the contract indeed varies very much according to this type of task (Table 3). The more general the power given to the proxy, the longer the contract that has to enumerate all the tasks deriving from it. For example, managing land included managing harvests, tenants, repairing buildings, etc. Half of the contracts mentioned the possibility to go to court (generally listing all sorts of courts that could be used and all the stages of the judicial process), whereas representation in court was the main object of only 3% of our forms of proxy. Notaries apparently considered that it was better to enumerate all the tasks that the proxy was authorized to perform, even though most forms began with the phrase "*procuration générale et spéciale*" that was intended to cover for tasks derived from the main ones, and ended with generalization clauses that even more explicitly stated that actions not explicitly described in the contract were also authorized (e.g. "whatever the case might require, without further power of attorney": *tout ce que le cas requerra, sans avoir besoin de plus amples pouvoirs*).

Table 3: Length of the contract according to the main task to be performed

Task\Length	≤1 page (%)	1-2 pages (%)	>2 pages (%)	Total (N)
Doing everything	0	53	47	100 (15)
Inheritance or managing land, buildings or company	11	65	24	100 (184)
Other	32	63	5	100 (411)

*Chi-square test: prob < 0.001*

*Fisher exact test (rows 1 and 2 vs. 3, columns 1 vs. 2 and 3): prob < 0.001*

We found no evidence, inside each of the categories listed in Table 3, that contracts between spouses, kin, employer and employee, etc. were less detailed – or that merchants, as principals, signed shorter or longer contracts than average. The main correlation that we find is an evolution between our three dates (Table 4). Forms of proxy were significantly longer in 1800 than in 1751, but in 1851, their length had decreased – without coming back to the level of 1751. This seems to point to changes in legal context rather than in the relationships between principals and proxies. In 1800, the revolution had abolished many Old Regime laws, but it was not necessarily clear which remained in force, and codification was not yet finished. This might explain why notaries wrote longer contracts, at least in the case of powers of attorney. In 1851, the law was more stable and well-known, although jurisprudence was far from settled. We find no evidence of linear modernization here.

Table 4: Length of contracts for the simplest tasks according to the year

Task\Length	≤1 page (%)	1-2 pages (%)	>2 pages (%)	Total (N)
1751 Other (see Table 3)	50	44	5	100 (117)
1800 Other (see Table 3)	13	85	1	100 (143)
1851 Other (see Table 3)	34	56	9	100 (151)

*“Simplest tasks” includes all main tasks except doing everything for the proxy, managing inheritance proceedings, land, buildings or a company.*

*Chi-square test: prob < 0.001 – the same tendencies are found for more complex contracts, but the contrasts are not significant*

#### *The phrasing of contracts: maximum discretion*

If we turn to the phrasing of contracts, what is striking is the fact that long clauses were used to give *more*, not *less* discretion to the proxies. Old Regime lawyers such as Pothier (1821) explicitly discussed the interpretation of prices given in powers of attorney – stating that a selling price should be interpreted as a minimum threshold and a buying price as a maximum threshold. (Lopez, 1976, described such clauses in medieval contracts.) Pothier also insisted on the fact that the principal would ultimately have to agree on the price paid or received. On the contrary, some of our contracts explicitly state, in the final clause, that the principal promises to “find anything the proxy will do agreeable” (*avoir le tout pour agréable*) or even that he or she ratifies in advance whatever will be done; and almost none mention specific prices. Only 7% of our contracts include any kind of restriction to the discretion of the proxy (e.g. he has to discuss with the principal before making some decisions), or specification of what is to be done (e.g. the length of leases the proxy has to decide on). On the contrary, many use long clauses that emphasize the discretion of the proxy, i.e. he can sell even

at a loss, or sign a settlement in a bankruptcy whatever the clauses. One of the most frequent phrases is “as he will find convenient,” and final clauses often add the idea that the proxy will have to do “as the circumstances will dictate” (*ce que les circonstances exigeront*) or “what will be necessary.” In 1851, we find shorter final clauses that seem to indicate that the discretion has become so routine that it does not have anymore to be paraphrased again and again (Table 5). They state “and generally do whatever is necessary” (*et généralement faire le nécessaire* or *tout ce qui sera nécessaire*). This seems to indicate the routinization of maximum discretion for the proxy.

Table 5: Final discretionary clause “do whatever is necessary”

Year\City	Paris	Marseilles	Lille
% in (1751 and 1800)	11	1	21 (1800 only)
% in 1851	57	28	54
% in Total (Total N)	31 (95)	9 (208)	44 (142)
Chi-square test prob	<0.001	<0.001	<0.001

Conversely, final clauses that explicitly stated that the proxy could do whatever the principal could have done if he or she had been present, or could have done “in person,” tended to disappear (Table 6). Interestingly, their frequency varied a lot between our cities in the 18<sup>th</sup> century, something we will have to try to explain; but it decreased everywhere afterwards (also in Lille, from 1800 to 1851). The Civil Code had clarified the fact that the proxy and the principal did not necessarily enjoy the same legal rights – a man could choose a woman as proxy, and vice versa, etc., but it is interesting to notice that our contracts already show a disappearance of this clause in 1800, before the codification. This evolution could be interpreted as a symptom of the wider realization of the fact that giving a power of attorney could in fact be a way to get something done that *you could not do in person* – so that you can be drawn to give a power of attorney even if you are present. The disappearance of the phrase “do all the things the constituent [the principal] would do if he/she was present” would be a symptom of a growing recognition, if not a growing actual use, of the power of attorney as a tool in a division of labor, as opposed to a transfer of tasks between equals due to a mere absence – the very thing that some 19<sup>th</sup>-century lawyers feared was happening. This type of division of labor could lead to choices supporting Hypothesis 0 (a more impersonal choice of proxies) or Hypothesis 2 (a choice of proxies based on professional skills, that could include repeated choices of the same proxy by the same principal).

Table 6: Final discretionary clause “whatever the principal could do in person”

Year\City	Paris	Marseilles	Lyons
% in 1751	4	83	35
% in (1800 and 1851)	0	11	8 (1800 only)
% in Total (Total N)	1 (95)	45 (208)	15 (165)
Chi-square test prob	ns	<0.001	<0.001



#### IV. Who were the proxies? Professional proxies vs. merchants

Moving from a description of the phrasing of contracts to a study of occupations and relationships between the principal and the proxy should help us to more directly test our hypotheses – even within the limitations of our current sample. Three points are interesting here: explicit mentions of relationships – directly relevant for Hypotheses 0 and 1; preferences for some types of proxies among merchants – connected to Hypothesis 3; and the presence of frequent proxies – to Hypothesis 2.

##### *Relationships between principals and proxies*

Having read a large quantity of notarized forms of proxy, we are confident that the types of relationships that could be recorded in the source (kinship ties in 16% of cases, including 10% of spouses; employer-employee, members of the same partnership, etc. in 3% of cases) were exhaustively included in the forms. (The exception is neighbors: the addresses showed, in some cases, that the two lived in the same building or street, which was not explicitly pointed out by the contract). This leaves us with a vast majority of cases without any explicit pre-existing relationship. Even if we exclude blank forms, which we will discuss below, 74% of powers did not mention any such relationship.

Of course, this did not mean that the 74% were completely disembodied, anonymous relationships. Apart from the possibility of repeated powers (Hypothesis 2, which we will discuss below), the obvious case is that of “friendship,” the idealtype used by lawyers to characterize powers of attorney. We can only state that the parties and the notaries did not use the vocabulary of friendship in any way, be it purely rhetorical or not, in the contracts; they did not give any hints either about citizenship, religion, or any other basis for communitarian solidarity. It is of course possible that many principals knew their proxies before giving them powers, and even were close to them. In addition, it could be argued that the closest the pre-existing relationship, the less the power would need to be notarized. This could be true because social norms would make formalization less necessary (by ensuring that there would be no dispute, or disputes would be dealt with inside the family or firm) or for legal reasons. For example, art. 1432 of the Civil Code explicitly stated that each spouse tacitly had the power to manager the other's property; 19<sup>th</sup>-century jurisprudence accepted oral powers without further proof if the principal and proxy were kin or “*commensaux*” (eating together i.e. presumably living in the same household: Dalloz, 1853). From this point of view, the fact that we find 16% of forms given to kin is rather interesting in terms of a demand for formalization of even the most embedded relationships (which would support our Hypothesis 1).

What we can more firmly state from our data – in addition to the fact that men giving notarized powers to women were rather rare occurrences– is that the relationships between principals and proxies, in the notarized contracts, did not significantly change from the 18<sup>th</sup> to the 19<sup>th</sup> century, and that merchants were not, in this respect, different from other social groups (Table 7). Moreover, Poisson (1966), studying Parisian records of the 1960s which were quite different from ours in terms of the tasks to be performed (no debt recoveries, inheritance proceedings, management of estates, but more sales and loans than in our period), found a similar share of forms of proxy given to kin (24%, including 11% between spouses; 40% of non-blank forms).

Table 7: Evolutions in the relationships between principal and proxy

Year\Relationship	Spouses	Other kin	Other	No explicit rel.	Total (N)
% in 1751	8	16	4	72	100 (118)
% in 1800	9	17	6	69	100 (164)
% in 1851	8	8	3	81	100 (127)
% in Total	8	14	5	74	100 (409)
% from merchants	3	15	3	80	100 (80)

Calculations exclude blank (and filled-in blank) forms

Hypothesis 0 does not appear to be supported in any way by our data on the explicitly stated relationships between principal and proxy. The pattern that would be worth exploring about these relationships is not their correlation with a period or social position of the principal, but the choice of different types or proxies for different types of tasks. Here, too, there are few distinctions at first glance: proxies in inheritance proceedings are only slightly more often members of the family (26% of cases) than others (22%). Dealing with annuities, a task often performed by professionals (brokers, bankers), is the only one with more than 90% of cases without an explicit relationship. The fact that 10 out of 20 of powers to manage a company are given inside the family, two to neighbors and one to an employee, however, would, if confirmed in a wider sample, deserve investigation. Management of a business is by far the type of power for which the most explicit ties are recorded. Anecdotal evidence from another source in this research, our study of printed circulars, hints at such general powers of attorney representing, in the 19<sup>th</sup> century, one step in commercial careers, used to further integrate young relatives, and sometimes long-serving employees, in a company before making them full partners.<sup>6</sup> A separate study of these wide-ranging commercial powers of attorney would help us to assess their role in testing possible partners, as well as to further explore Hypothesis 1, that seems very much supported by this use of a legal device to complement kinship ties.

### *Merchant proxies*

Forms of proxy do not inform us of the embeddedness of commercial relationships in friendship or communitarian ties. They however allow us to test our Hypothesis 3, i.e. a broad version of the language homophily found by Trivellato (2009). Does the mere fact of being a merchant matter to fellow merchants when it comes to choosing a proxy? In our period, the words *marchand*, *négociant*, and *commissionnaire*, which we have used to define the category “merchant”, were still used with Old Regime social statuses in mind: they denoted wholesale operations and some degree of recognition by fellow merchants as being part of a local elite (Carrière, 1973). Therefore, if merchants as principals exhibit some preference for merchants as proxies, whereas commercial occupations generally (our category ECO) do not show the same degree of homophily, we could interpret this as denoting preference for a social group, not only for the skills associated with persons performing commercial transactions. Such an interpretation should, of course, be taken with much caution at this stage, and

<sup>6</sup>See e.g. a brother and employee (Centre d'archives du monde du travail, 69AQ/3, sent to Foache from Le Havre, 1 January 1824), a brother-in-law (Archives municipales de Marseille, Fonds Roux, LIX-164, sent from Bordeaux, 1 June 1816), a son (Le Havre, 1 July 1826) and long-time employees (Le Havre, 1 January 1828, 28 August 1817, 10 April 1830, 1 March 1824) promoted to proxy (sometimes explicitly as a “testimony or our trust”), another son promoted from proxy to partner (Le Havre, 1 January 1827), a long-time proxy of the father, than of the son, finally becoming a partner (Le Havre, 1 June 1814).

we will look for confirmation in a closer study of some cases (i.e. by looking for our “merchants” in other sources to try to assess their wealth, reputation, exact location in the city, etc.; and by looking for reciprocated principal-proxy ties in our notaries' inventories for other years). Of course, we will also use multivariate statistics on the whole sample, because merchants clearly used merchants more often as proxies to recover debts (18 cases out of 27 in our current sample) than to deal with inheritance or sales of land (3 cases out of 11): skills as well as social proximity played a role. With this due caution, we can still state that no other category exhibits the same degree of preference for proxies drawn from the same category, or for merchants as proxies, and that the preference for merchants among merchants is much stronger than the general preference for commercial occupations among commercial occupations (Table 8).

Table 8: Occupations of principals and proxies

Principal\Proxy	% merchant	% ECO	% same cat. as principal	Total N
merchant	47	66	47	68
financial	33	100	67	3
employee	29	86	0	7
other eco	15	74	28	53
<i>ECO</i>	33	71	71	131
propertied	6	49	14	49
civil servant	13	47	13	30
lawyer	9	64	27	11
other	13	56	13	16
<i>Total</i>	22	63		329

Calculations exclude blank forms but include filled-in blank forms. Unknown occupations are excluded on both sides. ECO is a sub-total of the four categories above (merchant, financial, employee, other eco).

Chi-square test on merchant vs other x merchant vs other table: prob <0.001. Chi-square test on ECO vs other x ECO vs other table: prob=0.01.

An interesting anecdotal case hints at the fact that persons signaled as merchants could be considered as better proxies than others by fellow merchants. In our study of printed circulars, we found a former merchant (he pointed out that he even had been a commercial judge in Nîmes and Marseilles) advertising for his new company that offered services of representation in courts and, more broadly, before the authorities. He stated both that this sort of business required a full-time dedication and that a former merchant would provide better services than any other person. Of course, he would have to use licensed attorneys to actually go to court, but his skill as a professional proxy, knowledgeable about the needs of merchants, would be to find the best ones.<sup>7</sup> This Bruguière argued against using active merchants as proxies, at least in the context of litigation, because it would harm local friendships; but he used the mutual recognition among merchants to promote his new business. We do not know whether he succeeded – the Lyonese bank in the records of which we found his printed circular did not answer –, but his rhetoric points to both the signaling power of the label “merchant” among peers and to the possibility of envisioning the role of proxy as a full-time job.

<sup>7</sup>Archives municipales de Lyon, Fonds Veuve Guérin, 4J331, sent by Bruguière aîné, “agent de commerce” in Marseilles, 1 May 1809.

### *Professional proxies*

As we have seen, our sampling design led us to keep an eye on the specific contract templates that could have been used by each notary. In addition, a preliminary investigation in the ARNO databases had shown that some individuals acted as proxies in a lot of contracts drawn in the same year;<sup>8</sup> sampling the complete records of a few notaries seemed to be a way to identify such cases. Even if we have only coded a small portion of forms, we are already able to confirm the existence of such frequent proxies. In some cases, their legal or financial profession required them to use forms of proxy; others seem to have been almost full-time attorneys-in-fact, performing various tasks for various principals.

Two brokers at the Lille stock exchange in 1851, Frédéric Tattet fils and Joseph Jules Blerzy, used several different notaries, bringing their own standard forms of proxy with them: all their contracts look the same, whatever the notary. In Paris, at the same date, the banker Ferrère-Laffitte was a proxy in many contracts dealing with the sale or collection of interest from annuities, like Tattet and Blerzy. Unlike them, he used many slightly different templates according to his principals' notaries; one of the templates, coming from a notary in Jersey, was even printed. Some professional proxies therefore used notaries to certify their contracts, but did not need them to provide templates.

If we move from questions on the phrasing of contracts to address more directly our concerns about the relational base of these contracts, however, the most interesting frequent proxies are not those who dealt with annuities. The fact that those appear in large numbers of contracts in our sample in 1851, but not in 1751 and 1800, could be an artifact related to the growing formalization of proxies used for this sort of task, or to our choice of notaries who happened to have annuities brokers favoring notarial certification among their clients. If we focus on proxies appearing at least four times in our sample, along with our three brokers (with a total of 56 contracts), we find two other interesting cases: Étienne Maurice Olivier, a notary's clerk, and Louis Montagne, only described as a "propertied man", both living in Lille, were proxies in at least five and four contracts respectively in 1851 (we found Montagne's in the records of one notary among the three in our sample, Olivier's in two). Their repeated roles as proxies were not a direct consequence of their profession, as with Tattet, Blerzy, and Ferrère-Laffitte. They performed diverse tasks related to the management of inheritance proceedings and the sale of lands and buildings. Conservative lawyers, as well as 19<sup>th</sup>-century publicists generally, were very much concerned about this type of individuals, whose only business was to manage the business of others. As their role as proxies would necessarily call for compensation beyond expenses (although the forms never explicitly stated it), they threatened the Roman definition of the power of attorney as voluntarily accepted from a friend. Often called *agents d'affaires* (business agents, with a negative connotation), they would perform all sorts of tasks as proxies, or in other variously defined positions, e.g. arbitrators for commercial courts, trustees in bankruptcies, etc. Historians have sometimes mentioned their importance and bad reputation (Boigeol et Dezalay, 1997), but very little is known about this social group. Identifying individuals such as Olivier and Montagne and looking for their other contracts in the notaries' directories, beyond the one-year samples, would offer insight on business agents; it would also allow us to discuss our Hypothesis 2. Did the same principals repeatedly choose the same proxies for various tasks, which would confirm

---

<sup>8</sup>The database only provides a clear identification of the proxy for 400 out of 8,500 cases in 1851. Among the 400, 12 individuals appear at least three times. Three were lawyers, three clerks of notaries, three "propertied men", one notary, and two occupations are unknown.

this hypothesis? We do not know yet, but we already find one principal, the Parisian “propertied man” Charles Desbrochers des Loges, giving two separate powers to Olivier, for the sale of agricultural land, then the management of inheritance proceedings, in June, then August 1851.<sup>9</sup> We do not know either whether merchants used such business agents as proxies for their business, or generally more or less often than other social groups (among Olivier's principals, there are a group of associated merchants and the wife of a wine merchant, along with civil servants, propertied men and a milliner). Finally, we need more cases to assess whether frequent proxies were also used in 1751 and 1800 – an important point as we deal with hypotheses on modernization.

**V. Blank forms of proxy and substitution clauses: who chose the proxy?**

Finally, one of our most interesting results is the high proportion of notarized forms of proxy that were either blank (25%: no name or function for the proxy, but a blank space) or originally blank and filled in later (8%: the name, and often occupation and address of the proxy are in a different handwriting; two thirds of the filled-in blank forms of proxy are “deposits”: the proxy filled in his name, then had the form recorded by his notary). 19<sup>th</sup>-century lawyers made little or no mention of such a practice. Conservatives among them would certainly have deemed it a betrayal of the original idea of the power of attorney, typical of modernity and/or merchants. However, it is difficult at this stage to find a temporal pattern in our data, except maybe in Marseilles (Table 9). Moreover, Poisson (1966) found a similar share of blank forms in notarial records of the 1960s. It is likely that there was no modernization in this respect, at least from the 18<sup>th</sup> century onwards (which tends to lessen the support for our Hypothesis 0).

Table 9: Evolutions in the use of blank forms and substitution clauses

Year\City	Paris	Marseilles	Lyons	Lille
% in 1751	36//43	26//62	33//58	unknown
% in 1800	4//89	33//58	40//61	29//45
% in 1851	10//90	66//62	unknown	29//33

For each cell: Blank//Substitution

Both blank forms and filled-in blank forms are included. Both general and partial substitution are included

---

<sup>9</sup>Archives départementales du Nord, 2E48/173 (deposit of 7 July 1851) and 174 (deposit of 10 November 1851).

*Substitution clauses: a chain of proxies*

Observing the use of substitution clauses leads to the same conclusion (Table 9). Such clauses, which did not arise a lot of scholarly attention either, allowed the proxy to choose another proxy who would perform all or some of the tasks included in the power of attorney. Ca. 50% of the forms in our sample included a final, general substitution clause, and ca. 25% (sometimes the same) mentioned a specific task that could be performed by a person chosen by the proxy. In the latter case, the person chosen by the proxy would, in most cases, represent the principal in court, or perform transactions for him/her at the stock exchange: tasks which only a licensed solicitor/attorney/barrister (*avocat, avoué*) or broker was authorized to perform. It means that it was possible to choose a non-professional as proxy for a general power of attorney, even if the general task to be performed included sub-tasks that would have to be subcontracted to professionals; and that many principals left the choice of these professionals to their proxy.

In the frequent case of a general substitution clause, the proxy was only the first person in a chain of delegation of powers. He or she was entitled to choose someone else to perform all or part of the general task described in the form. Indeed, we found 15 substitution contracts in our sample of 610 forms of proxy, i.e. forms in which the first proxy transferred powers to a second one, without any explicit intervention of the principal. It is likely that many other substitutions occurred without being notarized, especially when they were partial and/or provisional.

Logically, general and partial substitution clauses were more often found in the longest contracts (more than one page). It also seems that they were a bit more frequent when commercial, rather than civil tasks were described (Table 10, if we take into account the length associated with each task in interpretation), although this would have to be confirmed by a wider sample. Merchants, as principals, did not however use this clause more often than others.

Table 10: Use of substitution clauses depending on the main task in the power (%)

Other non-commercial matter	27	Dealing with inheritance	59
Representation in court	36	Managing land and/or buildings	66
Other commercial matter	40	Recovering debts	66
Selling land and/or buildings	46	Managing a company	75
Selling annuities or collecting interest	50	Selling-other (mostly merchandise)	76
<i>Total</i>	<i>58</i>	Doing everything for the principal	<i>93</i>

*Includes general and partial substitution clauses*

This qualifies the relational interpretation of powers of attorney as symptoms of trust that we find both among 19<sup>th</sup>-century lawyers and among colleagues today. A form of proxy including a substitution clause meant that the proxy who had been chosen by the principal was entrusted not so much to perform the task, or all of the task, as to find reliable persons to do so. This also qualifies the sharp divide built by contemporaries between powers given among equals and those given to professionals, as the former could be a first step toward the latter. It points in the general direction of our first hypothesis: the actors apparently used forms of proxy in ways that allowed them to leverage both personal relationships and professional skills.

### *Blank forms of proxy: the notary as intermediary?*

Blank (and filled-in blank) forms can be interpreted in a similar way, in that drawing a form of proxy is just one step in a relational chain (Grossetti et al., 2011), not the legal expression of an isolated relationship between two persons. Contrary to our findings regarding substitution clauses, merchants (as principals) used blank forms more often than the other categories. 47% of our forms of proxy in which the principal was a merchant were blank, as opposed to just 29% when the principal was not a merchant (chi square prob < 0.001). It is all the more interesting because using a blank form could be considered as a deliberate choice by the principal, whereas inserting a substitution clause could be something the notary did or did not suggest to all his clients and the clients did or did not accept. There is little variation in the use of blank forms according to the task to be performed: perhaps surprisingly, percentages are the same for the management of inheritance proceedings and the recovery of debts.

Why would principals, especially merchants, use blank forms, then, and why notarize them? It is likely that in many cases, it had something to do with the place in which the task was to be performed – something that we have found surprisingly difficult to code. Perhaps the principal did not know that place well, but it was the place where the deceased had lived, or the debtor was currently: it might then be useful to find a still unknown proxy there, rather than use someone known by the principal but located in the wrong place. For example, Jean-Charles Galhaut, a merchant in Amiens, head of the Galhaut & Thibaut company, wanted to recover 2,000 FF [equivalent of the yearly wages of a clerk] from a Lyonnaise company, for merchandise he had sold them and for which they had not paid. His blank form of proxy for this task was recorded in Lyons almost one year after he had signed it, filled in with the name of a company, not a person as proxy (*“Bourget père et fils aîné de Lyon”*).<sup>10</sup> Similarly, Charles Desbroches, a *propriétaire* (propertied man) in Paris, signed a blank form in his city on August 18, 1851, so that a proxy could deal with inheritance proceedings (decide on the partition of lands and buildings, etc.) in Lannoy, a small town in the Nord department. Three months later, the form was recorded in Lille, also in the Nord department but not extremely close to Lannoy, with the name of Étienne Maurice Olivier, the clerk of a notary, as a proxy.<sup>11</sup> Olivier was one of our frequent proxies described in Part IV. More generally, 87% of our blank forms of proxy were originally notarized in the place where the principal lived, hinting at a role for notaries in this process of finding a distant proxy. The role of French notaries in the circulation of economic information and the matching of contract partners has already been well documented by Hoffman et al. (2000). Similarly to what they show about the search for credit partners, our principals could have trusted their notary to look for a proper proxy, provide him with the blank form, which the proxy would then fill in with his name and sometimes record with his own notary. Finding a proxy, when the task had to be performed in a distant place, could then be done by using a notary in that place as an intermediary. It is not easy to empirically confirm this interpretation, however.<sup>12</sup> Lawyers writing about powers of attorney commented on the growing trust clients put in their notaries (Daloz, 1853). Such commentators were talking about notaries acting as proxies, though, not as intermediaries used to find proxies. In our current database, we only find 10 proxies explicitly described as notaries and 11 as clerks of a notary, i.e. 3% of cases – but of course, we don't know who eventually performed the tasks described in the

---

<sup>10</sup>Archives départementales du Rhône, 3E/12868, deposit of 1er ventôse an 8 (20 February 1800), form of proxy of 28 ventôse an 7 (18 March 1799).

<sup>11</sup>Archives départementales du Nord, 2E48/174, deposit of 10 November 1851.

<sup>12</sup>On the contrary, it might be alleged that some principals kept their forms blank because they did not want their notary to use information about their proxies.

25% of blank forms. More interestingly, but not very conclusively due to the small number of cases, 7 out of the 47 filled-in blank forms were given to notaries or clerks (15%), as compared to 3% of the non-blank forms; barristers and civil servants also seem to have been over-represented in the filled-in blank forms.

Were it to be confirmed, this role of the notaries would lend support to our Hypothesis 2 – not in the sense of the same proxies being repeatedly used by the same merchants, but of the same notaries being repeatedly used by the same merchants to find proxies. The general idea behind Hypothesis 2 indeed is that of trust based neither on personal relationships nor on purely formal, anonymous mechanisms, but on repeated interactions. The exclusive or quasi-exclusive notary-client relationship is an example of this type of relationship. In addition, even if this is, as for now, just anecdotal evidence, it is worth noticing that the majority of our Lillois professional proxies' forms were filled-in blank forms (four out of five for Olivier, three out of four for Montagne), and that Olivier was the clerk of a notary. It is likely that notaries favored frequent proxies if they had to choose or recommend one for a client (or the client of a notary they knew in a different city). The choice of proxies would, in such cases, involve a chain of at least two relationships (principal-notary, notary-frequent proxy, and possibly notary-notary) based on repeated interactions, rather than on embedded ties or anonymous mechanisms. It will always be difficult to assess the actual weight of such relational chains in the matching of principals and proxies, because we cannot know who the eventual proxy was for most of the blank forms that we found. We will however closely study blank forms, and especially filled-in blank forms, as well as frequent proxies, in our complete sample. As for now, what we can assess is that the use of blank forms, and what it implies regarding the complementarity between personal and formal relationships and the role of repeated interactions, was in no way specific to the 19<sup>th</sup> century, as opposed to the 18<sup>th</sup>.

## Discussion

Although most of our results are preliminary at best, we can already state that we have found little or no support, in the study of notarized forms of proxy, for the simplest modernization narrative of Hypothesis 0. As this narrative was shared by many contemporaries and is present in historical and economic scholarship today, it is already a useful result. We found few significant changes between our periods, and those that appeared did not point in the direction of more and more anonymous and formal relationships.

It could simply mean that, as regards forms of proxy, such fundamental changes had occurred before the mid-18<sup>th</sup> century. We know that anonymity and blank forms, in the context of bills of exchange, for example, were already used and discussed at that time, and that important evolutions had begun before (Kessler, 2009; Santarosa, 2015). However, our sources do not seem to picture a purely anonymous market in which trust would solely rely on formal institutions. Some preliminary results point in the direction of a complementarity between embedded relationships and formalization, rather than a substitution over time (Hypothesis 1), e.g. the use of the most formal contracts, notarized forms of proxy, between relatives. We also find some support for Hypotheses 2 and 3 – or at least encouragement to further refine our interpretations and to test them on a wider sample and with complementary sources. Hypothesis 2, pointing to the possibly growing role of non-embedded, repeated interactions, would be supported if we found that professional proxies were indeed more used in 1851 than before, and used repeatedly by the same principals. Hypothesis 3, considering the social status of “merchant” as a broad base for homophily, signaling not just commercial skills but a shared identity, would be supported if we could better disentangle the preference for a fellow



merchant from the preference for someone who knows how to recover debts, and especially if we could find traces of reciprocation in the principal-proxy relationships among merchants. The study of blank forms and substitution clauses has also pointed out that our four hypotheses relied on a strong assumption: the idea that what mattered to the commercial relationship, what was to be described, what possibly supported trust, was the type of pre-existing tie between two individuals. On the contrary, blank forms and substitution clauses are symptoms of longer relational chains, in which the principal-proxy contract is just one step, in the case of substitutions, or could only be established thanks to one or several intermediaries, in the case of blank forms. The role of notaries in such an intermediation specifically deserves further investigation. Finally, describing our sample has also led us to find patterns that are not directly relevant to our four original hypotheses, but are worth noticing, i.e. the use of lengthy forms to provide *more*, not *less* discretion to the proxy (a line of investigation that could lead us to make better use of jurisprudential cases), and the fact that some features of the contracts depended on the type of task to be performed, rather than on the type of persons involved or their relationships. A proper study of the uses of powers of attorney in French economic life, and daily life generally, should begin with this description of the wide range of possibilities, from a verbal contract to recover one debt to a lengthy notarized form allowing any type of action on a person's property.

## References

- Bergeron, Louis. *Banquiers, négociants et manufacturiers parisiens du Directoire à l'Empire*. Paris; New York: École des hautes études en sciences sociales; Mouton, 1978.
- Boigeol, Anne, and Yves Dezalay. "De L'agent D'affaires Au Barreau : Les Conseils Juridiques et La Construction D'un Espace Professionnel." *Genèses*, no. 27 (1997): 49–68.
- Carrière, Charles. *Négociants marseillais au XVIIIe siècle. Contribution à l'étude des économies maritimes*. Marseille: Institut historique de Provence, 1973.
- Chandler, Alfred D. *The Visible Hand: The Managerial Revolution in American Business*. Cambridge, Mass.: Belknap Press, 1977.
- Chassagne, Serge. *Veuve Guerin et fils, banque et soie. Une affaire de famille : Saint-Chamond-Lyon, 1716-1932*. Lyon: Éd. BGA Permezel, 2012.
- Cyr, Maryse. "L'activité économique Des Femmes En Nouvelle-France : étude Des Procuratrices à Québec de 1740 à 1749." In *Sciences En Devenir. Actes de La 16e Journée Sciences et Savoirs*, edited by Renée Corbeil, Amélie Hien, and Ali Reguigui, 89–108. Sudbury: Acfas-Sudbury, 2010.
- Dalloz, Désiré, and Armand Dalloz. "Mandat." In *Répertoire Méthodique et Alphabétique de Législation, de Doctrine et de Jurisprudence*, 30:624–765. Paris: Au bureau de la Jurisprudence générale, 1853.
- Dufournaud, Nicole, and Bernard Michon. "Les femmes et le commerce maritime à Nantes (1660-1740) : un rôle largement méconnu." *Clio. Femmes, Genre, Histoire*, no. 23 (2006): 311–30.
- Gervais, Pierre. "Mercantile Credit and Trading Rings in the Eighteenth Century." *Annales HSS* 67, no. 4 (2012): 731–63.
- Gervais, Pierre, Yannick Lemarchand, and Dominique Margairaz, eds. *Merchants and Profit in the Age of Commerce, 1680-1830*. London: Pickering & Chatto Publishers, 2014.
- Granovetter, M.S. "Economic Action and Social Structure : The Problem of Embeddedness." *American Journal of Sociology* 91, no. 3 (1985): 481–510.
- Greif, Avner. *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade*. Cambridge: Cambridge University Press, 2006.
- Grenier, Benoît, and Catherine Ferland. "« Quelque longue que soit l'absence » : procurations et pouvoir féminin à Québec au XVIIIe siècle." *Clio. Femmes, Genre, Histoire*, no. 37 (2013): 197–225.
- Grossetti, Michel, Jean-François Barthe, and Nathalie Chauvac. "Studying Relational Chains from Narrative Material." *Bulletin of Sociological Methodology/Bulletin de Méthodologie Sociologique*, no. 110 (2011): 11–25.

Hancock, David. *Citizens of the World: London Merchants and the Integration of the British Atlantic Community, 1735-1785*. Cambridge; New York: Cambridge University Press, 1995.

Hirsch, Jean-Pierre. *Les deux rêves du commerce. Entreprise et institution dans la région lilloise, 1780-1860*. Paris: éditions de l'EHESS, 1991.

Hoffman, Philip T, Gilles Postel-Vinay, and Jean-Laurent Rosenthal. *Priceless Markets: The Political Economy of Credit in Paris, 1660-1870*. Chicago: University of Chicago Press, 2000.

Kessler, Amalia. *A Revolution in Commerce. The Parisian Merchant Court and the Rise of Commercial Society in Eighteenth-Century France*. New Haven: Yale University Press, 2007.

Lemercier, Claire, and Claire Zalc. "For a New Approach to Credit Relations in Modern History." *Annales. Histoire, Sciences Sociales* 67th Year, no. 4 (December 1, 2012): 661–91.

Lopez, Robert S. "Proxy in Medieval Trade." In *Order and Innovation in the Middle Ages. Essays in Honor of Joseph R. Strayer*, edited by William Chester Jordan, Bruce McNab, and Teofilo F. Ruiz, 187–94. Princeton: Princeton University Press, 1976.

Marzagalli, Silvia. *Bordeaux et les États-Unis, 1776-1815: politique et stratégies négociantes dans la genèse d'un réseau commercial*. Genève: Droz, 2015.

Molina Jiménez, Iván. "Informe Sobre Las Cartas Poder de Los Comerciantes Y Campesinos Del Valle Central de Costa Rica (1800-1824)." *Anuario de Estudios Centroamericanos* 12, no. 1 (1986): 97–121.

Molina Jiménez, Iván. "Solidaridades, Conflictos Y Derechos. Las Cartas Poder Otorgadas En El Valle Central de Costa Rica (1824-1850)." *Avances de Investigación*, no. 39 (1988): 1–64.

North, Douglass C. *Understanding the Process of Economic Change*. Princeton: Princeton University Press, 2005.

Pétel, Philippe. *Le contrat de mandat*. Paris: Dalloz, 1994.

Pfister, Laurent. "Un contrat en quête d'identité. Jalons pour une histoire de la qualification du mandat." In *Le mandat : un contrat en crise?*, edited by Nicolas Dissaux, 1–38. Paris: Economica, 2011.

Poisson, Jean-Pierre. "Introduction à Une Sociologie Statistique Des Actes de Procuration." *Journal de La Société Statistique de Paris*, no. 109 (1968): 263–65.

Pothier, Robert Joseph. "Traité Du Contrat de Mandat." In *Oeuvres Complètes de Pothier. Nouvelle édition. Traités Du Contrat de Mandat [...]*, 1–203. Paris: Thomine et Fortic, 1821.

Santarosa, Veronica Aoki. "Financing Long-Distance Trade: The Joint Liability Rule and Bills of Exchange in Eighteenth-Century France." *The Journal of Economic History* 75, no. 03 (September 2015): 690–719.

Sturtz, Linda L. "'As Though I My Self Was Pr[e]sent'. Virginia Women with Power of Attorney." In *The Many Legalities of Early America*, edited by Christopher L. Tomlins and Bruce H. Mann, 250–71. Chapel Hill: University of North Carolina Press, 2001.

Trivellato, Francesca. *The Familiarity of Strangers. The Sephardic Diaspora, Livorno, and Cross-Cultural Trade in the Early Modern Period*. New Haven: Yale University Press, 2009.

Troplong, Raymond-Théodore. *Le Droit Civil Expliqué [...] Tome Seizième. Du Mandat*. Paris: Hingray, 1846.

Uzzi, Brian. "The Source and Consequences of Embeddedness for the Economic Performance of Organizations : The Network Effect." *American Sociological Review* 61, no. 4 (1996): 674–98.

Uzzi, Brian. "Social Structure and Competition in Interfirm Networks : The Paradox of Embeddedness." *Administrative Science Quarterly* 42, no. 1 (1997): 35–67.

Xifaras, Mikhail. "Science Sociale, Science Morale ? Notes Sur La Pénétration de L'économie Dans La Pensée Juridique Française Au XIXe Siècle." In *Économie et Théories économiques En Histoire Du Droit et En Philosophie*, edited by Jean-François Kervégan and Heinz Mohnhaupt. Frankfurt am Main: Klostermann, 2004.