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Antwerp commercial legislation in Amsterdam in the 17th century: legal transplant or jumping board?

Dave De ruysscher^{*}, ^{**}

Summary

The 1582 Antwerp *costuymen* influenced Amsterdam law during the seventeenth and eighteenth centuries. Although the Antwerp law has often been considered as an applicable law in the Amstel city, its role was more limited. At the end of the sixteenth century and during the first half of the seventeenth century, it was used as a common and subsidiary applicable law for certain mercantile issues. Later on, as the Amsterdam legislator issued ordinances on these themes, this function declined. Yet, references to the Antwerp law book were still common in the eighteenth century, although they were more a consequence of a cultural attraction than of an actual application of the Brabant law book.

Keywords

Commercial law, legal transplant, Antwerp 16th and 17th centuries, Amsterdam 16th and 17th centuries

Introduction

The relations between Antwerp and Amsterdam in the late sixteenth and seventeenth centuries have drawn considerable attention from historians and – to a lesser extent – from legal historians. After the downfall of the Brabant

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Used abbreviations:

ACA = City Archives in Antwerp (FelixArchief)

AmCA = City Archives in Amsterdam

PK = Privilegiekamer

SS = Schout and schepenen

V = Vierschaar

city and its protestant rulers in august 1585 and following the reintegration in the catholic Spanish-Habsburgian complex, fiscal barriers on the river Scheldt remained by and large untouched until the end of the *ancien régime*¹. The economic attraction of the former *emporium* was seriously shaken by these setbacks and had already been shocked by the hostilities after 1566, which had marked the start of the weakening of Antwerp's commercial position². A shift in European commercial networks following these events reduced Antwerp to an outpost of international firms which did their businesses mainly abroad, although the city preserved much of its former importance in exchange and insurance affairs³. Amsterdam, by contrast, grew to new heights in the seventeenth century. The contribution of merchants from southern provinces to this rise is controversial among economic historians⁴,

¹ V. Enthoven, *Zeeland en de opkomst van de Republiek: handel en strijd in de Scheldedelta, ca. 1550-1621*, Leiden 1996. On the later history of this regime, see in particular: H. Hasquin, *Sur l'administration du commerce dans les Pays-Bas méridionaux aux XVIIe et XVIIIe siècles*, *Revue d'histoire moderne et contemporaine*, 20 (1973), p. 430-443 and I. Van Damme, *Het vertrek van Mercurius, Historiografische en hypothetische verkenningen van het economisch wedervaren van Antwerpen in de tweede helft van de zeventiende eeuw*, NEHA-jaarboek voor economische, bedrijfs- en techniekgeschiedenis, 64 (2003), p. 26-36. See also *infra*, n.50.

² H. Van der Wee and J. Materné, *Antwerpen als internationaler Markt im 16. und 17. Jahrhundert*, in: W. Feldenkirchen, *et al.* (eds.), *Wirtschaft, Gesellschaft, Unternehmen*, Festschrift für Hans Pohl zum 60. Geburtstag, Stuttgart 1995, I, p. 470-499, at p. 486-488.

³ Sombart was the first who described Antwerp in the seventeenth century as a *Dispositionsplatz*. His views have been challenged by Van der Wee, Baetens and Pohl, who have underlined Antwerp's position in international financial affairs after 1585. See: R. Baetens, *De nazomer van Antwerpens welvaart, De diaspora en het handelshuis De Groote tijdens de eerste helft der 17de eeuw*, [Gemeentekrediet van België, Historische uitgaven Pro Civitate, Series in -8°, 45], Brussels 1976, I, p. 243-259; H. Pohl, *Zur Bedeutung Antwerpens als Kreditplatz im beginnenden 17. Jahrhundert*, in: W. Besch and E. Ennen (eds.), *Die Stadt in der europäischen Geschichte*, Bonn 1972, p. 667-686; H. Van der Wee, *Monetary, credit and banking systems*, in: E.E. Rich and C.H. Wilson (eds.), *The Cambridge economic history of Europe*, V: The economic organization of early modern Europe, Cambridge 1977, p. 290-392, at p. 322-325. The role of seventeenth-century Antwerp as a centre for maritime insurances has been hinted at in several publications. See in particular: J. Everaert, *De internationale en koloniale handel der Vlaamse firma's te Cadiz*, [Rijksuniversiteit te Gent, Werken uitgegeven door de Faculteit van de Letteren en Wijsbegeerte, 154], Bruges 1973, p. 138-148; H. Pohl, *Die Portugiesen in Antwerpen (1567-1648): zur Geschichte einer Minderheit*, [Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte, Beihefte, 63], Wiesbaden 1977, p. 263-270 and E. Stols, *De Spaanse Brabanders of de handelsbetrekkingen der Zuidelijke Nederlanden met de Iberische wereld, 1596-1648*, [Verhandelingen van de Koninklijke Vlaamse academie voor wetenschappen, letteren en schone kunsten, Klasse der letteren, 70], Brussels 1971, II, p. 158-165.

⁴ The most recent monographs on this subject are: O. Gelderblom, *Zuid-Nederlandse kooplieden en de opkomst van de Amsterdamse stapelmarkt (1578-1630)*, Hilversum 2000 and C. Lesger, *Handel in Amsterdam ten tijde van de Opstand, Kooplieden, commerciële expansie en verandering in de ruimtelijke economie van de Nederlanden, ca. 1550-1630*, Hilversum 2001. Of the latter, an English translation has recently been published: C. Lesger, *The rise of the Amsterdam market and information exchange: merchants, commercial expansion and change in the spatial economy of the Low Countries, c. 1550-1630*, Aldershot 2006. Gelderblom has stated that the influence of

although they agree on the introduction of Antwerp commercial techniques in the Amstel city by them⁵.

The legal historian J.W. Bosch has emphasized that Antwerp commercial law played an important role during the seventeenth century, in the province of Holland and in Amsterdam in particular⁶. Although much of his insights are still relevant, this article aims to go somewhat beyond these (now well-known) indications of Antwerp legal influence in the North. A central question is whether the Brabant law was merely copied or whether the Amsterdam legislator used it as a starting point for his own legislation. Due to the lacunary preservation of seventeenth-century Amsterdam court records⁷, the findings

southerners in Amsterdam was limited because most of the immigrants were young and not pertaining to the highest commercial classes. Lesger on the other hand has reviewed some of Gelderblom's conclusions and is somewhat more positive in his evaluation of the part merchants from Brabant and Flanders had in Amsterdam's lift-off. See also the more classical: G. Asaert, *1585: de val van Antwerpen en de uittocht van Vlamingen en Brabanders*, Tiel 2004.

⁵ Lesger, *Handel in Amsterdam* (supra, n. 4), p. 161; Van der Wee, *Monetary, credit and banking systems* (supra, n. 3), p. 336.

⁶ J.W. Bosch, *Enige rechtshistorische aantekeningen over Zuid-Nederlandse juridische invloeden in het Noorden*, Rechtskundig Weekblad, 11 (1947-48), col. 1009-1016, at col. 1013-1015; J.W. Bosch, *Remarques sur quelques influences exercées, en matière de droit, par les provinces méridionales sur les provinces septentrionales des Pays-Bas jusqu'en 1795*, Tijdschrift voor Rechtsgeschiedenis, 19 (1951), p. 133-157, at p. 143-147. The following authors have based their insights mostly on Bosch's views: W.F. Lichtenauer, *Geschiedenis van de wetenschap van het handelsrecht in Nederland tot 1809*, [Geschiedenis der Nederlandse Rechtswetenschap, 5/1], Amsterdam 1956, p. 158, p. 174 and p. 194; L.Th. Maes, *Juristen en rechtsleven te Antwerpen ten tijde van P.P. Rubens*, in: *Juristen en rechtsleven ten tijde van Rubens*, Antwerp 1977, p. 15-64, at p. 30-31; L.Th. Maes, *Rubens in het kader van de Europese en van de Antwerpse rechtsgeschiedenis*, Rechtskundig Weekblad, 41 (1977-78), col. 673-686, at col. 682-683; W.H.F. Oldewelt, *De pogingen tot 'codificatie' van het Amsterdamse recht*, Verslagen en Mededelingen van de Vereeniging tot uitgaaf der bronnen van het oud-vaderlandsche recht, 13 (1967), p. 57-73, at p. 71-72. Studies on topics of mercantile law have also made use of his insights: W.D.H. Asser, *Bills of exchange and agency in the 18th century law of Holland and Zeeland, Decisions of the Supreme Court of Holland and Zeeland*, in: V. Piergiovanni (ed.), *The courts and the development of commercial law, [Comparative studies in Continental and Anglo-American legal history, 2]*, Berlin 1987, p. 103-130, at p. 105-107; J.P. Van Niekerk, *The development of the principles of insurance law in the Netherlands from 1500 to 1800*, Kenwyn 1998, I, p. 254-255; J.A.F. Wallert, *Ontwikkelingslijnen in praktijk en theorie van de wisselbrief 1300-2000*, Tilburg 1996, p. 96. For the influence of the 1608 Antwerp *costuymen* in Roermond and Gelre, which is not examined in this article, see: A.M.J.A. Berkvens and G.H.A. Venner, *Het Gelderse Land- en Stadsrecht van het Overkwartier van Roermond 1620*, [Werken der Stichting tot Uitgaaf der Bronnen van het Oud-Vaderlandse Recht, 25], Arnhem 1996, p. XXXII-XXXIV; R. Feenstra and G. Spijkerboer, *La coutume de Gueldre (Quartier de Ruremonde) de 1619 et la coutume d'Anvers dite 'Compilatae'*, Revue du Nord, 36 (1954), p. 74-76; B. 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, p. 261-277.

⁷ Of the insurance chamber, which was installed in 1598, the earliest preserved judgments date from 1700. The oldest surviving archival materials from other departments, the so-called 'roles' (*rollen*), usually date back to the last decade of the seventeenth century only. Of the

here presented are based mainly on Amsterdam ordinances and on doctrinal sources, of which many were used by Bosch as well. A new interpretation of these texts is predominantly fostered by the comparison of Amsterdam legislation with Antwerp legal texts, by recent research and by data drawn from Amsterdam's cultural history. The contextual approach leads, inevitably, to a more subtle assessment of legal relations between the two commercial centres.

I. – Mercantile law from the south: a printed 'code' with commercial chapters

After the promulgation of royal ordinances imposing registration of local law and its approval ('*homologatie*') by the central government, the Antwerp City Council installed commissions to draw compilations of Antwerp law⁸. In the course of the sixteenth century and in the early seventeenth century, four versions of the city's law, so-called *costuymen*, saw the light. Because of the evident commercial touch of Antwerp court practice, these compilations contain paragraphs on mercantile contracts such as bills of exchange and maritime insurances, and deal with legal issues with a strong commercial connotation such as bankruptcy. The version of the Antwerp *costuymen* with the most extensive mercantile paragraphs was the fourth, which was presented to the central government in 1608 at the latest⁹. Almost one third of this

small affairs chamber (*kleyne rolle*), which was installed in 1611, registers start as late as 1767 and there exist no judgments. For the department competent for seizures and arrests (*arrestrol*), there are, however, records from 1649 onwards. The commissioners in maritime affairs (*commissarissen van de zeezaken*) made notes from 1641 onwards. Samples of these departments' registers demonstrated that they contain merely law clerk notes on the procedure and very few legal arguments. See: AmCA, SS, nr. 1843 (*arrestrolle*), nr. 1867 (*ordinaris rolle*), nr. 2063 (*kleyne rolle*) and nr. 2490 (*commissarissen van de zeezaken*). No records of the chamber for outward affairs (*buytenrolle*), which judged cases on bills of exchange, could be found. Series of extended sentences, in which the arguments of the parties were usually copied, only start in 1696. See: AmCA, SS, nr. 605–630. A few bundled excerpts from now lost older volumes of extended sentences, of which some date back to 1534, have been drawn from criminal judgments only. See: AmCA, SS, nr. 630 A, nr. 630 B, nr. 630 C, nr. 630 D and nr. 630 E.

⁸ On the compilation movement in the Netherlands, see: J. Gilissen, F. Gorlé and M. Magits, *Historische inleiding tot het recht*, Antwerp 1991, I, p. 50; J. Gilissen, *La rédaction des coutumes en Belgique aux XVIe et XVIIe siècles*, in: J. Gilissen (ed.), *La rédaction des coutumes dans le passé et le présent*, Brussels 1962, p. 87–111, at p. 98–102; J. Gilissen, *Loi et coutume, Esquisse de l'évolution des sources du droit en Belgique du XIIIe au XXe siècle*, *Revue de droit international et de droit comparé*, 39 (1962), p. 1–40, at p. 20; G. Martyn, *Het Eeuwig Edict van 12 juli 1611, Zijn genese en zijn rol in de verschriftelijking van het privaatrecht*, [Algemeen Rijksarchief en Rijksarchief in de Provinciën, Studia, 81], Brussels 2000, p. 152–155.

⁹ Usually this version is dated 1608 although no document allows to determine the date of completion precisely. There are, however, important indications that this text had already been finished in 1607. An edition of the 1582 Antwerp law, which had been printed in Amsterdam in 1607, contains references to these new *costuymen*. See: *Rechten ende costumen van Antwerpen*,

text, some 1124 articles, consist of commercial and contractual rules, which are put together in a separate part on ‘*Contracts, obligations and relating matters*’¹⁰. Shortly after their submittal, the Antwerp aldermen urged for a provisional recognition of the mentioned mercantile parts, mainly in order to support the city’s merchants community, as in 1608 and 1609 economic slowdowns had resulted in floating prices and a shortage of funds¹¹. The commercial elite and the Antwerp City Council blamed the Archducal government in Brussels for its *licenten*, i.e. taxes on incoming and outgoing merchandises¹². When in the first days of 1609 negotiations for a truce with the North were proceeding in Antwerp¹³, the City Council drafted a request in order to obtain provisional approval of the mercantile paragraphs of the 1608 compilation¹⁴. The answer of the Archdukes, dating from 14 February 1609, was positive and the Antwerp rulers were given authorization to publish these ‘*points relating to commerce*’¹⁵. On 10 March 1609 the Antwerp City

Amsterdam, Hendrick Barendszoon, 1607. Compiler Hendrik Uwens received his last reward in September 1607. See ACA, PK, 567, fol. 23v (6 September 1607). He was appointed counsellor in the Great Council of Mechelen on 10 November 1607. See: Berkvens and Venner, *Het Gelderse Land- en Stadsrecht* (supra, n. 6), p. XXXII. See also Van Hofstraeten, *Juridisch humanisme* (supra, n. 6), p. 12–13.

¹⁰ *Coutumes du pays et duché de Brabant, Quartier d’Anvers*, [Recueil des anciennes coutumes de la Belgique], IV, G. De Longé (ed.), Brussels 1874. The whole text of the 1608 Antwerp law book contains 81 paragraphs in 7 parts, numbering 3643 articles in total.

¹¹ Stols, *De Spaanse Brabanders* (supra, n. 3), I, p. 26.

¹² P. Voeten, *Antwerpse handel over Duinkerken tijdens het Twaalfjarig Bestand*, Bijdragen tot de geschiedenis, bijzonderlijk van het oud hertogdom Brabant, 39 (1956), p. 67–78, at p. 69–70.

¹³ W.J.M. van Eysinga, *De wording van het Twaalfjarig Bestand van 9 april 1609*, Amsterdam 1959, p. 130.

¹⁴ ACA, V, 64 (request with decision of 14 February 1609).

¹⁵ ACA, V, 64 (request with decision of 14 February 1609). See: J.P.A. Coopmans, *De jaarmarkten van Antwerpen en Bergen op Zoom als centra van rechtsverkeer en rechtsvorming*, in: J.G.C. Raaijmakers, et al. (eds.), *Handelsrecht tussen ‘koophandel’ en Nieuw B.W.*, Opstellen van de Vakgroep Privaatrecht van de Katholieke Universiteit Brabant bij het 150-jarig bestaan van het WvK, Deventer 1988, p. 1–24, at p. 23; M. De Cuyper, *Rapport sur les documents coutumiers de Brabant, Limbourg et Malines*, Handelingen van de Koninklijke Commissie voor de Uitgave der Oude Wetten en Verordeningen van België, 4 (1862), p. 7–92, at p. 60; J. De Keyser, *De officiële redactie der Antwerpsche gewoonten*, Rechtskundig Weekblad, 7 (1937–38), col. 705–716, at col. 713; M. Gotzen, *De costumiere bronnen voor de studie van het oud-Antwerpsch burgerlijk recht*, Rechtskundig Tijdschrift voor België, 39 (1949), p. 3–16, 105–124 and 191–208, at p. 118; C. Laenens and L. Leemans, *De geschiedenis van het Antwerps gerecht*, Antwerp 1953, p. 21; C. Laenens and L. Leemans, *Juristen en rechtsleven ten tijde van Rubens, Tijdsbeeld en historische herinneringen uit de periode van de oprichting van het justitiepaleis*, in: *Juristen en rechtsleven ten tijde van Rubens*, Tentoonstelling in het kader van het Rubensjaar, Antwerp 1977, at p. 90; F. Stevens, *Revolutie en notariaat, Antwerpen 1794–1814*, [Brabantse rechtshistorische reeks, 8], Assen 1994, p. 27; Van Hofstraeten, *Juridisch humanisme* (supra, n. 6), p. 110; C. Wauters, *Le droit commercial belge mis en rapport avec la jurisprudence ...*, Brussels 1867, I, p. 9.

Council publicly ordered the use of this Antwerp commercial legislation in its courts¹⁶.

The history of these commercial *costuymen*, and of the 1608 compilation in general, is puzzling. Notwithstanding the more exhaustive approach of its compilers, the 1608 text on commercial issues was not the unchallenged reference for questions on these matters. Instead, the 1582 compilation was used the most, and this until the end of the eighteenth century. Although the 1608 version was still considered important for some mercantile topics such as maritime insurance¹⁷, the 1582 version proved the most widespread and was generally considered as the Antwerp law, also for commercial rules¹⁸. The 1582 *costuymen* contained four mercantile chapters, on bills of exchange, maritime insurance and bankruptcy proceedings. Because the 1582 law had been published and the 1608 version, as well as other Antwerp *costuymen* dating from 1548 and 1570, remained in manuscript form, these latter texts were not well known to seventeenth-century Antwerp barristers and proctors, and even less to their Amsterdam counterparts¹⁹.

II. – Printing for the enemy: Amsterdam publications of Antwerp law

Already in the first phase of the Revolt merchants fled to Amsterdam. In 1590, some 200 merchants from the southern provinces of Flanders and Brabant were residing in the Holland city²⁰. When the Amsterdam economy started to boom shortly after the Twelve Years' Truce (1609), this number had already more than doubled as in 1609 no less than 450 southerners were active in Amsterdam's commercial scenes²¹. They had a considerable influence on the organisation of trade in the Amstel city, notwithstanding earlier advantages and strengths being present there before their arrival. The reorientation of international maritime trade on the Amsterdam port in the early seventeenth century allowed for older structural opportunities to be fully

¹⁶ ACA, V, nr. 55. This manuscript of the 1608 Antwerp law part on mercantile issues contains a copy of the City Council resolution of 10 March 1609. See also: Wauters, *Le droit commercial* (*supra*, n. 15), I, p. 9.

¹⁷ See ACA, V, nr. 70, fol. 160 (31 May 1652). This *turbe* confirms a maritime insurance custom which is formulated in the 1608 Antwerp law compilation.

¹⁸ See Gotzen, *De costumiere bronnen* (*supra*, n. 15), p. 197–198; Laenens and Leemans, *Geschiedenis van het Antwerps gerecht* (*supra*, n. 15), p. 24; Stevens, *Revolutie en notariaat* (*supra*, n. 15), p. 28.

¹⁹ A common view is that the 1582 *costuymen* prevailed and that the 1608 version was forgotten. It has been stated that the publication of the 1582 version was responsible for this. See: Gotzen, *De costumiere bronnen* (*supra*, n. 15), p. 198. However, a considerable number of manuscript copies of the 1608 *costuymen* were made. Other evidence points in the direction of a minor but not negligible use of this text in the seventeenth century.

²⁰ Gelderblom, *Zuid-Nederlandse kooplieden* (*supra*, n. 4), p. 89.

²¹ Gelderblom, *Zuid-Nederlandse kooplieden* (*supra*, n. 4), p. 119.

explored²². In those days, Amsterdam proved a leading centre in commercial networks, which were though still linked to Antwerp. Also on a cultural level the Brabant city was connected with Amsterdam. Many intellectuals, artists and booksellers found a safe haven there and Amsterdam's book production was, to a large extent, focused on export to the newly conquered provinces.

The 1582 Antwerp *costuymen* knew, initially, only one local edition. In November or December 1582, 400 copies were printed in the Plantin printing shop in Antwerp²³. Christophe Plantin († 1589) nor his successors reissued the book, which was due to the attitude of the Antwerp government after 1585. The 1582 law had been published on the demand of the Antwerp aldermen by Christophe Plantin, as he was in charge of printing the City Council's ordinances at that time²⁴. On 30 May 1586, however, the new catholic Antwerp government prohibited the use of the 1582 *costuymen* because they had been written under a Calvinistic rule (1578–1585), which is why they were considered unsuitable²⁵. The close relations between the City Council and the firm of Plantin were maintained by the latter's successors Jan I Moretus († 1610), Balthasar I Moretus († 1641), Balthasar II Moretus († 1674) and Balthasar III Moretus († 1696), who remained the city's printers²⁶. Although the Antwerp aldermen of the second half of the seventeenth century were not as reluctant to use the 1582 *costuymen* as their predecessors had been²⁷, ordering the reprinting of the old text was probably too far a step for them, also because of its complex legal status and because of the still partial application of the 1608 compilation. Private initiatives by Antwerp printers were equally discouraged. In 1674, for example, the Antwerp printer Michael Knobbaert tried to obtain authorization from the Council of Brabant for a new publication of the 1582 *costuymen* in a planned compilation of Brabant law. After this institution had informed the Antwerp aldermen on the request,

²² Lesger, *Handel in Amsterdam* (supra, n. 4), p. 103–137.

²³ L. Voet, *The Plantin Press (1555–1589), A bibliography of works printed and published by Christopher Plantin at Antwerp and Leiden*, Amsterdam 1980, I, p. 156. Another Antwerp edition was published by J.B. Carstiaenssens in 1793.

²⁴ L. Voet, *The golden compasses, A history and evaluation of the printing and publishing activities of the Officina Plantiniana of Antwerp*, Amsterdam 1969, I, p. 96.

²⁵ ACA, PK, nr. 558, fol. 112v (30 May 1586). See: Gotzen, *De costumiere bronnen* (supra, n. 15), p. 114; Laenens and Leemans, *Geschiedenis van het Antwerps gerecht* (supra, n. 15), p. 21; Laenens and Leemans, *Juristen* (supra, n. 15), p. 89; Stevens, *Revolutie en notariaat* (supra, n. 15), p. 24; Wauters, *Le droit commercial* (supra, n. 15), I, p. 8–9.

²⁶ De Nave, *Een typografische hoofdstad in opkomst, bloei en verval*, in: J. Van der Stock (ed.), *Antwerpen, verhaal van een metropool, 16de–17de eeuw*, Antwerp 1993, p. 87–95, at p. 93.

²⁷ In 1694, the Antwerp aldermen asked the Council of Brabant to confirm a rule of the 1582 *costuymen*. See: ACA, PK, nr. 2819, ad annum. See also: De Cuyper, *Rapport* (supra, n. 15), p. 61; Laenens and Leemans, *Geschiedenis van het Antwerps gerecht* (supra, n. 15), p. 25; Stevens, *Revolutie en notariaat* (supra, n. 15), p. 25; Van Hofstraeten, *Juridisch Humanisme* (supra, n. 6), p. 203–204.

Knobbaert faced fierce opposition from them²⁸. Although Knobbaert finally ignored the refusal and included the *costuymen* in Jan-Baptist Christyn's *Brabandts recht* (1682) anyway²⁹, these reactions show that publication of the law book was far from evident in the Brabant city, and still in the late seventeenth century.

Printers in Amsterdam took an early interest in the Antwerp *costuymen*, as already in 1584 a pirate edition was printed there which was given the false *locus* of Cologne³⁰. In 1597, another Amsterdam edition was printed and it was also adorned with the Cologne-stamp. Most of the latter version was printed by Nicolas Biestkens, except for the frontispiece which was delivered by the Amsterdam printer Cornelis Claeszoon³¹. Somewhat later, a new edition was presented as the Cologne-edition of 1597, supplemented by Cornelis Claeszoon. This book seems, however, to have been printed either by Herman de Buck or by Nicolas Biestkens, who were also residents of the Holland city³². The three mentioned editions were intended for practical use, as they had the manageable octavo-format instead of the 1582 Plantin folio size. Claeszoon, who sold the two latter editions³³, was originally from Brabant³⁴ and had possibly acted on the instruction of Christophe Plantin, with whom he got along during the latter's Leiden stay between 1581 and 1583³⁵ and with whose firm he had contracts until his death in 1609³⁶. Claeszoon specialized in manuals on subjects such as geography, seafaring and accounting³⁷, but his stock equally consisted of practice-orientated legal treatises by authors such as Philip Wielant and Joost De Damhouder³⁸.

²⁸ ACA, V, nr. 66bis, request with decision of 1 October 1674. See also: Gotzen, *De costumiere bronnen* (*supra*, n. 15), p. 193; Laenens and Leemans, *Geschiedenis van het Antwerps gerecht* (*supra*, n. 15), p. 25; Stevens, *Revolutie en notariaat* (*supra*, n. 15), p. 27.

²⁹ J.B. Christyn, *Brabandts recht dat is generale costumen van den lande ende hertoghdomme van Brabant* ..., Brussels 1682, I, p. 375–497.

³⁰ J.W. Bosch and R. Feenstra, *Livres anciens de droit d'origine étrangère imprimés aux Pays-Bas, Essai de bibliographie et catalogue* ..., Amsterdam 1953, p. VI and p. 40 (295); Voet, *The Plantin Press* (*supra*, n. 23), I, p. 156.

³¹ P. Valkema Blouw, *Typographia Batava 1541–1600*, Nieuwkoop 1998, I, p. 485 (4274). See also: Bosch and Feenstra, *Livres anciens* (*supra*, n. 30), p. 40 (296).

³² Valkema Blouw, *Typographia Batava 1541–1600* (*supra*, n. 31), I, p. 485 (4275); Bosch and Feenstra, p. 41 (297).

³³ Valkema Blouw, *Typographia Batava 1541–1600* (*supra*, n. 31), I, p. 485 (4274 and 4275).

³⁴ J.G.C.A. Briels, *Zuidnederlandse boekdrukkers en boekverkopers in de Republiek der Verenigde Nederlanden omstreeks 1570–1630, Een bijdrage tot de kennis van de geschiedenis van het boek*, Nieuwkoop 1974, p. 238; E.W. Moes and P.C. Burger, *De Amsterdamsche boekdrukkers en uitgevers in de zestiende eeuw*, Amsterdam 1907, II, p. 27.

³⁵ Briels, *Zuidnederlandse boekdrukkers* (*supra*, n. 34), p. 238.

³⁶ Voet, *The golden compasses* (*supra*, n. 24), II, p. 515.

³⁷ B. van Selm, *Een menighre treffelijke Boecken, Nederlandse boekhandelcatalogi in het begin van de zeventiende eeuw*, Utrecht 1987, p. 181.

³⁸ He printed De Damhouder's *Practijcke ende handtboec in criminele saecken* (1598), of Wielant's *Practijcke civile* (1598 and 1606) and *Dat nieuwe landtrecht van de Ommelanden*,

Cornelis Claeszoon's publications seem not to have been linked to the Amsterdam government and there is no indication that the issuing of the 1597 and later edition was more than a private initiative. The same can be said of the 1584 version. If the Amsterdam legislator had approved these collections, the publishers would most certainly have mentioned this. In the meantime, a first edition of collected Amsterdam ordinances, privileges and *turben* (i.e. testimonies on law), which is generally referred to as *Handvesten* or *Willekeuren*, contained the chapters of the 1582 Antwerp compilation on bills of exchange and maritime insurance in annexe, together with some older royal ordinances on insurance matters³⁹. The book was printed in 1597 for the most part, some pages being added afterwards in 1599⁴⁰.

In 1607 and 1613, another Amsterdam printer, Hendrik Barendszoon, made two new editions of the Antwerp *costuymen*⁴¹; the 1617 edition was also issued with a Cologne-address⁴². These editions were of the quarto-format and belonged to the few books which he printed. Barendszoon was mainly interested in practice-orientated legal literature on commercial topics⁴³. He clearly intended to sell his copies in Antwerp. This is evident from the fact that he printed separate booklets of the *By-voechsel*, a pre-constitutional text on the composition and functioning of Antwerp institutions. The Antwerp City Council had ordered the compilation of this text in November 1581⁴⁴, but it had been the subject of controversy until December 1583⁴⁵. As a result, it had not been a part of the 1582 Plantin edition and it had not yet been integrated in the 1584 and 1597 editions either. Barendszoon later printed the 1618 so-called *Albertine* royal ordinance, which had altered some of

tusschen die Eems ende Lauwers (1602). The titles were found in the *Short-Title Catalogue Netherlands (STCN)*: <http://picarta.pica.nl/xslt/DB=3.11/LNG=NE/>.

³⁹ *Handt-vesten ende Privilegie van Amstelredam, Mitsgaders sekere Costuymen, Oude-ghebruycken ende Willekeuren der zelve Stede ...*, s.l. 1597 (AmCA, Library, nr. 474) (hereafter *Handvesten 1597*), p. 165–169. See: Oldewelt, *De pogingen* (supra, n. 6), p. 71; Stevens, *Revolutie en notariaat* (supra, n. 15), p. 28 n. 168.

⁴⁰ The printer of these *Handvesten* is unknown, but evidence points in the direction of Herman van Borculo of Utrecht. The last parts of the book, containing some royal legislation, were presumably printed by the Amsterdam printer Barent Adriaenszoon in 1599. See: Moes and Burger, *De Amsterdamsche boekdrukkers* (supra, n. 34), III, p. 305; Valkema Blouw, *Typographia Batavia 1541–1600* (supra, n. 31), II, p. 170 (7083).

⁴¹ *Rechten ende costumen van Antwerpen*, Amsterdam, Hendrik Barendszoon, 1607 and 1613. See also: Bosch and Feenstra, *Livres anciens* (supra, n. 30), p. 41 (298 and 299).

⁴² Bosch and Feenstra, *Livres anciens* (supra, n. 30), p. 41 (298); J.W. Bosch and R. Feenstra, *Livres anciens de droit d'origine étrangère imprimés aux Pays-Bas, Supplément à l'essai de bibliographie de 1953 ...*, Amsterdam 1962, p. 20 (594).

⁴³ He published *'t Boeck der Zee-rechten* (1626 and 1637). See: *Short-Title Catalogue Netherlands (STCN)*, <http://picarta.pica.nl/xslt/DB=3.11/LNG=NE/>.

⁴⁴ Laenens and Leemans, *Geschiedenis van het Antwerps gerecht* (supra, n. 15), p. 19–20.

⁴⁵ A draft of the text was finalized in June 1582 and on 7 August 1582 four copies were given to the city's four most important corporations. Following opposition by these groups, Philip van Mallery was appointed to draw a compromise. He obtained its formal approval in December 1583. See: Laenens and Leemans, *Geschiedenis van het Antwerps gerecht* (supra, n. 15), p. 19–20.

Antwerp's institutions, as a supplement to the *costuymen*. The mentioned annexes clearly show that the Amsterdam editions were exported to Antwerp, because the former were useful only in the Brabant city itself. Barendszoon's 1607 edition moreover contains marginal notes made by Karel Gabri, an Antwerp barrister and one of the leading members of the 1582 *costuymen* compilation committee⁴⁶. His remarks were clearly written for Antwerp readers, as they also referred to the 1548 and 1570 Antwerp *costuymen*, of which were, as already mentioned, only a few manuscripts available and predominantly in Antwerp⁴⁷.

It is very likely that also the earlier Amsterdam prints of the Antwerp *costuymen* were delivered on the boards of the river Scheldt. Not a lot is known about bookselling in Antwerp in those days⁴⁸. Some of the preserved catalogues of the *Officina Plantiniana*, Plantin's printing firm, which also mentioned books from other printers, do not list the *costuymen*⁴⁹. Even if more catalogues would be available, it would be surprising to find a reference to the controversial law book in them. Probably copies of the *costuymen* were sold via informal and discrete contacts. This was due to the mentioned views of the Antwerp aldermen, but also to the commercial policy of the Spanish government. Naval commerce with the North was officially prohibited between 1598 and 1603, and again between 1625 and 1629, and commerce over land was only allowed between 1610 and 1622, and after 1632⁵⁰. Relaxations of these

⁴⁶ These notes were also added to later Amsterdam editions of the *costuymen* of 1613, 1639, 1644 and 1660. On Gabri's membership of the 1582 compilation committee, see: Gotzen, *De costumiere bronnen* (*supra*, n. 15), p. 14–15 and p. 108.

⁴⁷ E.g. at art. 38, tit. 60, at art. 28, tit. 27: 'desunt in M.S.', and at art. 6, tit. 41: 'In Antiquis M.S. anno 1545 habes ...'.

⁴⁸ An overview of Antwerp booksellers and of the research on their activities can be found in: K. De Vlieger - De Wilde, *Directory of seventeenth-century printers, publishers and booksellers in Flanders*, Antwerp 2004, p. 1–163.

⁴⁹ *Index librorum qui in typographia Plantiniana prodierunt*, Antwerp 1615, p. 28–29; *Index librorum qui in typographia Plantiniana excusi venales nunc exstant*, Antwerp 1642, p. 32.

⁵⁰ A *plakkaat* of November 1598 by Philip III and a royal ordinance by the Archdukes Albrecht and Isabella of 9 February 1599 prohibited commerce with the rebel provinces. These measures were suspended by a decree of 5 April 1603, which introduced new taxes for commerce coming from the North. On 12 March 1605 this system was changed for the older *licenten*, which were, in the light of negotiations on a truce, abolished in May 1607. See: J.H. Kernkamp, *De handel op den vijand 1572–1609*, [thesis University of Utrecht], Utrecht 1931, II, p. 228, p. 284 and p. 331. In all these years, between 1598 and 1610, the commerce over land with the rebellious provinces had been prohibited and the relaxations had only concerned naval transports. An Archducal ordinance of 19 February 1610 allowed this land traffic, against payment of *licenten*. A new ordinance of 30 March 1622 again excluded commercial traffic with the seven provinces over land. On 29 July 1625, a complete prohibition of commercial contacts over water was reiterated. The financial problems which resulted from this act, finally led to a reintroduction of the *licenten*-system on 10 January 1629 (but only for shipping activities). For transports over land, the prohibition was left for *licenten* on 24 December 1632. See: G. Kindt, *De Antwerpse licenthandel met het Noorden van 1615 tot 1630, in het licht van de Spaans-Nederlandse handelspolitiek gedurende de Tachtigjarige Oorlog*, unpublished Master thesis Katholieke Universiteit Leuven, 1963, p. 30–50.

measures did not, until the end of the eighteenth century, lead to the abolition of the *licenten*. The fiscal regime was therefore the main cause for the mentioned type of smuggling, as import taxation could be avoided if production in the Republic was covered up. The choice for Cologne was evident, as the Electorate of Cologne was a catholic stronghold and an ally of the Spanish monarchs at that time⁵¹. Another strategy for the mentioned purpose was the use of false printing addresses by Holland printers, mostly of houses in Antwerp⁵².

New Amsterdam editions of the Antwerp law followed in the 1630s and 1640s. In his 1639 edition of Amsterdam *Willekeuren*, printer Jacob Pieterszoon Wachter († 1649) added the complete text of the 1582 Antwerp *costuymen*⁵³, which he also released as a separate book in that same year⁵⁴. The joint publication was probably Wachter's initiative and he was not commissioned for it by the Amsterdam City Council, as this is not mentioned in his introductory remarks. The edition of Wachter contained the *By-voechsel* and the *Albertine* ordinance, which made it as useful for Antwerp practice as Hendrik Barendszoon's editions. Also in the late seventeenth century, the Amsterdam copies of the 1582 *costuymen* were sold in the Southern Netherlands, as the 'Cologne'-stamp was given to two new editions dating from 1644 and 1660⁵⁵. This demonstrates that the tax regime of *licenten* remained a major impetus to present Amsterdam prints as editions from other regions⁵⁶.

Despite the mentioned Amsterdam publications of Antwerp *costuymen* and references to it in editions of Amsterdam *Willekeuren*, there is not much evidence of a considerable influence of this law book. Admittedly, Johannes Phoonsen's († 1702) *Wissel-styl tot Amsterdam* (1676) has the Antwerp chapter on bills of exchange as annexe, which is the only foreign legislation included in the book⁵⁷. Widespread seventeenth-century Amsterdam books on mercantile techniques and practices do not mention the Antwerp *costuymen*⁵⁸. The Antwerp sea law is referred to in the title of the 1626 and 1635 editions of the

⁵¹ On the Electorate of Cologne during the Eighty Years War, see: J.I. Israel, *Conflicts of empires, Spain, the Low Countries and the struggle for world supremacy, 1585-1713*, London 1997, p. 23-44.

⁵² E.g. A. Rouzet, *Dictionnaire des imprimeurs, libraires et éditeurs des XVe et XVIe siècles dans les limites géographiques de la Belgique actuelle*, Nieuwkoop 1975, p. 72.

⁵³ *Handtvesten, ofte privilegien, handelingen, costumen ende willekeuren der Stadt Aemsterdam ...*, Amsterdam 1639 (hereafter *Handvesten 1639*).

⁵⁴ *Rechten ende costumen van Antwerpen*, Amsterdam, Jacob Pieterszoon Wachter, 1639. Not mentioned in Bosch and Feenstra, *Livres anciens* (*supra*, n. 30).

⁵⁵ *Rechten ende costumen van Antwerpen*, Cologne [= Amsterdam] 1644 and 1660. See also: Bosch and Feenstra, *Livres anciens* (*supra*, n. 30), p. 41 (300 and 301).

⁵⁶ Many Dutch bookprinters still had false addresses in the south after 1648. See: De Vlieger - De Wilde, *Directory* (*supra*, n. 48), p. 26 (12), p. 32-33 (31), p. 48 (77), p. 55 (102) and p. 61 (121).

⁵⁷ J. Phoonsen, *Wissel-styl tot Amsterdam*, Amsterdam 1711, II, p. 25-28.

⁵⁸ References to Antwerp law are lacking in the famous *Le négoce d'Amsterdam* (1723) by Jean Pierre Ricard, and in subsequent editions. See: J. Le Moine De L'Espine, *De coophandel van Amsterdam ...*, Rotterdam 1753, II vol.

Zee-Rechten, a practical guidebook published by the already mentioned Hendrik Barendszoon, but these volumes do not contain the chapter on maritime insurance of the 1582 Antwerp *costuymen* or any other Antwerp legislation⁵⁹. Amsterdam histories dating from the seventeenth century, containing – sometimes elaborate – descriptions of the city’s law, do not cite the Brabant compilation either⁶⁰. A further analysis of the actual role the Antwerp law book played in the Amstel city will allow to properly evaluate these findings.

III. – Legal hegemony across the frontline? Antwerp commercial legislation as a common commercial law for Amsterdam

Particularly revealing for an assessment of what Antwerp law meant for seventeenth-century Amsterdam are some notes made by Jacob Pieterszoon Wachter and by Nicolaes Duysendaelders. In the introduction of his joint 1639 edition of both the Antwerp *costuymen* and Amsterdam *Willekeuren*, Wachter stated that in Amsterdam the Antwerp law enjoyed almost the same authority as the ‘law of the land’ and as Amsterdam legislation itself. Both published texts together formed, in his opinion, a *corpus iuris* of the Amsterdam laws⁶¹. In the first pages of his 1662 comment on the Amsterdam law, Amsterdam barrister Nicolas Duysendaelders declared that he would indicate which commented Amsterdam rules differed from the Roman and from the Antwerp law, and which were conformable with them⁶². In the main

⁵⁹ ‘t Boeck der Zee-Rechten, Inhoudende: Dat hoogste ende oudste Gotlandsche Water-recht dat de gheemeene Coopliden ende Schippers geordineert ende gemaect hebben tot Wisbuy ... Noch sijn hier by gevoecht de Willekeuren en(de) Costuymen van de Binnen-lants-vaerders van Amsterdam Antwerpen Middellburch Rotterdam Dordrecht Haerlem Utrecht ende Leyden ..., Amsterdam 1626 and 1635. See: J. Hooek and P. Jeannin (eds.), *Ars Mercatoria, Handbücher und Traktate für den Gebrauch des Kaufmans, Eine analytische bibliographie*, Paderborn 1991, I, p. 343.

⁶⁰ See for sections on Amsterdam commercial legislation, without references to Antwerp law: J.I. Pontanus, *Historische Beschrijvinghe der seer wijt beroemde Coopstadt Amsterdam*, Amsterdam 1614, p. 299–300; O. Dapper, *Historische Beschryving der Stadt Amsterdam ...*, Amsterdam 1663, p. 486–508.

⁶¹ *Handvesten 1639* (*supra*, n. 53), introduction: ‘Hier komen oock by de Costuymen van Antwerpen, hier by ghedaen om der selver ghebruyck in saken van Coopmanschap, als hebbende, vermits haer billickheyt en wel gefondeertheyt, geen oft seer weynigh minder autoriteyt by ons, als ons eyghen Landt-recht ende deser Stede Costumen. Sulcx dat ghy dit Boeck koopende, ende daer in vindende neffens uw recht, des selfs rechtmatigh gebruyck, reeckenen mooght u te versien van een geheel Corpus Iuris van deser Stede Wetten, ende door dat middel in kortertijt, vermits die kennisse ende wetenschap, verhoppen mooght, of van veel moeyelickheden van processen te sullen ontslaghen wesen, ofte in velen u selfs te konnen redden, ende voor voor-spraeck dienen ...’. See: Oldewelt, *De pogingen* (*supra*, n. 6), p. 72; Stevens, *Revolutie en notariaat* (*supra*, n. 15), p. 28 n. 168.

⁶² N. Duysendaelders, *Liber primus ad Leges Statuta Consuetudinesque Amstelaedamenses*, Amsterdam 1662, p. 4–5: ‘... In dese onse beschrijvinghe dan, hebben wy voorghenomen te houden de ordre Institution. Justiniani, ende oversulks ons werk in drie deelen verdeelt: het eerste sprekende de iure personarum, tweede, de rerum divisione, et quomodo rerum dominia acquirantur, en ‘t derde de contractibus et obligationibus, en alles soo te voegen, dat in yder

part of his comment Duysentdaelders merely referred to comparable articles of the 1582 Antwerp *costuymen*⁶³. The remarks of Wachter and Duysentdaelders were both an exaggeration, but they provide a clue for the understanding of the role which the Antwerp *costuymen*, and the Antwerp law in general, had in Amsterdam at that time. It was considered, to some extent, as a subsidiary applicable law for matters that were not dealt with in Amsterdam sources.

When examined more closely, the mentioned opinions are clearly no sign of an application of Antwerp law in Amsterdam's legal practice. Duysentdaelders referred to the Brabant *costuymen* because they were 'very laudable' ('*seer loffelijck*') in his opinion. Wachter underlined the Antwerp *costuymen*'s 'authority', which he said was based on their equity and quality. These texts do not speak of the implementation of the Antwerp law, but merely of its attractiveness because of its contents. Other evidence suggests that it is unlikely that the Antwerp *costuymen* formed a secondary source of law for all civil law issues, because nearly all references to the Antwerp *costuymen* deal with commercial questions (albeit in a broad sense). The Antwerp *costuymen* were, to some extent, a common law in mercantile matters which were relatively new and for which no equivalent could be found in the Amsterdam legal texts. Nevertheless, this role changed according to the state of Amsterdam legislation and gradually diminished in the course of the seventeenth century.

An Amsterdam *turbe* of 11 July 1601 dealt with the acceptance of bills of exchange for the account of a third party. This technique had no basis in the 1582 Antwerp *costuymen* and therefore the issue had to be solved with reference to mercantile custom. Of the ten merchants who were asked their views, each one had come from the South and no less than nine of them were former Antwerp residents⁶⁴. The same affinity of southerners with bills of exchange can be found in a 1608 petition at the Amsterdam government, in which merchants asked to suspend legislation that had abolished the *kassiers*, *i.e.* agent brokers, who dealt mostly in financial effects such as bills obligatory and bills of exchange. Of the demanding merchants, almost two thirds had been citizens in the southern provinces⁶⁵. For the period of 1609 to 1615,

deel mochte blijken, waer in wy met'er Roomsche Recht en de Coustumen van Antwerpen, die seer loffelijck sijn, overeenkomen, ende waer in wy met de selve verscheelen ...'.

⁶³ Duysentdaelders, *Liber primus* (*supra*, n. 62), p. 98, p. 283 and p. 324.

⁶⁴ *Hand-vesten, Privilegien, Handelingen, Costuymen ende Willekeuren der Stadt Aemstredam ...*, s.l. 1624 (AmCA, Library, nr. 1732), p. 195–196 [= p. 95–96]; *Ordonnantien ende willekeuren van Wissel en Wissel-Banck*, Amsterdam 1775, p. 3–7. According to a marginal note in the latter edition, this *turbe* was written in the *Compostboecken*, collections of *turben*, which have not been preserved. The Antwerp merchants were Pieter Van de Moere, Isaak Le Maire, Hans Honger, Casper Copmans, Gillis Santijn, Jan van Baerle, Abraham van Lemmens, Herman Huysman and Pieter van Geer. These names were found in a database of southern immigrants in Amsterdam, made by Oscar Gelderblom. See: <http://192.87.107.12:8080/kooplieden>. See also: Lesger, *Handel in Amsterdam* (*supra*, n. 4), p. 160 n. 86.

⁶⁵ J.G. van Dillen, *Het oudste aandeelhoudersregister van de Kamer Amsterdam der Oost-Indische*

between 35 and 40% of the *Wisselbank* registers contain names of southern merchants. After 1615, there was a slow decline, but in 1627 still 27,2% of the accountholders had immigrated from Flanders or Brabant⁶⁶.

Although the Amsterdam government had installed the *Wisselbank* in 1609 and new legislation had been necessary in the first half of the seventeenth century, very few Amsterdam ordinances contained articles on exchange relations⁶⁷, as nearly all legislation dealt with the functioning of the new institution and with the regulation of the behaviour of *kassiers*⁶⁸. Only from 1651 onwards, new ordinances on exchange relations were promulgated and new rules were written down in a number of *turben*⁶⁹. Until that time, the Antwerp *costuymen* were used for questions on exchange rules and they remained a solid basis for retrieving legal answers for these often-complex matters. The Amsterdam secretary Daniel Mostart († 1646) mentioned in his 1633 compilation of Amsterdam law that the Antwerp *costuymen* were generally consulted in cases of bills of exchange⁷⁰. In a 1663 *turbe*, Amsterdam barristers declared that a 1582 Antwerp rule on the delay during which a refused bill of exchange had to be protested should be applied⁷¹.

The inclusion of the 1582 Antwerp chapter on maritime insurance in the first edition of the Amsterdam *Willekeuren* was another effect of this supporting role of Antwerp law. It would be an overstatement to describe the Brabant *costuymen* as the only legal text on maritime insurance used at that time. Also

Compagnie, Den Haag 1958, p. 94. See: Lesger, *Handel in Amsterdam* (*supra*, n. 4), p. 161 n. 86.

⁶⁶ Lesger, *Handel in Amsterdam* (*supra*, n. 4), p. 153.

⁶⁷ J. Wagenaar, *Amsterdam, in zyne opkomst, aanwas, geschiedenissen, voorregten, koophandel, gebouwen, kerkenstaat, scholen, schutterye, gilden en regeeringe*, Amsterdam 1760–67, IX, p. 429: ‘... Ondertusschen, verliepen er, in’t eerst, veele jaren, zonder dat, hier ter Stede, eenige Keuren of Ordonnantien op den handel in Wisselbrieven of Wisselhandel gemaakt werden. Men hield zig, doorgaands, aan de Coustumen of Gewoonten der Stad Antwerpen, de eenigsten, die uitgegeven werden, in den eersten Druk der Handvesten van Amsterdam van den jaar 1597 ... De Coustumen van Antwerpen behelsden nog eenige andere byzonderheden, die, ten deele, stand hielden, ten deele, door den tyd, in ongebruik geraakt zyn ...’; and *Ibid.*, XIII, p. 42: ‘De geschillen, over ‘t stuck van Assurantie vallende, werden, in en voor dien tyd, hier ter Stede, gebragt voor Schepenen, die regt spraken naar de Plakaaten van de jaaren 1563 en 1570, en naar de Coustumen of Gewoonten van andere Koopsteden, met naame van Antwerpen ...’.

⁶⁸ *Handvesten 1624* (*supra*, n. 64), p. 305 (15 July 1608).

⁶⁹ See: Wagenaar, *Amsterdam, in zyne opkomst* (*supra*, n. 67), IX, p. 442.

⁷⁰ AmCA, Archief van Burgemeesters, Privilegeboeken and keurboeken, nr. 34, fol. 167v.: ‘Int stuck van wissel worden binnen deser stede meest ghevolgt de Costumen van Antwerpen’.

⁷¹ *Ordonnantien ende willekeuren van Wissel en Wissel-Banck* (*supra*, n. 64), p. 23–28 (17 March 1663). This *turbe* has been misinterpreted. Nine barristers and a proctor were asked whether the printed Antwerp *costuymen* were usually (*ordinaris*) used for the mentioned delay. Bosch has erroneously stated that, according to this *turbe*, the Antwerp *costuymen* were generally used for questions on bills of exchange. See: Bosch, *Enige rechtshistorische aantekeningen* (*supra*, n. 6), p. 1012; Bosch, *Remarques* (*supra*, n. 6), p. 146. This was copied by Wallert. See: Wallert, *Ontwikkelingslijnen* (*supra*, n. 6), p. 96.

the older royal ordinance of 20 January 1571 (n.s.), which was annexed together with the Antwerp law to the 1597 *Willekeuren*, served as a still useful starting point for rules on this subject⁷². Nevertheless, there was an Antwerp tradition for matters of maritime insurance. Amsterdam insurance policies referred, for example, to the insurance customs of Lombard Street in London and of the Antwerp Exchange⁷³. On 23 October 1599, an inquiry was held on the retreat of an insurer after he had signed the insurance policy. For such a problem, no solution was written down in the Amsterdam legislation, nor in the Antwerp *costuymen* or in the 1571 royal ordinance. Fourteen merchants were asked their opinions on the issue, five of them Antwerp immigrants⁷⁴. Although they did not present their findings as Antwerp legislation or customs, their participation clearly demonstrates that the Amsterdam government relied on the Brabant immigrants for topics of insurance which had no basis in available legal texts.

Another example of an additional use of the Antwerp *costuymen* relates to the famous article 5 of chapter 58 of the 1582 Antwerp *costuymen*, which states that no revendication is allowed for a principal who has permitted his agent to sell merchandises, even if they have been sold at too low a price⁷⁵. According to Mostart, this rule was in use in Amsterdam and he referred to the Antwerp *costuymen* to explain it⁷⁶. In one instance, the *Hof van Holland* followed the Antwerp and Amsterdam law, which stated that the estate of a suspected insolvent should be divided among his creditors, against the debtor's argument that he had sufficient credit. The Antwerp *costuymen* and the Amsterdam *Willekeuren* were both alleged by a demanding creditor although

⁷² *Handvesten 1597* (*supra* n. 39), p. 171–182.

⁷³ This is mentioned in a 1592 maritime insurance policy. See: Van Niekerk, *The development* (*supra*, n. 6), II, p. 1418–1420.

⁷⁴ *Handvesten 1624* (*supra*, n. 64), p. 198 [= p. 98]. Noordkerk's edition has 21 October 1599 as date. See: H. Noordkerk, *Handvesten; ofte Privilegien ende octroyen: mitsgaders willekeuren, costuymen, ordonnantien en handeligen der stad Amstelredam ...* (AmCA, Library, nr. 77930), Amsterdam 1748, p. 541–542. The Antwerp merchants were Isaak Le Maire, Pieter Van de Moere, Reynier de Loquere, Hans de Schot and Dirck Van Os. Another southerner was Pieter Wilbraet, who came from the county of Flanders. The names of the merchants involved were compared with Gelderblom's database. See also: Lesger, *Handel in Amsterdam* (*supra*, n. 4), p. 160.

⁷⁵ *Coutumes du pays et duché de Brabant, Quartier d'Anvers*, [Recueil des anciennes coutumes de la Belgique], II, G. De Longé (ed.), Brussels 1871 (hereafter *Costuymen Antwerp 1582*), p. 444 (art. 5). On this rule, quoted by Grotius in a manuscript addition to his *Inleidinge tot de Hollandsche rechtsgeleerdheid*, II,3,3–6 (see the edition by F. Doving, H.F.W.D. Fischer and E.M. Meijers, Leiden 1952 (2nd ed. 1965), p. 53 n. 1), see R. Feenstra, *Vindikation von Mobilien und Lösungsrecht in den nördlichen Niederlanden im 17. Jahrhundert*, Tijdschrift voor Rechtsgeschiedenis, 63 (1995), p. 355–375, at p. 360–362.

⁷⁶ AmCA, Archief van Burgemeesters, Privilegeboeken and keurboeken, nr. 34, fol. 157v.: 'Twelck alhier ter stede altydts zoo gepractiseert, ende oock in judicio contradictorio in dier voeghen verstaen ende geweten is, ende nimmermeer anders, zie d'Antwerpse handvesten de rei vendicatione'.

the case had no geographical connections with these towns. They provided, according to the judges, a 'received' mercantile custom that well-known insolvency allowed the bankruptcy liquidation procedure to be started⁷⁷. In other matters, the resemblance of the Amsterdam rule with the Antwerp *costuymen* is striking. An Amsterdam ordinance of approximately 1617 consecrated the Roman law *paritas*-principle, which encompassed equality for non-privileged creditors at the distribution of a bankrupt's assets⁷⁸. This same rule had been written down in the Antwerp 1582 *costuymen*⁷⁹ and went back a long way to a 1516 Antwerp ordinance⁸⁰. An important Antwerp provision on the restricted possibility for a debtor of a bill obligatory to hold defences against its holder, was introduced in an Amsterdam ordinance of 27 July 1635⁸¹.

Other Amsterdam rules were contrary to the Antwerp ones. In a 1617 *turbe* Amsterdam barristers and proctors declared that a vendor was not permitted to revendicate his sold but unpaid goods from a bankrupt buyer if the vendor had given credit and had fixed a payment date after the delivery⁸². According to the 1582 Antwerp *costuymen*, in that case the vendor was given authorization to retrieve his merchandise⁸³. A similar difference with the Antwerp solutions

⁷⁷ J. Loenius, *Decisiën en observatiën ...*, Rotterdam 1735, p. 566 (case 88, judgment of 20 June 1638): 'Het Hoff heeft verstaan, volgens de voorseide Coustume en Keure, quod par fuerit omnium Creditorum conditio van de voornoemden Purmerynde, soo haast de voorseide Purmerynde notoirlyck was insolvent: en dat de selve Coustume in Patria nostra, en andere Landen, daar de Negotie en Koopmanschap vigeeren, zyn gececipieerd. Hoewel de Jure Civili anders, ut in d. lege is gestatueerd'. Bosch has misinterpreted this sentence and mistaken the mentioned custom (on *paritas creditorum*) for the Antwerp *costuymen*. He therefore said that the *Hof van Holland* had accepted the Antwerp *costuymen* as applicable law in matters of bankruptcy. See: Bosch, *Enige rechtshistorische aantekeningen* (*supra*, n. 6), p. 1011; Bosch, *Remarques* (*supra*, n. 6), p. 145. The Antwerp *costuymen* were, together with the Amsterdam *Willekeuren*, merely seen as a text in which a mercantile custom was laid down, which was also in use in other countries. This custom was an accepted custom and prevailed as *ius proprium*.

⁷⁸ *Handvesten 1639* (*supra*, n. 53), p. 100. The exact date of promulgation is not mentioned. In this compilation of Amsterdam legislation, the summary of this ordinance follows the *turbe* on the rights of the unpaid vendor against a bankrupt, which dates from 15 April 1617 (see further below, n. 82). There is, surprisingly, no reference to this ordinance in the 1624 *Handvesten*, although this latter compilation does contain the text of the forementioned *turbe*. See: *Handvesten 1624* (*supra*, n. 64), p. 196 [= p. 96].

⁷⁹ *Costuymen Antwerp 1582* (*supra*, n. 75), p. 538 (art. 2).

⁸⁰ D. De ruysscher, *Designing the limits of creditworthiness, Insolvency in Antwerp bankruptcy legislation and practice (16th–17th centuries)*, Tijdschrift voor Rechtsgeschiedenis, 76 (2008), p. 307–327, at p. 309–313.

⁸¹ *Handvesten 1639* (*supra*, n. 53), p. 118 (27 July 1635). This rule excluded the debtor's right to introduce defences of earlier payment of the debt and of set-off. See: *Costuymen Antwerp 1582* (*supra*, n. 75), p. 526 (art. 11).

⁸² *Handvesten 1624* (*supra*, n. 64), p. 196 [= p. 96] (15 April 1617).

⁸³ *Costuymen Antwerp 1582* (*supra*, n. 75), p. 446 (art. 7). On this rule see R. Feenstra, *Reclame en revindicatie, Onderzoekingen omtrent de rol in de ontwikkelingsgeschiedenis van het recht van reclame gespeld door den Romeinsrechtelijken regel omtrent eigendomsomvang en prijsbetaling bij*

related to revendication of transferred goods by an unpaid vendor who had not set a date for payment. In the second half of the seventeenth century, the Amsterdam aldermen ordered at several instances that the vendor was due to claim his price within six weeks after the sale. If the buyer was unwilling or if the delay had expired, the vendor had to start a procedure before the court⁸⁴. In Antwerp, the vendor's right of recovery was not subject to comparable rules.

This is one example of how commercial matters in the course of the seventeenth century were slowly monopolized by legislation from the Amsterdam City Council, which left less and less space for an additional use of the Antwerp *costuymen*. The early Antwerp legal influence in maritime insurances quickly ended, as in January 1598 the Amsterdam aldermen issued an elaborate ordinance on this subject, in which old rules were copied and joined with new ones⁸⁵. In this legislation, some provisions of the 1582 Antwerp *costuymen* were elaborated, e.g. on insurance of valuables and on insurance 'on good and bad tidings'⁸⁶. As a result, no references to a secondary role of Antwerp law in insurance affairs can be found after 1598. Another example relates to bankruptcy legislation. On 6 November 1643, the Amsterdam City Council issued an ordinance establishing a Chamber for insolvencies⁸⁷. It formulated a liquidation procedure which was applied to all types of insolvency and which went further than the Antwerp solutions. Lawsuits on liquidation would henceforth suspend the public sale and should be brought before the Chamber, which also managed the evaluation and payment of the creditors' claims⁸⁸. This was not the case in Antwerp, where the estate was usually managed by an official whose actions were not hindered by litigation of involved parties before the City Council⁸⁹. The Amsterdam ordinance also encompassed principles of the Antwerp *costuymen*, such as comparable rules for ranking creditors⁹⁰. Therefore, references to the Antwerp law book were

koop (Inst. 2.1.41), Haarlem 1949, p. 125–127, supplemented by id., *Eigendomsovergang bij koop en terugvorderingsrecht van de onbetaalde verkoper: Romeins recht en Middeleeuws handelsrecht*, Tijdschrift vir Hedendaagse Romeins-Hollandse Reg, 50 (1987), p. 127–138, at p. 136–138. Cf. also *infra*, p. 477.

⁸⁴ *Ordonnantien en willekeuren van Wissel en Wissel-Banck* (*supra*, n. 64), p. 142–143 (31 January 1658) and p. 146–149 (10 February 1682).

⁸⁵ *Handvesten 1624* (*supra*, n. 64), p. 131–133 (31 January 1598).

⁸⁶ Compare with: *Costuymen Antwerp 1582* (*supra*, n. 75), p. 400–408 (chapter 54). On maritime insurances of valuables and 'on good and bad tidings', see respectively: Van Niekerk, *The development* (*supra*, n. 6), I, p. 291–296 and II, p. 850–886.

⁸⁷ This ordinance has been published in: Gerard Rooseboom, *Recueil van verscheyde keuren, en costumen: midtsgaders maniere van procederen binnen de stadt Amsterdam*, Amsterdam 1656, p. 304–309.

⁸⁸ G. Moll, *De Desolate Boedelskamer te Amsterdam, Bijdrage tot de kennis van Oud-Hollandsch failliten-recht*, [thesis University of Amsterdam], Amsterdam 1879, p. 77–86.

⁸⁹ De ruysscher, *Designing the limits* (*supra*, n. 80), p. 324–325.

⁹⁰ Compare with: *Costuymen Antwerp 1582* (*supra*, n. 75), p. 528–556 (chapters 65 and 66).

no longer necessary in bankruptcy cases after 1643. Following these and other legal interventions by the Amsterdam aldermen, the direct need for legal borrowing disappeared and the 1613, 1624 and 1639 editions of the Amsterdam *Willekeuren* did no longer include the excerpts of Antwerp law which had been attached to the 1597 edition⁹¹. This phenomenon can equally explain why the mentioned practical treatises and histories of Amsterdam contain virtually no references to Antwerp law.

A popular theory with an undeniable Weberian touch⁹² presumes that the Antwerp *costuymen* were easily adopted in Amsterdam's legal scenes because of their Calvinistic contents⁹³. The protestant colour of the 1582 *costuymen* has, however, been exaggerated as they contained only a handful of provisions with confessional characteristics⁹⁴. It is also very questionable whether these 'protestant' articles, if they had had more catholic contents, would have prevented Amsterdam lawyers from using the 1582 law book. For commercial topics no Calvinistic provisions can be found in the 1582 *costuymen*. A value for legal practice is, as seen from the cited examples, the most likely explanation for the application of Antwerp law in the city on the Amstel.

IV. – ... but still an appealing example

The intellectual aura of the 1582 Antwerp *costuymen* was responsible for the copying of the structure of many of its sections into the compilation of Amsterdam law made by the Amsterdam secretary Gerard Rooseboom (1644)⁹⁵. The contents of the title on bills of exchange in the Antwerp *costuymen* served as an example for Hugo de Groot's according chapter in the *Inleidinge tot de Hollandse Rechtsgeleertheit* (1621)⁹⁶. Editions of Amsterdam *Willekeuren* were,

⁹¹ See above, notes 53 and 64, and below, note 97.

⁹² Max Weber († 1920) stated that there is a relation between protestantism and capitalism in his *Die protestantische Ethik und der Geist des Kapitalismus* (1905).

⁹³ Bosch, *Remarques* (*supra*, n. 6), p. 144; Maes, *Juristen* (*supra*, n. 6), p. 30; Maes, *Rubens* (*supra*, n. 6), p. 682.

⁹⁴ Gotzen spoke of the printed *costuymen* as a 'a legal pillar in the building of the protestant Antwerp republic'. See: Gotzen, *De costumiere bronnen* (*supra*, n. 15), p. 108. Floris Prims held the 1582 *costuymen* responsible for 'suppressing the law of the church'. See: F. Prims, *Geschiedenis van Antwerpen*, Brussels 1982, VI/A, p. 118. The Calvinistic influence is mostly discernable in the installation of a court for marital cases, which replaced the abolished bishop's court. See: *Costuymen Antwerp 1582* (*supra*, n. 75), p. 30–32 (art. 2 and 4). In an oath formula, references to saints were 'forgotten'. See: *Costuymen Antwerp 1582* (*supra*, n. 75), p. 60–62 (art. 18).

⁹⁵ Wallert, *Ontwikkelingslijnen* (*supra*, n. 6), p. 100–109.

⁹⁶ Asser, *Bills of exchange* (*supra*, n. 6), p. 106–107; H.F.W.D. Fischer, *Het oud-vaderlandse handelsrecht en Hugo de Groot*, Rechtsgeleerd Magazijn Themis, 1952, p. 598–610; Wallert, *Ontwikkelingslijnen* (*supra*, n. 6), p. 113–121. See also on De Groot's connections with practice: L. Waelkens, *Ius quaesitum tertio, Dutch influences on Grotius*, in: E.J.H. Schrage (ed.), *Ius quaesitum tertio*, [Comparative Studies in Continental and Anglo-American legal history, 26], Berlin 2008, p. 175–189.

up until the eighteenth century, less well structured and less accessible than the Antwerp 1582 *costuymen*⁹⁷. The mentioned influence of this law book went hand in hand with its actual use in Amsterdam in the first half of the seventeenth century, but later on the beauty of the *costuymen* remained nearly their only asset in the Dutch city. In the eighteenth century, many Amsterdam lawyers still referred to the Antwerp *costuymen*, but no longer thought that they contained a subsidiary applicable law. Instead, these jurists hinted mainly at the *former* authority of the Brabant compilation, albeit they still consulted the *costuymen* because of their intrinsic qualities or because they had been used by De Groot. In 1712, the Amsterdam barrister Tobis Boel remarked in his annotations at Johannes Loenius' *Decisiën* that, for a question on mutual testaments, the Antwerp customs were to be used in conformity with De Groot's insights⁹⁸. In a legal opinion on revendication, which dated from before 1744, Cornelis van Bynkershoek mentioned the fact that the Antwerp *costuymen* were often referred to by De Groot and that they once had a good reputation in Holland, but he put their rules easily aside because they were contrary to Amsterdam law and to the *ius commune*⁹⁹.

Similar opinions were blended with historical references to the growth of Amsterdam after 1600, which was already a *topos* in Amsterdam eighteenth-century historical literature¹⁰⁰. In a 1704 legal advice, several Amsterdam

⁹⁷ Other editions of the *Willekeuren* than the mentioned 1597, 1624, 1639 and 1748 versions were: *Hantvesten, Privilegien Willekeuren ende Ordonnantien der stadt Aemstelredam ...*, Amsterdam (s.n.) 1613; *Hand-vesten, privilegien, octroyen, costumen ende willekeuren der Stad Amstelredam ...*, Amsterdam (Otto Smient and Judocus Smient) 1663.

⁹⁸ Loenius, *Decisiën* (*supra*, n. 77), 792 (case 137). 'Soo vermeenen wy nogtans, dat alle die bepalingen, gelyk ook de Leere van den Heer de Groot, niet anders, of verders en konnen verstaan werden te procedieren, of plaats te hebben, dan, in conformitè, en na inhoudè van het gedisponeerde by de Coustumen van Antwerpen ... Vermids, onses bedunkens, het selve in alles over een komt met de Leere der DD. De meenigvuldige Gewysdens, en ook met het Regt, de Reeden en billykheyt, welke alle in het gedisponeerde van de selven Coustumen van Antwerpen te vinden zyn ...'. Bosch has said that, according to this passage, Boel had stated that the Antwerp law had the same authority as Roman law in matters of mutual testaments. See: Bosch, *Enige rechtshistorische aantekeningen* (*supra*, n. 6), col. 1012; Bosch, *Remarques* (*supra*, n. 6), p. 146.

⁹⁹ C. van Bynkershoek, *Quaestionum juris privati libri quatuor...*, Leiden 1744 [anastatic reprint, Rodopi, Amsterdam 1969], p. 495–505 (lib. 3, cap. 15): '... Sed id admittendum non est, et nescio, an aliam auctoritatem habeat, quam in illa, quam supra memoravi, Consuetudine Antwerpiensi. Magna, fateor, Juris Antwerpiensis auctoritas etiam olim hic fuit, saepe et a Grotio in partes vocata, at quis eam sibi obtrudi patietur contra rationem, Jus Commune et ipsam Legem Amsterdammensem in causa Amsterdammensi ...'. On this opinion of Bynkershoek see Feenstra, *Reclame en revindicatie* (*supra*, n. 83), p. 125–127, and *Eigendomsvergang bij koop* (*supra*, n. 83), p. 136–137, referring to the original text, dating from 1725 (*Observationes tumultuariæ*, nr. 2221).

¹⁰⁰ Le Moine De L'Espine, *De coophandel van Amsterdam* (*supra*, n. 58), I, introduction: 'Aldus is Amsterdam van tydt tot tydt aanmerkelyk vermenigvuldigt, door den aanwas van de Negotie, en die wederom door de geduurige toevloeyingen van Vreemdelingen, uyt alle gewesten des Werelds; en daar door eindelyk geworden gelyk als het Pakhuis, niet alleen van geheel Europa, maar van de geheele Wereldt'.

lawyers felt the need to justify their references to the Antwerp *costuymen* on a question of company, for which a mercantile custom had in their opinion come from Antwerp to Amsterdam in the slipstream of commerce¹⁰¹. It seems that views on Amsterdam's commercial history merged with the respect the Brabant law book enjoyed because it had constituted a source for De Groot's writings. The presence of Antwerp law chapters in the 1597 and 1639 *Handvesten* made lawyers believe in a former use of this law for more topics than had actually been the case. Near the end of the eighteenth century, barristers mentioned a rule of the Antwerp *costuymen* on the legal capacity of minors in commercial affairs and stressed that the authority of Antwerp law in commercial matters had always ('*altoos*') been great in Holland and Amsterdam, this because the Antwerp law book had never been used before for this specific question¹⁰². The same can be said of the mentioned 1704 legal opinion, in which references to the historical application of the Antwerp *costuymen* in Amsterdam served the purpose of making an alleged rule on company acceptable¹⁰³.

Conclusion

The mentioned data show that the 1582 Antwerp *costuymen* were indeed considered a common law in Amsterdam, but in general only in the first half of the seventeenth century and for mercantile topics. This influence was, in this first phase, a result of the often haphazard and not exhaustive Amsterdam legislation on commercial issues, in combination with the role played by Brabant newcomers. The application of Antwerp law was widely accepted for questions on bills of exchange, and originally also for insurance matters. Yet, even for those themes, the Antwerp *costuymen* never gained the status of Amsterdam's commercial code, as the Amsterdam government nor the lawyers in the city perceived them as such. Furthermore, the role which these *costuymen* played declined over time, as more rules were codified by the Amsterdam legislator. Admittedly, the actual contents of this new legislation reveal a strong affinity with the Antwerp sources and the *costuymen* were definitely a material source of Amsterdam law on these matters. This picture is in conformity

¹⁰¹ J.M. Barel, *Advysen over den koophandel en zeevaart ...*, Amsterdam 1781, II, p. 231–237 (7 April 1704): '... zynde kennelyk dat verscheiden dingen tot de Commerce en Negotie behoorende van Antwerpen, door verloop van Commerce van die Stad en 't aenwaschen van de Commerce hier te Lande, tot ons in gebruik zyn overgebracht, even als ook byzonderlyk alhier tot Amsterdam in de Practycque zekerlyk en buiten alle twyffeling is gerecipieerd, volgens de daeglyksche menigvuldige Gewysdens, ut socii teneantur in solidum ...'.

¹⁰² Barel, *Advysen* (*supra*, n. 101), II, p. 392–393 (8 May 1778): '... in de Coustumen van Antwerpen, (welker auctoriteit hier te Lande en ook particulierlyk binnen deeze Stad altoos in materie van Commerce zeer groot is geweest) ...'.

¹⁰³ See note 101.

with that of the contribution which Antwerp immigrant-merchants made by introducing techniques in their new hometown, especially concerning exchange and insurance. Notwithstanding this undercurrent, the Amsterdam legislation proved innovative. The availability of the 1582 printed Antwerp *costuymen*, of which several editions were published in Amsterdam itself, led to the fact that not the Antwerp law in general, or the more mercantile 1608 *costuymen*, were used. In the eighteenth century, the 1582 law book had lost much of its significance for solving legal questions on commerce in Amsterdam. Still, the cultural aura of this text facilitated references to it, even for issues that had never before been solved on the basis of the Antwerp *costuymen*. Lawyers justified their citations of this text and they did so with references to Hugo de Groot's appreciation of the work or with general remarks on the commercial influence of Antwerp on Amsterdam's growth in the seventeenth century. The legal relations between the two commercial centres provide a remarkable example of how the authority of and the actual references to legal sources are closely related to cultural and economic phenomena. Amsterdam's commercial legislation built on its Antwerp example, without being determined by it.

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