

Antwerp Commercial Law in the Sixteenth Century: A Product of the Renaissance?

The Legal Facilitating, Appropriating and Improving of Mercantile Practices

3.1. Introduction

When it comes to law, the notion of “Renaissance” is commonly used in two different meanings, i.e. that of legal humanism and also in the sense of academic legal culture. The coming into being of Antwerp municipal commercial law was related to both. The presence of university-trained lawyers in sixteenth-century Antwerp and their influence on the formulation of municipal law invites examination of the commercial law of Antwerp and of the city’s legal system against the background of contemporary academic views, including humanist ones. Over the course of the 1500s, it was jurists who drew up the Antwerp rules regarding mercantile and other contracts. Their solutions breathe concepts and ideas of academic legal doctrine, even though they were based on mercantile practices and techniques as well.

The first-mentioned meaning of “Renaissance” denotes an intellectual shift towards the reconstruction of Roman law, which entailed a focus on classical languages and a search for historical texts. This new legal-humanist approach originated in Italy in the middle of the 1400s and was refined in France over the course of the next century.¹ Legal humanism is usually not considered for its contributions to commercial law. However, because legal humanism renewed European academic legal culture and because university-based law and legal methods had a strong influence in local jurisdictions, it can be presumed to have been relevant in the shaping of municipal law concerning mercantile agreements and situations.² A first goal of this chapter is therefore to examine whether the

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1 Manlio BELLOMO, *The Common Legal Past of Europe, 1000–1800*, Washington, 1995, pp. 204–10; Peter STEIN, *Roman Law in European History*, Cambridge, 1999, pp. 76–82.

2 The fifteenth- and sixteenth-century formative process of municipal – and also of princely – law all over continental Europe, which entailed the application of academic theories, concepts and rules, has but rarely been studied. One older example is Helmut COING, *Die Rezeption des Römischen Rechts in Frankfurt am Main. Ein Beitrag zur Rechtsgeschichte*, Frankfurt am Main, 1939. This lack of attention is due to a rather surprising persistence of nineteenth-century views as to a dichotomy between customary law (local law or *ius proprium*) and learned law (legal doctrine, which was commonly

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development of Antwerp commercial law in the sixteenth century is correlated to an influence from contemporary legal humanism.

In so doing, attention must be paid to the characteristics of legal humanism as distinguished from academic legal culture in general. For the purpose of this volume, this is the more relevant because another common meaning (the abovementioned second one) of Renaissance with regard to law directly points to legal scholarship in general. The scholastic interpretations of texts of Roman law began around 1100 and thereafter spread throughout the known world. Charles Haskins considered “the revival of jurisprudence” as a major achievement of the Renaissance of the twelfth century.³ What was rebooted in the early twelfth century, and first and foremost in Italian cities, was the idea that law is a product of reasoning. This mirrored essential characteristics of Roman law. In the early twelfth century Roman law was re-appropriated in scholarly writings through an analysis of the *Corpus Iuris Civilis*, which had been drawn up under the sixth-century Roman Emperor Justinian and which contained the *Digesta* and the *Codex*. As a result, academic lawyers acquired and built up a law that was capable of rationalisation through internal principles alone and which comprised abstract concepts (e.g. property, contract) that allowed for subsuming and organising practices and factual elements.⁴ In the early Middle Ages, after the collapse of the Roman legal systems and before the revival of academic legal culture, law in the mentioned sense did not exist. After 1100, legal literature written by academics became the catalyst of a high-level legal culture all over Europe.⁵

labelled *ius commune*). The latter is generally thought of as being a more prestigious object of study because of its intricacy and sophistication; local law is then seen as different, in contents as well as underlying values, from this “*Professorenrecht*”. See on the mentioned dichotomy, for example Paolo GROSSI, *L'ordine giuridico medievale*, Laterza, 2006; António Manuel HESPANHA, “Savants et rustiques: la violence douce de la raison juridique”, in *Ius Commune. Zeitschrift für europäische Rechtsgeschichte*, 10, 1983, pp. 1–47; James Q. WHITMAN, “The Moral Menace of Roman Law and the Making of Commerce: Some Dutch Evidence”, in *Yale Law Journal*, 105, 1995–1996, pp. 1841–89. A recent (but still exceptional) re-appraisal of the interactions between academic and local law is Harold J. BERMAN, *Law and Revolution II. The Impact of the Protestant Reformations on the Western Legal Tradition*, Cambridge (MA), 2006, pp. 156–75. The approach of Emanuele Conte (Università di Roma Tre), who regards late-medieval statutes of Italian cities as being intimately connected to legal doctrine, is promising. See for example Emanuele CONTE, “Roman Law vs. Custom in a Changing Society: Italy in the Twelfth and Thirteenth Centuries”, in *Custom. The Development and Use of a Legal Concept in the Middle Ages. Proceedings of the Fifth Carlsberg Conference on Medieval Legal History*, eds Per ANDERSEN & Mia MÜNSTER-SWENDSEN, Copenhagen, 2009, pp. 33–49. The history of municipal commercial law and of its academic embedment remains largely unwritten. See for some interesting research with regard to sixteenth-century Augsburg, highlighting the importance of academic law in municipal forensic practice and legislation, Christoph BECKER, “Der Einfluss der Rechtsschule von Bologna auf das Wirtschaftsrecht in Augsburg”, in *Schwaben und Italien. Zwei europäische Kulturlandschaften zwischen Antike und Moderne* (Zeitschrift des Historischen Vereins für Schwaben, 102), eds Wolfgang WÜST, Peter FASSL & Rainhard RIEPERTINGER, Augsburg, 2010, pp. 369–85.

³ Charles H. HASKINS, *The Renaissance of the Twelfth Century*, Cambridge, 1927, pp. 193–223.

⁴ This definition of law, and in reference to its Roman beginnings, is proposed in Aldo SCHIAVONE, *The Invention of Law in the West*, Cambridge (MA), 2012, pp. 3–4.

⁵ BELLOMO, *The Common Legal Past of Europe*, pp. 52–77; Harold J. BERMAN, *Law and Revolution. The Formation of the Western Legal Tradition*, Cambridge (MA), 1983.

Also as a general cultural phenomenon of Italian origin, the Renaissance can be linked to Antwerp. Between approximately 1535 and 1565, which was at the height of the Transalpine Renaissance, the city was the leading commercial centre in Europe, which it had been since the 1490s. Trade contributed to cultural renewal in Northwest Europe at that time. In those years, Antwerp was a hub for many merchants, coming from the Italian and Spanish Peninsulas, from England and from German regions. Netherlanders were also involved in trade in Antwerp. As a result of the interactions among these traders, new mercantile techniques were brought to Antwerp. Many of these techniques had Italian roots. The methods of trade, as well as mercantile contracts and usages, were legally elaborated on in Antwerp's municipal law, which took the practices of commerce as the basis for solutions that were thoroughly impregnated with academic notions.

It will be made clear below that of the three mentioned Renaissances it was the aftermath of the Renaissance of the twelfth century and its dispersal in Northwest continental Europe that proved fundamental for Antwerp's commercial law. After all, it was mainly the academically imbued municipal law, which had been crafted out of late-medieval writings, that mattered for resolving disputes, and not the practices of merchants. Customs of trade were few, and other mercantile practices were too superficial from a legal point of view to solve complex problems. The gradual restructuring of the Antwerp legal system after 1460, which went together with an incremental use of legal doctrine, resulted in the **incremental** creation of Antwerp commercial law. Initially, in the first half of the 1500s, academic approaches served to update the practice of the court and the enforcement of debts, and later on they became a tool to capture the contents of mercantile contracts within a legal-theoretical framework. In turn, this framing of business methods within academic schemes fostered a further quick absorption of new practices of merchants, such as indorsement of bills of exchange.

In the first part, the modest upgrading of a fifteenth-century system of executing contracts in relation to academic concepts will be detailed. In the second, we will examine to what extent humanist culture influenced Antwerp lawyers and the commercial law that they crafted. The third part assesses the relative importance of academic culture vis-à-vis (Italian and other) mercantile techniques within the law that was applied in Antwerp in matters of trade.

3.2. Academic Legal Culture and First Changes to the Antwerp Legal System (after c. 1460)

For the most part of the fifteenth century, Antwerp law was mainly unwritten and disorganised. It was less a matter of written rules than of memory. In this period, textual approaches towards municipal law were minimal. The Antwerp administrators ("aldermen") and the Duke of Brabant, being the lord of Antwerp, sometimes promulgated bylaws that were registered in ledgers for consultation. However, such official decrees were rather rare and they were mostly concerned

with general safety, guilds and public health.⁶ Solutions regarding agreements between citizens, inhabitants and visiting merchants remained for the most part unwritten, and if they were written down this was done in an abbreviated form. This was very much the case for rules relating to mercantile contracts. The *Keurboeck*, which was a compilation of Antwerp regulations that had been put together from the beginning of the fourteenth century onwards, lists some sections dealing with debts arising out of sale contracts.⁷ Succinct legal precepts on commercial contracts can be found in privileges that were granted by the Duke of Brabant to groups of merchants visiting Antwerp. Ducal charters that in 1296 and 1305 were handed out to English traders contain some rules regarding contracts of sale.⁸ Moreover, fourteenth- and fifteenth-century judgments of the Antwerp Municipal Court were brief and seldom explicit on the rules that were linked to types of mercantile contracts (*coop* (i.e. sale), *geselschap* (i.e. partnership)).⁹

With regard to mercantile agreements this understated law mostly focused on the enforcement of debts. Over the course of the second half of the 1400s, it became possible to seize (to lay attachment on, *arrest*) the effects of a debtor on the basis of any agreement or promise and to have them sold publicly if the debtor did not offer payment, even if no collateral for the debt had been fixed.¹⁰ In response to this new regime, visitors to the Brabant fairs at Whitsun and Bamis were protected against seizure and expropriation of assets that were pursued in compensation for debts that had not been incurred at the fairs. For the duration of the so-called “freedom of the market” (*marktvrijheid*), which

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- 6 “Clementeynboeck, 1288–1414”, in *Antwerpsch Archievenblad*, first series, vol. 25, *s.d.*, pp. 101–465, vol. 26, *s.d.*, pp. 1–136, second series, vol. 5, 1930, pp. 124–59; “Het 2e oudt register in’t parkement gebonden, 1438–1459”, in *Antwerpsch Archievenblad*, first series, vol. 29, *s.d.*, pp. 262–471 and vol. 30, *s.d.*, pp. 1–471.
- 7 An analysis and dating of the sections of the *Keurboeck* can be found in Frans BLOCKMANS, “Het vroegste officiële ambachtswezen te Antwerpen”, in *Bijdragen voor de Geschiedenis der Nederlanden*, 8, 1954, pp. 161–201. The *Keurboeck* was published in *Coutumes de la ville d’Anvers*, ed. Guillaume DE LONGÉ (Coutumes du pays et duché de Brabant. Quartier d’Anvers), vol. 1, Brussels, 1870, pp. 2–89. See for a sections on debts, p. 26 (s. 66).
- 8 “Une charte brabançonne inédite de 1296 en faveur des marchands anglais”, ed. Hendrik OBREEN, *Bulletin de la Commission royale d’Histoire*, 80, 1911, pp. 528–57; Frans Henri MERTENS & Karel Louis TORFS, *Geschiedenis van Antwerpen sedert de stichting der stad tot onze tyden*, vol. 2, Antwerp, 1846, pp. 543–52.
- 9 “Oudt Register, mette Berderen, 1336–1439”, in *Antwerpsch Archievenblad*, first series, 26, *s.d.*, pp. 414–27, 27, *s.d.*, pp. 1–472, 28, *s.d.*, pp. 1–472, and 29, *s.d.*, pp. 1–261; “Het 2e Oudt Register, in’t parkement gebonden, 1438–1459”, in *Antwerpsch Archievenblad*, first series, 29, *s.d.*, pp. 262–471, and 30, *s.d.*, pp. 1–471. See also Egied I. STRUBBE & Edward SPILLEMAECKERS, “‘De Antwerpse rechtsaantekeningen’ van Willem de Moelnere”, in *Bulletin de la Commission royale pour la publication des anciennes lois et ordonnances de Belgique*, 18, 1954, pp. 7–148.
- 10 Dave DE RUYSSCHER, “Bankruptcy, Insolvency and Debt Collection Among Merchants in Antwerp (c. 1490–c. 1540)”, in *The History of Bankruptcy. Economic, Social and Cultural Implications in Early-Modern Europe*, ed. Th.M. SAFLEY, Abingdon, 2013, pp. 188–9.

lasted a few weeks before, during, and after the fairs, only debts that had been negotiated at a (previous) fair could be enforced by means of seizure of assets.¹¹

Most of the rules regarding commercial agreements that were imposed by the Antwerp aldermen, in judgments as well as by means of bylaws, concerned enforcement remedies. The aldermen offered the contracting parties the possibility of swift execution, but only upon registration of the debt. The Antwerp administrators endorsed arrangements in certificates (*certificatiën*) and so-called “aldermen’s letters” (*schepenbrieven*). The latter were used for *gheloften* (i.e. promises) and *voirwairden* (i.e. agreements).¹² Certificates could be handed out for ascertaining statements or situations. These documents could serve to upgrade the evidential value of the debt mentioned in them. Moreover, since the first decades of the 1400s, the execution of a debt that had been inserted into an aldermen’s letter was possible with short proceedings. In their role of judges, the aldermen “read”, i.e. confirmed, the letters and certificates that they had issued earlier.¹³ The authentication of debts was fairly easy, which meant that contents of contracts were more or less freely established. In the courtroom of the Antwerp Municipal Court, this approach of stamping and executing promises and contracts went together with reluctance towards imposing rules that breached the contents of agreements. Until the middle of the sixteenth century, the aldermen did not create default rules, serving as models for contracts and allowing for the checking of their contents in case the agreement was unclear. Measures prohibiting certain provisions of contract were also rare until that time.¹⁴

After 1480, Antwerp judgments were systematically written down in ledgers.¹⁵ In the final decades of the fifteenth century, the French technique of the *enquête par turbe* became popular in Antwerp. When a question of law was raised, such a *turbe* inquiry was held and ten or more legal professionals (former aldermen, practitioners and civil servants), who were often jurists by training, were

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- 11 Antwerp City Archives (FelixArchief) (hereinafter ACA), Vierschaar (hereinafter V), no. 2, s. 141 and fol. 35. See for an edited version of this text Dave DE RUYSSCHER, “De ontwikkeling van het Antwerpse privaatrecht in de aanloop naar de *costuymen* van 1548. Uitgave van het *Gulden Boeck* (c. 1510–c. 1537), (projecten van) ordonnanties (1496–c. 1546), een rechtsboek (c. 1541–c. 1545) en proeven van hoofdstukken van de *costuymen* van 1548”, in *Bulletin de la Commission royale pour la publication des anciennes lois et ordonnances de Belgique*, 54, 2013, pp. 65–324, here pp. 158–59 and p. 174.
 - 12 Gustaaf ASAERT, “De oudste certificatiën van de stad Antwerpen (1468–1482)”, in *Handelingen van de Koninklijke Commissie voor Geschiedenis – Bulletin de la Commission royale d’Histoire*, 132, 1966, pp. 261–3.
 - 13 Philipp GODDING, “Les conflits à propos des lettres échevinales des villes brabançonnnes (XVe–XVIIIe siècles)”, in *The Legal History Review (Tijdschrift voor Rechtsgeschiedenis)*, 22, 1954, pp. 308–17; Raoul C. VAN CAENEGEM, “La preuve dans l’ancien droit belge des origines à la fin du XVIIIe siècle”, in *La preuve. Deuxième partie. Moyen Âge et Temps modernes*, Brussels, 1963, pp. 405–7.
 - 14 Dave DE RUYSSCHER, “L’interprétation des contrats commerciaux à Anvers (c. 1490–c. 1540)”, in *L’interprétation du droit*, ed. Boris BERNABÉ, **Besançon, 2017, in press.**
 - 15 ACA, Privilegiekamer (hereinafter PK), no. 93; ACA, V, no. 1231.

interviewed on the contents of rules of Antwerp municipal law.¹⁶ These newly organised inquiries into law reflect the growing influence of academic procedural law, as mentioned in French procedural treatises, and which had become applied in princely courts some time before. When at the end of the 1460s the princely Council of Brabant established its jurisdiction in appeal over the judgments of the Antwerp aldermen, the principles of the Romano-canonical law of procedure that were used there also shaped the proceedings of the Antwerp Municipal Court.¹⁷ Moreover, the appropriation of academic procedural ideas brought about a concern for textuality in law, which in this first phase of the later fifteenth and the early decades of the sixteenth centuries consisted of an aim for the recording of rules. The questionnaires and answers of the mentioned *turbe* inquiries were written down and bundled together into so-called *turbeboecken* (i.e. ledgers of *turben*), which after a certain period of time facilitated the production of evidence on previously attested Antwerp municipal norms.¹⁸

The influence of learned precepts in Antwerp's court procedures in the second half of the fifteenth century helped to change late-medieval local ideas that were felt to be incompatible with the emerging international market situation. Because of the coming to Antwerp of many more merchants after approximately 1490 measures for which no precedent could be found in Antwerp's older law were sometimes taken. An important legal change, which in its concrete form hinged on academic doctrine, related to bankruptcy proceedings. The interests of international firms, which for their business undertakings relied on often slowly distributed information, required an update of the Antwerp rules of expropriation. The generalisation of seizure for debts in the later decades of the fifteenth century had meant that debts could be secured quickly in the event of a debtor's imminent failure. It was in the interests of creditors to act swiftly, also because on payment of the proceeds of the public sale a first attachment (*arrest*) was given priority over later ones. "First come, first served" was held to be the general principle. However, in January 1516, it was decided that all claimants without express collateral (i.e. contractual and legal hypothecs) should be given an equal share of the assets, irrespective of the date or time of their attachment. As a result, creditors could no longer take advantage of local news regarding the payment problems of contracting parties, at the expense of slower players acting from abroad. The 1516 bylaw also acknowledged that *facteurs* (i.e. salaried business agents) and *procuratores* (i.e. agents on mandate) were to be treated as acting on behalf of their masters.¹⁹ A 1518 bylaw detailed the periods during

16 John GILISSEN, "La preuve de la coutume dans l'ancien droit belge", in *Hommage au professeur Paul Bonenfant (1899–1965). Études d'histoire médiévale dédiées à sa mémoire par les anciens élèves de son séminaire à l'Université Libre de Bruxelles*, ed. Georges DESPY, Brussels, 1965, pp. 568–70.

17 See Dave DE RUYSSCHER, "Naer het Romeinsch recht alsmede den stiel mercantiel", *Handel en recht in de Antwerpse rechtbank (16de–17de eeuw)*, Kortrijk, 2009, p. 105.

18 ACA, V, no. 68.

19 *Recueil des ordonnances des Pays-Bas*, 2nd series, vol. 1, ed. Charles LAURENT, Brussels, 1893, pp. 464–6 (21 January 1516 (ns)). For an edited version, on the basis of all existing manuscripts, see DE RUYSSCHER, "De ontwikkeling van het Antwerpse privaatrecht", pp. 196–9.

which a claim could be filed against a bankrupt's estate, laying down six weeks for creditors from neighbouring duchies and counties and three months for interested parties who lived further away.²⁰ Although the 1516 and 1518 bylaws were still modelled on the older seizure procedure, equality of (non-collateralised) debts was a fundamentally new idea in Antwerp municipal law, not least because it was a solution that had been drawn from academic doctrine or texts that had been inspired by it.²¹

Another example of the enabling powers of academic legal notions concerns the circulation of commercial paper. In the later 1400s and early 1500s, written acknowledgments of debt underwent important transformations and developed to become transferable commercial documents. At a 1507 *turbe* inquiry, Antwerp public servants, advocates, and proctors (*procureurs*) – some of them were jurists – stated that an acknowledgment of debt to which a bearer clause, “payable to X or bearer”, had been added could be passed on in payment for debts.²² The holder of such a document could collect his debt from the person who had signed the document. The contents of the precept were not fundamentally new since in Lübeck, for example, a similar measure had been taken some years before,²³ and openings allowing for this development had been made in treatises on Brabant and Flemish law since the later fifteenth century.²⁴ However, in Antwerp, the mercantile custom was immersed

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- 20 ACA, V, no. 4 (bylaw of 2 June 1518). For an edited version of all known manuscripts, see DE RUYSSCHER, “De ontwikkeling van het Antwerpse privaatrecht”, pp. 199–205.
- 21 Dave DE RUYSSCHER, “Designing the Limits of Creditworthiness. Insolvency in Antwerp Bankruptcy Law and Practice (16th–17th Centuries)”, in *The Legal History Review (Tijdschrift voor Rechtsgeschiedenis)*, 76, 2008, pp. 310–3. See, for the academic nature of this rule, footnote 13 in the mentioned article, and Dave DE RUYSSCHER, “From Usages of Merchants to Default Rules: Practices of Trade, *Ius Commune* and Urban Law in Early Modern Antwerp”, in *The Journal of Legal History*, 33/1, 2012, pp. 16–7, footnote 46. The newness of the 1516 and 1518 regulations, as well as the underlying policy argument of facilitation of bankruptcy proceedings involving foreign merchants, has been accepted among economic historians. See Oscar GELDERBLUM, *Cities of Commerce. The Institutional Foundations of International Trade in the Low Countries, 1250–1650* (The Princeton Economic History of the Western World), Princeton, 2013, pp. 117–8.
- 22 ACA, V, no. 68, fol. 13r (7 June 1507).
- 23 Michael NORTH, “Banking and Credit in Northern Germany in the Fifteenth and Sixteenth Centuries”, in *Banchi pubblici, banchi privati e monti di pietà nell’Europa preindustriale. Amministrazione, tecniche operative e ruoli economici* (Atti della Società Ligure di Storia Patria, Nuova serie, 31), Genoa, 1991, vol. 2, pp. 821–2. The thesis of Van der Wee, who has suggested that the full legal acknowledgment of a bearer’s claim was an Antwerp invention, must be reconsidered on the basis of the new materials. See Herman VAN DER WEE, “Antwerp and the New Financial Methods of the 16th and 17th Centuries”, in Herman VAN DER WEE, *The Low Countries in the Early Modern World*, Ashgate, 1993, p. 152; Herman VAN DER WEE, “Anvers et les innovations de la technique financière aux XVIe et XVIIe siècles”, in *Annales: economies, sociétés, civilisations*, 22, 1967, p. 1074; Herman VAN DER WEE, *The Growth of the Antwerp Market and the European Economy (Fourteenth–Sixteenth Centuries)*, The Hague, 1963, vol. 2, p. 343. See on this subject also Jeroen PUTTEVILS, “Tweaking Financial Instruments. Bills Obligatory in Sixteenth-Century Antwerp”, in *Financial History Review*, 22, 2015, pp. 337–61, and Jeroen Puttevils’ chapter in this volume.
- 24 Willem VAN DER TANNERIJEN, *Boec van der loopender practycken ...*, vol. 1, ed. Egied I. STRUBBE, Brussels, 1952, pp. 59–60. This book dates from 1474–1476. Van der Tannerijen had been secretary of the city of Antwerp in the 1450s. See also, Filips WIELANT, *Practijke civile*, Antwerp, 1572 (first written around 1519), p. 125 (part 3, ch. 24, no. 1), and Louis H. J. SICKING & C. H. VAN RHEE,

in academic terminology, which ensured that it fitted in with other schemes of legal doctrine. The relative newness of the practice explains why the Antwerp aldermen frequently had to confirm that debt instruments to bearer were legally sound. On each of these occasions, debts to bearer were further linked to academic contract law.²⁵ Holders were named *cessionarii*, for example, which echoed the academic concept of *cessio*, i.e. the contemporary Romanist law term describing a transfer of claims. This served to underpin the rights of holders, since a *cessio* of claims transferred full rights.²⁶ The Antwerp jurists referred to this *cessio* in order to upgrade transfers of bearer bills to that same level, and in so doing they integrated a practice of merchants into the academic-municipal law, which allowed for its application even among groups of merchants that were reluctant to use bearer bonds.²⁷

Both the adaptation of the bankruptcy proceedings and the rules regarding bearer notes are examples of how the appropriation of academic law helped to adjust and transform older Antwerp rules. This was done because it was thought to advantage the complex market that had reached the city. The changes were directly attributable to the embracing of academic legal culture within the city's court and government. Yet, all in all adjustments were limited. In the first half of the 1500s, the enforcement and not the supplementing or testing of agreements was considered the most important aspect.

3.3. Legal Humanism and Antwerp Law

Legal scholarship was “Romanist” even in the twelfth and thirteenth centuries, since it was based on the *Corpus Iuris Civilis*. However, many legal historians have pointed to a second renaissance of law in the later 1400s and in the 1500s. This “Renaissance” they have labelled legal humanism. Sixteenth-century Antwerp has been described as a city in which civic humanism was important,²⁸ but the legal aspects of this Antwerp humanism have remained largely obscure.

Briève instruction en causes civiles (Filips Wielant. Verzameld werk, 2), Brussels, 2009, p. 119 (dating from c. 1510, and which even though it refers to procedural reports, contains the novel rule: “Ung porteur des briefz ayant lesdictes lettres en sa main est maistre de la cause”). See for further analysis Dave DE RUYSSCHER, “Innovating Financial Law in the Early Modern Netherlands and Europe: Transfers of Commercial Paper and Recourse Liability in Legislation and *Ius Commune* (Sixteenth to Eighteenth Centuries)”, in *European Review of Private Law*, 19, 2011, pp. 508–9.

25 ACA, V, no. 69, fol. 25v (19 April 1559), fol. 59v (21 June 1567), fol. 76v (24 November 1572). See also *Coutumes de la ville d'Anvers*, ed. Guillaume DE LONGÉ (*Coutumes du pays et duché de Brabant. Quartier d'Anvers*), vol. 2, Brussels, 1871, pp. 1–688 (hereafter *Antwerp 1582 Law*), p. 398 (ch. 53, s. 6); *Coutumes de la ville d'Anvers*, ed. Guillaume DE LONGÉ (*Coutumes du pays et duché de Brabant. Quartier d'Anvers*), vol. 3–4, Brussels, 1872–1874 (hereafter *Antwerp 1608 Law*, vol. 1–2), vol. 2, p. 12 (part 4, ch. 2, s. 7).

26 ACA, V, 68, fol. 13r (7 June 1507). For doctrinal views relating to *cessio*, see Guido ASTUTI, “Cessione (premesse storica)”, in *Enciclopedia del diritto*, vol. 6, Milan, 1960, pp. 805–22.

27 See the chapter 2 by Jeroen Puttevels in this volume.

28 Marcus DE SCHEPPER, “Humanism and Humanists”, in *Antwerp, Story of a Metropolis, 16th–17th Centuries*, ed. Jan VAN DER STOCK, Antwerp, 1993, pp. 97–103.

The notion of legal humanism has two different and yet related meanings. Firstly, it has traditionally been linked to philology and a historical awareness.²⁹ Legal and other historians have generally contended that the legal-humanist approach of the later 1400s and of the 1500s grew out of the philological examinations of the Justinianic *Digesta* by Angelo Poliziano (ob. 1494). His methods were adopted in France by such scholars as Guillaume Budé (ob. 1540). From the later 1520s onwards this resulted in the innovative teaching of law at the University of Bourges, under the impetus of Andrea Alciato (ob. 1550) and thereafter of François Douaren (ob. 1559). The new way of conducting legal studies, which after its French success was labelled *mos galicus (docendi)* in order to contrast it with the late-medieval scholastic approach of law (*mos italicus*), comprised a *retour aux sources*. Legal manuscripts were scrutinised and compared. For the first time since the Roman era, Greek versions of law texts were read as well. Philology and historical research went hand in hand. According to this general story, their new tactics allowed the legal humanists to remove layers of scholarly interpretation that had been added since the early twelfth century. A search for the so-called classical Roman law was combined with a general dislike of the “vulgar” Latin of medieval legal doctrine.³⁰

However, over the past decades it has rightly been emphasised that the rigorous scientific study of legal texts arrived rather late in the sixteenth century. Jurists of the early 1500s did refer to errors of transcription in manuscripts and at times they interpreted Roman law precepts on the basis of Greek texts. They linked some of their ideas to fragments of Roman law that had not been inserted into the Justinianic *Corpus Iuris Civilis*, which was the only collection of texts with which the late-medieval Romanists had worked. However, these new practices were quite superficial since they did not involve philological science. The publication of manuscripts by jurists in the period between approximately 1500 and 1530 was not usually rooted in thorough investigations since editors often merely sought to disclose useful legal texts that had been unknown before.³¹ In this respect, one can refer to the Antwerp law clerk Peter Gillis (Aegidius) (see Fig. 3.1). He was a jurist and alumnus of Orléans University, as well as a humanist maintaining good contacts with Erasmus and Thomas More. In 1517, Gillis published the *Lex Romana Visigothorum* (506 AD), which itself contained

29 This meaning of legal humanism was already known in the eighteenth century. See Douglas J. OSLER, “Images of Legal Humanism”, in *Surfaces*, 9, 2001, www.pum.umontreal.ca/revues/vol.9/osler.htm.

30 BELLOMO, *The Common Legal Past*, pp. 204–08; STEIN, *Roman Law*, pp. 75–82; Donald R. KELLEY, *Foundations of Modern Historical Scholarship. Language, Law and History in the French Renaissance*, New York, 1970, pp. 53–115; Raoul C. VAN CAENEGEM, *An Historical Introduction to Private Law*, Cambridge, 2003, p. 44.

31 Editions were hasty and often based on one or two manuscripts only. See Douglas J. OSLER, “Vestigia Doctorum Virorum: Tracking the Legal Humanists’ Manuscripts”, in *Subseciva Groningana. Studies in Roman and Byzantine Law*, 5, 1992, pp. 77–92. Douglas Osler has also highlighted that “humanist philology” was not rigorous, but involved sloppy referencing, conjectures and even false claims. See Douglas J. OSLER, “Humanist Philology and the Text of the Justinian Digest”, in *Reassessing Legal Humanism and its Claims. Petere Fontes?*, eds Paul J. DU PLESSIS & John W. CAIRNS, Edinburgh, 2016, pp. 46–56.

fragments of the *Codex Theodosianus* (438 AD), together with excerpts of the *Pauli Sententiae Receptae*, an early fourth-century compilation of legal opinions based on Roman law texts. This edition was a first, but it mostly contained only excerpts and summaries.³² The attitudes of Gillis and of his colleagues were also those of legal practitioners. Throughout the sixteenth century, arguments regarding textual traditions that were put forward in legal actions were mostly hypothetical and they were not the result of an actual, let alone rigorous, comparison of manuscripts.³³ Among advocates, the medieval scholastic method of legal reasoning (*mos italicus*) remained dominant, as was the case in most academic circles throughout the sixteenth century, and even for a long while after 1600.³⁴ Moreover, the abovementioned humanist legal authors and others acknowledged the achievements of medieval jurists and they continued to make use of their writings.³⁵ Until approximately 1550, legal scholarship was still a far cry from the thorough analyses that were later performed by such scholars as Denis Godefroy (Gothofredus) (ob. 1622). Even in the later decades of the sixteenth century, manuscript-bound investigations into Roman law were relatively rare. A more textual method of legal interpretation, without analogous arguments in the scholastic style, became fashionable only after 1650.³⁶

A broad understanding of “legal humanism” has also blurred diversity within legal practice. Over time, the label of “legal humanism” became stretched in order to make it encompass certain genres of legal literature, thus resulting in a second meaning, i.e. that of practice-oriented legal science. According to older

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- 32 *Summae sive argumenta legum diversorum imperatorum, ...*, Leuven, 1517. For an appraisal of the value and contents of this work, see Hans E. TROJE, “Die Literatur des gemeinen Rechts unter dem Einfluss des Humanismus”, in *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, ed. Helmut COING, vol. 2/1, Munich, 1976, p. 42.
- 33 STEIN, *Roman Law*, p. 77.
- 34 Alain WIJFFELS, “Einflüsse der Doktrin auf die gerichtliche Argumentationspraxis in der frühen Neuzeit”, in *Akten des 26. Deutschen Rechtshistorikertages*, ed. Dieter SIMON, Frankfurt am Main, 1987, p. 383; Alain WIJFFELS, *Qui millies allegatvr. Les allégations du droit savant dans les dossiers du Grand Conseil de Malines (causes septentrionales, ca. 1460–1580)* (Verzamelen en bewerken van de jurisprudentie van de Grote Raad, Nieuwe reeks, 10), Amsterdam, 1985, vol. 1, p. 384.
- 35 In general, see BERMAN, *Law and Revolution II*, pp. 104–08. For Ulrich Zasius, this has become clear due to the monograph by Stephen Rowan. See Stephen ROWAN, *Ulrich Zasius. A Jurist in the German Renaissance*, Frankfurt am Main, 1987. Andrea Alciato and Guillaume Budé have been cast into new light by Douglas Osler and Donald R. Kelley. See Donald R. KELLEY, “Civil Science in the Renaissance: Jurisprudence Italian Style”, in *The Historical Journal*, 22, 1979, pp. 787–8; Douglas J. OSLER, “Budaeus and Roman Law”, in *Ius Commune. Zeitschrift für europäische Rechtsgeschichte*, 13, 1985, pp. 195–211; Douglas J. OSLER, “Developments in the Text of Alciato’s *Dispunctiones*”, in *Ius Commune. Zeitschrift für europäische Rechtsgeschichte*, 19, 1992, pp. 219–35; Douglas J. OSLER, “Magna Jurisprudentiae Injuria. Cornelis van Bynkershoek on Early Legal Humanist Philology”, in *Ius Commune. Zeitschrift für europäische Rechtsgeschichte*, 19, 1992, pp. 61–79. Jacques Cujas’ methods have recently been re-appraised as well. He has traditionally been considered a historicist legal humanist, but now it has been made evident by Xavier Prévost that this did not exclude extensive referencing to late-medieval scholars. See Xavier PRÉVOST, “Reassessing the Influence of Medieval Jurisprudence on Jacques Cujas’ (1522–1590) Method”, in *Reassessing Legal Humanism and its Claims. Petere Fontes?*, eds Paul J. DU PLESSIS & John W. CAIRNS, Edinburgh, 2016, pp. 88–107.
- 36 VAN DEN BERGH, *Die holländische elegante Schule*. For the renewal of legal methods in the seventeenth century, see WIJFFELS, “Einflüsse der Doktrin”, pp. 384–5.

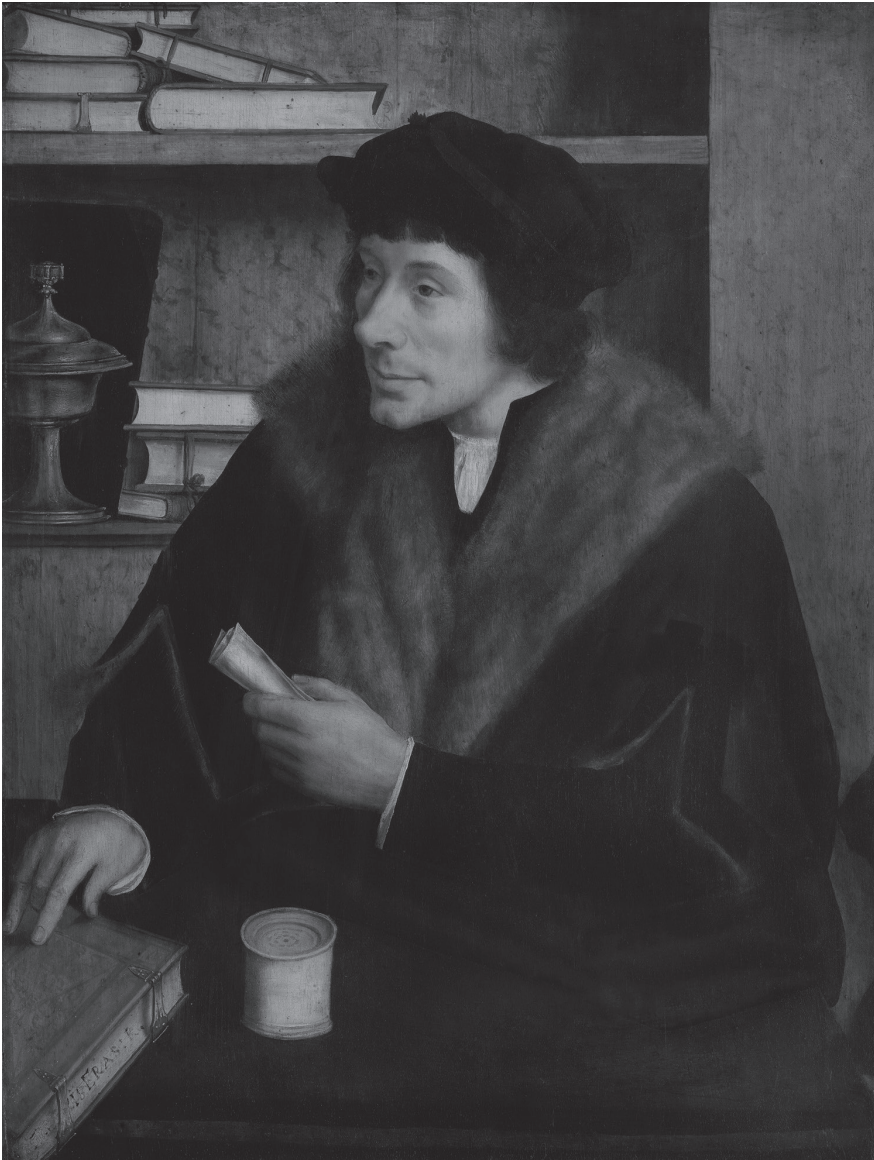


Figure 3.1. Peter Gillis, portrait by Quentin Matsys (c. 1517), © Galleria Nazionale de Arte Antica in Rome

legal-history textbooks, French legal writings of the 1500s concerning municipal, provincial and even royal legislation and judgments are to be considered as pertaining to the *mos gallicus* and “(legal) humanism”.³⁷ It has often been assumed that the reason for the broadening of the concept of “legal humanism”, from a historical-philological method to an attention for local law, was the relativist conclusions that were brought about by the new analysis of Roman law texts. Textual flaws and errors of transcription found within the medieval body of Roman law manuscripts and the discovery of the fact that the Justinianic texts were a polished version of collected Roman law fragments supposedly led to the perception that the quality of Roman law was no better than that of local rules.³⁸ However, such insights gradually followed from scientific publications of parts of the *Corpus Iuris Civilis* after 1530, but particularly after 1550. They made it clear that Justinian’s works were for the most part compilations of older texts.³⁹ It was therefore only in the second half of the sixteenth century that authors such as François Hotman (ob. 1590) could convincingly contend that, because Roman law texts were not perfect, rules of local law were a preferential object of study. They were to be put before “exotic” writings based upon academic texts with which practitioners were less familiar.⁴⁰ Furthermore, attention to local law and first attempts to study it in an academic fashion were definitively older than this idea. Since the early fourteenth century, tools and methods for understanding

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- 37 In the nineteenth century, it was common to use the term *mos gallicus* in a broad sense. In early nineteenth-century literature, any sixteenth-century French jurist was categorized as belonging to the *mos gallicus*. See for example Charles-Joseph Barthélémy GIRAUD, *Histoire du droit romain: ou introduction historique à l'étude de cette législation*, Paris, 1841, pp. 461–2. Since the early twentieth century, the broad interpretation of *mos gallicus* was left, but even today it is still an underlying assumption found within many textbooks of legal history that any French author of the 1500s can be labelled a humanist. The “Procrustean and Manichean scheme” of *mos gallicus* and *mos italicus*, and the nineteenth-century mental framework of national schools thus *lives* on, albeit often only implicitly. See A. WIJFFELS, “Law Books at Cambridge, 1500–1640”, in *The Life of the Law. Proceedings of the Tenth British Legal History Conference*, ed. Peter BIRKS, London, 1993, p. 65.
- 38 Adriano CAVANNA, *Storia del diritto moderno in Europa. Le fonti e il pensiero giuridico I*, Milan, 1979, p. 177; VAN CAENEGEM, *An Historical Introduction*, p. 56.
- 39 In the late-medieval tradition, the rules (*constitutiones*) in manuscripts of the *Codex* of Justinian (529 AD) did not contain references to the date or to the emperor who had issued the *constitutio*, which had nonetheless been added to the original version. Greek *constitutiones* were omitted. As a result of this, medieval scholars were unaware that the *Codex* was a collection of norms from very different periods of Roman history and also of its Byzantine origins. In 1530, Gregor Haloander published an integral version of the *Codex* for the first time. Also for the *Digesta* of Justinian, which was a compilation of fragments of writings of Roman jurists, the references to the author and book for the rules mentioned therein had been stripped in medieval manuscripts. In late fifteenth- and early sixteenth-century printed editions of the *Digesta*, the names of jurists were usually added to the *leges* (rules), but not the titles of the books or further references. This was done for the first time in the 1553 Torelli edition and thereafter – and more systematically – in the 1583 Gothofredus edition. See on the textual history of the *Corpus Iuris Civilis* and other texts of Roman law in the later Middle Ages and early modern period: Harry DONDORP & Eltjo J. H. SCHRAGE, “The Sources of Medieval Learned Law”, in *The Creation of the Ius Commune. From Casus to Regula*, eds John W. CAIRNS & Paul J. DU PLESSIS, Edinburgh, 2010, pp. 7–18; Arthur A. SCHILLER, *Roman Law: Mechanisms of Development*, Berlin, 1978, pp. 28–57.
- 40 Vincenzo PIANO MORTARI, *Diritto romano e diritto nazionale in Francia nel secolo XVI*, Milan, 1962, pp. 55–66 and pp. 124–34.

the interrelations between the local law (*ius proprium*) and academic law (*ius commune*) had been proposed in academic legal doctrine.⁴¹ Therefore, in fact, legal treatises on subjects even of strictly local importance, and also when written in vernacular language, were never completely absent from academic law. This was also the case for the period before the fifteenth century.⁴² Yet, nonetheless, separating local law studies from legal humanism is useful. It helps to explain, for instance, why legal treatises on the subject of Antwerp municipal law could be in the style of the *mos italicus*.⁴³

Both of the abovementioned meanings of legal humanism have been related to historicism with regard to law. For legal humanism as practice-orientated science, Donald Kelley has emphasised the importance of a sixteenth-century school of French jurists that aimed at promoting a discipline of customary law. Thereby they paid considerable attention to the history of local law,⁴⁴ because historical research had to provide guarantees of equity against the intrusions of an allegedly harsher Roman law.⁴⁵ However, other research has yielded the insight that sixteenth-century French legal authors wrote in many traditions, and that their goals were more prosaic. Specialists in legal humanism such as Domenico Maffei and Hans Erich Troje have insisted on the fact that the programme of humanism concerning law was from its beginnings directed towards a “cleaning” of available source texts and of legal doctrine that had been written on the basis of them. They have also underlined that legal humanists wanted to re-establish order in newly mixed legal traditions. French legal authors were not attacking Roman or academic law as such, but rather were trying to systematise and simplify the existing multi-layered law, which consisted of municipal law, Roman law (source texts and doctrine) and royal statutes. They purported to reconcile the academic legal tradition with other types of law when doing so.⁴⁶

41 Mario SBRICCOLI, *L'interpretazione dello statuto. Contributo allo studio della funzione dei giuristi nell'età comunale*, Milan, 1969, pp. 462–4.

42 Examples are the *Somme rural* by Jehan Boutillier (end of the fourteenth century) and the *Coutumes de Beauvaisis* by Philippe de Beaumanoir (end of the thirteenth century).

43 An example is the *Commentaria in leges municipales Antverpienses*, which dates from the eighteenth century. See Royal Library in Brussels, Manuscripts, no. 13569.

44 KELLEY, *Foundations of Modern Historical Scholarship*, pp. 241–76. According to this author, the writings of Antoine Loisel (ob. 1617), Etienne Pasquier (ob. 1615) and Louis le Caron (ob. 1613) concerning municipal and royal law were embedded in historical approaches, which he links to legal humanism. These views have been copied into general overviews of the history of Renaissance culture. See, for example, Charles G. NAUERT, *Humanism and the Culture of Renaissance Europe*, Cambridge, 2006, pp. 176–7.

45 Donald R. KELLEY, “Lord Deliver Us From Justice”, in *Yale Journal of Law & the Humanities*, 5/1, 1993, pp. 159–68; Donald R. KELLEY, “Second Nature: the Idea of Custom in European Law, Society, and Culture”, in *The Transmission of Culture in Early Modern Europe*, eds Anthony GRAFTON & Ann BLAIR, Philadelphia, 1990, pp. 144–53.

46 Domenico MAFFEI, *Gli inizi dell'umanesimo giuridico*, Milan, 1956; Hans E. TROJE, “‘Verwissenschaftlichung’ und Romanistische Jurisprudenz” (1985), “Arbeitshypothesen zum Thema ‘humanistische Jurisprudenz’” (1970) and “Zur humanistischen Jurisprudenz” (1972), in Hans E. TROJE, *Humanistische Jurisprudenz. Studien zur europäischen Rechtswissenschaft unter dem Einfluss des Humanismus*, Goldbach, 1993, respectively pp. 253–86, pp. 77–123, and pp. 143–72.

Historical sensibility with regard to law was most certainly a novelty in the early sixteenth century, and it was related to humanism and also to legal humanism. However, it must not be regarded as (a prelude to) legal-historical science, nor as an attempt to introduce broad historical analysis into legal studies. A search for older texts had much to do with a new epistemology of law, which marked the core feature of the legal humanism that was practised in the 1520s and 1530s. Such scholars as Alciato and Ulrich Zäsi (Zasius) (ob. 1536) attempted to trace the underlying meaning of texts through an analysis of manuscript versions. Legal historians have for some time hinted at the “elegant” or “philosophical” nature of legal humanism in the abovementioned period,⁴⁷ but only quite recently the full impact and proportions of this pioneering humanist approach towards law have become clear.⁴⁸

The concrete outcomes of the abovementioned ideas were substantial for local law. Rules that had haphazardly been produced in previous periods were now put into a logical order, under chapter headings, and uniform terminology was used throughout newly compiled texts. The scholastics had already pursued a thorough and deep understanding of texts, but they had refrained from changing them. By contrast, the slowly spreading culture of legal humanism prompted exactly that. The novel humanist understanding of law went together with a striving towards *renovatio* or *reformatio*. These concepts referred to the bringing of consistency, in a systematised and comprehensive form, into materials that were disconnected and patchy. In the early sixteenth century, the notion of *reformatio* (*in melius*) commonly depicted religious reform (hence “Reformation”) and it was a synonym of *emendatio*, which was also the label describing the philological process of “reviving” a lost archetype text.⁴⁹ Throughout the sixteenth century, in France and in German territories, the term *reformatio* was commonly used for a rephrasing of municipal law in a new text.⁵⁰ In North-west continental Europe, in the later fifteenth and early sixteenth centuries, plans to recast municipal law into a more

47 VAN CAENEGEM, *An Historical Introduction*, p. 57; Franz WIEACKER, *A History of Private Law in Europe*, Oxford, 1995 (originally from 1967), p. 122.

48 BERMAN, *Law and Revolution II*, pp. 104–26; Jan SCHRÖDER, *Recht als Wissenschaft. Geschichte der juristischen Methodenlehre in der Neuzeit (1500–1933)*, Munich, 2012 (first edition 2001), pp. 25–49.

49 Gerald STRAUSS, “Ideas of *Reformatio* and *Renovatio* from the Middle Ages to the Reformation”, in *Handbook of European History, 1400–1600. Later Middle Ages, Renaissance and Reformation*, eds Thomas A. BRADY, Heiko A. OBERMAN & James D. TRACY, vol. 2, Leiden, 1995, pp. 1–30. These concepts had been coined earlier, in the eleventh and twelfth centuries. Also with regard to law, the scholastic method, which entailed references to a *ratio* or “reason” of written rules, has been described as *emendatio*. The mentioned humanist element of rewriting the law on the basis of its “spirit” is not taken into account in literature that underscores continuity between the scholastic and the humanist methods concerning *ratio*. See Ian MACLEAN, *Interpretation and Meaning in the Renaissance. The Case of Law*, Cambridge, 1992; SCHRÖDER, *Recht als Wissenschaft*, pp. 25–49; Govaert C. J. J. VAN DEN BERGH, *Die holländische elegante Schule. Ein Beitrag zur Geschichte von Humanismus und Rechtswissenschaft in den Niederlanden 1500–1800*, Frankfurt am Main, 2002, pp. 35–9.

50 Examples are the *Reformacion der kayserlichen stadt Nuremberg* (1503) and the *Frankfurt erneuerte Reformacion* (1578). See “Reformation (Rechtsquelle)”, in *Handbuch zur Deutschen Rechtsgeschichte*, vol. 4, Berlin, 1990, col. 468–72. In sixteenth-century France, the notions of *réduction* or *réformation* were commonly used for revisions of compilations of *coutumes*.

systematic form became widespread. This new way of doing also responded to the efforts of states to translate municipal law into writing. Such policies had started in France in the middle of the fifteenth century and they became copied in the Netherlands and German cities thereafter. The imposed “homologation” of municipal law triggered the writing of drafts of structured compilations of rules in which the legal-humanist views were applied.⁵¹ An example of a text of “reformed” municipal law is the 1520 *Stadtrecht* of Freiburg im Breisgau, which was written by Ulrich Zäsi.⁵² In the Netherlands, at around the same time, the legal author Philip Wielant drew up comparable compilations, such as projects of law for the County of Flanders and a municipal law for Haarlem.⁵³

In Antwerp, the *nouvelle vague* arrived around 1530. From the early 1510s onwards, a list of excerpts from *enquêtes par turbe* had circulated in the Antwerp institutional bodies, but it lacked coherence and teemed with repetitions and unclear phrases. Shortly after 1530, this so-called *Golden Book* was rearranged. Its contents were brought into line with new municipal bylaws and some sections were omitted. The older approach of giving more weight to authority was not eradicated entirely. Some redundant parts of the earlier compilation were kept but in other paragraphs significant changes were made and new judicially applied principles were inserted. The first extant collection of Antwerp law that was sent in for princely approval as the city’s law book, in 1548, was also the outcome of a thorough revision, involving changes to the contents of the Antwerp municipal law.⁵⁴

The process of compiling and correcting overviews of rules was dependent on the use of archival records. Even though the legal culture in Antwerp had been predominantly oral before the last years of the fifteenth century, some important norms of municipal law had been fixed in the preceding centuries, in ducal charters, in treaties with cities and principalities, and in bylaws of the Antwerp aldermen as well. As a result of the more hermeneutical humanist views on law, any legal reform had to start with the effort of listing and analysing such source materials. The searching and cataloguing of texts of Antwerp municipal law from previous periods led to a collecting of official documents in series of ledgers.⁵⁵ The secretary of the city of Antwerp performed the task of administering the urban archives. In the first half of the sixteenth century, the most important

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- 51 On the homologation movement in France and the Netherlands, see John P. DAWSON, “The Codification of the French Customs”, in *Michigan Law Review*, 38, 1940, pp. 765–800; Martine GRINBERG, *Écrire les coutumes. Les droits seigneuriaux en France, XVIe–XVIIe siècle*, Paris, 2006; Martine GRINBERG, “La rédaction des coutumes et les droits seigneuriaux. Nommer, classer, exclure”, in *Annales. Histoire, Sciences Sociales*, 52, 1997, pp. 1017–38; John GILISSEN, “Les phases de la codification et de l’homologation des coutumes dans les XVII provinces des Pays-Bas”, in *The Legal History Review (Tijdschrift voor rechtsgeschiedenis)*, 18, 1950, pp. 36–67 and pp. 239–90.
- 52 Hansjürgen KNOCH, *Ulrich Zasius und das Freiburger Stadtrecht von 1520*, Karlsruhe, 1957.
- 53 Jan BUNTINX, “Wielant, Filips”, in *Nationaal biografisch woordenboek*, vol. 5, Brussels, 1972, col. 1009–19.
- 54 See the detailed analysis in DE RUYSSCHER, “De ontwikkeling van het Antwerpse privaatrecht”, pp. 73–91.
- 55 For example, of received letters (ACA, PK, no. 271) and of oaths of officials and public servants (ACA, PK, no. 1488).

secretaries were the jurist Peter van Wesenbeke (1532–1547) and the humanist Cornelis De Schrijver (Grapheus) (1520–1522 and 1540–1548).⁵⁶ The activities of learned civil servants of the city went way beyond administrative tasks. On important occasions, literary ambitions could be combined with official duties. Grapheus, for example, compiled a book with verse and illustrations of the 1549 Joyous Entree of Prince Philip of Habsburg and most probably wrote a petition in humanist prose for the new ruler, containing a demand for new privileges for the city of Antwerp.⁵⁷ The tradition of secretaries and law clerks being jurists and intellectuals was continued in the later sixteenth and the early seventeenth centuries, when the jurist Jan Boghe (Bochius) (ob. 1609) and Jan Gaspar Gevaerts (Gevartius) (ob. 1666) were law clerks.⁵⁸ The most important figure in that period was former advocate, *doctor iuris utriusque* and long-time secretary of the city Hendrik de Moy (ob. 1610). He was guardian of the Antwerp charters. Following the 1576 Spanish Fury of Antwerp and the burning of the Town Hall, he reconstructed the city's archives,⁵⁹ which explains his vivid interest in Antwerp's medieval legal texts. He cited such sources very frequently, for example in his comment on the 1582 Antwerp law compilation⁶⁰ and in his *Tractaet der officieren*, which was a volume dealing with regulations concerning public servants.⁶¹ Considering all this, it is no surprise that law clerks and secretaries were among the prime members of committees that were set up in order to write compilations of Antwerp municipal law, to be sent in for authentication by the sovereign. The 1548 collection was drawn up by the secretaries Willem van Ryt (ob. 1553), Jan van Halle (ob. 1551), and perhaps also Cornelis Grapheus.⁶² Other jurists were important as well. In 1570, another panel, the main member of which was the jurist Nicolaas Rockox the Elder (ob. 1577), prepared a revised version of the municipal law. He was a graduate from Orléans university and had been mayor (burgomaster-within) of the city.⁶³

When summarising all of the above, it can be said that the Antwerp legal scenes have been academic since the later fifteenth century, and that legal humanism has

56 On Peter van Wesenbeke, see Hilde DE RIDDER-SYMOENS, "De universitaire vorming van de Brabantse stadsmagistraat en stadsfunctionarissen in Leuven en Antwerpen, 1430–1580", in *De Brabantse stad*, 's-Hertogenbosch, 1978, p. 97. For a short biography of Cornelis Grapheus, see Joseph ROULEZ, "Cornelis de Schryver", in *Biographie nationale de Belgique*, vol. 5, Brussels, 1876, pp. 721–26. Judging from the contents of his texts, it is not unlikely that Grapheus had had a legal training at university.

57 Dave DE RUYSSCHER, "Lobbyen, vleien en herinneren: vergeefs onderhandelen om privileges bij de Blijde Inkomst van Filips in Antwerpen (1549)", in *Noord-Brabants Historisch Jaarboek*, 29, 2012, pp. 64–79.

58 Dirk IMHOFF, "Joannes Bochius (1555–1609)", in *Bio-bibliografie van Nederlandse Humanisten*, Den Haag, 2009, digital edition (www.dwc.knaw.nl/bochius-joannes-1555-1609/). On Gevaerts, see Louis ROERSCH, "Gevaerts (Jean-Gaspard)", in *Biographie nationale*, vol. 7, Brussels, 1880–1883, col. 694–9.

59 Floris PRIMIS & Michel VERBEECK, *Het Antwerpsche Stadsarchief*, Antwerp, 1941, pp. 26–7.

60 ACA, V, nos 21–23.

61 ACA, PK, nos 151–53.

62 ACA, PK, no. 271, 56 (16 May 1546).

63 ACA, V, no. 11, fol. 41r (5 May 1570).

had influence, especially since the 1530s. This influence consisted of a new idea that the law of the city could be modelled and reshaped on the basis of an internal logic that was to be discovered through an assessment of the contents of texts stemming from different periods. The Antwerp administrators thus acquired contemporary views, as they became sensitive for the philosophy of *emendatio*. This did not involve a science of local law or a rigorous philological discipline, but rather a new style that was aimed at restating and systematising older legal materials. But notwithstanding these new humanist approaches, all over Northwest continental Europe, jurists continued to build on late-medieval legal literature.⁶⁴ In this stage of development, the projects of the ordering and revising of legal texts did not yet result in default rules regarding contracts. Most of the municipal law concerned the enforcement of debts. Around 1550, this was changed, and late-medieval legal doctrine was used as a source also by the Antwerp administrators.

3.4. Commercial Law in Antwerp: Appropriating, Endorsing and Upgrading Mercantile Practices

The phenomenon of the reception of legal academic culture and academic law must not be interpreted in antagonistic terms. The case of Antwerp in fact proves that an economic policy that was based on motives of facilitation was not only possible within but also profited from the academic settings in which it was pursued. This goes directly against the (still widespread) nineteenth-century romantic view that the growing popularity of academic solutions (Roman law) entailed the reducing of the “law of the people”. Roman law would have supported claims of the elite, and the latter would have used the learned law to strip other classes within society of their century-old privileges and customary rules.⁶⁵

However, neither in the Late Middle Ages nor in the sixteenth century was the area of the law a battleground between different legal systems. This is clear in two respects. Firstly, before as well as during the sixteenth century, local law, which mostly consisted of rules that were fixed and applied by local courts, was not a collection of customs in the sense of spontaneously developed rules. Even

64 This view allows to overcome difficult theories on jurists being Italian in the courtroom and humanist in their study. See for example F. CARPINTERO, “*Mos italicus*, ‘*mos gallicus*’ y el Humanismo racionalista. Una contribución a la historia de la metodología jurídica”, in *Ius Commune. Zeitschrift für europäische Rechtsgeschichte*, 6, 1977, pp. 108–71. See also the older views of Victor BRANTS & René DEKKERS, who described the teachings at the University of Louvain in the middle of the sixteenth century of such law professors as Gabriel Van der Muiden (Mudaeus) (ob. 1560) and Elbrecht De Leeuw (Leoninus) (ob. 1579) as a *via media* between *mos italicus* and *mos gallicus*. See Victor BRANTS, *La Faculté de Droit de l’Université de Louvain à travers cinq siècles (Étude Historique)*, Brussels, s.d. (1910), pp. 110–21, and René DEKKERS, *Het humanisme en de rechtswetenschap in de Nederlanden* (Vlaamsche rechtskundige bibliotheek, 19), Antwerp, 1938, p. 131, and pp. 142–3.

65 On this bias in historiography, consult James R. FARR, “Honor, Law, and Custom in Renaissance Europe”, in *A Companion to the Worlds of the Renaissance*, ed. Guido RUGGIERO (Blackwell Companions to European History), Oxford, 2002, pp. 131–2 and KELLEY, “Civil Science in the Renaissance”, pp. 792–3. See also footnote 3.

though local rules were commonly defined with such terms as “consuetudines” and “costuymen”, this did not mean that they had emerged from within the community. Local law was constantly being developed by specialists. It was made concrete in judgments and was acknowledged by local rulers. Particular customs could exist outside this framework of official law. Such customs could come into existence and be practised without intervention from legal practitioners and without the approval of the municipal government. However, from recent research it is becoming evident that in late medieval and early modern Europe, customs in that latter sense were mostly of an individual nature, few in number and therefore insufficient for supporting a fully fledged system of law that was aimed at the common good.⁶⁶ Solutions that were imposed as local law were often created and thus not always rooted in old ideas.⁶⁷

This raises a second important point concerning the nature of law, in history as well as today, which is its nurturing through legal culture and through legal reasoning. Law in the sense of written or otherwise fixed *ex ante* rules provides answers for concrete situations, but it also inevitably depends on interpretation. Judges and advocates have to weigh the contents of legal texts and of precedents, which do not cover every possible situation and which can be incomplete or unclear, in order to make them fit facts. This process of interpretation facilitates innovation. It makes law change and evolve.⁶⁸ Doctrine, or legal scholarship, is the most evident lifeblood for legal arguments and for innovation. It is abstract and it functions according to an internal logic, which explains its relatively free contents and continuous development. These features resulted in the appeal of legal literature, which marked a counterweight against bylaws and statutes. The latter were usually limited in scope and wording. In sixteenth-century Antwerp, this drawing on legal doctrine was most relevant. It was demonstrated above that academic law proved itself as a tool to adapt older Antwerp legal practices.

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- 66 CONTE, “Roman Law vs. Custom”, p. 38; Robert JACOB, “Beaumanoir vs. Révigny: The Two Faces of Customary Law in Philip the Bold’s France”, in *Essays on the Poetic and Legal Writings of Philippe de Remy and His Son Philippe de Beaumanoir of Thirteenth-Century France*, eds Sarah-Grace HELLER & Michelle REICHERT, Lewiston (NY), 2001, pp. 221–76; Robert JACOB, “Les coutumiers du XIII^e siècle ont-ils connu la coutume?”, in *La coutume au village dans l’Europe médiévale et moderne*, Toulouse, 2001, pp. 103–20. The notion of custom (*consuetudo*) was used for both particular customs in the abovementioned sense and also in the meaning of the general (not necessarily but often judge-made) comprehensive law that was applied within a jurisdiction. See Lloyd BONFIELD, “What Did English Villagers Mean by ‘Customary Law’?”, in *Medieval Society and the Manor Court*, eds Zvi RAZI & Richard M. SMITH, Oxford, 1996, pp. 107–8; Ron HOUSTON, “Custom in Context. Medieval and Early Modern Scotland and England”, in *Past & Present*, 211, 2011, pp. 39–40; David IBBETSON, “Custom in Medieval Law”, in *The Nature of Customary Law. Legal, Historical and Philosophical Perspectives*, eds Amanda PERREAU-SAUSSINE and James B. MURPHY, Cambridge, 2007, p. 153 and pp. 162–5.
- 67 DE RUYSSCHER, “De ontwikkeling van het Antwerpse privaatrecht”, pp. 104–11; Emily KADENS, “The Myth of the Customary Law Merchant”, in *Texas Law Review*, 90, 2012, pp. 1185–96.
- 68 Law is directive (*ex ante*) and flexible at the same time: judges and lawyers can draw on principles for guidance as to their concrete decisions in the absence of detailed rules in ordinances or case law. Their solutions are then a part of the law as well, even though in their detailed form they are new. See Ronald DWORKIN, *A Matter of Principle*, Cambridge (MA), 1985; Ronald DWORKIN, *Law’s Empire*, Cambridge (MA), 1986.

We will discover below to what extent the Antwerp municipal law with regard to commerce that developed throughout the sixteenth century drew on practices and customs of merchants visiting or residing in the city, and whether legal pluralism existed in one way or another. Furthermore, the sources of the municipal commercial law will be analysed.

3.4.1. *Municipal Law vs. Customs of Merchants in the First Half of the Sixteenth Century*

In the later years of the fifteenth and the first decades of the sixteenth centuries groups of merchants arrived in Antwerp from abroad. As a result, mercantile techniques and practices that had not been applied there before spread into the Antwerp market. At the fifteenth-century fairs of Brabant, which were held at Antwerp and Bergen op Zoom, acknowledgments of debt and succinct partnership contracts were common. Agreements and certificates regarding joint ownership, deposit and agency were drawn up as well.⁶⁹ In the 1520s and 1530s, new contracts and techniques, including detailed partnership contracts, marine insurance policies, double-entry bookkeeping and commission trade, came into use in Antwerp. Many of these practices had been applied in Bruges before that time and in Antwerp they gradually became more popular, after they had been known within relatively closed circles only. Marine insurance underwriting in Antwerp for example was first done exclusively by Spaniards and Italians, and only in the 1550s did merchants of other nationalities sign insurance contracts.⁷⁰ Of all the mentioned techniques, double-entry bookkeeping, commission trade and bills of exchange were the most Italian: they were Italian in origin, or at least they were regarded as such.⁷¹ However, eventually these mercantile practices were shared amongst merchants of different

69 See Renée DOEHAERD, *Études anversoises: documents sur le commerce international à Anvers, 1488–1514*, Paris, 1962–1963, 3 vols. For a detailed analysis of partnership arrangements in Antwerp *certificatiën* of the later fifteenth century, see Ernst PITZ, “Kapitalausstattung und Unternehmensformen in Antwerpen 1488–1514”, in *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte*, 53, 1966, pp. 53–91.

70 Dave DE RUYSSCHER & Jeroen PUTTEVILS, “The Art of Compromise. Legislative Deliberations on Marine Insurance Institutions in Antwerp (c. 1550–c. 1570)”, in *BMGN. Low Countries Historical Review*, 130, 2015, pp. 31–4.

71 On commission trade, which in sixteenth-century Antwerp was perceived of as being Italian (see ACA, V, no. 69, fol. 51v (10 July 1566)), see Florence EDLER-DE ROOVER, “The Van der Molen, Commission Merchants of Antwerp: Trade with Italy, 1538–44”, in *Medieval and historiographical essays in honour of James Westfall Thompson*, eds James Lea CATE & Eugene N. ANDERSON, Chicago, 1938, pp. 78–145; PUTTEVILS, *Merchants and Trading*, pp. 100–5. With regard to bookkeeping in sixteenth-century Antwerp, see Dave DE RUYSSCHER, “How Normative Were Merchant Manuals? Of Customs, Practices, Techniques and ... Good Advice (Antwerp 16th Century)”, in Heikki PIHLAJAMÄKI, Albrecht CORDES, Serge DAUCHY & Dave DE RUYSSCHER (eds), *Understanding the Sources of Commercial Law*, Leiden, Brill, 2018; GELDERBLOM, *Cities of Commerce*, pp. 86–96. On the earliest bills of exchange in Antwerp, see PUTTEVILS, *Merchants and Trading*, pp. 76–7.

nationalities, and they had been applied by non-Italians in the Netherlands before the sixteenth century as well.⁷²

The new methods of trade came together with normative ideas. Some of the mentioned techniques hinged, at least partly, on formalities that were considered crucial for their validity. These formalities were acknowledged within groups of merchants that applied the practices, and they can therefore be considered mercantile customs.⁷³ Even though they became standardised only later, in the first years of the sixteenth century and thereafter, bills of exchange for example had to contain an order clause (*pagate per me a ...*). It can be suspected that a written recognition of debt not mentioning this formula was not considered a bill of exchange. However, formal requirements such as this one were minimal, as were the customs relating thereto. This is particularly evident in instructional literature that was printed in Antwerp in the first half of the sixteenth century. For bills of exchange, merchant manuals refer to a minimal “style” of writing bills of exchange, but they contained most of all calculations of exchange rates and currency swaps. Such books did not usually mention default rules, or even rules or sanctions in general.⁷⁴ Furthermore, for open-ended contracts such as partnership agreements and marine insurance policies, requirements were even more limited. For the most part there were no norms of merchants as to their contents. What was provided in the contract was mainly the result of negotiations between the parties to the contract.

For marine insurance, one can get an idea of the relative lack of normative rules applying among merchants from a comparison of contracts and decisions the subject of legal actions. Some insurance policies that were written in Antwerp between 1530 and 1550 have been preserved. Admittedly, they are very few (four contracts), and most of them are notarial deeds, whereas the contents of private arrangements, which were most probably made as well, are not known.⁷⁵ With this caveat in mind, their appearance and contents make it nonetheless likely that detailed forms of marine insurance contracts were not yet known in Antwerp

72 This was the case for double-entry bookkeeping and bills of exchange, which had been used in Flanders since the fourteenth century. The Bruges hostellers can be considered commission agents as well. See James MURRAY, *Bruges, Cradle of Capitalism, 1280–1390*, Cambridge, 2005, p. 202.

73 A practice refers to repeated actions or shared opinions, for example mentioned in a contract. A custom regards practices that are deemed constraints, the breach of which is sanctioned in one way or another. This difference corresponds with the contemporary, sixteenth-century, distinction between *usus* (practice) and *consuetudo* (custom). See Siegfried BRLE, *Die Lehre vom Gewohnheitsrecht. Eine historisch-dogmatische Untersuchung*, Wrocław, 1899, pp. 104–18 and pp. 141–56.

74 In a 1543 manual, Jan Ympyn Christoffel for example detailed the difference between regular, dry and fictitious bills of exchange, but was not explicit as to what extent the latter varieties were lawful. See Jan YMPYN CHRISTOFFEL, *Nieuwe instructie*, fol. 13v–fol. 15v. Other manuals contained instructions on the writing of bills of exchange. See Gabriel MEURIER, *Formulaire de missives, obligations, quittances, lettres de change, d’assurances ...*, Antwerp, 1558, fol. 18v–19r. See, for an appraisal of the legal contents of Antwerp mercantile tracts, DE RUYSSCHER, “How Normative Were Merchant Manuals?”

75 They are analysed in detail in Henry L. V. DE GROOTE, *De zeeassurantie te Antwerpen en te Brugge in de zestiende eeuw*, Antwerp, 1975, pp. 96–125.

in this period, even though they had been applied elsewhere since the 1510s.⁷⁶ The wording of the contracts, which was in different languages (French, High German, Spanish), was not identical, even when the contents were sometimes comparable. In the preserved notarial deeds some similarities in provisions can be found, for example with regard to the risks (“until the safe unloading of the merchandise”, the definition of risks was general, of the seas and men)⁷⁷ or the route (all policies contained a “liberty clause”, which allowed all ports of choice to be touched during the voyage).⁷⁸ These provisions corresponded to a typical policy, which was commonly chosen. The contents of insurance contracts converged to a modest extent and were based on a Florentine example.⁷⁹ However, the use of a typical policy was not imposed or deemed obligatory in the merchant community. Moreover, there were differences with regard to other conditions of the insurance. Some insurance contracts insured against misconduct and damage caused by the captain and his crew (i.e. barratry), whereas others did not mention this as a peril.⁸⁰ In some insurance policies, the value that was insured was defined as limited, but percentages differed (90 or 50%).⁸¹ Some of the contracts provided that the costs of the sale of the insured merchandise were insured as well, whereas others did not.⁸² At least some of these differences might reflect variable views of groups or *nations* of merchants as to lawful and compulsory insurance terms.⁸³ The merchants subscribing to insurance contracts or the notaries who drew up the deeds of contract referred to “customs” supplementing the provisions of the contract. Most marine insurance contracts that were drafted at Antwerp referred to both the customs of the Antwerp Bourse and the “customs of (the Strada of) London” or “customs of Lombard Street”.⁸⁴ It is likely that this concerned the mentioned Florentine style of formulating perils, which had also been in use in Bruges, and some basic rules that applied in either place, rather than standards or default rules to be applied to the contents of contracts.⁸⁵

For the most part, when used in Antwerp the label of “customs” pointed to a restricted number of procedural rules and terms of payment that were imposed

76 In Burgos, in 1514 a policy form was imposed, and in Florence, a standard policy applied since 1523. See Johan P. VAN NIEKERK, *The Development of the Principles of Insurance Law in the Netherlands from 1500 to 1800*, Kenwyn, 1998, vol. 1, p. 486.

77 DE GROOTE, *De zeeassurantie*, p. 100, pp. 107–8.

78 DE GROOTE, *De zeeassurantie*, p. 106.

79 Dave DE RUYSSCHER, “Belgium. Marine insurance”, in Ph. HELLWEGE (ed.), *A Comparative History of Insurance Law in Europe. A Research Agenda* (Comparative Studies in the History of Insurance Law), Berlin, 2018, vol. 1, p. 115, pp. 117–8.

80 DE GROOTE, *De zeeassurantie*, pp. 107–8.

81 DE GROOTE, *De zeeassurantie*, p. 120.

82 DE GROOTE, *De zeeassurantie*, p. 120.

83 See on barratry, and differences of opinion among merchants of different regions relating thereto, Guido ROSSI, *Insurance in Elisabethan England: The London Code*, Cambridge, 2016, pp. 173–6.

84 Dave DE RUYSSCHER, “Antwerp 1490–1590: Insurance and Speculation”, in *Marine Insurance. Origins and Institutions, 1300–1850*, ed. Adrian B. LEONARD, London, 2016, pp. 86–7.

85 DE RUYSSCHER, “Belgium: Marine Insurance”, p. 118. See in this regard also – the somewhat different view of – ROSSI, *Insurance in Elisabethan England*, p. 150, footnote 47.

by the Antwerp Municipal Court. An analysis of the deeds of judgment of the Antwerp Municipal Court of the period between 1488 and 1550, which contained the arguments made in court, yielded only ten adduced customs relating to mercantile contracts and situations. Nearly all of the customs referred to dealt with marine insurance.⁸⁶ The earlier mentioned insurance policies of the 1530s and 1540s commonly contained the promise of the underwriters to pay out when no news had been heard after a year.⁸⁷ In 1544, this was in a legal action referred to as a “usage and custom of the (Antwerp) Exchange” supplemented a contract.⁸⁸ This early reference to “customs of the Exchange”, which remained exceptional until the 1550s, concerned in particular the prescribed period of one year. Similar links to concrete delays can be seen in some references to other customs. When an underwriter was notified of the loss of insured merchandise, he was required to pay within two months. In a 1537 petition to the Emperor, the Antwerp aldermen labelled this principle a rule, being of “old law”, by which municipal law was meant.⁸⁹ In some preserved insurance policies of the 1530s, the underwriters promised compensation within two months after the notification of shipwreck or losses at sea.⁹⁰ When a 1537 princely ordinance imposed this term of two months, parties at trials started referring to this law; references to a custom disappeared after May 1537, when the mentioned princely bylaw came into force.⁹¹

Another custom concerned an issue that was frequently raised in the Antwerp courtroom, which was the nullity of the contract because of belated insurance. A *consilium* of the Leuven law professor Elbrecht De Leeuw (Leoninus), most probably of 1540, mentioned the rule that an insurance agreement remained valid when it appeared later that damage to the insured object had occurred before the contract had been signed, but only if the news of the damage could not have reached Antwerp before the signing of the contract. The norm was described as a local *consuetudo* of Antwerp, thus pertaining to the municipal (unwritten) law, and as well known among merchants and seamen in the city.⁹² Arguments that were written in a deed of judgment of the Antwerp Municipal Court dating

86 The following deeds contained references to customs regarding sea law (general average): ACA, V, 1241, fol. 103v–104r (16 July 1547), fol. 283r–v (8 March 1548 ns), 1244, fol. 60v–61r (24 December 1555), fol. 126v–127v (12 March 1556 ns). On the lawfulness of insurance after loss: ACA, V, 1241, fol. 48v–49v (7 May 1547), 1242, fol. 50v–52r (10 April 1548 ns) and 1238, fol. 62r (17 September 1543). The reference to another customs, dating from April 1548, is mentioned hereafter.

87 DE GROOTE, *De zeeassurantie*, pp. 112–3.

88 ACA, V, no. 1239, fol. 117v and fol. 138v (19 July 1544).

89 Oskar DE SMEDT, “De keizerlijke verordeningen van 1537 en 1539 op de obligaties en wisselbrieven. Eenige kantteekeningen”, in *Nederlandsche Historiebladen*, 3, 1940, p. 19.

90 DE GROOTE, *De zeeassurantie*, p. 111.

91 For the law, see *Recueil des Ordonnances des Pays-Bas*, 2nd series, vol. 4, Brussels, 1907, pp. 34–5 (25 May 1537). An example of a reference to the “ordinance of the emperor” is ACA, V, no. 1237, fol. 23v–24v (31 October 1542).

92 Elbrecht DE LEEUW (LEONINUS), *Centuria consiliorum ...*, Arnhem, 1645, pp. 250–1 (cons. 22, nos 5–6). See also Alain WIJFFELS, “Business Relations Between Merchants in Sixteenth-Century Belgian Practice-Orientated Civil Law Literature”, in *From lex mercatoria to commercial law*, ed. Vito PIERGIOVANNI (Comparative Studies in Continental and Anglo-American Legal History, 24), Berlin, 2004, pp. 256–9.

from 1543 label this same rule as “a custom of merchants”.⁹³ In a case of 1547, the advocate of the insured defined the mentioned norm on late insurance as a “common usance and custom that was held in affairs of insurance, which was notorious and public”.⁹⁴ A rule that was closely linked to belated insurance stated that when an insurance contract had been signed but had no object, the premium had to be returned. In 1548, an advocate of an insured defined this rule as a “custom and usage here at the Exchange among merchants”.⁹⁵

From all these descriptions, it appears that the references to customs of the Exchange comprised very specific rules that concerned procedural delays after which compensation could be demanded from insurance underwriters before the Antwerp Municipal Court. It is likely that in the first half of the 1500s in Antwerp references to “customs of merchants” and the like for marine insurance mostly described local law that was known and used by merchants and which could also be confirmed in princely legislation. There is no evidence that many “customs of merchants” or “customs of the Exchange” existed beyond the reach of the Antwerp Court. It should also be noted that the “customs” only allowed for the resolution of a limited number of disputes and that there is no trace of customs that concerned clauses regarding risks for example. Provisions that were often inserted into insurance policies (for example, the generalised risks of the seas and men) were practices rather than customs. There is no evidence that in the first half of the sixteenth century the Florentine way of phrasing risks in marine insurance policies was compulsory, or considered as standard, in one way or another. By contrast, the procedural rules of the municipal law were regarded by merchants as “their law”.

In this first period until the middle of the sixteenth century, a virtual identity between Antwerp municipal law and mercantile customs had little to do with the permissive attitudes of the Antwerp leaders and judges. It was not because the Antwerp aldermen supported mercantile practice – which they did – that few customs of merchants developed. Instead, the minimal importance of normative ideas surrounding business followed on from a mentality of “facts and figures”, which meant that merchants themselves paid little attention to the legal phrasing and explanation of their agreements and commercial relationships. Quite remarkably, in the first half of the sixteenth century, the academic jurists of the Antwerp Municipal Court largely followed the same philosophy. They continued the fifteenth-century ideal of the “reading judge” who did not enter into the contract between the parties at the trial. Contracts and promises were stamped and executed, and not tested. Antwerp judges, but also the advocates that pleaded before them, generally refrained from imposing default rules onto agreements that proved incomplete or unclear. Instead, the court commonly ordered the inspection of books or accounts by arbiters, who were often merchants, and to whom the order was given to try to reconcile the parties and

93 ACA, V, no. 1238, fol. 62r (17 September 1543).

94 ACA, V, no. 1241, fol. 48v (7 May 1547).

95 ACA, V, no. 1242, fol. 50v–52r (10 April 1548 ns).

reach a compromise.⁹⁶ These arbiters did not apply customs of merchants, not only because the latter were very few, and if existing, too crude to settle legal questions, but also because the Antwerp aldermen prohibited the appointed arbiters from deciding and interpreting points of law.⁹⁷ If efforts of mediation failed, the judges could require one of the litigants to swear on oath his good faith, thus deciding the case.⁹⁸

Resuming all of the above, my argument on the blend of commercial practices and academic law in the Antwerp municipal law throughout the sixteenth century differs somewhat from the positions of other scholars. Oscar Gelderblom and Jeroen Puttevils have emphasised the functionality and permeability of Antwerp municipal law and its adaptive and adopting features towards the customs and practices of merchants.⁹⁹ Gelderblom has contended that urban magistrates, including those in Antwerp, had profound knowledge of the customs, techniques and practices of international trade. Gelderblom underlined that city administrators sensed which (corroborating and additional) measures of support and facilitation would bring about an optimal private-public heterogeneity of norms and proceedings in order to sustain growth, even in the long term.¹⁰⁰ By contrast, Bram Van Hofstraeten has criticised the facilitating effect of the Antwerp municipal law. He mentions differences between mercantile practice and an “intellectual” municipal law as found in the compilations that were issued by the Antwerp aldermen.¹⁰¹ Van Hofstraeten has described the reception in Antwerp municipal law of mercantile practices regarding partnerships as untimely and haphazard.¹⁰² As well as Van Hofstraeten, Gelderblom contrasts

96 AVA, V, no. 1233, fol. 170v (8 October 1507), no. 1237, fol. 146r (13 March 1543), no. 1237, fol. 23v–24r (31 October 1542), and no. 1238, fol. 24r (2 August 1543). This policy of the Municipal Court was also applied in lawsuits that did not concern mercantile debts or merchants. See, for example, ACA, V, no. 1238, fol. 1r (2 June 1542). Another example which relates to accounts of guardians is ACA, V, no. 1239, fol. 59v–60r (2 May 1544). See on the referral to arbiters, also, PUTTEVILS, *Merchants and Trading*, p. 139.

97 The report of the arbiters was described as an advice. See ACA, V, no. 1235, fol. 202v (22 October 1519) and V, no. 1233, fol. 110r (27 June 1506). The common formula in the order to the arbiters stated that they were to reach a compromise, “the law excluded” (“totten rechten excluyt”).

98 For an example of an oath waged by a defendant, who claimed that the debt had been paid, see ACA, V, no. 1231, fol. 121v (14 June 1490). If the defendant denied that he had entered into an (unwritten) agreement, an oath could be imposed onto him as well. See, for example, ACA, V, no. 1233, fol. 168v and no. 1237, fol. 21r–22r (24 October 1542). This type of oath was a purgatory oath.

99 GELDERBLOM, *Cities of Commerce*, pp. 201–2; Jeroen PUTTEVILS, *Merchants and Trading in the Sixteenth Century. The Golden Age of Antwerp*, London, 2015, pp. 106–7.

100 GELDERBLOM, *Cities of Commerce*, pp. 12–3, 201–03; O. GELDERBLOM, “Thinking About Cities of Commerce. A Rejoinder”, in *Tijdschrift voor sociale en economische geschiedenis*, 11/4, 2014, p. 126 and p. 130.

101 Bram VAN HOFSTRAETEN, “The Organization of Mercantile Capitalism in the Low Countries: Private Partnerships in Early Modern Antwerp (1480–1620)”, in *Tijdschrift voor Sociale en Economische Geschiedenis*, 13/2, 2016, p. 6 and p. 24.

102 Bram VAN HOFSTRAETEN, “Antwerp Company Law Around 1600 and its Italian Origins”, in *Companies and Company Law in Late Medieval and Early Modern Europe*, eds Bram VAN HOFSTRAETEN & Wim DECOCK (*Iuris Scripta Historica*, 29), Louvain, 2016, p. 52; Bram VAN HOFSTRAETEN, “Jurisdictional Complexity in Antwerp Company Law (1480–1620)”, in *The Law’s Many Bodies, Studies in Legal Hybridity and Jurisdictional Complexity c1600–1900*, eds Sean DONLAN & Dirk HEIRBAUT, Berlin, 2015, pp. 79–80.

municipal law with Roman law. According to Gelderblom, the latter was more out of touch with trade than the former, even though he acknowledges that municipal administrators could select appropriate solutions also from within Roman law.¹⁰³ In contrast to all mentioned scholars, I argue that separating Antwerp municipal law from academic frameworks is artificial. It was the concepts and terminology of academic law in particular that proved important for the phrasing of municipal rules on commercial situations and contracts, even when mercantile practices served as an example.

But because the customs and views of merchants with regard to possible solutions concerning their contracts were limited,¹⁰⁴ both in scope and quality, the Antwerp leaders had most of the agency for setting the normative framework. As a result, they often hesitated about which option to take, and legislation was often haphazard.¹⁰⁵ Not surprisingly, a deliberate standstill was a normal response as well. A late formulation of Antwerp municipal rules on the contents of mercantile contracts was due to path dependency, residing in the long-held conviction of the Antwerp aldermen that municipal and other rules should not interfere with the contents of agreements. Moreover, the late and hesitant crafting of municipal rules of contract does not attest to a divide between jurists and merchants. In Antwerp, both shared ideas as to how the Municipal Court should tackle questions on mercantile contracts, and as to the relationship between law and contract. Neither adjudication within *nations* of merchants nor resorting to mediation by arbiters was concerned with the enforcing of sets of rules of contracts crafted by merchants, or with the imposing of the law of the foreign merchants' place of origin in this regard. Arbiters were forbidden to settle legal questions. Also within *nations*, it seems that the "facts and figures" approach prevailed.¹⁰⁶ Yet, these views changed around mid-century. Merchants

103 GELDERBLOM, *Cities of Commerce*, p. 99, pp. 102–3.

104 Opinions as to the function of *turbe* inquiries, and the contents of the statements produced at the occasion of such *turben*, are equally divergent. Gelderblom and Van Hofstraeten consider them a reflection of mercantile practice, even if jurists participated in the *turben*. See GELDERBLOM, *Cities of Commerce*, p. 70, p. 135; VAN HOFSTRAETEN, "Antwerp Company Law", p. 37. Elsewhere I have stressed that statements registered in the *turbenboecken* were reflecting accepted municipal law and that statements drawn up exclusively by merchants were very rare. If they were made, they referred commonly not to merchant customs alone, but also to the "law of the city". See DE RUYSSCHER, "From Usages of Merchants", p. 17.

105 Dave DE RUYSSCHER, "Debt and Debt Adjustment: Assessing Institutional Change in Antwerp (c. 1490–c. 1560)", unpublished working paper, www.vub.ac.be/CORE/wp.

106 One would expect customs of merchants regarding the contents of contracts – at least when they deviated from the municipal law – to be mentioned in charters granted to *nations* of merchants before the middle of the sixteenth century. Such rules cannot be found in the 1511 charter for the Portuguese, or in the 1518 privilege for the English Merchant Adventurers. In the extant documentation that was produced during the long negotiations on the transfer of the Hanseatic Kontor from Bruges to Antwerp, dating of between 1546 and 1563, no such norms were mentioned either. See ACA, PK, no. 80, PK, fol. 273 r (1 June 1518), no. 1063/7 (c. 1546), no. 1063/13 (10 February 1546 ns), no. 1063/23 (24 October 1563), no. 1063/24 (24 October 1563), and no. 1070, fol. 61r–63r (20 November 1511). Evidence of the adjudication practice within the Antwerp *nations* of the first half of the sixteenth century is sparse. But some verdicts of *nations* mentioned in the ledgers of the Antwerp Municipal Court do not refer to rules of contract as imposed within the *nations*. See

complaining about fraud convinced the Antwerp aldermen to pursue a more detailed policy with regard to mercantile contracts. Providing legal certainty was the policy consideration that set in motion the drafting of more extensive laws.

The direction into which the municipal law evolved was not enshrined within the market, which is what Oscar Gelderblom suggests. Rather, there were many equally valuable and consistent alternatives, thus explaining fundamental differences in legislative tactics among – equally successful – trading cities of the later Middle Ages and early modern period.¹⁰⁷ Magistrates were no less bounded in their capacity to predict long-term growth than merchants were themselves. But, this notwithstanding, each of the possible paths, when chosen, and the solutions that were related to them could profit from the terminological, conceptual and theoretical wealth of legal academic literature, as was indeed the case in Antwerp.

The academic procedural rules did not oppose a further passive attitude towards the contents of contracts. Yet, they helped to lift earlier restrictions on the evidential value of documents. The Romano-canonical procedural rules allowed witnesses to give evidence of unwritten agreements and promises. There are strong indications that already early in the sixteenth century, account books and contracts of all types (private, notarial), maybe even letters as well, could be submitted as evidence in the Antwerp Municipal Court.¹⁰⁸ Academic restrictions as to their evidential value could easily be remedied with a complementary oath.¹⁰⁹ Merchants did not gain access to the municipal government and positions of judge in the Antwerp Municipal Court, because patrician

PUTTEVILS, *Merchants and Trading*, p. 144. Moreover, some statutes of *nations* have been preserved, and they do not contain rules of contract law: Walter EVERS, *Das hansische Kontor in Antwerpen*, Kiel, 1915 (extant on the contents of the 1569 and 1578 statutes); William E. LINGELBACH, *The Merchant Adventurers of England, their Laws and Ordinances*, Philadelphia, 1902 (contains the laws for the Company of Merchant Adventurers up to the 1660s).

107 DE RUYSSCHER, “Debt and Debt Adjustment”; Jeroen PUTTEVILS, Peter STABEL & Botho VERBIST, “Een eenduidig pad van modernisering van het handelsverkeer: van het liberale Brugge naar het gereguleerde Antwerpen?”, in *Overheid en economie: geschiedenissen van een spanningsveld*, eds Bruno BLONDÉ et al, Antwerp, 2014, pp. 39–54.

108 An early reference to books kept by the defendant is ACA, V, no. 1231, fol. 129v–130v (26 July 1491). The registered deeds of civil judgments of the Antwerp Municipal Court, for the later years of the fifteenth and for the first years of the sixteenth century, teem with mentions of submitted private acknowledgments of debt. See, for example, ACA, V, no. 1232, fol. 323r (October 1502). See also footnote 23. As for private letters, there are – to my knowledge – no examples of before 1550 of Antwerp court trials during which they were produced as evidence. See, for an example of 1554, PUTTEVILS, *Merchants and Trading*, p. 88. Some authors have nonetheless claimed that in Antwerp commission trade hinged on private merchants’ letters that according to Antwerp law were accepted as evidence. See GELDERBLOM, *Cities of Commerce*, pp. 79–83, p. 97; PUTTEVILS, *Merchants and Trading*, p. 101.

109 Some deeds of judgment point to oaths that were granted in *supplementum probationis*, i.e. for compensating the limited evidential value of writings and assertions. See, for example, ACA, V, no. 1231, fol. 129v–130v (26 July 1491). For academic doctrine regarding evidence, see Jean-Philippe LEVY, *La hiérarchie des preuves dans le droit savant du Moyen Âge depuis la renaissance du droit romain jusqu’à la fin du XIVe siècle*, Paris, 1939. A 1515 Antwerp ordinance had confirmed the limited evidential value of many notarial deeds, but they could be supplemented with an oath. See ACA, PK, no. 914, fol. 69r (24 November 1515).

families remained monopolistic in this respect,¹¹⁰ but apparently they did not need formal participation in order to gain the aldermen's support.

To the abovementioned examples of academically supported changes in expropriation and bearer notes one can add a change in municipal law concerning the transfer of ownership rights, which was closely related to the enforcement of contracts of sale. In the fifteenth century, the (unwritten) Antwerp municipal law had provided that "delivery conveys ownership". Around 1500, this was changed to the rule "only payment conveys ownership". Only when the seller had explicitly granted credit by stating a date at which the price had to be paid was ownership ceded to the buyer on delivery before payment.¹¹¹ Under the older regime, delivery without payment granted ownership to the buyer, except when it was agreed otherwise.¹¹² The new solution was easier to link to academic legal literature,¹¹³ which allowed for legal reasoning in complex cases on the basis of that doctrine. For merchants either solution was acceptable. What mattered to them was that the applicable rule was fixed, and that they could adjust their contracts if they did not want to apply it. The municipal rule thus served as standard, as supplementary law, in case the agreement of sale had not provided a solution.

3.4.2. *Towards a Written Antwerp Law on Mercantile Contracts* (c. 1550–c. 1610)

From the middle of the sixteenth century onwards, the municipal law of Antwerp became written down and systematised in structured compilations. Starting in 1531, at regular intervals, the princely government ordered that private-law rules that applied in local jurisdictions of the Netherlands were committed to writing. Compilations were to be handed in at the nearby princely court, which for Antwerp was the Council of Brabant, and following an analysis of their contents they could become promulgated in the form of a princely ordinance as the law of the locality.¹¹⁴ In Antwerp, as well as in many other localities, early decrees were ignored. Some law fragments were put together in the abovementioned *Golden Book*, but the latter was not presented to the princely authorities.¹¹⁵ In the early 1540s a new compilation of Antwerp municipal rules was drawn up, containing some 300 articles, but again it was not submitted for

110 On this issue, see the chapter 2 by Jeroen Puttevels in this volume.

111 ACA, V, no. 1233, fol. 11v (30 June 1503) and no. 1235, fol. 265v (10 July 1520). See also, but less clear in this regard ACA, V, no. 69, fol. 10r–11v (4 May 1542).

112 DE RUYSSCHER, "De ontwikkeling van het Antwerpse privaatrecht", p. 140 (*Golden Book*, c. 1511–c. 1528, s.77). The rule of "payment conveys ownership" was mentioned in the 1608 law book: *Antwerp 1608 Law*, vol. 2, pp. 326–28 (part 3, ch. 3, s. 13).

113 R. FEENSTRA, "Eigentumsvorbehalt und die Regel von Inst. 2,1,41 über das Verhältnis von Kaufpreiszahlung und Eigentumsübertragung", in *The Legal History Review (Tijdschrift voor Rechtsgeschiedenis)*, 58/1, 1990, pp. 133–42.

114 John GILISSEN, "La rédaction des coutumes en Belgique au XVIe et XVIIe siècles", in *La rédaction des coutumes dans le passé et le présent*, ed. John GILISSEN, Brussels, 1962, pp. 98–102; GILISSEN, "Les phases".

115 DE RUYSSCHER, "De ontwikkeling van het Antwerpse privaatrecht", pp. 87–91.

princely approval.¹¹⁶ In 1546, a reminder was sent to the Antwerp aldermen and, as a result, in 1548 a compilation of Antwerp rules was sent in. Even though its authors had sought to “emend” the Antwerp rules, this collection was of poor quality and contained almost no sections regarding mercantile contracts, which was due to the lasting attitudes of Antwerp judges towards the contents of such agreements. For reasons unknown, it never obtained princely approval. In 1559, a new princely order warned that norms of municipal law should be reduced to writing. For the Antwerp aldermen, this was probably the signal to withdraw the 1548 compilation. In Brabant, at that time almost no collections of municipal law had yet been ratified because the Council of Brabant had been negligent in examining the few *cahiers* that had been submitted. New local compilations were drafted following severe injunctions issued by Governor-general Alva in 1570. Together with many other local courts, in July 1570 Antwerp produced its revised version, which had been assembled by a committee of jurists and practitioners.¹¹⁷ The 1570 compilation contained new chapters on merchants’ matters, such as marine insurance and bankruptcy, but they were brief and their sections were mostly based upon princely legislation and upon older Antwerp bylaws. A paragraph on bills of exchange rephrased academic legal opinions concerning that type of arrangement.¹¹⁸

All in all, these compilations corroborated the earlier municipal law as it had been developed earlier in the cooperations between merchants and the Antwerp aldermen-judges. A brief intermezzo of contention, in marine insurance, which in 1557 started because of strict proposals of marine insurance registration by Giovanni Battista Ferrufini, was quickly ended because the Antwerp aldermen advocated for their earlier municipal rules. By 1571 they obtained princely approval for that.¹¹⁹ The contention of the 1550s had followed after a rise in marine insurance cases before the Antwerp Municipal Court that had started in 1548. In those cases insurance underwriters attempted to renege on their obligations. As a result, merchants looked to the sovereign and the Antwerp aldermen to bring order, even though they wanted to have their say on the contents of new legislation as well. Following the demands of merchants, the princely administration thereupon ventured into legislating also on the contents of marine insurance contracts.¹²⁰ Around the same time associates in partnerships were accused of fraudulent behaviour and an interest

116 DE RUYSSCHER, “De ontwikkeling van het Antwerpse privaatrecht”, pp. 95–99.

117 For details on the writing of the 1548 and 1570 law books, see DE RUYSSCHER, “De ontwikkeling van het Antwerpse privaatrecht”, pp. 99–104; DE RUYSSCHER, “Naer het Romeinsch recht”, pp. 51–8; Marcel GOTZEN, “De costumiere bronnen voor de studie van het oud-Antwerpsch burgerlijk recht”, in *Rechtskundig Tijdschrift voor België*, 39, 1949, pp. 11–15; Fred STEVENS, *Revolutie en notariaat. Antwerpen 1794–1814* (Brabantse rechtshistorische reeks, 8), Assen, 1994, pp. 21–24.

118 *Coutumes de la ville d’Anvers*, ed. Guillaume DE LONGÉ (Coutumes du pays et duché de Brabant. Quartier d’Anvers), vol. 1, Brussels, 1871, pp. 530–36 (bankruptcy), p. 598 (bills of exchange), and pp. 598–604 (marine insurance).

119 DE RUYSSCHER & PUTTEVILS, “The Art of Compromise”, pp. 37–46.

120 DE RUYSSCHER & PUTTEVILS, “The Art of Compromise”, pp. 34–35.

in monopolies sparked legislation as well.¹²¹ Newly adopted attitudes of the Antwerp aldermen concerning the city's municipal law are evident in a 1554 statement of theirs in which they – for the first time – formulated some rules on terms in partnership contracts.¹²²

In 1578, the Antwerp aldermen decided to issue a new law compilation, acting this time on their own initiative.¹²³ The new text, which was printed in the last months of 1582, became the standard Antwerp law. It contained a new chapter on partnership (company), and many new articles relating to other commercial issues such as bankruptcy.¹²⁴ The 1582 compilation was the first to list rules concerning the most important contracts of trade. However, when it was published, Antwerp's Golden Age had already come to an end, even though the city maintained a respectable position as an international financial and insurance centre well into the seventeenth century.¹²⁵ Because a Calvinist-orientated Antwerp government had issued the 1582 text, in May 1586 the new and now Catholic Antwerp board of aldermen prohibited the use of this version, and ordered another committee of jurists to draw up a new compilation of Antwerp law.¹²⁶ Discrepancies between provisions of contract and the contents of the 1582 compilation, in matters of partnerships, have been identified as opposition between mercantile practice and municipal law.¹²⁷ However, these differences were more due to the freedom to contract than to an estranged policy of the Antwerp administrators. The sections on partnerships in the 1582 collection were supplementary law, which could lawfully be changed in contracts. They demonstrate the same blend of mercantile-academic solutions that was typical of the Antwerp legislative methods. Yet, also, the 1582 compilation for the first time provided for elaborate rules on the contents of mercantile contracts.

At the beginning of the seventeenth century, the alliance between merchants and policy makers changed. In 1608, a municipal law text of gigantic proportions was finished, but as regards its sections on mercantile contracts it was finicky and harsher than the earlier collections. The 1608 law book contained 3643 articles, distributed over seven parts and eighty-one paragraphs. Provisions

121 Hugo SOLX, "Economische vernieuwing en sociale weerstand. De betekenis en aspiraties der Antwerpse middenklasse in de 16de eeuw", in *Tijdschrift voor Geschiedenis*, 83, 1970, pp. 520–35, p. 522, and p. 530. Princely laws regarding investments without risk and monopoly were made in 1540 and 1550. See *Recueil des Ordonnances des Pays-Bas*, vol. 4, p. 235 (4 October 1540); ACA, PK, 479, no. 25 (15 February 1550 ns).

122 ACA, V, 68, fol. 159r (c. 1554).

123 ACA, PK, no. 552, fol. 204r (18 July 1578).

124 *Antwerp 1582 Law*, pp. 392–96 (company) and pp. 538–56 (bankruptcy).

125 Roland BAETENS, *De nazomer van Antwerpens welvaart. De diaspora en het handelshuis De Groote tijdens de eerste helft der 17de eeuw*, vol. 1, Brussels, 1976, pp. 243–59 and pp. 264–68. On marine insurance in seventeenth-century Antwerp, see: Dave DE RUYSSCHER, "Normative Hybridity in Antwerp Marine Insurance (c. 1650–c. 1700)", in *The Law's Many Bodies. Studies in legal hybridity and jurisdictional complexity c1600–1900*, eds Sean DONLAN & Dirk HEIRBAUT (Comparative Studies in Continental and Anglo-American Legal History, 32), Berlin, 2015, pp. 145–68.

126 ACA, PK, no. 558, fol. 112v (30 May 1586).

127 VAN HOFSTRAETEN, "Company Law", p. 52; VAN HOFSTRAETEN, "Jurisdictional Complexity", pp. 79–80.

on commercial law comprised nearly one third of the total, i.e. 1124 articles in eighteen chapters, which contrasted with the 111 articles regarding corresponding matters in the 1582 law book. Shortly after the submission of the 1608 compilation to the Council of Brabant, the Antwerp aldermen advocated provisional approval and publication of the part on commercial law, which was granted in February 1609.¹²⁸ Although in March 1609 the Antwerp aldermen publicly imposed the commercial chapters to be used in the court,¹²⁹ the new compilation never gained much popularity. For nearly all commercial and also other topics, the 1582 compilation was the most used after 1586 and even after 1609. The reason for this was mainly that the new solutions contained within the 1608 law book were often contrary to older court practice and unwieldy for mercantile contracts. This followed from a stricter policy that identified Antwerp's waning commercial attraction with problems and deceitful behaviour in the market. The 1608 compilers, for example, insisted on compulsory clauses to be inserted into insurance contracts and even required litigating purchasers of insurance to draw up a declaration of good intent. Fraud was thus presumed!¹³⁰ Such rules were not accepted among merchants, and the Antwerp government ultimately had to acknowledge that the 1582 law book had remained the prevalent compilation of Antwerp law. After 1633, the aldermen no longer insisted on formal princely approval of the 1608 text.¹³¹ When after 1650, the 1608 collection gained new attention in marine insurance litigation, the Antwerp aldermen-judges resorted to the older rules of municipal law.¹³²

There were concomitant reasons for why around 1550 the Antwerp aldermen started crafting municipal rules regarding the contents of mercantile contracts. First, by the second half of the sixteenth century, the coalition between the municipal government and the community of foreign merchants had become very strong, and this also concerned legal matters. From the later fifteenth century onwards, the Antwerp Municipal Court had attracted more and more mercantile cases.¹³³ This followed on from an integration of the market, which saw more and more contracts between merchants that did not belong to the same *nation*. Between compatriots, the leaders of *nations* could mediate, but when outsiders were involved, only the court of the locality was competent. This success of the Antwerp Municipal Court went together with a new tendency of the Antwerp and princely lawmakers to consult merchants on drafts of legislation.¹³⁴ Second, the impulses provided by the homologation efforts of the princely government

128 ACA, V no. 64.

129 ACA, V, no. 55.

130 *Antwerp 1608 Law*, vol. 2, p. 310 (part 4, ch. 11, s. 266).

131 A last attempt was made in the early 1630s, but in December 1633 the efforts stopped. See ACA, PK, no. 579, fol. 22v (14 July 1633), fol. 23r (23 July 1633), and fol. 25r (9 August 1633).

132 DE RUYSSCHER, "Normative Hybridity", pp. 154–67.

133 PUTTEVILS, *Merchants and Trading*, pp. 141–2.

134 See for example General Archives of the Realm in Brussels, Papiers d'État et de l'Audience, no. 1635/1, letter of 14 October 1553 (referring to a consultation of Lazarus Tucher on the effects of the postponement of payments at the Antwerp fairs); DE RUYSSCHER & PUTTEVILS, "The Art

triggered concerns among the Antwerp administrators over the contents of their municipal law. Underlying this was the exhaustive ambition of jurists to capture any reality in legal terms. Third, apart from the mentioned deeper causes, the shocks resulting from legal uncertainty in the marine insurance market and regarding company contracts were important. They provided the spark that set off the new policy of the Antwerp administrators.

However, notwithstanding new ambitions, it seems that the Antwerp aldermen and also the princely legislator remained very cautious when crafting rules of law. They consistently assessed what consequences a measure could have for the Antwerp market. When forging solutions that had been made necessary by the use of mercantile contracts in the city, the Antwerp aldermen often started from merchants' practices and insights. They were instructive, but too superficial, and as a result they were expanded by means of the academic law that the administrators had studied at university. The affinity of the Antwerp rulers with learned legal literature marked the outcome of this process of appropriation. Mercantile techniques and practices provided the raw materials for municipal law, which in its concrete form had the required sophistication for solving real and often complex problems. In the 1560s, 1570s and 1580s, sometimes it was merchants who were invited to formulate rules at *turben* inquiries, but in their registered and elaborated form these rules bore the traces of juristic adaptation.¹³⁵

The academic embedding of mercantile practices allowed for quick acknowledgments of new techniques. The indorsed bill of exchange is a case in point. In the 1620s and 1630s, indorsement became a mainstream commercial practice in Antwerp, also because of an innovative and facilitating interpretation of certain sections of the city's law books. In those years, it became gradually acknowledged that one could pay for a bill of exchange and collect the sums due, even as buyer of the bill. Although the academic law of the early seventeenth century still mainly focused on a bipartite conception of a bill of exchange as proof of a loan between the lender and the drawer, which actually excluded transfers of bills of exchange, new views quickly became popular in the Antwerp Municipal Court. A 1630 declaration of the Antwerp government in Latin, which teemed with academic terminology, formally recognised indorsement of bills of exchange as sound according to Antwerp law.¹³⁶ It was the concept of *procurator in rem suam*, which had been mentioned in the 1582 sections regarding bills of exchange that helped promote the holder of an indorsed bill of exchange to an autonomous

of Compromise", p. 41, footnote 48; Louis SICKING, "Stratégies de réduction de risque dans le transport maritime des Pays-Bas au XVIe siècle", in *Ricchezza del mare, ricchezza dal mare, secc. XIII–XVIII*, ed. Simonetta CAVACIOCCHI, Prato, 2006, pp. 797–8.

135 ACA, V, no. 69, fol. 18r (29 May 1571), no. 69, fol. 51v (10 July 1566), and fol. 208r (7 June 1582).

136 ACA, V, no. 70, fol. 41r (9 July 1630). "... acceptator alicuius cambii scedulae ... obligatus solvere ... ipsi, qui est et ulterius inventus fuerit, die solutionis habere actionem, et nominatus esse ad recipiendum per nominatione prima aut procuracionem, aut per inscriptionem in dorso eiusdem scedulae, illius qui invenitur habere potestatem recipiendi, aut committendi ...".

party by law.¹³⁷ This was thus another example of how academic law ensured a new and facilitating legal appreciation by the Antwerp aldermen starting from the basic materials of commercial practice.

The academic law regarding mercantile contracts that served as a platform for the integration of usages of trade in the Antwerp 1582 and 1608 law books can be dated. It seems that the compilers did not much use contemporary treatises, not even those of legal humanists, but relied more on late-medieval Italian literature. This is evident, for example, in some legal precepts surrounding the contract of sale. A late-medieval idea regarding the protection of supposedly weaker parties was that of the “just price”, which was based on the opinion that for every type of merchandise there existed one ideal price. Derogations from this price were to be sanctioned if they transgressed certain limits. In that case, the sale was deemed null and void. In the later Middle Ages, this theory had been formulated by canonists and theologians and had also been present in legal literature that was based on Roman law. By the middle of the seventeenth century, the scope of this arrangement had become more limited. According to late-medieval canon law, both the buyer and the seller could bring an action suit following infringements regarding the just price, and for all contracts. By 1650, however, this had become only an option for the seller of immovable property, and on the condition that he proved fraud of the buyer or that he himself had erred.¹³⁸ The latter solution, which had first been set forth in legal-humanist Romanist writings of the 1560s and 1570s, was not inserted into the 1582 and 1608 *costuymen*. Instead, they contained rules on the old broad “just price”.¹³⁹ It seems that, even though the Antwerp administrators pursued a humanist *emendatio* when recasting their municipal law, their sources were in the Italian scholastic style and dating from the fourteenth and fifteenth centuries.¹⁴⁰ This can be explained by the rather conservative training Antwerp jurists had had, at

137 For a full version of this argument, see Dave DE RUYSSCHER, “L’acclaturation juridique des coutumes commerciales à Anvers. L’exemple de la lettre de change (XVIe–XVIIe siècle)”, in *L’acclaturation juridique. Actes des journées de la Société d’Histoire du Droit* (Iuris Scripta Historica, 25), eds Fred STEVENS & Laurent WAELKENS, Leuven, 2011, pp. 151–60.

138 Reinhard ZIMMERMANN, *The Law of Obligations. Roman Foundations of the Civilian Tradition*, Cape Town, 1990, pp. 259–70. For the development of the scholastic idea of the “just price” in doctrine and in urban Brabant in the late Middle Ages, see Raoul DE KERF, *De juiste prijs in de laatmiddeleeuwse stad. Een onderzoek naar middeleeuwse economische ethiek op de ambachtelijke markt en in moralistische lekenliteratuur*, Leuven, 2010.

139 *Antwerp 1582 Law*, p. 536 (ch. 65, s. 17); *Antwerp 1608 Law*, vol. 2, p. 64 (part 4, ch. 6, s. 17–19). For movables, rescission of the contract could only be asked for contracts of a value above 600 guilders, but this remedy was – and this was contrary to the humanistic interpretation – also available for buyers.

140 DE RUYSSCHER, “Naer het Romeinsch recht”, pp. 372–73. The *Memorieboeken*, which were books containing legal arguments about the sections of the 1608 law book, refer to French and contemporary books, but this does not attest to an influence of legal-humanist literature on the contents of this compilation. See Bram VAN HOFSTRAETEN, *Juridisch Humanisme en Costumiere Acculturatie. Inhouds- en vormbepalende factoren van de Antwerpse Consuetudines compilatae (1608) en het Gelderse Land- en Stadsrecht (1620)*, Maastricht, 2008, and my book review in *Belgisch Tijdschrift voor Filologie en Geschiedenis – Revue Belge de Philologie et d’Histoire*, 90/1, 2012, pp. 593–7. See also VAN HOFSTRAETEN, “Company Law”, which provides many examples of parts of sections that were taken from the writings of commentators of the fourteenth century.

the universities of Northern Italy, and – notwithstanding humanist influences there – also at the universities of Leuven and Orléans.¹⁴¹

3.5. Conclusion

In the course of the later fifteenth and in the sixteenth centuries, Antwerp commercial law underwent important changes. In the first decades of the 1500s, proceedings of expropriation and enforcement of debt were adjusted with references being made to legal scholarly writings. This reflected a legal ambition of the Antwerp administrators, which went back to the Renaissance of the twelfth century. As more jurists worked at the Antwerp Town Hall, scholastic legal doctrine provided the underpinning for updates of the Antwerp municipal law. Moreover, starting from the 1530s, a fundamental renewal of the Antwerp municipal law consisted of a comprehensive and systematic re-formulation. This new method had been spread throughout Western Europe in legal-humanist writings. Because of the Antwerp administrators' affinity with the Renaissance within legal studies of the fifteenth and early sixteenth centuries, they incrementally pursued an ambition to devise an extensive and written municipal law. This way of working slowly replaced an earlier policy of endorsing and enforcing contracts, *inter alia* of merchants, without testing their contents. After approximately 1550, written law also concerned the contents of mercantile agreements. This development was a direct response to crises in marine insurance and partnership practice and a further consequence of the earlier embraced philosophy of academic law and of the princely programme of homologation. Around mid-century, the Antwerp administrators changed their approaches because of merchants' demands. The latter had experienced the downside of too much leeway in contractual matters, which had incited fraud and confusion, and they urged for more rules.

The Antwerp 1570, 1582, and 1608 law books formulated precepts of law that were impregnated with academic legal terminology and ideas, even though their contents were inspired by practice as well. The afflux of trade brought with it mercantile techniques. Practices of merchants were sometimes, but not always, Italian in origin, but even if they were, after a while they became used among many groups of traders. Such practices were not always normative, and if they were they were usually not adequate for settling complex disputes. Therefore,

141 For the university training of Antwerp jurists in the sixteenth and seventeenth centuries, see DE RIDDER SYMOENS, "De universitaire vorming" and Hilde DE RIDDER-SYMOENS, "Het onderwijs te Antwerpen in de zeventiende eeuw", in *Antwerpen in de XVIIde eeuw*, Antwerp, 1989, pp. 221–50. On the legal education at Leuven University during the 1500s, and its traditional features, see Philippe GODDING, "La formation des étudiants en droit à Leuven (fin 16e–début 17e siècle): fait-elle place au droit coutumier et édictal de nos régions?", in *Recht en instellingen in de oude Nederlanden tijdens de middeleeuwen en de Nieuwe Tijd*, Leuven, 1981, p. 437. A good overview of the renewal of teaching at most European law faculties can be found in Helmut COING, "Die juristische Fakultät und ihr Lehrprogramm", in *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte* (Veröffentlichungen des Max-Planck-Instituts für europäische Rechtsgeschichte), ed. Helmut COING, vol. 2/1, Munich, 1976, pp. 3–102.

they generally required serious extension and adjustment. Merchants petitioning for more legislation did not have many rules for themselves. The magistrate had to devise them and could not just select existing customs, or impose an obviously optimal rule.¹⁴² Commerce delivered the raw materials of law; the Antwerp jurists extended and transformed them with concepts and principles found in the academic literature into legal products that could be used in the courts. This was the case for new techniques such as indorsement of bills of exchange, but also expropriation procedures, bearer bonds and partnership agreements benefited from academic expertise. However, notwithstanding the influence of the humanist *emendation* approach, the contents of humanist legal literature had limited influence in Antwerp. Rules and concepts that were inserted into the Antwerp law collections were often adopted from late-medieval academic doctrine.

The adherence to legal doctrine after 1460 and the *emendatio* approach after 1530 are crucial factors in explaining the alliance between the Antwerp administrators and the merchants trading in Antwerp during its Golden Age. A policy of facilitation did not involve the copying or selecting of solutions that were available in business practice in a ready-made form, but rather the crafting of detailed norms that were only remotely based on the techniques and actions of merchants. For the main part, these norms were made out of academic elements. Academic law gave body to municipal rules, which had to be devised from often thin customs and mercantile practices. Notwithstanding the aldermen's hesitations and delays in providing legislative answers to problems, what assisted merchants the most was this framework of sophisticated law into which the municipal law was placed. This was present throughout the Golden Age of Antwerp.

142 This runs counter: GELDERBLOM, *Cities of Commerce*, 201–3.