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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. For both of these meanings, the history of Antwerp commercial law is important. The presence of university-trained lawyers in sixteenth-century Antwerp and their influence on the formulation of urban law invites an examination of Antwerp commercial law and its legal system against the background of contemporary academic views. 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 a shift towards the reconstruction of classical Roman law, which was done by means of a focus on language and a search for historical texts. This new legal-humanist approach originated in Italy in the middle of the 1400s and was refined for a large part in France over the next century. Legal humanism is usually not considered for its contributions to commercial law but since it 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 local law concerning mercantile agreements and situations. A first goal of this paper is therefore to examine whether the development of

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1 Postdoctoral fellow of the Scientific Research Foundation – Flanders (FWO) and lecturer in legal history at the University of Brussels (VUB). I would like to extend my gratitude to the participants at the workshop that was organised in preparation of this volume, and the referees reporting on an earlier version, for their remarks. Dirk Heirbaut (Ghent University), Tammo Wallinga (University of Antwerp), Wim Decock (KU Leuven) and James Mearns (KU Leuven) have commented on earlier drafts of this contribution, for which they are cordially thanked. Thanks also to Alexia Herwig for correcting my English.


3 The fifteenth- and sixteenth-century formative process of local law in jurisdictions (counties, duchies, cities, …) all over continental Europe, which entailed an application of academic theories, concepts and rules, has but rarely been studied. This is due to a rather surprising persistence of nineteenth-century views as to a dichotomy between customary law (local law) and learned law (ius commune), which also builds on a view on legal doctrine as being a set of fixed rules rather than a body of learning and methods. See for example Paolo GROSSI, L’ordine giuridico medievale, Laterza, 2006; Antônio 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. 1841–1889. 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 Reformation on the Western Legal Tradition,
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 distinctive characteristics of legal humanism vis-à-vis 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 and its scholastic understanding of texts of Roman law, which originated around 1100 and which thereafter spread throughout the known world. Charles Haskins considered “the revival of jurisprudence” as a major achievement of his Renaissance of the twelfth century.4 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, which was in the early twelfth century re-appropriated through an analysis of the Corpus iuris Civilis that had been drawn up under the sixth-century Roman Emperor Justinian. Academic lawyers acquired and built up a law that is capable of rationalization on internal principles alone and which comprises abstract concepts (e.g. property, contract) that subsume and organize practices and factual elements.5 In the early Middle Ages, after the collapse of the Roman legal systems and before the reception 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.6

Also as a general cultural phenomenon, the Renaissance can be linked to Antwerp because between approximately 1535 and 1565, which was at the height of the Transalpine Renaissance, the city was the leading commercial centre in Europe. Trade contributed to cultural renewal in Northwest Europe at that time. Antwerp became a hub for many merchants, coming inter alia from the Italian Peninsula, and also Netherlanders established commercial contacts in Italian markets. As a result of this interaction, mercantile techniques were brought to Antwerp that had not been known there before. These methods were, as were other mercantile contracts and usages that did not come from Italian regions, legally elaborated on in the urban law of Antwerp, which took the practices of commerce as basis for solutions that were thoroughly impregnated with academic notions.

It will be made evident hereafter that of the three mentioned Renaissances it was the aftermath of the Renaissance of the twelfth century and its reception in Northwest continental Europe that proved fundamental for Antwerp’s commercial law. After all, it


5 This definition is set forth in Aldo Schiavone, The Invention of Law in the West, Cambridge (MA), 2012, pp. 3–4.

was mainly the academically imbued urban law, which had been crafted starting from late-medieval writings, that mattered for resolving disputes, and not 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 following the infiltration of learned legal literature after 1480 in the end resulted in the creation of Antwerp commercial law, which in the fifteenth century had virtually been non-existent. 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 embed highly innovative mercantile techniques within a legal-theoretical framework. This framing of mercantile practices within academic schemes allowed for a quick absorption of merchant-made novelties, such as endorsed bills of exchange for example.

In a first part, the modest upgrading in the first half of the sixteenth century of a fifteenth-century system of endorsing contracts with academic concepts will be detailed. In a second paragraph, it will be examined to what extent humanist culture influenced Antwerp lawyers and the commercial law that they crafted. A third part assesses the relative importance of academic culture vis-à-vis (Italian and other) mercantile techniques in the commercial law of Antwerp.

3.1 Academic Legal Culture and First Changes to the Antwerp Legal System (after c. 1480)

For the most part of the fifteenth century, Antwerp law of contract was mainly unwritten and disorganized. It was less a matter of written rules than of memory. In this period, textual approaches towards law were still minimal. The Antwerp aldermen or the Duke of Brabant, being the lord of the Antwerp, sometimes promulgated ordinances that were registered in ledgers for consultation. However, such official decrees were rather scarce and they were mostly concerned with public safety, guilds and public health. Solutions regarding agreements between citizens, inhabitants and merchants-visited remained for the most part unarticulated, even though they were imposed and applied in the judgments of the City Court of Antwerp aldermen. This was very much the case for rules relating to mercantile contracts. Few written norms existed. 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 out of sale contracts and bankruptcy.8 Succinct legal precepts on commercial contracts can be found in privileges that were given by the duke of Brabant to groups of merchants visiting Antwerp. Ducal privileges that had been granted in 1296 and 1305 to

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8 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 has been 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 sections on debts and bankruptcy, p. 26 (s. 66) and p. 54 (s. 146).
English traders contain some rules regarding contracts of sale.\(^9\) Fourteenth- and fifteenth-century judgments of the Antwerp City Court are equally brief and seldom explicit on the rules that were linked to types of mercantile contract (\textit{coop, geselschap}).\(^10\)

Another feature of late-medieval Antwerp law with regard to mercantile agreements concerns its focus on the enforcement of debts. Over the course of the second half of the 1400s, it became possible to seize (to lay attachment on, \textit{arrest}) 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 agreed.\(^11\) Along with these new developments, earlier established exemptions were lifted. The so-called “freedom of the market” (\textit{marktvrijheid}), which had prevented all attachments and arrests for a period before, during, and after the fairs, was reduced for it no longer encompassed debts that had been negotiated at a previous fair.\(^12\) Most of the rules regarding commercial agreements that were imposed by the Antwerp aldermen, in judgments as well as by means of ordinances, had to do with enforcement remedies. The aldermen offered the possibility to contracting parties of swift execution. They endorsed arrangements in certificates (\textit{certificatiën}) and so-called “aldermen’s letters” (\textit{schepenbrieven}). The latter were used for \textit{gheloften} (promises) and \textit{voirwairden} (agreements).\(^13\) Certificates could be handed out for ascertaining statements or situations. These documents could serve to upgrade the legal status of a debt that was incorporated in them. In the first decades of the 1400s, the execution of a debt that had been mentioned in an alderman’s letter was possible with shorter proceedings. In their role of judges, the aldermen “read”, \textit{i.e.} confirmed, the letters and certificates that they had issued earlier.\(^14\) These official registrations were popular, which also followed from the fact that Antwerp contract law was minimal and authentication of debts fairly easy, which meant that contents of contracts were more or less freely established. In the courtroom of the Antwerp City Court, this approach of stamping and executing promises and contracts went together with a reluctance to impose rules breaching the contents of

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\begin{itemize}
\item \(^11\) Dave \textsc{De Ruyscher}, “Bankruptcy, Insolvency and Debt Collection Among Merchants in Antwerp (c. 1490–c. 1540)”, in \textit{The History of Bankruptcy. Economic, Social and Cultural Implications in Early-Modern Europe}, ed. Th. M. \textsc{Salpy}, Abingdon, 2013, pp. 188–189.
\item \(^12\) Antwerp City Archives (FelixArchief) (hereinafter ACA), Vierschaar (hereinafter V), no. 2, s. 141.
\end{itemize}
}
agreements. Until the middle of the sixteenth century, the aldermen did not create default rules, serving as models for contracts and allowing for a checking of their contents in case the agreement was unclear. Measures prohibiting certain provisions of contract were also scarce until that time.\(^{15}\)

After 1480, Antwerp judgments were systematically written down in ledgers.\(^{16}\) 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, were interviewed on the contents of rules of Antwerp law.\(^{17}\) These newly organized inquiries into law reflect a growing influence from academic procedural law, of which they formed a part, and which had become applied in royal courts some time before. When at the end of the 1460s the royal 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 City Court.\(^{18}\) 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 early decades of the sixteenth century consisted of an aim for the recording of rules. The questionnaires and answers of the mentioned *turbe*-inquiries were put to text into so-called *turbeboecken* (ledgers of *turben*), which after a certain period of time facilitated the production of evidence on formerly attested Antwerp norms.\(^{19}\)

The influence of learned precepts in Antwerp’s court procedures after approximately 1480 facilitated a bending of late-medieval local ideas towards the emerging international market situation. The coming of many more merchants to Antwerp after approximately 1490 sometimes invited measures for which no precedent could be found in Antwerp’s older law. 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 generalization of seizure for debts in the second half of the fifteenth century had determined that debts could be secured quickly in case of a debtor’s imminent failure. It was in the interest of creditors to act swiftly because the 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 formal collateral (*i.e.* 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 payment problems of contracting parties at the expense of slower players acting from abroad. The 1516 ordinance also acknowledged that *facteurs* (business agents) and *procuratores* (mandataries) were to be treated as acting on behalf


\(^{16}\) ACA, Privilegiekamer (hereinafter PK), no. 93; ACA, V, no. 1231.


\(^{19}\) ACA, V, no. 68.
of their masters. A 1518 ordinance detailed the periods during which a claim could be made against a bankrupt’s estate, proclaiming six weeks for creditors from neighbouring duchies and counties and three months for interested parties that resided further away. Although the 1516 ordinance was still modelled on the older seizure procedure, equality of (non-collateralized) debts was a fundamentally new idea in Antwerp law, not least because it was a solution that had been drawn from academic doctrine or texts inspired by it.

Another example of the enabling powers of academic legal notions regards the circulation of commercial paper. In the late 1400s and early 1500s, written acknowledgments of debt underwent important transformations and developed to become transferable commercial papers. 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 given as payment. 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 already been taken some years before, and anticipations had been made in treatises of Brabant and Flemish law since the later fifteenth century. However, in Antwerp, the new practice


21 ACA, V, no. 4 (ordinance of 2 June 1518). For an edited version of all known manuscripts, see DE RUYSCHER, “De ontwikkeling van het Antwerpse privaatrecht”, in press.


23 ACA, V, no. 68, fol. 13r (7 June 1507).


was immersed in academic terminology, which ensured that it could fit with other schemes of learned 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.\textsuperscript{26} Holders were named \textit{cessionarii}, for example, which echoed the learned concept of \textit{cessio}, which was the contemporary Romanist law term to describe a transfer of claims and which served to underpin the rights of holders, since a \textit{cessio} of claims transferred full rights.\textsuperscript{27} The Antwerp jurists referred to this \textit{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 urban law, which allowed for its application even in groups of merchants that were hesitant towards bearer bonds.\textsuperscript{28}

Both the adaptation of the bankruptcy proceedings and the rules regarding bearer notes are examples of how the appropriation of learned law helped to overcome older Antwerp rules for the benefit of the complex market that had reached the city and generalize acknowledged mercantile practices within that market, even though changes to the older system were still modest. In the first half of the 1500s, enforcement and not the supplementing or testing of agreements was considered the most important. In spite of their modesty, these reforms were crucial in the attraction of Antwerp for international trade, and they were directly attributable to the acceptance of academic legal culture in the city’s court and government.

\section*{3.2 Legal Humanism and Antwerp Law}

Even though legal scholarship was classical even in the twelfth and thirteenth centuries, since it was based on the \textit{Corpus Iuris Civilis}, many legal historians have pointed to a second renaissance of law in the later 1400s and in the 1500s, which they have defined as legal humanism. Sixteenth-century Antwerp has been described as a city in which civic humanism was important,\textsuperscript{29} but the legal aspects of this Antwerp humanism have remained in the dark. The notion of legal humanism has two different and yet related meanings. Firstly, it has traditionally been linked to philology and an historical awareness.\textsuperscript{30} Legal and other historians have generally contended that the legal-humanist approach of the 1500s grew out of the attraction of the philological examinations of the Justinianic \textit{Digesta} by Angelo Poliziano (ob. 1494). The latter’s methods were taken seriously in France, by such scholars as Guillaume Budé (ob. 1540),

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\textsuperscript{27} ACA, V, 68, fol. 13r (7 June 1507). For doctrinal views relating to \textit{cessio}, see Guido Astuti, “Cessione (premessa storica)” in \textit{Enciclopedia del diritto}, vol. 6, Milan, 1960, pp. 805–822.
\textsuperscript{28} See the contribution of Jeroen Puttevils in this volume.
\textsuperscript{29} Marcus de Schepper, “Humanism and Humanists”, in \textit{Antwerp, Story of a Metropolis, 16th-17th Centuries}, ed. Jan Van der Stock, Antwerp, 1993, pp. 97–103.
\end{flushright}
and from the later 1520s onwards this led to a renewed 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 (docend)*) in order to contrast them with the late-medieval scholastic discipline of law (*mos italicus*), comprised *a retour aux sources*. Legal manuscripts were scrutinized and compared and, 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 the general story, following their new tactics the legal humanists removed layers of 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.31

However, over the past decades it has been rightly emphasized 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 based some of their ideas on 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. Publications of manuscripts by jurists in the period between approximately 1500 and 1530 were not usually based on thorough investigations since editors often merely sought to disclose useful legal texts that had been unknown before.32 In this respect, one can refer to Antwerp law clerk Peter Gillis (Aegidius), who was a jurist and alumnus of Orléans University and a humanist maintaining good contacts with Erasmus and Thomas More. In 1517, he published the *Lex Romana Visigothorum* (506 A.D.), which itself contained fragments of the *Codex Theodosianus* (438 A.D.), together with excerpts of the *Pauli Sententiae Receptae*, which was an early fourth-century compilation of legal opinions based on Roman law texts. This edition was a first, but it was very succinct, and at points only contained excerpts and summaries.33 The attitudes of Gillis and of his colleagues were also those of legal practitioners. Throughout the sixteenth century, arguments regarding textual traditions that were brought forward in lawsuits were mostly hypothetical and they were not the result of an actual comparison of manuscripts.34 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

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32 Editions were hasty and often based on one or two manuscripts only. See Douglas J. Osler, "Vestigia Doctorum Vironum: Tracking the Legal Humanists' Manuscripts", in *Subseciva Groningana. Studies in Roman and Byzantine Law*, 5, 1992, pp. 77–92.

33 Summae sive argumenta legum diversorum imperatorum,..., Leuven, 1517. For an appraisal of the value and contents of this work, see Hans E. Tørøe, "Die Literatur des gemeinen Rechts unter dem Einfluss des Humanismus", in *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte* (Veröffentlichungen des Max-Planck-Instituts für europäische Rechtsgeschichte), ed. Helmut Going, vol. 2/1, Munich, 1976, p. 42.

after 1600. The abovementioned legal authors and others acknowledged the achievements of medieval jurists and they continued to make use of their writings. Until approximately 1550, legal scholarship was a far cry from the thorough analyses that were sometime later performed by such scholars as Jacques Cujas (Cujacius) (ob. 1590) and Denis Godefroy (Gothofredus) (ob. 1622). Even in the later decades of the sixteenth century, manuscript-bound investigations into Roman law were relatively scarce. Moreover, a more textual method of legal interpretation, without analogous arguments in the scholastic style, became fashionable only after 1650.

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-orientated legal science. According to older legal-history handbooks and some more recent interpretations, French legal writings of the 1500s concerning local, provincial and even royal legislation and judgments are to be considered as pertaining to the mos gallicus and “(legal) humanism”. 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 approaches 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 not better than that of local rules. However, such insights gradually ensued from


38 In nineteenth-century legal-history handbooks, it was common to use the term “mos gallicus” in a broad sense. In early nineteenth-century textbooks, any sixteenth-century French jurist was classified as belonging to the mos gallicus. See for example Charles-Joseph Barthélémy Graud, Histoire du droit romain: ou introduction historique à l’étude de cette législation, Paris, 1841, pp. 461–462. Since the early twentieth century, the broad interpretation of mos gallicus was put aside, but even today it is still an underlying assumption of many legal history handbooks that any French author of the 1500s can be called 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.

scientific publications of parts of the *Corpus Iuris Civilis*, after 1530 but foremost after 1550, which made it clear that Justinian’s works were for the most part compilations of older texts.⁴⁰ It was only in the second half of the sixteenth century that authors such as François Hotman (ob. 1590) could contend that, because Roman law texts were not perfect, local rules that were used in the courts were to be put before “exotic” writings based upon learned texts with which practitioners were not familiar.⁴¹ An attention to local law and first attempts to study it in an academic fashion were definitively older than this idea. Tools and methods for understanding the interrelations between the local law (*ius proprium*) and the learned law (*ius commune*) had, since the early fourteenth century, made up the core of academic law.⁴² Therefore, in fact, legal treatises on subjects even of strictly local importance and also when written in vernacular language were never completely devoid from academic law, and this was also the case for the period before the fifteenth century.⁴³ Separating local law studies from legal humanism helps explain why legal treatises on the subject of Antwerp law could be in the style of the *mos italicus*.⁴⁴

Both of the mentioned meanings of legal humanism have been related to historicism with regard to law. For legal humanism as practice-orientated science, Donald Kelley has emphasized the importance of a sixteenth-century school of French lawyers that aimed at promoting a discipline of customary law, paying considerable attention to the history of local law⁴⁵ because it had to provide guarantees of equity

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⁴⁰ In the late-medieval tradition, the rules (*constitutiones*) in manuscripts of the *Codex* of Justinian (534 A.D.) did not contain subscriptions referring to the date or to the emperor issuing the *constitutio*, which had nonetheless been added to the original version, and also 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 Greek background. 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 of the rules mentioned therein had been stripped in medieval manuscripts. In late fifteenth- and early sixteenth-century printed editions of the Digest, the names of jurists were usually added to the *leges* (rules), but not the books and further references. This was done for the first time in the 1553 Torelli edition and thereafter 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 DONDOEP & 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.


⁴³ 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).

⁴⁴ An example is the *Commentaria in leges municipales Antverpienses*, which dates from the eighteenth century. See Royal Library in Brussels, Manuscripts, no. 13569.

⁴⁵ KELLEY, *Foundations of Modern Historical Scholarship*, pp. 241–276. According to this author, the writings of Antoine Loisel (ob. 1617), Etienne Pasquier (ob. 1615), and Louis le Caron (ob. 1613) concerning local, royal and customary law were embedded in historical tendencies, which he links to legal humanism. These ideas 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* (New Approaches to European History), Cambridge, 2006, pp. 176–177.
against the intrusions of an allegedly harsher Roman law. However, from other research it is clear that sixteenth-century French legal authors wrote in many different traditions, and that their goals were more prosaic. Specialists of 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 at brushing up the available source texts and the doctrine that had been written on the basis of them, and 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 they trying to purify the existing multi-layered law, which consisted of local law, Roman law and royal statutes, and to reconcile the academic legal tradition with other types of law when doing so.

A sense of history 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, but it must not be regarded as (a prelude to) legal-historical science or even as an attempt to introduce 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 by Alciato and Ulrich Zäsi (Zasius) (ob. 1536). These scholars attempted to recover 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 mentioned period, but only quite recently the full impact and proportions of this pioneering humanist approach to law have become clear. The concrete outcomes of the mentioned ideas were substantial for local law. Rules that had haphazardly been produced in previous periods were now put in 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 and this was precisely what the slowly spreading culture of legal humanism promoted. The novel humanist understanding of law went together with a striving towards renovatio or reformatio. These concepts referred to a bringing of consistency, in a systematized and comprehensive form, into materials that were disconnected and patchy. In the early sixteenth century, the notion of reformatio (in melius) was commonly depicting 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.


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.
German territories, the term of *reformatio* was commonly used for a full reappraisal of local law in a new text.51 What was new in Northwest continental Europe in the later fifteenth and early sixteenth centuries, and which had not been done before, were attempts to legally rephrase local law in a systematic form. This new way of doing also responded to the movement to put local law to writing, which had started in France in the middle of the fifteenth century and which spread to the Netherlands and German cities thereafter. The imposed “homologation” of local law triggered the writing of drafts of structured compilations of rules in which these views were applied.52 An example of a text of “reformed” local law is the 1520 *Stadtrecht* of Freiburg im Breisgau, which was written by Ulrich Zäsi.53 In the Netherlands, at around the same time, the well-known legal author Philip Wielant drew up comparable drafts of laws, such as projects of law for the County of Flanders and an urban law for Haarlem.54

In Antwerp, the *nouvelle vague* arrived around 1530. From the early 1510s onwards, a list of excerpts from *enquetes par turbe* had circulated in the Antwerp institutional bodies, which lacked coherence and which teemed with repetitions and unclear phrases. Shortly after 1530, this so-called *Golden Book* was rearranged. Its contents were brought into line with new urban ordinances and some sections were omitted. The older approach of giving more weight to authority was not eradicated entirely, because some redundant parts were kept. However, in other paragraphs significant changes were made, reflecting new judicially applied principles. The first extant compilation of Antwerp law that was sent in for royal 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 law and legal texts.55 The process of compiling and correcting collections 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 urban law had been fixed in the preceding centuries.

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51 Examples are the *Reformacion der kaiserlichen stadt Nuremberg* (1503) and the *Frankfurt erneuerte Reformacion* (1578). See “Reformation (Rechtsquelle)”, in *Handbuch zur Deutschen Rechtsgeschichte*, vol. 4, Berlin, 1990, col. 468–472. In sixteenth-century France, the notions of “réduction” or “réformation” were commonly used for revisions of local law compilations of *coutumes*.


55 See the detailed analysis in De Ruyscher, “De ontwikkeling van het Antwerpse privaatrecht”, in press.
in ducal charters, in treaties with cities and principalities and in ordinances of the Antwerp aldermen as well. As a result of the more hermeneutical views on law, any legal reform had to start with an effort of listing and analysing such source materials. The searching and cataloguing of texts of Antwerp law from previous periods led to a collecting of official documents in series of ledgers.\textsuperscript{56}

The secretary of the city performed the task of administering the urban archives. In the first half of the sixteenth century, the most important secretaries were the jurist Peter van Wesenbeke (1532–1547) and the well-known humanist Cornelis De Schrijver (Grapheus) (1520–1522 and 1540–1548).\textsuperscript{57} The activities of learned civil servants of the city went much 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.\textsuperscript{58} The tradition of learned secretaries and law clerks, such as Peter Gillis, was continued in the later sixteenth and in the seventeenth centuries, when the jurist Jan Boghe (Bochius) (ob. 1609) and Jan Gaspar Gevaerts (Gevartius) (ob. 1666) were law clerk.\textsuperscript{59} The most important figure was former advocate, \textit{doctor iuris utriusque} and long-time secretary of the city Hendrik de Moy (ob. 1610), who was appointed guardian of the Antwerp charters. Following the 1576 Spanish Fury of Antwerp and the fire at the Town Hall, he reconstructed the city’s archives,\textsuperscript{60} which explains his vivid interest in Antwerp medieval legal texts. He cited such sources very frequently, for example in his comment on the 1582 Antwerp law book\textsuperscript{61} and in his \textit{Tractaat der officieren}, which was a volume dealing with regulations concerning public servants.\textsuperscript{62} 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 urban 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 maybe also Cornelis Grapheus.\textsuperscript{63} Other jurists were important as well. In 1570, another panel prepared a revised version of the urban law, of which the
main member was the jurist Nicolaas Rockox the Elder (ob. 1577), who was alumnus from Orléans university and who had been mayor (burgomaster-within) of the city.\footnote{3}

When summarising all of the above, it can be said that the Antwerp legal scenes were academic since the last years of the fifteenth century, and that legal humanism had some 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. In this first phase, the efforts of ordering and revising texts did not yet result in default rules regarding contract. In this period, most rules regarded enforcement of debts. The Antwerp government and its law became dominated by a doctrinal and academic-methodological approach, which was a remote product of the Renaissance of the twelfth century. In their sensitivity for the philosophy of \textit{emendatio}, the Antwerp lawyers acquired contemporary ideas. This legal humanism should not be considered a science of local law or a rigid philological discipline, but rather a new style that left many of the older doctrinal materials untouched. All-over Northwest continental Europe, jurists continued to build on late-medieval legal literature, even when they were following the more hermeneutic methods.\footnote{5} In the next paragraph, it will become evident that the Antwerp jurists were no exception in this respect.

### 3.3 Commercial Law in Antwerp: Appropriating, Endorsing and Upgrading Mercantile Practices

The phenomenon of reception of legal academic culture and learned law must not be interpreted in antagonistic terms. The case of Antwerp in fact proves that a facilitating economic policy was not only possible but also profited from the academic settings in which it was pursued. This directly goes against the (still widespread) nineteenth-century romantic view that the growing popularity in Northwest continental Europe of academic legal literature (Roman law) during the fifteenth and sixteenth centuries pushed back 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.\footnote{6}

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\footnote{3}{ACA, V, no. 11, fol. 41r (5 May 1570).}

\footnote{5}{This view allows the overcoming of 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 \textit{lus Commune. Zeitschrift für europäische Rechtsgeschichte}, 6, 1977, pp. 108–171. See also the older views of Victor Brants and 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 \textit{via media} between \textit{mos italicus} and \textit{mos gallicus}. See Victor Brants, \textit{La Faculté de Droit de l'Université de Louvain à travers cinq siècles (Étude Historique)}, Brussels, s.d. (1910), pp. 110–121, and René Dekkers, \textit{Het humanisme en de rechtswetenschap in de Nederlanden} (Vlaamsche rechtskundige bibliotheek, 19), Antwerpen, 1938, p. 131, and pp. 142–143.}

However, neither in the Late Middle Ages nor in the sixteenth century, was the area of the law a battleground between different legal traditions. This is clear in two respects. Firstly, before as well as during the sixteenth century, the local law, which mostly consisted of principles that were fixed and applied by the local courts, was not a collection of customs in the sense of spontaneously developed rules that had emerged from within the community, even though it was commonly defined with such terms as “consuetudines” and “costuymen”. Local law was constantly being developed by specialists, it was made concrete in judgments and was acknowledged by the local rulers. Particular customs could exist outside the framework of official law; such customs could come into existence and be practiced without interventions of legal practitioners and without approval of government. However, from recent research it is becoming evident that in late-medieval and early modern Europe, customs in that sense were mostly of an individual nature, scarce in numbers and therefore insufficient for supporting a working system of law that aimed at the common good. Solutions that were imposed as local law were often created and thus not always rooted in old ideas. This brings up 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 with facts, and this process of interpretation enables innovation. It makes law evolve. Doctrine, or legal scholarship, is the most evident lifeblood for legal arguments, and for innovation, because it is abstract and functioning according to an internal logic, which explains its relative free contents and development. These features result in the appeal of legal literature that marks a counterweight against ordinances and statutes, which are usually limited in scope and wording.

It has been demonstrated that academic law proved itself as a tool to adapt older Antwerp legal practices to the needs of international commerce. Hereafter, it will be


69 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.
found out to what extent the Antwerp local 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, it will be assessed, for those parts of the urban commercial law that did not (exclusively) go back to merchants’ customs, what its sources were.

3.3.1 Urban Law vs. Customs of Merchants in the First Half of the Sixteenth Century

The later years of the fifteenth and the first decades of the sixteenth centuries saw the arrival of groups of merchants from abroad, and also the use of mercantile techniques and practices in the Antwerp market that had not been known there before. The fifteenth-century fairs economy of Brabant had witnessed the circulation of acknowledgments of debt, and in that period also succinct contracts of partnership and agreements and certificates regarding joint ownership, deposit and agency had been drawn up in Antwerp. What was new in Antwerp in the 1520s and 1530s were detailed partnership contracts, marine insurance policies, double-entry bookkeeping and commission trade. In Antwerp, these “new” practices – most of which had been applied in Bruges before that time as well – became gradually more popular over time, after they had been known within relatively closed circles for a while. 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. 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. However, looked at them from another perspective, these mercantile practices cannot be considered as Italian or typically Italian because they were shared early on amongst merchants of different nationalities, and also because


71 Adolf HOFMEISTER, “Eine Hansische Seesversicherung aus dem Jahre 1531”, in Hansische Geschichtblätter, 5, 1886, pp. 169–177. The policy that was published in this article was drafted in Antwerp in July 1531. It lists 44 underwriters that are all Spanish and Italian. For other examples, see ACA, Notaries, no. 3133, fol. 36r (12 February 1541 n.s.), and Jan A. GÖRIS, Étude sur les colonies marchandes méridionales (portugais, espagnols, italiens) à Anvers de 1488 à 1567, (Recueil de Travaux publié par les membres des Conférences d’Histoire et de Philologie, deuxième série, 4), Leuven, 1925, pp. 641–642.

72 This is evident in the names of insurance underwriters in the 1562–1563 ledger of Antwerp insurance broker Juan Henríquez. See Henri L.V. DE GROOTE, De zeeassurantie te Antwerpen en te Brugge in de zestiende eeuw, Antwerp, 1975, p. 157; Jeroen PUTTEVILS, The Ascent of Merchants from the Southern Low Countries. From Antwerp to Europe, unpublished doctoral dissertation University of Antwerp 2012, p. 126.

they already had been applied by non-Italians in the Netherlands before the sixteenth century.74 The mercantile techniques and practices, and foremost the skills that were required for using them, were communicated through merchant manuals, on a large scale.75

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 circles of merchants that applied the practices, and they can therefore be considered customs of merchants. Even though they became standardized 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 regarded as a bill of exchange. However, formal requirements such as this one were minimal. This is particularly evident in merchant manuals that were printed in Antwerp in the first half of the sixteenth century, and which for bills of exchange refer to a minimal “style” of writing bills of exchange, but foremost to calculations of exchange rates and currency swaps, and not to default rules, or even rules or sanctions in general.76 Furthermore, for open-ended contracts such as partnership agreements and marine insurance policies, requirements were even more limited. For the most part they did not entail 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 contracts, one can get an idea of the normative rules applying among merchants from a comparison of source materials dating from the later fifteenth and the early sixteenth century, such as contracts and decisions in lawsuits. Some insurance policies that were made 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.77 With this caveat in mind, their appearance and contents make it nonetheless likely that officially or informally prescribed forms of marine insurance contracts were not yet known in Antwerp in this period, even though they had been applied elsewhere since the 1510s.78 The wording of 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 resemblances in provisions can be found, for example with regard to the duration of the risk ("until the safe unloading of the merchandise")79 or the route

74 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.

75 See the contribution of Jeroen Puttevils in this volume.

76 In a 1543 manual, Jan Ymyn 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 YMYPN 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, letters de change, d'asseurances ..., Antwerp, 1558; Gérard DE VIVRE, Lettres missives familières ..., Antwerp, 1576.

77 They are analysed in detail in DE GROOTE, De zeeassurantie, pp. 96–125.

78 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.

79 DE GROOTE, De zeeassurantie, p. 100
(all policies contained a “liberty clause”, which allowed to touch all ports of choice during the voyage). However, there were considerable differences with regard to other conditions of the insurance. Some insurance contracts insured against misconduct and damages caused by the captain and his crew, whereas others did not mention this as a peril. In some insurance policies, the percentage of value that could be insured was described as limited, but percentages differed (90 or 50%). Some of them provided that the costs for the sale of the insured merchandise were insured, whereas others did not. Even though the contents of the mentioned Antwerp insurance contracts were for the most part not the product of customs of merchants, the merchants subscribing to them, or the notaries that drew up the deeds of contract, referred to “customs” supplementing the provisions of the contract (“customs of (the Strada of) London” or “customs of Lombard Street”).

These formulas for the most part pointed towards procedural rules and terms of payment that were imposed by the local courts. An analysis of the deeds of judgment of the Antwerp City Court of the period between 1488 and 1550, which contained the arguments brought in the court, yielded only ten adduced customs relating to mercantile contracts and situations. Nearly all of the customs referred to dealt with marine insurance. The earlier mentioned insurance policies of the 1530s and 1540s commonly contain the promise of the underwriters to pay out when no news had been heard after a year. In 1544, this was in a lawsuit referred to as a “usage and custom of the (Antwerp) Exchange” that filled in a contract that did not specify its application. This first reference to “customs of the Exchange”, which remained exceptional until the 1560s, and the label of “custom” for rules regarding mercantile contracts in general for the period up to 1550, concerned foremost 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 held to pay within two months. In a 1537 petition to the Emperor, the Antwerp aldermen labelled this principle as a rule, being of “old law”, by which urban law was meant. In some

80 De Groote, De zeeassurantie, p. 106.
82 De Groote, De zeeassurantie, p. 120.
83 De Groote, De zeeassurantie, p. 120.
84 This was the case for the 1531 policy, which referred to the “Seerechte, Usantie unde Costume der Stadt Lunden yn Engelandt”. See Hofmeister, “Eine Hansische Seeversicherung”, p. 172. A notarial insurance contract of 12 February 1541 (n.s.) contains the phrase “a uzo y costumbre dela strade de Londres”. See ACA, Notariaat, no. 3133, fol. 35v. See also De Groote, De zeeassurantie, p. 113 and pp. 126–127. Two contracts, which were drawn up with the Antwerp notary Zeger sHertogen on 7 June 1535 and 22 October 1535, mentioned the “forme et manière des assurances qu’on est accoustumé de faire sur la strada et bourse de Londres situe au royaulme d’Angleterre”. See ACA, Notariaat, 2070, fol. 95v–96r.
85 The following deeds contained references to customs regarding sea law (gross average): ACA, V, 1241, fol. 104r (16 July 1547), fol. 283r (8 March 1548 n.s.), 1244, fol. 61r (24 December 1555), fol. 126v (12 March 1556 n.s.). See ACA, V, 1239, fol. 117v and fol. 138v (19 July 1544). On the lawfulness of insurance after loss: ACA, V, 1241, fol. 49 (7 May 1547), 1242, fol. 51v (10 April 1548 n.s.) and 1238, fol. 62 (17 September 1543). The reference to another customs, dating from April 1548, is mentioned hereafter.
86 De Groote, De zeeassurantie, pp. 112–113.
87 ACA, V, no. 1239, fol. 117v and fol. 138v (19 July 1544).
preserved insurance policies of the 1530s, the underwriters promised compensation within two months after notification.  

When a 1537 royal 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 law became imposed.  

Another custom regarded an issue that was frequently brought forward in the Antwerp courtroom, which was the nullity of the contract because of belated insurance. In the later 1530s or early 1540s, a consilium of the Leuven law professor Elbrecht De Leeuw (Leoninus) mentioned the rule that an insurance agreement remained valid when it appeared later that damages to the insured object had occurred before the contract had been signed, but only if the news on the damages 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 urban (unwritten) law, but which according to Leoninus was also well-known among merchants and seamen in the city.  

Arguments that were written in a deed of judgment of the Antwerp City Court, dating from 1543, label this same rule as “a custom of merchants”.  

In a 1547 lawsuit, 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”. 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 mentioned this rule as a “custom and usage here at the Exchange among merchants”. From all these descriptions, it appears that the references to customs of the Exchange or the London Strada comprised very specific rules that concerned procedural delays during which compensation could be demanded from insurance underwriters, and that these rules did at the same time belong to the local law as well as to what merchants considered as law. In fact, it is likely that in the first half of the 1500s in Antwerp, references to “customs of merchants” and the like, for marine insurance, described local law that was known and used by merchants and which could also be confirmed in royal legislation. There is no evidence that many “customs of merchants” or “customs of the Exchange” existed outside the reach of the Antwerp court. It should also be noted that the mentioned customs only allowed for a resolution of a limited number of disputes, and that there is no trace of customs that concerned clauses regarding perils for example. Practices, such as provisions that were often inserted into insurance policies, were too rudimentary, for such clauses were often brief, and a practice was not necessarily a normative practice, i.e. a custom.

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89 De Groote, De zeeassurantie, p. 111.

90 For the law, see Recueil des Ordonnances des Pays-Bas, 2nd series, vol. 4, Brussels, 1907, pp. 34–35 (25 May 1537). An example of a reference to the “ordinance of the emperor” is ACA, V, no. 1237, fol. 23v (31 October 1542).


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

93 ACA, V, no. 1241, fol. 49 (7 May 1547).

94 ACA, V, no. 1242, fol. 51v (10 April 1548).

95 A practice refers to repeated actions or shared opinions, for example mentioned in a contract. A custom regards practices that are deemed constraints, whose breach is sanctioned in one way or another. This difference corresponds with the contemporary distinction between usus (practice) and consuetudo.
In this first period of up until the middle of the sixteenth century, a virtual identity between local law and mercantile customs had little to do with 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, a minimal importance of normative ideas surrounding business followed from a mentality of “facts and figures”, which meant that merchants paid little attention to the legal phrasing and explanation of their agreements and commercial relationships. Quite paradoxically, in the first half of the sixteenth century, the academic jurists of the Antwerp City 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 endorsed 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 imposed an 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 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 such efforts failed, the judges could require one of the litigants to swear on oath on his good faith, thus deciding the case.\(^{98}\) The learned procedural rules did not hinder a continued stamping of contracts. The Romano-canonical procedure allowed the bringing up of proof by witnesses of unwritten agreements and promises. There are strong indications that even early in the sixteenth century, letters, account books and contracts of all types (private, notarial) could be submitted as evidence in the Antwerp City Court,\(^{99}\) and that academic reservations as to their evidential value could easily be remedied.\(^{100}\) Merchants did not

\(^{96}\) 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 City 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).

\(^{97}\) 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 excluys”).

\(^{98}\) 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 1491). 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.

\(^{99}\) An early reference to books kept by the defendant is ACA, V, no. 1231, fol. 130r (26 July 1491). The registered deeds of civil judgments of the Antwerp City Court, for the later years of the fifteenth and for the first years of the sixteenth century, teem with mentions of submitted bearer papers. See, for example, ACA, V, no. 1232, fol. 323r (October 1502). For an example of a letter that was used as proof, see PUTTEVILS, The Ascent of Merchants, p. 207.

\(^{100}\) Some deeds of judgment point to oaths that were granted \textit{in supplementum probationis}, \textit{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 hierarchie des preuves dans le droit savant du Moyen Âge depuis la renaissance du droit romain jusqu’à la fin du XIVè siècle, Paris, 1939. A 1515 Antwerp ordinance had confirmed the limited evidential value of many
gain access to the urban government and positions of judge in the Antwerp City Court, because patrician families remained monopolistic in this respect, but apparently they did not need formal participation in order to gain the aldermen’s support.

### 3.3.2 Towards a Written Antwerp Law on Mercantile Contracts (c. 1550–c. 1610)

From the middle of the sixteenth century onwards, the urban law of Antwerp became written down and systematized in structured compilations. Starting in 1531, at regular intervals, the royal government ordered that private-law rules that applied in local jurisdictions of the Netherlands were put to text. Compilations were to be handed in at the nearby royal 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 royal ordinance as the law of the locality. 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 royal authorities. 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 royal approval. In 1559, a new central order warned that norms of private law should be put into writing. For the Antwerp aldermen, this was probably the signal to withdraw the 1548 compilation. In Brabant, at that time almost no compilations had yet been ratified because the Council of Brabant had been negligent in examining the few *cahiers* that had been submitted. New local compilations followed severe injunctions made by Governor-general Alva in 1570. Together with many other local courts, in July 1570, Antwerp turned in its revised version, which had been assembled by a committee of jurists and practitioners. 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 royal legislation and upon older Antwerp ordinances. A paragraph on bills of exchange rephrased learned legal opinions concerning that type of contract.

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101 On this issue, see the contribution of Jeroen Puttevils in this volume.


In 1578, the Antwerp aldermen decided to issue a new law book, acting this time on their own initiative. 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. 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. 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. In 1608, a text of gigantic proportions was finished. It contained 3643 articles, distributed over seven parts and eighty-one paragraphs. Provisions 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 submittal of the 1608 compilation to the Council of Brabant, the Antwerp aldermen urged for provisional approval and publication of the part on commercial law, which was granted in February 1609.

Although in March 1609 the Antwerp aldermen publicly imposed the commercial chapters to be used in the court, the new compilation never gained much popularity. For nearly all commercial and other private-law topics, the 1582 compilation was the most used after 1586 and even after 1608. The reason for this was twofold. The 1608 text had not been printed, and manuscripts were not easily found. Another problem was the new solutions contained within the 1608 law book, because they were often contrary to older court practice or unwieldy for commercial contracts. This followed from a stricter policy that presumed that the waning commercial attraction of Antwerp was due to 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 insurance takers to draw up a declaration of good intent. Fraud was thus presumed! 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 royal approval of the 1608 text.

The history of the 1608 law book is revealing. In the second half of the sixteenth century, the coalition between the urban government and the community of foreign merchants had become very strong, and this also regarded legal matters. From the

105 ACA, PK, no. 552, fol. 204r (18 July 1578).
106 Antwerp 1582 Law, pp. 392–396 (company) and pp. 538–556 (bankruptcy).
108 ACA, PK, no. 558, fol. 112v (30 May 1586).
109 ACA, V no. 64.
110 ACA, V, no. 55.
111 Antwerp 1608 Law, vol. 2, p. 310 (part 4, ch. 11, s. 266).
112 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 Augustus 1633).
1530s onwards, the Antwerp City Court had attracted rising numbers of mercantile cases.\textsuperscript{113} This followed 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 enforce informal standards, but when outsiders were involved, only the court of the locality had competence for this. This success of the Antwerp City Court went together with a natural inclination of the Antwerp and royal lawmakers to consult merchants on drafts of legislation.\textsuperscript{114} When in the 1550s, legal uncertainty arose in the insurance market and regarding company contracts, merchants looked at the monarch and the aldermen to bring order, even though they wanted to have their say on the contents of the demanded legislation as well.\textsuperscript{115} It seems that the Antwerp aldermen and also the royal legislator were, also in the high-flying sixteenth century, very cautious when crafting rules of law, and that they consistently – except for the 1608 law book – 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, which they rephrased and expanded by means of the learned law that they had studied at university. The affinity of the Antwerp rulers with learned law determined the outcome of this process of appropriation. Mercantile techniques and practices provided the raw materials for urban 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 that were invited to formulate rules at turben-inquiries, but in their registered and elaborated form these rules bore the traces of juristic adaptation.\textsuperscript{116}

The learned embedding of mercantile practices allowed for quick acknowledgments of new techniques. The endorsed bill of exchange is a case in point. In the 1620s and 1630s, endorsement became a mainstream commercial technique 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 a buyer of the bill. Although the learned law of the early seventeenth century still 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 became quickly popular in the Antwerp court. A 1630 declaration of the Antwerp government in Latin, which teemed with academic terminology, formally recognized endorsement of bills of

\textsuperscript{113} PUTTEVILS, The Ascent of Merchants, pp. 306–307.

\textsuperscript{114} See for example L SICKING, "Stratégies de réduction de risque dans le transport maritime des Pays-Bas au XV\textsuperscript{e} siècle", in Ricchezza del mare, ricchezza dal mare, secc. XIII–XVIII, ed. Simonetta CAVACIOCCI, Prato, 2006, pp. 797–798, and 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).

\textsuperscript{115} For marine insurance, several petitions and drafts were directed at and involved the sovereign and the Antwerp aldermen between 1555 and 1559. See ACA, PK, 1019, and DE GROOTE, De zeeassurantie, pp. 66–99. As for company contracts, for the 1550s a resistance against monopolies is clear in debates surrounding the financial administration of the city and in legislation. See Hugo Soly, “Economische vernieuwing en sociale weerstand. De betekenis en aspiraties der Antwerpse middenklasse in de 16de eeuw”, in Tijdschrift voor Geschiedenis, 83, 1970, pp. 520–535, p. 522, and p. 530. Royal 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 n.s.).

\textsuperscript{116} ACA, V, no. 69, fol. 18r (29 May 1571), no. 69, fol. 51v (10 July 1566), and fol. 208r (7 June 1582).
exchange as sound according to Antwerp law. 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 endorsed bill of exchange to an autonomous party by law. This was thus another example of how academic law laid the basis for 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 reworking of mercantile usages in the Antwerp 1582 and 1608 law books, can be dated. It seems that the compilers did not so much use contemporary treatises, not even those of the legal humanists of the 1520s and 1530s, but that they 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 late 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 scheme had become more limited. According to late-medieval canon law, both the buyer and the seller could bring suit following infringements on the just price, and even for contracts that were only concerned with moveables. By 1650, however, this was still 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. The latter solution, which had first been set forth in legal-humanist 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”. For other points, the close attachment to mercantile practice allowed for an overhaul of some cumbersome academic rules. An example is provided by agency in partnerships. At a 1551 *turbe inquiry*, it had been stated that only agents having an express mandate could make partners liable, which reflected contemporary doctrine. In the 1582 law compilations it was nonetheless provided that any partner signing a contract for the firm was presumed to have such a mandate.

Where the compilers had a basis in mercantile practice, they could act against ideas persistent in legal literature. However,

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117 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 procurationem, aut per inscripitionem in dorso eiusdem scedulae, illius qui inventur habere potestatem recipiendi, aut committendi ...”.


120 Antwerp 1608 Law, vol. 4, p. 64 (part 4, ch. 6, s. 17–19). For moveables, 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.

121 ACA, V, no. 68, fol. 159r (s.d., c. 1551); *Antwerp 1582 Law*, p. 392 (ch. 52, s. 1).
such emancipatory uses of mercantile ideas proved rather limited since customs of merchants were few and insufficient,\textsuperscript{122} the authors of the Antwerp law codes had to fill up many gaps, and they did so by drawing from doctrinal sources which they knew. It seems that, even though they pursued a humanistic \textit{emendatio}, their sources were in the Italian scholastic style of and dating from the fourteenth and fifteenth centuries,\textsuperscript{123} which can be explained by the rather conservative training Antwerp jurists had had, at the universities of Leuven, Orléans and of Northern Italy.\textsuperscript{124}

### 3.4 Conclusion

In the course of the sixteenth century, Antwerp commercial law underwent important changes. Its fundamental renewal consisted of a comprehensive and systematic formulation of law, which over time supplemented an earlier policy of endorsing contracts of merchants. After approximately 1550, written law regarding the contents of mercantile agreements developed, which was a response to the crises in marine insurance and partnership practice and a further consequence of the philosophy of academic law. The Antwerp 1570, 1582, and 1608 law books formulated precepts of law that were impregnated with learned law terminology and ideas, even though their contents were inspired by practice as well. The afflux of trade also brought with it mercantile techniques, which were not adequate for settling complex disputes, and therefore required adjustment and updates. Commerce delivered the raw materials; the Antwerp jurists transformed them, with concepts and principles found in the academic literature, into legal products that could be used in the court. This was the case for new techniques such as endorsement of bills of exchange, but also expropriation procedures, bearer bonds and partnership agreements benefited from the newly acquired insights. This academic culture was related to the Renaissance of the twelfth century, and less to the one of the fifteenth and sixteenth centuries. Humanist legal literature had a limited

\textsuperscript{122} This overhaul of Roman law by customs of merchants has been exaggerated towards a fundamental feature of magistrates’ policies in GELDERBLOM, \textit{Cities of commerce}.


influence in Antwerp, since rules and concepts that were inserted into the Antwerp law collections were – due to the paucity and quality of customs of merchants available to their compilers – often adopted from late-medieval academic doctrine. Even so, Antwerp commercial legislation was a product of a legal revolution that shaped the city’s law. The appropriation of and acquaintance with legal doctrine provided the theoretical backbone of the Antwerp legal constellation. The official rules of law were, due to the sophistication of academic law, a considerable improvement on the few existing customs of merchants and their – from a legal perspective – unwieldy practices. These practices were sometimes, but not always, Italian, and if so, they were not clustered with Italian ideas that marked their functioning or hindered their dispersal among other groups of merchants.