

# The Resolution of Commercial Conflicts in Bruges, Antwerp, and Amsterdam (1250-1650)

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## **Introduction**

Even if merchants carefully select their trading partners and closely monitor their behavior, chances remain that the other party walks away with either goods or money. The simple reason is that trade, save spot transactions, implies a time lapse between delivery and payment.<sup>1</sup> For any trader who estimates that the immediate gain from shirking exceeds the discounted value of possible future dealings, walking away is a rational choice.<sup>2</sup> To prevent this, merchants need to be able to impose sanctions (financial, social, or otherwise) that raise the cost of cheating for the other party. A credibly threat with punishment will induce merchants to honour their obligations.<sup>3</sup>

Economic historians have argued that the institutions for contract enforcement changed during the Commercial Revolution contributed the growth of European long-

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<sup>1</sup> Greif, “Fundamental”; Volckart & Mangels, “Roots”, 436.

<sup>2</sup> For a theoretical exposition of this rationale, see Greif, “Reputation”; Greif, “Institutions”. The importance of kinship and friendship in dealings between merchants, often highlighted by historians of early modern trade (Mathias, “Risk”) does not contradict this contention. It merely points out that merchants will also take into account the expected immaterial gains from a prolonged business relationship. In some cases these gains may be infinitely high.

<sup>3</sup> Greif, “Fundamental”.

distance trade.<sup>4</sup> At international fairs in England and Champagne temporary courts were set up to pass immediate judgment in conflicts between visiting merchants.<sup>5</sup> Foreign visitors of fairs also formed guilds whose leaders acted as substitutes of the hometown authorities in the settlement of disputes between members.<sup>6</sup> Another medieval solution found in cities with permanent markets, was to allow foreign merchant communities to establish their own separate jurisdictions. These consular courts applied legal rules of the place of origin to commercial conflicts and minor criminal offences that arose between merchants, shipmasters, and sailors of a single city or region.<sup>7</sup> The organization of merchants in corporate bodies, formally subjected to the same legal regime and imbued with a strong sense of community, allowed their

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<sup>4</sup> Greif et al. "Coordination"; Greif, "Institutions"; Milgrom et al. "Role"; Note however that older generations of economic historians put much less emphasis on changes in the institutions for commercial litigation. The notion is absent from Lopez' *Commercial revolution*, and referred to only in passing by Verlinden, "Markets" (**check this**).

<sup>5</sup> See for the fair courts of England: Wedemeyer Moore, *Fairs*, 165-187; Milgrom et al. ("Role ") have drawn attention to the crucial contribution the fair courts of Champagne made to the efficient resolution of conflicts between strangers. The French judges played a double role. They ruled in conflicts and in doing so gathered information on the past behaviour of merchants. As a result, judges could tell merchants whether their prospected trading partner had been involved in any litigation before. The mere ability to do so prevented merchants from cheating and thus lowered the risk of default. At least in theory, this system implied an extension of the reputation mechanism, with private judges transferring the information on past behaviour between otherwise unconnected merchants.

<sup>6</sup> Evidence on English and Flemish *merchant groupings* present at the fairs of England in the 13th century is provided by Wedemeyer Moore, 95-105, 297-302. Note also that in the English fair courts, the wardens who were responsible for the organization of legal proceedings had to answer to the entire community of merchants visiting the fair in what was called the full court (Wedemeyer Moore, *Fairs*, 170)

<sup>7</sup> Cite literature on Consulado del Mar and other Spanish consulates. For the separate jurisdiction of foreign merchants in Bruges and Antwerp, cf. infra. The German Hansa, often considered the most typical of the medieval merchant guilds, was in fact an exception with regard to commercial regulation, for it was the only organization that managed to subject merchants from a large number of cities to the singular jurisdiction of its aldermen in London, Bruges, Bergen, and Novgorod. It is noteworthy that claims about the corporate organization of the so-called Flemish Hansa of London, which allegedly united England traders from different Flemish towns, has not survived historical scrutiny. Ellen Wedemeyer Moore, following earlier publications of Van Werveke and Perroy has convincingly shows that there may have been plans for a permanent association of Flemish merchants trading in London in the last quarter of the thirteenth century but that there is no evidence that such a guild ever functioned in the way, for example, the German hansa did. (Wedemeyer Moore, *Fairs*, 99-102; Van Werveke, "Statuts"; Perroy, "Commerce").

leaders to credibly threaten and punish members with exclusion, and non-members with collective boycotts, in case of dishonest behaviour.<sup>8</sup>

Despite their proven ability to prevent and punish default, fair courts and consular courts disappeared from the commercial heartland of Europe in the early modern period. Notably Douglass North has argued that the creation of a central, state-sponsored legal system from the 15<sup>th</sup> century onwards obviated the temporary and corporate jurisdictions of the Middle Ages.<sup>9</sup> In his view, the appointment of impartial judges to permanent courts, applying the same contracting rules to all merchants regardless their background provided a more efficient means to enforce contracts.<sup>10</sup> The state as independent third-party enforcer made it easier for alien merchants to contract with one another, and hence contributed to the commercial expansion of the long sixteenth century (1450-1650).<sup>11</sup>

This idea that state formation in early modern Europe improved contract enforcement has been challenged by both economic and legal historians. On the one hand, Avner Greif has demonstrated that the right of medieval merchants to hold fellow citizens or countrymen of their trading partners responsible for possible

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<sup>8</sup> Theoretical evidence for the ability of merchant guilds to collectively punish the misbehaviour of trading partners is provided by Greif, "Reputation", and Idem "Institutions". See also Volckart and Mangels, "Roots", 437-440. Historical evidence for the rationale behind the formation of merchant guilds can be found, among others, with the *hanze* of Flemish merchants trading at the fairs of England (Wedemeyer Moore, *Fairs*, 99, 297-302) and the German Hansa trading in Novgorod, Bergen, London and Bruges (Dollinger, *Hanse*). See also Avner Greif's work on Maghribi traders' coalitions in the Muslim Mediterranean in the 11<sup>th</sup> century. In these *informal* coalitions repeat transactions between merchants, and their sharing of information about the past behaviour of agents, also posed a credible threat of exclusion to potential defaulters: Greif, "Reputation"; Greif, "Contract Enforceability"; This argument is summarized, and extended to include Genoese merchants, in Greif, "Institutions", 130. Note that Greif defines the coalition as a purely economic institution, not as a social network or a group with shared cultural beliefs (Greif, "Reputation", 859).

<sup>9</sup> Cite Zorina Khan

<sup>10</sup> North, *Structure*, 24; Idem, "Institutions". Note, however, that North also acknowledges the efficiency enhancing effects of private efforts to improve in contract enforcement (108-109).

<sup>11</sup> To be sure, the commitment of rulers to the *protection of the property* of foreign merchants residing in their territories can be traced back much further in time. However, the present paper is only concerned with problems arising from the *transfer* of property rights and the institutions that could solve them.

defaults provided, at least in theory, sufficient security for them to engage in credit transactions with aliens.<sup>12</sup> On the other, Harold Berman and Leon Trakman have contended that medieval fair courts already applied an international commercial code in conflicts between visitors. Even if many legal historians dispute the existence of such a *lex mercatoria*, or law merchant, their hypothesis saps too great optimism about the superior capacities of early modern states. Both critiques will be discussed in detail in the next chapter.

First it is important to note, however, that either of the two critiques ignores a salient constant in commercial litigation in late medieval and early modern Europe: the involvement of local authorities in the settlement of disputes.<sup>13</sup> From the twelfth century onwards town magistrates in Italy, Spain, Germany, the Low Countries and England acted as third party enforcers in conflicts between merchants.<sup>14</sup> Initially some local courts may have discriminated against aliens but by 1300 legal services were offered to the merchant community at large.<sup>15</sup> In following centuries the involvement of local authorities increased. In the fourteenth century the magistrates of port towns

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<sup>12</sup> Greif, “Théorie”; Greif, “Institutions”; Note, however that throughout the High Middle Ages local and central authorities lifted the right of reprisal during fairs, or between their respective subjects, in order to remove the constant threat of imprisonment and confiscation. (Boerner & Ritschl, “Institutions”, 206-207; cf. *infra* for additional evidence on the Low Countries).

<sup>13</sup> Admittedly, Avner Greif shows that the rulers of Italian city-states performed guild-like functions for their inhabitants, e.g. in negotiations with foreign rulers. However, he argues that local courts acted in the interest of local merchants only and hence were not acceptable to foreign merchants (Greif, *Social Foundations*, 8; Greif, “Historical Perspectives”, 129). He largely ignores their role as adjudicators in conflicts between merchants from different backgrounds. Boerner and Ritschl (“Institutions”) even show that the community responsibility system could only function with the political and legal support of local authorities.

<sup>14</sup> Nörr, *Procedure*, 196. For German towns, see also Volckart and Mangels, “Roots”, 443. In England Edward I issued detailed rules regarding the trade of strangers as early as 1285 but he left it to local authorities to enforce these rules (Basile, *Lex Mercatoria*, 69-70, 114). Though it should be added that the king retained the right to appoint his own justices and intervene in commercial disputes whenever he deemed this necessary (Baker, “Law Merchant”, 349ff).

<sup>15</sup> Volckart and Mangels (“Roots, 44) argue that local courts in Germany and eastern Europe in the twelfth and thirteenth century favoured local merchants. To avoid such treatment, aliens in English market towns could pay an otherwise sturdy fee to become member of the local merchant guild and hence be submitted to the same jurisdiction (Basile, *Lex Mercatoria*, 41, citing Gross, *Gild Merchant I*, 54, 66-68). Alternatively individual cities committed to the acceptance of their respective jurisdictions in commercial conflicts between citizens (Boerner and Ritschl, “Institutions”, 208.)

in the Mediterranean, the North Sea area, and the Baltic region set up separate tribunals to apply maritime law to disputes between shipowners, freighters, shipmasters, and their crew.<sup>16</sup> In the sixteenth and seventeenth century, when local authorities in Catalunya, the Italian city-states, France, and the Dutch Republic even created specialized mercantile courts with jurisdiction over most commercial disputes.<sup>17</sup>

This chapter analyses the different institutions alien merchants in Bruges, Antwerp, and Amsterdam relied on between 1250 and 1650 to resolve their commercial conflicts. Section I documents the persistent preference of merchants in all three cities for the amicable settlement of commercial disputes. Section II explores the role of arbiters as informal mediators in conflicts between traders. Section III analyzes the choice between consular and local courts, and Section IV looks at the importance of central courts from the mid-fifteenth century onwards. Conclusions follow.

## I. Amicable settlement

Taken aside a few quarrel-mongers, merchants in late medieval and early modern Europe did not like legal proceedings. The cost of litigation was high both in terms of money and time spent before a solution was reached.<sup>18</sup> Moreover, bringing agents to

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<sup>16</sup> On the creation of maritime courts, see Jados, *Consulate*, xii; Cf. also Niekerk, *Development*, 245-246. See for the international character of maritime law: Ashburner, *The Rhodian Sea-Law*, cxiii. Goudsmit's analysis of the simultaneous circulation of different editions of the sea law (Damme, Amsterdam, Wisbuy) in the Low Countries (Goudsmit, *Geschiedenis*, 136-137) also supports the idea of an international maritime code.

<sup>17</sup> On Spain \*\*\*; In Italy the cities of Genua and Florence set up a *Rota* in the early 16th century, whose justices applied a combination of Roman and customary law to commercial conflicts (Piergiovanni, "Courts", 18-20; Piergiovanni, "Rise", 23-26). In Paris the 'juge et consuls des marchands' were established in 1563 (Nörr, "Procedure", 197-198). Cf. also the largely unsuccessful establishment of insurance courts in London and Hamburg in the early seventeenth century: Niekerk, *Development*, 225-229. Cf. *infra* on the establishment of mercantile courts in the Low Countries.

<sup>18</sup> For example, in 1629, a merchant and a sculptor in Amsterdam chose to settle their dispute over the

court could easily damage the trust and reputation that cemented business relations. The aversion for litigation is very clear from the dealings of Hans Thijs. Between 1595 and 1611 he traded with hundreds of merchants, artisans, and shipmasters yet only once he sued one of his trading partners.<sup>19</sup> This case, which involved a shipmaster who refused to pay back a bottomry loan, dragged on for seven years, and cost at least a quarter of the initial damages in legal costs and interest foregone.<sup>20</sup> Commenting on the financial claims that followed the bankruptcy of his brother-in-law, Hans Thijs wrote in 1596: “I do not want the trials or wrangles that will arise from this. If we reach a [formal] agreement with the creditors, we will be marked as bankrupts ourselves.”<sup>21</sup>

Historians of international trade and economic theorists have unearthed a number of informal institutions that enabled merchants to solve business conflicts without formal litigation. These private enforcement mechanisms include the (threat of) foreclosure of future transactions, reputation damage through gossip or public denouncement, arbitration and, in extreme cases, ostracism.<sup>22</sup> Still, even though the avoidance of legal proceedings saved time and money, it was not a free ride. Besides

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delivery of three statutes in the Baltic area out-of-court, to avoid the “proceedings, costs, and discomfort”. Van Dillen, *Bronnen Bedrijfsleven*, II, nr. 1207

<sup>19</sup> These transactions included almost 1,000 sales and over 200 purchases of jewelry between 1595 and 1609 more than 400 assignments to goldsmiths and diamond cutters between 1596 and 1603 alone; over 300 sales and purchases of leather, 700 IOUs sold and renewed, over 100 investments in various shipping companies, and colonial companies, innumerable bills of exchange, and a range of other commodity and financial transactions. Sales on behalf of others also comprised many hundreds of entries in his ledgers. (Thijs archives Leiden: BT 119 Business Ledgers)

<sup>20</sup> BT *Grootboek 03-09, fol. 24.*; In 1603 the shipmaster Abram Andries refused to pay back a bottomry loan to Hans Thijs and his father in law because his ship was captured by Dunkirk corsairs. However, a ransom had been paid to free the ship, and therefore Thijs and Boel required repayment of their loan. At first the case was brought before the local court in Middelburg, where Thijs’ agent Goijssen van Harlaer paid 83 guilders in expenses in 1607. Eventually it was in 1610 that the Court of Holland decided in favour of [check this] (HvH Sententien, 1610-10); Admittedly Thijs was involved in other lawsuits but these were all the doing of others.

<sup>21</sup> BT 119 Brievenboek U, Hans Thijs to Anna Thijs, 31 January 1596 Hans Thijs disagreed with his brother Jacques, a law student, who preferred formal proceedings to force a breakthrough in the conflict. Thijs argued his brother did not realize what financial risks were involved: BT 119 Brievenboek V, Hans Thijs to Anna Thijs, 14 March 1596;

<sup>22</sup> Greif, “fundamental”; Mathias, “Risk”; Ewert and Selzer, “Verhandeln”.

the maintenance of a legal apparatus to be mobilized if private solutions failed (cf. *infra*), merchants spent money on letters, visits and presents to relatives and friends; they accepted delayed payments and wrote off irretrievable claims; they terminated otherwise profitable business relations with unreliable agents and bore the opportunity costs of trade foregone.<sup>23</sup> Hence traders had strong incentives to try and minimize the cost of private settlement as well.

For merchants with a diversified trade and a large number of business partners the cheapest solution was often to break off an agency relation and take the losses. For example, in the mid-fifteenth century the Medici branches in Bruges and London reserved 10% of their profits to cover bad debts.<sup>24</sup> The dubious debtors that remained in many inventories after death in Antwerp and Amsterdam are witness to both the inability and unwillingness of merchants to recover all their losses.<sup>25</sup> When in 1597 a leather tanner failed to make 100 elk hides into decent chamois leather, Hans Thijs reduced his wage with 10% and no longer worked with him, turning to other tanners instead.<sup>26</sup> Likewise, Thijs discontinued agency relations with foreign correspondents who did not carry out their initial commissions to his satisfaction.<sup>27</sup>

If a firmer agency relation had been established, the most important means to make unwilling agents comply was by urging them in person or writing to meet their obligations. Business administrations as well as notarial protocols show Italian, German, English, and Portuguese merchants in the Low Countries sending letters,

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<sup>23</sup> Hans Thijs wrote about 150 letters a year, he worked with one clerk, held current accounts with four relatives, and otherwise displayed a lenient attitude towards trusted debtors. Besides he had to return favours or compensate them with gifts (Cf. for example BT 119, Brievenboek V, Hans Thijs to Hendrik Kaers, 5 May 1596). In all, these costs may have amounted to as much as [calculate this] per year.

<sup>24</sup> De Roover, Medici, 323)

<sup>25</sup> Eight years after he died, the heirs of Hans Thijs still had claims of 1,300 guilders on various debtors, against a mere 78 guilders still payable to their creditors (BT 112 c-1); Add examples on other merchants.

<sup>26</sup> BT 119 Ledger HT&AB 1594-1600, fol. 23; Ledger H. Thijs (1599-1603), fol. 121

<sup>27</sup> Gelderblom, "Governance".

visiting agents, or asking others to put pressure on their debtors.<sup>28</sup> Meanwhile, merchants were never too strict about the exact date for payments. Delays of a few weeks or even months were accepted if the other party was believed to be honest.<sup>29</sup> To facilitate the application of personal pressure, foreign traders in Bruges, Antwerp and Amsterdam often chose relatives and friends as apprentices, business associates, foreign correspondents, and trading partners.<sup>30</sup> Besides, merchants typically maintained bilateral agency relations in which both parties performed functions for the other.<sup>31</sup> Patriarchic relationships could also generate social pressure that kept kin and next-of-kin from cheating.<sup>32</sup> Termination of such relationships was impossible without considerable losses to both parties.

However, even merchants capable of building and maintaining extensive personal relations could not limit their transactions to relatives and friends. Trade also implied deals with strangers, who might be less susceptible to personal pressure. One means to overcome this anonymity was the creation of larger peer groups in which informal pressure could be applied to punish defaulters. This was undoubtedly one of the strengths of the *foreign nations* in late medieval Bruges and Antwerp. Here merchants

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<sup>28</sup> For example, Hans Thijs wrote letters to urge his agents to make sure bills would be paid: BT 119 Brievenboek U (R2); Letter of Hans Thijs to Hendrick van Sevenbergen, 10 August 1595; to Elias Boudaen in Antwerp, 6 januari 1596; On Italians in Bruges: De Roover, "Money"; Bolton and Bruscoli\*\*\*; On Germans in Antwerp: Strieder, *Antwerpener*; On Portuguese merchants in Antwerp: Vazquez da Prada, *Lettres*; On Portuguese merchants in Amsterdam: Koen, *Notarial*; On English merchants in Amsterdam: *Calendar*.

<sup>29</sup> Although it was legally stipulated that merchants could charge interest for deferred payments (cf. for Antwerp: Costumen (1582), Title XLIX (on fairs), art. 17 (p. 382), which article refers to a general rule set by Charles V in 1551; For Amsterdam: *Handtvesten* 1639, 115-116), this was seldom done with short delays or overdrafts in current accounts. See for example a letter of Hans Thijs to Andries Bacher, 2 July 1599: (BT 133 B1).

<sup>30</sup> For Bruges, see for example the business letters and ledgers of the Hanseatic merchant Hildebrand Veckinchusen: Stieda, *Hildebrand Veckinchusen*; Lesnikov, *Handelsbücher*. Cf. for the family based organization of Italian merchant banks: De Roover, *Money*; Bolton & Bruscoli\*\*\*; For Antwerp, see the letters of Portuguese merchants published by Vazquez da Prada (*Lettres*). For Amsterdam: Koen, "Notarial deeds"; Dijkman, "Giles"; Gelderblom, "Governance";

<sup>31</sup> Ewert and Selzer, "Verhandeln", 140-142. The importance of mutual obligations is immediately apparent from the many entries in current accounts with several trading partners kept by German merchant Hildebrand Veckinchusen in Bruges (Lesnikov, *Hildebrand*) or Flemish merchant Hans Thijs in Amsterdam (Gelderblom, "Governance").

<sup>32</sup> Ewert and Selzer, "Verhandeln".



from Venice, Genoa, Florence, Lucca, Catalunya, Castile, England, Scotland, and the German Hansa formed close-knit communities that could exercise considerable social control.<sup>33</sup> However, actual attempts of members to settle conflicts amicably show only in those cases where consuls or local justices were eventually called in to remedy deals gone sour.<sup>34</sup> Meanwhile, the commercial success of unincorporated German, French, and Flemish traders in Antwerp, as well as the total absence of merchant guilds from Amsterdam, suggest that the peer pressure of *foreign nations* was not indispensable either.

One might object, however, that traders in Antwerp and Amsterdam relied on different kinds of peer groups. Notably the protestant communities in these towns are known to have exercised considerable control over their membership, including many merchants.<sup>35</sup> The surviving protocols of the consistories of Amsterdam's protestant church show many occasions on which church wardens condemned bankruptcies and other commercial conflicts that threatened a stable social order. For example, between 1578 and 1650 the reformed consistory in Amsterdam dealt with 247 insolvencies, many involving merchants.<sup>36</sup> Furthermore, there is evidence to suggest that the religious leaders of the Jewish community in Amsterdam exercised some mild control over the business dealings of Portuguese merchants.<sup>37</sup>

However, the powers of religious communities should not be exaggerated. First, there were many different denominations. By 1650 Amsterdam boasted about a dozen

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<sup>33</sup> The relevant literature on the foreign nations is summarized in Gelderblom, "Decline".

<sup>34</sup> See for example the business ledgers and letters that have survived after the insolvency and imprisonment of German merchant Hildebrand Veckinchusen in Bruges (Lesnikov, *Handelsbücher*; Stieda, *Hildebrand*) for a brief account of the episode: Seifert\*\*\*. Cf. also references to legal proceedings in the papers that remain of Bruges' Spanish nation: Gilliodts-van Severen, *Cartulaire*.

<sup>35</sup> For Antwerp: Marnef, *Antwerpen*, 181-201; For Amsterdam: Roodenburg, *Onder Censuur*.

<sup>36</sup> Roodenburg, *Onder Censuur*, 377-381; Cf also Gelderblom, "Antwerpse"; The aldermen of Amsterdam's Lutheran church were also responsible for the disciplining of the members: Estié, "Plaatselijk bestuur", 64-65

<sup>37</sup> Vlessing, "Portuguese"; Swetschinsky, *Reluctant Cosmopolitans*, 226-227, 237

churches, most of which counted merchants among their members.<sup>38</sup> Second, not all traders were active members of these communities. Hans Thijs, for example, was a devout Christian, but professed his faith in private. Finally, the punishment of religious leaders was symbolic, and often temporary at that. When two Antwerp grocers had attempted to monopolize the supply of certain foodstuffs in 1590 they were merely reprimanded by their pastor and a churchwarden. The next year one of the merchants was already re-elected deacon.<sup>39</sup> In case of insolvencies, only malicious bankrupts were excluded from communication. The completion of bankruptcies was left to the creditors or – if no agreement was reached or a debtor ceded his estate – to the local justices.<sup>40</sup>

The organization of commercial and financial transactions of Hans Thijs in Amsterdam between 1595 and 1611 suggests yet another means to credibly threaten potential defaulters with punishment.<sup>41</sup> The concentration of supply and demand of capital and commodities allowed Thijs to substitute market exchange for relational contracting in both his commodity trade and business finance. Our analysis in the previous chapter of several thousands of purchases, sales, loans, and investments in Amsterdam between 1595 and 1610, shows Thijs' agents were kept from cheating either because they were involved in spot transactions with him, or because they expected reputation damage in case of default. For just like in Antwerp, news travelled fast at the Bourse of Amsterdam. The permanent presence of most traders

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<sup>38</sup> Cf. on the merchant membership of the Lutheran, Walloon, and Dutch Reformed Church: Gelderblom, "Deelname"; On merchants belonging to Amsterdam's English churches: Carter, *English*; Dijkman, "Giles"; On the Jewish community: Swetschinsky, *Reluctant Cosmopolitans*.

<sup>39</sup> GAA Inv. nr. 376/2, fol. 26b (15-02-1590); One year later one of the merchants was already re-elected as a deacon (GAA Inv. Nr. 376-1, fol. 315 (05-02-1587), Inv. Nr. 376-2, fol. 55b (07-02-1591)

<sup>40</sup> Roodenburg, *Onder Censuur*, 377-381

<sup>41</sup> The following is based on Gelderblom, "Governance".

was an efficient check on opportunism. Indeed, merchants were expected to appear daily, and unexplained absence was considered proof of insolvency.<sup>42</sup>

Reputation damage could be so effective that even formal jurisdictions used it to punish merchants. The justices of the fairs of Champagne, for example, did not hesitate to publicly denounce merchants who cheated.<sup>43</sup> Likewise, local courts sometimes chose to inflict reputation damage to punish traders. In April 1482 Amsterdam's *Gerecht* decided it would no longer rule in cases against Simon Modder, who on a daily basis threatened to hurt, and actually hurt creditors asking for payment. Modder himself would be fined or imprisoned if he misbehaved again.<sup>44</sup>

## II. Arbitration<sup>45</sup>

As these references to formal justices already suggest, merchants could not always settle their disputes privately. In those cases a third party was needed to determine right and wrong.<sup>46</sup> However, rather than choosing costly and time-consuming legal proceedings, merchants tried to use arbiters to resolve their conflicts.<sup>47</sup> The mediation of two or more men, acceptable to both parties, with access to the necessary papers and testimonies was impartial, expedient, and cheap. For merchants abroad it probably had the added advantage that arbiters could be asked to apply the rules of

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<sup>42</sup> Cf. for example the Antwerp customs of 1582, title LXV, art. 3

<sup>43</sup> Milgrom et al. "Role"; Greif, "Social Foundations", 18; check reference in newer version of paper

<sup>44</sup> Breen, *Rechtsbronnen*, p. 178-179

<sup>45</sup> Check Niekerk Development.

<sup>46</sup> Unless, of course, merchants, took the law in their own hands. Compare for example the following episode, recounted in Brulez, *Della Faille*, 386-387: When in 1584 (?) the Antwerp merchant Maarten della Faille discovered that a London agent had given him three false IOUs to pay for almost 50,000 guilders. Instead of denouncing the agent, Della Faille secretly arrested him in London, threatening to go public if he did not come forward with proper payment. Meanwhile he informed the ignorant drawee of the IOUs that he had sent the bonds to Zeeland, where he believed the fraud had fled. However, the plan miscarried when the drawee asked Della Faille him to show the documents and name the malfasant. The Flemish merchant, intent on preserving the reputation of his agent (and hence his chances to recover the money) refused and was imprisoned in London on the request of the drawee. He was quickly released, however, and then wrote to his brother in Antwerp (using a false name) to ask him to back up his story. Soon afterwards he was able to recover his money.

<sup>47</sup> Stabel, "Gewenste vreemdeling". **Check unpublished paper.**

their own city or country.<sup>48</sup> Evidence for arbitration between merchants can be found as early as the thirteenth century England.<sup>49</sup> By the sixteenth century it had become common practice throughout Europe.<sup>50</sup>

The spread of commercial arbitration in the Low Countries is difficult to establish for merchants often decided privately to call upon arbiters, or *goede mannen* as they were often called.<sup>51</sup> Extant business letters and notarial deeds leave little doubt about the frequent use of mediation.<sup>52</sup> Insurance policies and company contracts in Antwerp and Amsterdam even arranged in advance for arbitration come conflicts.<sup>53</sup> However, the importance of arbitration in the Low Countries is most apparent from the referral of litigants to arbiters by the courts of law. In fifteenth-century Bruges arbiters took care of three quarters of the local lawsuits involving Spanish merchants.<sup>54</sup> The procedure was straightforward.<sup>55</sup> The merchants each named one or two arbiters –

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<sup>48</sup> Goris, *Étude*. Arbiters may even have had the right to ignore existing customs and laws, and adjudicate *ex bono et aequo* – i.e. decide what is right and good in the one particular case before them. Cf. Donahue (Benvenuto Stracca's *De Mercatura*, 84) who argues that Stracca in his treatise on commercial law, first published in Venice in 1553, may have been the first to argue that "the merchant's status as a merchant entitles him (or makes it equitable that he have) proceedings *ex bono et aequo*." Note that today arbitration constitutes an essential part of contract enforcement in international business, although arbiters now typically follow international codes of conduct (Volckart & Mangels, "Roots", 432-433).

<sup>49</sup> Basile, *Lex mercatoria*, 41.

<sup>50</sup> Cf. for example Godfrey, "Arbitration".

<sup>51</sup> Arbitration as such was practiced as early as the 12<sup>th</sup> century in the southern provinces of the Low Countries, especially in conflicts between the church and laymen: Godding, "Justice parallèle".

<sup>52</sup> The collection of notarial deeds regarding Portuguese merchants in Amsterdam shows the involvement of arbiters in at least 25 business conflicts between 1590 and 1620: Studia Rosenthaliana, nrs. 318, 3412, 345, 363, 458, 556, 569, 601, 724, 876, 918, 924, 1216, 1524, 1678, 1704, 1726, 1745, 1811, 1812, 1825, 1828, 1859, 1954, 1962; **Check for references in different collections of merchant letters.**

<sup>53</sup> For insurance conflicts: De Groote, "Zeeverzekering", 207. Niekerk, *Development*, I, 230-234; A contract for the silk trade of two merchants and a shopkeeper signed in 1629 specified that *goede mannen* would be nominated by the partners to value stocks in case the company was dismantled (Van Dillen, *Bronnen Bedrijfsleven*, II, nr. 1202). Cf. also a contract for the sales of ivory combs in Russia in 1616. (Amsterdam City Archives, Notarial Archives (hereafter: NA) 145-195, 14 December 1616)

<sup>54</sup> Gilliodts-van Severen, *Cartulaire*, 35; Even a prolonged dispute between merchants from Castile and Biscaya about their formal representation in Bruges was eventually resolved through arbitration in 1452 (Gilliodts-van Severen, *Cartulaire*, 50-52)

<sup>55</sup> Gilliodts-van Severen, *Cartulaire*, 29-30; Cf. also Goris, *Etude*, 67-68; For similar procedures in Antwerp: Notaris S's Hertogen sr. No 2072, fol 160-161 (Strieder, *Antwerpener*, 293, 294);

mostly fellow merchants<sup>56</sup> – while the local justices sometimes added other members to the committee. The arbiters began with the inspection of the evidence, they heard the arguments of both parties, deliberated, and passed their judgment. Their ruling was confirmed by the local justices and sometimes registered with a notary. By the time Amsterdam emerged as Europe's leading commercial centre, arbiters helped to solve a variety of conflicts between business partners, buyers and sellers, merchants and artisans.<sup>57</sup> They ruled in simple cases about delivery and payment, but also adjudicated complex matters like the dismantlement of entire companies.<sup>58</sup> After 1677 Amsterdam's aldermen would even keep registers with the names of those men who in their profession were held to be respectable and knowledgeable, and hence eligible as arbitrators would conflicts arise.<sup>59</sup>

Legal historians have shown that in medieval law a distinction existed between two kinds of arbiters.<sup>60</sup> On the one hand there were *goede mannen*, *amiable compositeurs*, or arbitrators, who were appointed by merchants, and whose judgement

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<sup>56</sup> Note that merchants who at one time had asked for the help of *goede mannen*, could also act as arbiters themselves, as was the case with Walloon immigrant Pieter Denijs in Amsterdam: NA 353 B 66, 23 June 1628; NA 723-20, 12 December 1629; NA 724-401, 7 September 1630; NA 726-117, 27 February 1632)

<sup>57</sup> Legal advices published on arbitration in the Dutch Republic set clear rules for the entire procedure. Arbiters were expected to judge only when they were all present; that they were not allowed to solve various parts of a conflict separately, that once they accepted a case, they were obliged to come forward with a ruling, that if a case had been put in the hands of an ordinary judge, arbiters had the right to refrain from judgments, and that arbiters should be given all the relevant evidence. (*Consultatiën en advyzen* II, 433; III, 477-478)

<sup>58</sup> In 1629 a merchant and a sculptor decided to call in a notary and a stonemason to resolve a conflict that had arisen from the delivery of three statutes in the Sound; Cf. the refusal of an artisan to put a case about his apprentice before arbiters (NA 62/357-357v, 14 May 1612 Check: it might be 257 instead of 357); NA 769/14, ook NA 782 map 13/5, 2 October 1627; For example, in 1612 *goede mannen* intervened in the execution of a sugar refining company valued at 43,000 guilders. NA 127, fol 174, 176, 9 juni 1612); In 1626 two arbiters drew up the balance sheet of the sugar refining company of Jean Verstappen, and David and Gillis van Kessel (Weeskamer archief (5073) inv. nr. 1430; courtesy Arjan Poelwijk)

<sup>59</sup> W.M. Gijsbers, "Kapitale Ossen. De Internationale Handel in Slachtvee in Noordwest-Europa (1300-1750)" (UvA, 1999). 244-245 (voetnoot 337 vertegenwoordigde bedrijfstakken in Bontemantel, Regeeringe, 2, 458-459)

<sup>60</sup> Godding, "Justice", 128; Le Bailly, *Recht*, 181-182; Lichtenauer, "Burgerlijk", 354-356;

was based on equity. Parties typically chose one mediator each.<sup>61</sup> On the other hand there were arbiters appointed by local or central courts. They applied prevailing law, and as a result should be considered lay judges. Indeed, an attestation of a group of lawyers and solicitors in Amsterdam in 1615 seems to bear out this distinction. The jurists declared before a notary that an arbitral decision was only legally binding if merchants had voluntarily submitted to arbitration. If the local court had referred litigants to arbiters, they retained the right to appeal to their judgment.<sup>62</sup>

A company contract signed between two cloth traders in 1630 suggests that the Supreme Court of Holland and Zeeland eventually departed from this rule. The contract specified that any possible differences should be submitted to two or three *goede mannen* appointed by the Schepenbank. “In conformity with a ruling of the Supreme Court”, the contract stated that, “the associates were bound by the decision of the arbiter, and had no right to appeal.”<sup>63</sup>

An obvious risk of giving arbitration force of law was that merchants would stop using arbiters and clog the legal system. Take for example the refusal of the English merchant Thomas Stafford who did not want to settle his affairs with Walloon merchant Pieter Denijs through arbitration, because “in the past Denijs (and his son) had slandered him, challenged him to fight, and even tried to stab and kill him at the Exchange”. Stafford decided to bring the case to court.<sup>64</sup> However, most merchants preferred the gentle hand of arbiters.<sup>65</sup> Besides, it always remained up to the court to

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<sup>61</sup> Cf. for examples from Antwerp: Goris, *Etude*, 67; For Amsterdam: NA 353 B 66, 23 June 1628; NA 723-20, 12 December 1629; NA 724-401, 7 September 1630; NA 726-117, 27 February 1632)

<sup>62</sup> Van Dillen, *Bronnen Bedrijfsleven*, II, 238; This interpretation followed late medieval practices, when litigants used both terms (*arbiter* and *arbitrator*) at the same time, in order to keep open all options for future appeal (Le Bailly, *Recht*, 181-182)

<sup>63</sup> Van Dillen, *Bronnen Bedrijfsleven*, II, nr. 1314;

<sup>64</sup> NA 729 B, 18 April 1636; Cf. also: NA 729B-174, 26 September 1636.

<sup>65</sup> On court cases being settled by arbiters before a judgment was passed: Godding, *Justice*, 124.

decide whether a lawsuit was appropriate.<sup>66</sup> For example, in 1630 arbitration seemed impossible in a conflict about a merchant's sale of calfskins to a gold leather maker because the latter refused to cooperate. The merchant turned to the local court, which then forced the artisan to accept arbitration. Within a month after their intervention an amicable settlement was reached.<sup>67</sup>

Meanwhile, it was not just the *schepensbanken* that left the resolution of disputes to arbiters. Specialized courts also referred merchants back to arbiters. In 1613, Amsterdam's *Weesmeesters* decided that the heirs of an Amsterdam sugar baker and a sugar merchant should try to reach an amicable settlement with the help of two arbiters.<sup>68</sup> Provincial and central courts were equally intent on amicable settlement.<sup>69</sup> Take for example the dispute that arose over the non-compliance with the terms of a freight contract signed in 1596 between a Dutch shipmaster and a Dutch merchant residing in Seville. Initially the case was brought before the local court of Amsterdam, which ruled in 1601. Both parties appealed to the Court of Holland that suggested in July 1603 that the parties should try and reach an agreement with the help of arbiters. Each of the parties chose three arbiters, and these six men appointed a seventh to act as their chair. Within a month the arbiters had reached a legally binding verdict which

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<sup>66</sup> Besides this discretion of local justices, the city magistrate could also issue regulations that made arbitration mandatory should commercial conflicts arise. It did so with the sales of bastard saffron in 1600. Noordkerk, *Handvesten*, II (1764), cites ruling of 1600, p. 577 "Item, en sal oock niemand, wie hy sy, alsulcke vervalschte Saffraen mogen koopen, verkoopen in 't gros ofte ter consumtie in eeniger manieren, op pene van de selve Saffraen te verbeuren, ende daer-en-boven arbitralicken gecorrigeert te werden na gelegtheyd der sake."

<sup>67</sup> Van Dillen, *Bronnen Bedrijfsleven*, II, 1315.

<sup>68</sup> Inbrenregister Amsterdamse weeskamer 11, fol. 270 (28-07-1613); courtesy Arjan Poelwijk; The same preference for arbitration can be observed with the *Commissarissen van Kleine zaken* (Oudekerk 1938: 31-32), and the *Commissarissen van Zeezaken*: M.S.C. Huybers, "Het Gebouw Zeerecht end de Commissarissen van Zeerecht", *unpublished research report*, University of Amsterdam (1991), 3-4.

<sup>69</sup> The justices of the *Hof van Holland* also acted as *arbiters* in conflicts between merchants. However, the available evidence suggests, that very few if any cases were resolved in this manner. Between 1457 and 1467 only 26 out of 255 civil cases were settled through arbitration. Given that very few merchants and foreigners were involved in civil cases in the first place, it seems very unlikely the *Hof van Holland* contributed to a speedy resolution of conflicts between merchants through arbitrations (Le Bailly, *Recht*, 214-223).

included the payment of tolls, fines and damages, the lifting of the seizure of goods and the freeing of a hostage in Seville, the return of business papers, and finally the pledging of sureties.<sup>70</sup>

### III. The rise and decline of separate jurisdictions

Amicable settlement and arbitration could not solve all commercial disputes in the Low Countries. Friendly solutions were sometimes frustrated by personal frictions, the social distance between trading partners, or simply because parties felt too strong about their own right.<sup>71</sup> Agents could also prove indifferent to informal punishments, pushing their principals to revert to the big stick.<sup>72</sup> To prevent the collapse of trade as a result of anonymity, animosity, or a lack of appropriate sanctions, foreign merchants in the Low Countries used a combination of formal jurisdictions to complement their private efforts to enforce contracts. Their choice of institutions changed over time.

Unlike in France and England, foreigners visiting the Bruges fairs in the twelfth and thirteenth centuries were never referred to a temporary court. Rather, the local court, established around 1100, took on the responsibility to pass judgement in conflicts between visitors.<sup>73</sup> The oldest surviving bylaws of Bruges, dated 1281, already stipulated that *schepenen* were expected to rule within three days (or eight, when the defendant was not present) in cases brought before them by foreign

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<sup>70</sup> The case is described in detail in the protocol of an Amsterdam notary, drawn up after the arbiters had given their verdict: GAA NA 20 H, fol. 1-9 (17 aug 1603) **Check this**.

<sup>71</sup> For example, Hugo de Groot's legal opinion that arbiters should be given all the relevant evidence (written in 1632) suggests that parties were not always willing to accept mediation (*Consultatiën en advyzen* II, 433; III, 477-478).

<sup>72</sup> In December 1596 Flemish merchant Aert Tholincx reached an agreement with Joost Laurensz regarding the repayment within six months of an outstanding debt of 2,000 guilders. It was only when Laurens did not meet the terms of this private arrangement that Tholincx asked the court to execute its decision after all (*Consultatiën en advyzen*, I, 448);

<sup>73</sup> Nörr, "Procedure", 197-198; Note however that English local justices were also involved in commercial litigation at a very early stage: Basile, *Lex Mercatoria*, 42.



merchants.<sup>74</sup> In 1330 the Count of Flanders specified that during the fairs justice should be done at least twice a week, with the exception of the three days of display, and the three days before and after that, when traders should be left to themselves.<sup>75</sup>

The local court of Bruges also ruled in conflicts between resident foreigners.<sup>76</sup> For example, the privileges granted to German traders in 1307 explicitly stated that disputes involving their merchants and apprentices had to be resolved by local judges.<sup>77</sup> The active role of the *Schepenbank* in the resolution of commercial conflicts can be gleaned from the 21 trade-related sessions it held between September 1333 and January 1334. Three years later this number had already risen to 31.<sup>78</sup> The only jurisdiction separate from the local court of Bruges before 1330 was the maritime court of Damme, which applied maritime law to conflicts between shipmasters, sailors, and merchants from around Flanders.<sup>79</sup> But even if this court was independent from the *Schepenbank*, the latter's justices probably welcomed it for damaged ships,

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<sup>74</sup> Gilliodts-van Severen, *Coutumes*, I, 208, 249 (Deuxième keure de Bruges, 25 mai 1281, art. 23); A similar article was included in the ducal privilege of 1304, where it was joined with the rule that all payments had to be in cash, unless surety was given (Idem, I, pp. 311, article 54); Ever since the creation of the *Schepenbank* in the 12th century, the local court had already pursued foreigners in criminal cases (Gilliodts-van Severen, *Coutumes*, II, 266n).

<sup>75</sup> Gilliodts-van Severen, *Coutumes*, I, 398: "Et ensi ne doit on point plaidier, dedens foire, les trois jours de monstre, trois jours devant, et trois jours après, des choses qui principalement touchent ciaux qui seront à le dite foire ales, et ce entendons-nous des foires de Flandres."

<sup>76</sup> In the course of time the jurisdiction of the schepenen was gradually extended to included Bruges' hinterland (De Schepper & Cauchies, "Justicie", 144); In 1396 the city declared that procedures for local citizens and foreigners had always been equally expedient (Gilliodts-van Severen, *Coutumes*, I, 447-448); A town ordinance of 1481 mentioned that conflicts between foreigners and between foreigners and locals had of old (*van ouden tyden*) been brought before the *Schepenbank*. (Gilliodts-van Severen, *Coutumes* II, 114-116); Only nobles and the clergy could claim immunity from this court (De Schepper & Cauchies, "Justicie", 142);

<sup>77</sup> Gilliodts-van Severen, *Coutumes*, II, 118n

<sup>78</sup> Gilliodts-van Severen, *Coutumes*, I, 398n; Evidence for the involvement of local authorities in litigation between English merchants and traders from Italy, Flanders and Genoa in the second half of the fourteenth century is provided by Nicholas, *English trade*, 25n.

<sup>79</sup> Gilliodts-van Severen, *Coutumes* II, 102n, 395; Goudsmit, *Geschiedenis*, 140-141; Evidence for the operation of a waterbailiff in neighboring Sluis in 1376, seizing English cloth is provided by Nicholas, "English trade", 28. On similar courts in Spain and Italy: Niekerk, *Development*, I, 199; In Dordrecht a *Watergerecht* ruled in maritime affairs in the middle of the 15<sup>th</sup> century. Meanwhile citizens of Damme had to appear before the *Schepenbank* of Bruges in civil and criminal affairs (Gilliodts-van Severen, *Coutumes*, I, p. 285)

lost cargoes, labor conflicts and fighting sailors could have easily clogged the legal apparatus.<sup>80</sup>

A more serious challenge to the autonomy of the local court in Bruges was the granting of separate jurisdictions to various foreign nations by the Count of Flanders between 1330 and 1400.<sup>81</sup> Alien merchants, French and Southern German traders excepted, used their consular courts for a number of reasons. First of all, the aldermen of the German Hansa, and the consuls of Venice, Lucca, Genoa, Aragon, Castile, and possibly Portugal applied the laws and customs of their own country, and did so in their native language.<sup>82</sup> Second, they had judicial authority over all their fellow countrymen, including the numerous factors, clerks, shipmasters, and sailors with whom most merchants had regular dealings.<sup>83</sup> Third and finally, the consular jurisdiction was not limited to commercial conflicts. Consuls also ruled in cases of insult and harassment, and they administered non-contentious procedures, like the management of the estates of deceased merchants.<sup>84</sup>

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<sup>80</sup> Bruges did not lack the political leverage to control legal proceedings in Damme. Already in 1304 the Count of Flanders granted the *schepenen* of Bruges the right to rule in all civil and criminal affairs involving the citizens of Damme (Gilliodts-van Severen, *Coutumes*, I, 285).

<sup>81</sup> An earlier attempt of German merchants to create an enclosed colony with separate jurisdiction (*Nieuw Damme*) nearby Burges had failed in the mid-thirteenth century (Roessner, *Hansische*, 45, with references to the older literature).

<sup>82</sup> In 1330 the Consulado del Mar in Barcelona delegated the jurisdiction over the Aragonese merchants in Bruges to two consuls, chosen from the resident merchants (Van Houtte, *Geschiedenis*, 175); In 1359 Louis of Male acknowledged the corporate jurisdiction of the German Hansa (Van Houtte, *Geschiedenis*, 181); Lucchese merchants may have had their own jurisdiction as early as 1367 (De Roover, Money, 18); In 1411 the Portuguese consul, was granted the jurisdiction over the Portuguese nation. (Van Houtte, *Geschiedenis*, 175); The consul of the Scottish merchants was formally recognized in 1407 but given that he was not necessarily Scottish (e.g. in 1472 Bruges citizen Anselm Adornes) he may not have been invested with the powers to solve conflicts between merchants (Vandewalle, 'Vreemde naties', 38-39). Castilian merchants, who were initially subjected to the jurisdiction of the Aragonese consuls, were granted their own consulate around 1443: Gilliodts-van Severen, *Cartulaire*, 44-45; English merchants were given the right

<sup>83</sup> On the presence of numerous German shipmasters, sailors, and clerks in Flanders: Beuken, *Hanze*, 42; Note that the first privileges the Count of Holland extended to alien merchants in Dordrecht included their right to try crewmembers that had fought aboard ships – provided there were no fatalities (Van Rijswijk, *Geschiedenis*, p. 18)

<sup>84</sup> Gilliodts-van Severen, *Cartulaire*, 28

It is difficult to establish how important Bruges' consular courts were for the efficient enforcement of contracts. The surviving regulations of the Lucchese nation in Bruges do suggest foreign consuls held regular court sessions.<sup>85</sup> Venetian and Hanseatic nations even threatened to boycott merchants who brought their cases before the local court instead.<sup>86</sup> What is more, extant documents of the Spanish nation suggest that consuls also resolved disputes through arbitration, thus providing a highly valued extension of private order solutions. Finally, indirect proof for the viability of the consular courts can be found in the transferal of several of them to Antwerp after this city took over Bruges' leading position in international trade after 1500 (cf. *infra*).

On the other hand, the creation of consular courts did not end the involvement of local justices in commercial litigation.<sup>87</sup> Evidence from the fifteenth century suggests that foreign merchants in Bruges still brought shipping disputes before the maritime court of Damme.<sup>88</sup> The *schepenen* of Bruges offered arbitration and heard appeals lodged by foreigners against the ruling of their own leaders.<sup>89</sup> But even consuls called upon the local justices. For example, in 1458 Bruges' *schepenen* intervened to ensure that Catalan merchants paid the membership fee of their nation.<sup>90</sup> Furthermore, the

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<sup>85</sup> De Roover, *Money*, 18-20.

<sup>86</sup> De Roover, *Money*, 18; Paravicini, *Bruges*; In fact, even the directors and employees of hierarchically organized Italian family firms submitted to the jurisdiction of their consuls. Social pressure within their community was used to enforce contracts but if necessary, consuls ruled in conflicts between Italian merchants (De Roover, *Money*, 20)

<sup>87</sup> The *Schepenbank* also looked after the estates of deceased foreign merchants in case no relatives were present in Bruges. However, conflicts regarding the division of estates were referred back to the respective consuls (Gilliodts-van Severen, *Coutumes*, II, 116n)

<sup>88</sup> In 1447 a conflict between a Genoese and two Spanish merchants was brought before the *loi de Mude* (as the court was called) and resolved after arbitration by three men – a councilor of the Burgundian duke, a Portuguese merchant, and a citizen of Bruges, the well-known hosteller Jacques de la Bourse Gilliodts-van Severen, *Cartulaire*, 29;

<sup>89</sup> Cf. for merchants from Lucca: De Roover, *Money*, 18; For merchants from Spain and Portugal: Gilliodts-van Severen, *Coutumes*, II, 117n; On the other hand, there are examples of consuls supporting claims of their members before the local courts: Gilliodts-van Severen, *Cartulaire*, 62-63.

<sup>90</sup> Gilliodts-van Severen, *Cartulaire*, 79.

local court ruled in conflicts between merchants from different nations, and even settled disputed between consuls.<sup>91</sup>

In Antwerp the local court was at least as dominant. Like in Bruges, there were no temporary court at the fairs of Bergen op Zoom and Antwerp. Rather, local justices dealt with cases involving non-resident merchants twice a week, on Tuesday and Thursday mornings, between 9 and 11 – a procedure that was quickly extended beyond the confines of the fairs.<sup>92</sup> In the sixteenth century the Antwerp *Schepenen* could also jurisdiction over the fairs of Bergen op Zoom.<sup>93</sup> Besides, they enforced the contracts of a growing group of local merchants involved in international trade, and of the Dutch, French, Venetian, Lucchese, and Southern German merchants who never applied for a separate jurisdiction.<sup>94</sup>

Still the legal autonomy of local justices had its limits. The Governor of the English merchants and the Portuguese consul held on to the jurisdictions granted to them in the fourteenth and early fifteenth century.<sup>95</sup> The removal of foreign merchants from Bruges led to the transfer of the Genoese *massaria* after 1522, the Aragonese consulate in 1527, and the Kontor of the Hanseatic League in 1553.<sup>96</sup> And although the Castilians were refused the creation of a separate consulate in Antwerp by Charles V in 1551, a few years earlier the emperor had given Florentine merchants the right to

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<sup>91</sup> In 1460 *schepenen* of Bruges lifted the arrest on goods from Biscayan shipmasters by the consuls of the Genoese nation (Gilliodts-van Severen, *Cartulaire*, 82-83); In 1466 the *Schepenbank* ruled in a conflict about faulty merchandise between an English and Spanish merchant (Gilliodts-van Severen, *Cartulaire*, 87); Cf. for a dispute between consuls of different nations: Gilliodts-van Severen, *Coutumes*, II, 118n.

<sup>92</sup> Check source: Gilliodts-van Severen, *Coutumes*, I, 249 (article 25)

<sup>93</sup> In the Antwerp customs of 1545 the city of Bergen op Zoom was explicitly subjugated to the jurisdiction of the Antwerp magistrate: 70. Item, de stadt van Berghen opten Soom is ende leegt int quartier ende onder dammannye van Antwerpen. (Antwerpse Costumen 1545, Title VI, nr. 70)

<sup>94</sup> On the Venetians and Lucchese: Goris, *Etude*, 71, 80; On the South Germans: Harreld, *High Germans*; On the Dutch\*\*\*; On the French: Coornaert, *Français*.

<sup>95</sup> In 1359 the separate jurisdiction of English merchants in Antwerp was recognized (Van Houtte, *Geschiedenis*, 181; Nicholas, "English trade", 24), and then confirmed on various occasions in the 15th century (Desmedt, *Engelse natie*, pp. 88-89).

<sup>96</sup> Goris, *Etude*, 58, 67, 71; Harreld, *High Germans*, 66, cites Vazquez da Prada, *Lettres*, 161.

rule in first instance in conflicts between members of their nation.<sup>97</sup> By the same token Philip II confirmed the rights of the Genoese *massaria* to rule in all civil cases between traders from Genoa in 1571.<sup>98</sup>

The legal proceedings of the Portuguese nation reveal the viability of the institution.<sup>99</sup> Two consuls presided over a tribunal every week. The merchants involved almost always appeared in person.<sup>100</sup> All the nation's members formed a jury. A local notary was present to summon the parties and write down the proceedings. The workload must have been considerable for occasionally Portuguese merchants refused to serve as consul arguing it took up too much of their time. Language may have been an issue here. The Antwerp customs stipulated that all cases brought before the local *Schepenbank*, should be tried in Dutch. This required Portuguese merchants to come to court with translators. In simple cases, they may have preferred their own judges. However, the Portuguese did not hesitate to appeal to the local court if they disagreed with the ruling of their consuls.<sup>101</sup>

Meanwhile, litigation practice in the Dutch port did differ from Bruges and Antwerp in two important respects. First, Amsterdam refused to accept consular courts. Already in 1413 it had ruled that conflicts between *guests* had to be resolved expeditiously by the *Gerechte*.<sup>102</sup> This local court was also explicitly commissioned to

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<sup>97</sup> *Liste Chronologique des édits et ordonnance des Pays-Bas. Règne de Charles-Quint (1506-1555)* (Bruxelles: Fr. Gobbaerts 1885), p. 295 ; (Brussels, 26 June 1546). The permanent representative of the Spanish nation in Antwerp probably lacked the legal powers to mediate or pass judgements in conflicts between its members. The refusal of a separate jurisdiction is detailed in Goris, *Etude*, 59, 63-66.

<sup>98</sup> Goris, *Etude*, 76, 79.

<sup>99</sup> The following is based on Goris, *Etude*.

<sup>100</sup> On very few occasions they were represented by a fellow merchant, never by a lawyer.

<sup>101</sup> Gilliodts-van Severen, *Coutumes*, II, 117n; Goris, *Etude* 45.

<sup>102</sup> First written down in 1413, but still applied in the seventeenth century was the rule that guests could appear before the local court twice a week (Breen, *Rechtsbronnen*, 10; *Handvesten* 1639, pp. 116-118); Amsterdam had an annual fair but this fair only seems to have attracted traders from the province of Holland; On the administration of criminal and civil justice by Amsterdam's *schepenen* in the late fourteenth century: Verkerk, "Goede lieden", 182-192.

administer maritime law.<sup>103</sup> Furthermore it ruled in conflicts between visitors from the same city or country – provided that both parties accepted its judicature.<sup>104</sup> The advantage of this common jurisdiction was that it saved merchants money. Whereas members of foreign nations in Antwerp had to pay a fixed percentage of their turnover to the consuls, regardless the use of their services, in Amsterdam the costs of the legal system were covered by urban taxes, and by fees paid to those who appeared before the court.

The obvious disadvantage of the stronger hold of local justices over commercial litigation was the increased workload it created.<sup>105</sup> This problem was resolved with the creation of subsidiary courts: the second institutional change that set Amsterdam apart from Bruges and Antwerp.<sup>106</sup> Admittedly, foreigners in Bruges had had access to a separate maritime court. However, by 1477 the local court also ruled in shipping disputes. In 1500 the aldermen of Bruges began to serve as justices of the maritime court and in 1566 its jurisdiction was transferred to the Bruges Schepenvank.<sup>107</sup> In a similar vein Antwerp's *schepenen* had allowed English cloth traders in 1474 to bring commercial conflicts before them rather than the local *Lakenhal*.<sup>108</sup> Royal attempts to set up a separate insurance court in Antwerp failed in 1571.<sup>109</sup> The only subsidiary

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<sup>103</sup> In principal Amsterdam's schepenen only applied maritime law in conflicts that involved seaborne trade. Breen, *Rechtsbronnen* p. 11-12 (1413); However, when it became clear in 1522 that cash payments for whatever goods were often delayed, the magistrate gave sellers the right to ask for the application of *maritime* law. If proven right by the *Gerechte*, sellers could repossess their goods without giving surety (*Handvesten* 1639, 116-118; *Handvesten* 1764, II, 521)

<sup>104</sup> If the goods of a stranger were sequestered by a fellow town- or countryman, he could object and the case was referred to judges in their place of origin ('haerder beyder dagelijckcsche Rechter') *Handvesten* 1639, 90-92 (article XI); *Handvesten* 1656, 73-81 (Title 19, article 29); in the seventeenth century it was formally established that when conflicts regarding contracts signed abroad were brought before Dutch judges, they applied the laws under which these contracts were signed (*Consultatiën en advyzen*, II, 400);

<sup>105</sup> Another disadvantage, for alien merchants at least, may have been that in Amsterdam in the seventeenth century all rulings had to be in Dutch *Handvesten* 1656, 63-64; **Elaborate on workload.**

<sup>106</sup> Oldewelt, "Amsterdamse", 118.

<sup>107</sup> Gilliodts-van Severen, *Coutumes*, II, 100-104, 395

<sup>108</sup> Check source

<sup>109</sup> Groote\*\*\*; Nieuwkerk; From Bruges in the third quarter of the seventeenth century survive various

courts that lasted in Bruges and Antwerp were the chamber of insolvent estates, although in Bruges this court seems to have been created in the 1520s – after most foreign merchants had left.<sup>110</sup>

Between 1578 and 1650 Amsterdam set up a string of subsidiary courts lead by commissioners with specialist knowledge.<sup>111</sup> Directly or indirectly involved in the city's trade were the *Weeskamer* (1578) and *Assurantiekamer* (1598), the commissioners of the *Wisselbank* (1609), the commissioners of *Kleine Zaken*, or small cases (1611), the commissioners of *Zeezaken* or maritime affairs (1641) and finally the chamber of insolvent estates (1644). Not all these subsidiary courts were equally important. Notably the insurance chamber, maritime chamber, and commissioners of the Exchange bank fulfilled crucial functions for the resident and visiting merchants.<sup>112</sup> *Commissarissen van Kleine zaken*, only ruled in minor commercial disputes, while merchants often excluded the involvement of the Orphan chamber in their wills in order to protect their business interests.<sup>113</sup>

The combination of a local court taking on general conflicts, and a string of specialized courts for bankruptcies, insurances, exchange, and maritime law left very

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cases of Bruges schepenen ruling in insurance cases Gilliodts-van Severen, *Coutumes* II, 106n; Gilliodts-van Severen, *Inventaire*, 76-77, 79

<sup>110</sup> Gilliodts-van Severen, *Coutumes*, II, 315n

<sup>111</sup> *Handvesten* 1656, pp. 18-22; On a central level these subsidiary courts were supplemented with admiralty courts that ruled in conflicts related to corsairs and mariners (Niekerk, *Development*, I, 197). Moreover, the colonial companies had their own private courts in Brazil and the East Indies to rule in labour conflicts; However, even if the VOC and WIC were allowed to arrest merchants, shipmasters and sailors who violated the terms of their monopolies, their private courts (like for example the Raden in Brazil) were not allowed to pass judgment on the perpetrators. This right was reserved for the courts under which the latter resided (*Consultatiën en advyzen*, V 346.)

<sup>112</sup> On the *Commissarissen voor de Zeezaken* see Lichtenauer, *Geschiedenis*, 141-143; Oldewelt, "Amsterdamse"; Schreiner et al. *In de ban van het recht*, 34.

<sup>113</sup> Although the commissioners were knowledgeable in trade, the threshold value of 40 guilders for cases to be submitted in 1611 (gradually raised to 600 guilders in 1650) precluded merchants to bring their cases before this court: Oudekerk\*\*\* 1938: 25, 28; This is also clear from the cases brought before similar commissioners in the neighbouring town of Haarlem at the time of the tulip mania. Almost all contested cases in 1637 concerned private individuals, not merchants. (Cf. Goldkar on Tulipmania )

little for merchants to wish for.<sup>114</sup> Even so, in the second half of the seventeenth century, some merchants began to contemplate the creation of a separate court for all commercial conflicts, very much like the merchant tribunals in Spain, Italy or France.<sup>115</sup> A proposition to this avail was made by former bookkeeper Johannes Phoonsen in his *Wissel-Stijl tot Amsterdam*. Phoonsen suggested to turn the local Exchange Bank into a *bank van judicature*. Conflicts between merchants that did not fall under the jurisdiction of the Chambers of Insurance and Sea-affairs should, in first instance, be brought before the commissioners of the Wisselbank. Their jurisdiction would comprise “all differences concerning matters of exchange trade, sales or purchases, deliveries and payment; and contracts of trade, and their observance; liquidation and adjustments of accounts, as well as provisions, salaries, and pay of Commissioners, Factors, Bookkeepers and Servants &c. en generally all disputes and matters that arise in, or follow from trade”.<sup>116</sup> Although a merchant tribunal was never created in Amsterdam, the very proposition shows the constant concern for the alignment of legal institutions with business practice.

#### **IV. The rise of central courts.**

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<sup>114</sup> Commissioners to adjudicate in case of insolvencies were first appointed in 1644?? (Desolate Boedelkamer); This particular structure was not typical for Amsterdam. Rotterdam also had a Commission for Maritime Affairs, that ruled in all cases related to shipping, insurance included (Niekerk, *Development*, I, 220-223).

<sup>115</sup> **Add references.**

<sup>116</sup> “alle geschillen concrenerende materie van Wissel Commerce, ‘t sy over koopen en verkoopen, leverantie en betalinge, mitsgaders over Contracten van negotie, en ‘t naar komen van deselve, liquidation en adjustementen van reekeningen, insgelijx provisie, salaris en Gage, van Commissarisen, Factoors, Boekhouders en Dienaars, &c. en generalijk alle disputen en quaestien ontstaande, in de koophandel, ofte daar aan dependerende (en niet specialijk staande ter judicature van de E.E.. Heeren Commissarisen van de Assurantie en Zee-zaken)”. Phoonsen, *Wissel-stijl*, 235-236; cited in Lichtenauer, “Burgerlijk”, 353 .



Yet another challenge to the autonomy of the *schepensbanken* in the Low Countries was the introduction of higher courts. Central rulers around Europe challenged local rulers with the creation of provincial and central courts. For example, this process can be observed in England in the fourteenth century, and in the Burgundian Netherlands and France in the fifteenth century. To be sure, these were not the first central jurisdictions; already in the twelfth century ecclesiastical courts operated besides the local courts. However, perhaps with the exception of usury issues, these courts had no practical use for merchants.<sup>117</sup>

This is not to say that the new monarchs of the fifteenth century created their courts to support merchants. The vast majority of cases heard before the judges consisted of disputes between ordinary citizens, public officials, villages, towns, and provincial authorities. At that, the principal purpose of these courts was to hear appeals against verdicts of local justices. Already in the fourteenth century Louis de Male had allowed his Flemish subjects to appeal judgments of their local courts with the Council of Flanders.<sup>118</sup> In the mid-fifteenth century Philip the Good gave all inhabitants of Flanders, Brabant and Holland the right to lodge an appeal with their respective provincial courts against the verdict of local justices.<sup>119</sup> He also created the opportunity to appeal to the *Grand Conseil de Malines* against the verdicts of these provincial courts.<sup>120</sup> This justice-in-three-stages survived in the northern provinces

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<sup>117</sup> For England: Benson, "Justice", 131-133; **For France\*\*\***; For the Low Countries, cf. supra; Note that the feudal and ecclesiastical jurisdictions which dominated supra-local legal proceedings in the High Middle Ages played no role whatsoever in the settlement of commercial disputes in Europe (Lopez and Raymond, *Medieval trade*, 267; Volckart and Mangels, "Roots", 440)

<sup>118</sup> The procedure was no novelty. From about 1260 onwards, foreign merchants could appeal to England's common courts in case they disapproved with the rulings of the fair courts: Basile, *Lex Mercatoria*, 10.

<sup>119</sup> In Flanders the possibility had existed for part of the population since the late fourteenth century. In 1453 Philip the Good managed to oblige the Four Cities of Flanders. In Holland the *Hof van Holland* concentrated on its legal functions since 1445. (Le Bailly, *Recht*, 10). After 1458 it became a court of appeal for all judgments passed by local courts. (De Smidt, "Evolutie", 172-173).

<sup>120</sup> Gilliodts-van Severen, *Coutumes*, II, 266n; Beroep tegen uitspraken Hof van Holland was vanaf

after the Dutch Revolt. The Court of Holland simply continued its work while a new Supreme Court for Holland and Zeeland was established for further appeals.

But what did these increasingly well-oiled bureaucratic apparatuses with justices proficient in Roman law do for merchants?<sup>121</sup> For one thing they served as court of first instance for several privileged groups, including nobles, ducal officials, widows, orphans, and foreign merchants.<sup>122</sup> Already in 1409 John the Fearless had arranged for disputes between non-resident foreigners to be brought before the Council of Flanders in Ghent. In the mid-fifteenth century Philip the Good extended this facility when he allowed foreigners to litigate in first instance before the *Grand Conseil* in Malines.<sup>123</sup> As was shown in Chapter 3 this Great Council also served for the initial hearing of prize cases, until it delegated this authority to specialized Admiralty Courts in the 1480s. Otherwise, the Great Council continued to serve as a court of first instance until the split of the Netherlands in 1581, after which foreign merchants in Holland gained similar privileges with the *Hof van Holland* and the *Hoge Raad van Holland en Zeeland*.

Town magistrates were not amused by this infringement on their autonomy but it is doubtful whether it changed anything for merchants in the Low Countries.<sup>124</sup> An exhaustive analysis of lawsuits before the *Hof van Holland* between 1457 and 1467

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1440 mogelijk bij de Grote Raad (Bailly, *Recht*, 94, 203-208); Officieel was het Parlement van Parijs het hoogste gerechtshof van Vlaanderen, totdat het onbevoegd verklaard werd door ordonnances Karel V van 1521 en 1522. In de praktijk nam de betekenis van dit hof voor beroep op uitspraken van lagere rechtbanken na het eerste kwart van de vijftiende eeuw sterk af en waren het vooral steden die er voor het beslechten van onderlinge conflicten gebruik van maakten. (De Schepper & Cauchies, *Justice*, 131-132; (Gilliodts-van Severen, *Coutumes*, II, 340-341). Cf. also Blockmans, “Bruges and France”, 213-216 who cite a few examples of cases brought before the court in the mid-fifteenth century.

<sup>121</sup> De Schepper and Cauchies, “Justicie”, 162-164

<sup>122</sup> Damen, “Hof van Holland”, 6. **Check for other courts.** Not unique. In England as early as 1285 the *Statute of Merchants* of Edward I had set rules for the composition of juries that ruled in commercial cases involving aliens (Nörr, “Procedure”, 196).

<sup>123</sup> Answaarden, *Portugais*, 82; Answaarden, “Drenken der heiligen”, 11; **Check** C.H. van Rhee, *Litigation and legislation: civil procedure at first instance in the Great Council for the Netherlands in Malines (1522-1559)*;

<sup>124</sup> Blockmans & Prevenier, *Promised lands*, 47.

reveals only ten trade-related cases per year, with very few long-distance traders among the parties involved.<sup>125</sup> One explanation would be that this kind of litigation simply cost too much time and money.<sup>126</sup> However, even cases in which judges of the *Hof van Holland* merely acted as arbitrators did not involve merchants.<sup>127</sup> The same was true for the sixty-odd disputes settled through arbitration by the Court of Brabant between 1436 and 1490.<sup>128</sup>

Obviously, in the fifteenth century, Holland played only a minor role in international trade. So it would be more appropriate to consider the higher courts in Flanders en Brabant. This kind of analysis is not possible for the provincial courts but it can be done for the *Grand Conseil* in Malines. For the years between 1460 and 1580 Robert van Answaarden's has documented 61 cases that involved Portuguese claimants, defendants, and occasionally also lawyers and witnesses – 23 of which were related to Portuguese long-distance trade.<sup>129</sup> If we compare this number to the estimated size of the Portuguese nation in Bruges and Antwerp between 1460 and 1580, the likelihood that one of its members appeared before the court as claimant or defendant in any one year was 0,34%.<sup>130</sup>

Van Answaarden's analysis can be extended to the foreign merchant community at large through an analysis of the published sentences of the *Grand Conseil* in the

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<sup>125</sup> A total of 255 civil lawsuits made up only 22% of all cases brought before the Court between 1457 and 1467. Less than half of these cases (122) concerned the law of contracts (either credit transactions or sales of goods), while another 30 cases were concerned with the transfer of real estate (Le Bailly, *Recht*, 287-290). Among the 535 plaintiffs whose profession was recorded by the court there were only 27 'traders, fishermen, and shipmasters', while among the 1002 defendants their number did not exceed 35. (Le Bailly, *Recht*, 259-263). Foreigners numbered only 51 among the 3,057 persons who appeared before the court in this decade. Most foreigners who did appear before the Court were pawnbrokers (Le Bailly, *Recht*, 266)

<sup>126</sup> Godding, "Justice", 129; Le Bailly, *Recht*, 182-183.

<sup>127</sup> Le Bailly, *Recht*, 183-189.

<sup>128</sup> Godding, *Justice*, 125-126.

<sup>129</sup> Answaarden, *Portugais*, passim.

<sup>130</sup> We estimated that in Bruges between 1450 and 1500 lived 20 Portuguese merchants, a number that rose to one hundred in Antwerp in 1550, and remaining constant thereafter until 1580.

years between 1470 and 1550.<sup>131</sup> This results in 224 trade-related lawsuits in which either claimants or defendants can be identified as foreign merchants.<sup>132</sup> This sample probably underestimates the total number of cases involving foreign merchants, for it contains only 10 of the 15 commercial disputes that appear in Van Answaarden's exhaustive survey in the same period.<sup>133</sup> The claimants and defendants whose origin was explicitly mentioned in the sentences (two thirds of their total number) came from a variety of countries, including the Italian city states (76), Castile and Biscaye (49), the British Isles (47), different parts of Germany (44), France (30), and Portugal (10). If we compare the total number of commercial conflicts with the size of the resident foreign merchant community in the Low Countries, we can estimate the probability that a foreign merchants would appear before the *Grand Conseil* in any one year for any of these disputes.<sup>134</sup>

*Table. The probability that a foreign merchant appeared as claimant or defendant before the Great Council of Malines in any one year between 1470 and 1550.*

Sentences related to:	Number of Cases	Probability
Violent assaults	50	0,08%

<sup>131</sup> Several times the claimant comprises more than one party, e.g. Spanish merchants and the city of Bruges. In the tabulation these cases are systematically included in the category *foreign merchants* or *nations*. The category *locals* consists of men and women whose residence, profession, or name suggests they were citizens of towns and villages in the Low Countries. The category *government* includes local and central authorities, as well as public officials, farmers of tolls and taxes, institutions for civil welfare, and personnel of legal institutions. The category noblemen, and – women also includes one case (1490) in which the pope was called as defendant.

<sup>132</sup> The sample includes all sentences regarding payment, delivery, and all other disputed contracts. Also included are sentences that refer to attacks by pirates and privateers, or alleged unlawful behavior of the government and its officials against merchants or their property. Not included in the sample are sentences that do not reveal the issue at stake, and sentences related to shipping matters (e.g. collisions) that do not explicitly mention damages to merchants or their property.

<sup>133</sup> In totaal vond Van Answaarden 61 cases, waarvan er ... met zekerheid betrekking hebben op commercial disputes. Van deze ... vonden er 18 plaats in de periode waarvoor de abbreviated sentences have been listed by Smidt (1470-1550). En van die achttien waren er in onze sample 13: Het niet opnemen van een aantal cases hangt samen met het niet specificeren van de inhoud, daarnaast liggen sommige missers voor de hand: one had betrekking op a citizen of Bruges that turned out to be of Portuguese origin. Alleen onoplettendheid kan een andere case uit 1470 verklaren.

<sup>134</sup> To calculate these probabilities we have assumed a linear growth of the number of foreign merchants from 400 in Bruges in 1450 to 1,100 in Antwerp in 1550. Based on this intrapolation the average number of merchants present in any one year between 1470 and 1550 is 820.

Commercial disputes with foreigners	58	0,09%
Commercial disputes with other parties	79	0,12%
Non-contentious litigation	37	0,06%
All cases	224	0,34%

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Source: Smit, *Geextendeerde sententien*, passim

The limited role of the Great Council in litigation between merchants was a direct result of the amount of time it took the court to reach its decisions. Indeed, when opportunities for appeal were initially created, merchants did not hesitate using them to delay proceedings and postpone possible sanctions.<sup>135</sup> In order to secure the expeditious ruling in commercial and financial conflicts that was required by foreign merchants and shipmasters trading in Flanders, the Burgundian dukes decided to limit the possibilities for appeal to decisions of local courts.<sup>136</sup> In 1459 it was stipulated that appeals would only be allowed in case of considerable damages. Besides, indemnities awarded in first instance should be paid awaiting the final judgment. The beneficiaries could dispose of the money, provided they gave sufficient surety, and finally that surety should be given for the expected costs of the appeal. Non-compliance with these rules resulted in a penalty of 30 guilders.<sup>137</sup> In a similar vein, Maximilian ordained in 1488 that no appeal to central courts would be possible on judgments passed by the Antwerp court in conflicts arising from trade at Brabant fairs.<sup>138</sup>

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<sup>135</sup> The *Grand Conseil* did intervene in conflicts between towns on commercial matters, like for example the staple rights of Dordrecht that were disputed by most other towns in Holland. Proceedings in such cases could also take years, however (Van Rijswijk, *Geschiedenis*, 64ff)

<sup>136</sup> Gilliodts-van Severen, *Coutumes* II, p 35-39; Cf. Philip II response to a similar complaint filed by burgomasters of various towns in Holland in 1556. In order to stop appeals to the Court of Holland or the Grand Conseil by 'wealthy men' who tried to force 'humble men' to settle or give up a conflict, Philip II ruled that appeal was no longer allowed in cases valued at less than 60 guilders (W.A. Fase, *Het stadsarchief van Alkmaar, vol. II Regestenlijst* (Alkmaar 1976), p. 39; courtesy Jessica Dijkman.

<sup>137</sup> Gilliodts-van Severen, *Coutumes* II, 35-39; and repetition of the sanction on pp. 55-58 (1464), 215-217 (1511).

<sup>138</sup> Reference to this decision is made in the Antwerp customs of 1609 (!), title IV, p. 52; The duke of Brabant and his councils retained the right to interpret privileges. Cf. for the customs of 1609:

Little had changed by the time Amsterdam succeeded Antwerp as the principal market of the Low Countries. We can analyse the role of the Court of Holland in the settlement of commercial disputes through a representative sample of 212 Flemish traders working in Amsterdam between 1580 and 1630 – one quarter of the total Flemish merchant community in this period.<sup>139</sup> We compared this sample with the names mentioned in the extant sentences of the Court of Holland in the years between 1580 and 1632. This comparison shows 81 merchants from the southern provinces appearing as claimant and/or defendant before the Court. Almost half of this group (36) was only involved in cases that were not directly related to long-distance trade, most notably contested wills, the care for orphans, and the sale of real estate. As for commercial disputes, a total of 45 out of 212 Flemish merchants were involved in at least one case brought before the Court of Holland between 1580 and 1632. The total number of these commercial cases was twice as high (96) because several merchants appeared more than once.<sup>140</sup>

Two merchants from the sample were involved in a very high number of cases; Louis del Becque in thirteen cases and Isaac Lemaire in eighteen. The latter's appearance in ten cases involving the trade in VOC shares comes as no surprise considering that Lemaire was the leader of the world's first and failing bear syndicate operating in Amsterdam in 1609 and 1610. Indeed stocktrading, together with conflicts regarding payment and delivery were the most common grounds for litigation, with 17 cases for each category. Most of the other cases brought before the Court of Holland involved insurance policies (8), freight contracts (6), insolvencies

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<sup>139</sup> The sample was compiled by selecting all merchants whose surname ended with B, M, or P from the database on Merchants from the Southern Netherlands, available at add **URL**.

<sup>140</sup> In 14 of these 96 cases the records do not indicate the actual issue at stake. However, given that both claimant and defendant in these cases were merchants, we have added them to the category commercial conflicts. If excluded, the number of cases would drop to 82, and the number of merchants to 36 (or 17% of the total)

(6), and miscellaneous financial contracts (13). Disagreements about company contracts (4) and labour conflicts (3) were very few and far between.

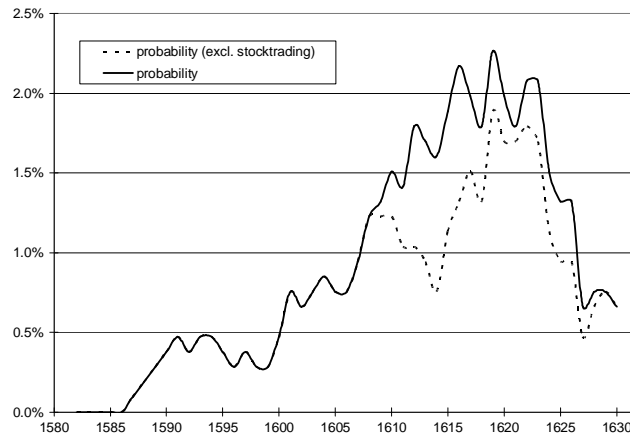
A simple measure to evaluate the importance of the Court of Holland as a third party enforcer is to translate the number of cases in the sample to the entire Flemish merchant community. Doing this yields an estimated 385 cases brought before the Court between 1580 and 1632 – less than eight per year. A different, and perhaps more accurate measure is the probability that an individual Flemish merchant appeared before the Court of Holland in any year between 1580 and 1632. This probability can be calculated by dividing the number of different merchants mentioned in cases starting in a particular year by the total size of the sample. The result, presented in Figure 1, reveals that the chance for a Flemish merchant to have a case adjudicated before the Court of Holland in a particular year was less than 1% before 1607, rising to slightly over 2% around 1620, and then dropping again to less than 1% in 1627.<sup>141</sup> A downward correction for cases involving stock trading reveals the aftermath of the bear syndicate.

*Figure 1. The probability that an individual Flemish merchant appeared before the Court of Holland to settle a commercial dispute in any year between 1580 and 1632 (five years moving average)*

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<sup>141</sup> Even if the calculated probability does not distinguish between one or more appearances of a single merchant before the Court in any one year, the underlying data shows only *two* merchants (Lemaire and Del Becque) being engaged in *more than one* new case.




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Sources: see text

The odds for other merchants in Amsterdam were similar. A comparison of the names of all English merchants known to have worked in Amsterdam before 1630 with the extant sentences reveals only 4 cases that served before the Court of Holland.

Assuming an average size of the English community of 20 merchants between 1600 and 1630, the probability of any one member appearing before the court in any one year was 0,67%. Explaining the small number of commercial disputes settled by the Court of Holland is easy enough. The Court only took on appeals on decisions of admiralties, local courts, and their subsidiaries.<sup>142</sup> The willingness of merchants to go through an appeal procedure must have been small, considering the many years that elapsed between an initial appeal and the final verdict. The fifty-odd cases for which we know the year of submission and the year of sentencing yield an average duration of five and a half years. It takes very high stakes, or litigants who strongly believe being in the right to go through such lengthy proceedings.

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<sup>142</sup> 68 out of 96 cases are explicitly referred to in the sentences as an appeal to decisions by other courts. In 19 of these cases previous proceedings were referred: 13 times a local court, mostly that of Amsterdam, three times arbiters, once the Insurance Chamber, once the Court of Flushing, and once a referral back from the High Court



And thus it comes as no surprise that the number of commercial conflicts involving Amsterdam merchants brought before the *Hoge Raad van Holland en Zeeland* (the Supreme Court) were fewer still. A survey of 1,094 cases brought before the Hoge Raad between 1582 and 1586 reveals only one non-resident merchant (an Antwerp citizen) bringing a case before the court in first instance - and this case was repealed before passing any verdict.<sup>143</sup> For later years we only have scattered references to suggest that merchants did appear before the High Court. For example, the resolutions of the States General refer to several cases where foreign merchants brought disputes directly before this Supreme Court.<sup>144</sup> So much is clear that the highest courts were of little use for the resolution of run-of-the-mill commercial conflicts.

## **Conclusion.**

The disparate character of the available evidence on the settlement of commercial disputes notwithstanding, a clear picture emerges with regard to the enforcement of contracts in Bruges, Antwerp, and Amsterdam. Merchants often took a loss rather than dispute a business deal gone sour. Even so, they did require some means to get compensation from defaulters, if only to keep them from opportunistic behavior in the first place. When conflicts came to a head the foreign merchants in Bruges, Antwerp and Amsterdam consistently preferred informal solutions. They used peer pressure, reputation damage, and the foreclosure of future transactions to settle disputes. If this

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<sup>143</sup> Verhas, *Beginjaren*, passim; The case concerned is number 509. Admittedly, most merchants moved from Antwerp to Amsterdam after 1585 but even at this early date the Flemish community counted already more than 120 traders. Gelderblom, *Zuid-Nederlandse kooplieden*, 189

<sup>144</sup> One such example of foreigners turning to the Court dates from 1600, when a combine of a Venetian senator, shipmaster and several shipowners requested 'expeditious justice' by the Supreme Court a conflict with a Flemish corsair. Given that the latter had shipped the goods taken from the Venetians to Holland and Zeeland, legal proceedings here seemed most appropriate. To support their case, they promised a favourable treatment of Dutch subjects in similar cases in Venice: *Resolutien Staten Generaal 1600-1601*, p. 339-340);

could not solve the matter merchants chose to appoint *goede mannen* to mediate between them. This arbitration was pioneered by the justices of Bruges in the fifteenth century, and it was common practice in Antwerp and Amsterdam thereafter.

Whenever formal proceedings were unavoidable local courts were the preferred third-party to enforce contracts. The aldermen of Bruges, Antwerp, and Amsterdam provided expeditious justice for all traders regardless their social or geographical background. Their potential weaknesses – a limited knowledge of business affairs and an excessive case load – were overcome with the creation of subsidiary courts, like the maritime court of Damme, the chamber for insolvencies in Antwerp, and the various chambers for insurance, shipping, exchange, and insolvencies in Amsterdam. To further reduce the workload the local justices stimulated arbitration to resolve conflicts between merchants up to the point that arbitral decisions were declared legally binding if both parties had voluntarily submitted to such amicable settlement.

The dominance of the local courts left the consular courts to deal with what seems to have been a rather restricted set of cases: the disciplining of their community, including shipmasters and their crew; arrangements for the division of property of deceased members; and the application of contracting rules unfamiliar to the local courts of Bruges and Antwerp – most notably the adjudication of insurance conflicts until the last quarter of the sixteenth century. In Amsterdam, the establishment of a string of subsidiary courts for specific cases rendered the consular jurisdictions entirely superfluous from the late sixteenth century onwards.

The limited number of cases brought before provincial and central courts shows that merchants rarely took conflicts all the way up to the highest legal authority. Even their right to turn to the supreme court for proceedings they used only sparsely. The obvious reason was that it could take years before a case was completed. Given that

local courts offered speedy proceedings the vast majority of merchant strangers chose to rely on the bench of aldermen. Only irreconcilable parties with large sums of money, their honour, or reputation at stake, ended their quest for justice before the central courts.

And yet this does not necessarily mean that the legal system created by the central government was of no consequence for the merchants of Bruges, Antwerp, and Amsterdam. For even if the central courts adjudicated only a few cases per year, in what was by and large a common law tradition, their judgments may have had a lasting impact if they approved or disapproved of particular contractual forms.<sup>145</sup> Cases initially decided between two parties could serve as precedents in later disputes, regardless whether these were brought before a central court, local courts, or even arbiters. Indeed, the creation of a unambiguous set of contracting rules may have prevented quite a few conflicts, especially the ones concerned with the correct interpretation of contractual agreements. The following chapter explores the substance of the rules applied in the settlement of disputes between merchants in the Low Countries.

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<sup>145</sup> Cite Zorina Khan.