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HOW NORMATIVE WERE MERCHANT GUIDEBOOKS? OF CUSTOMS, PRACTICES AND... GOOD ADVICE (ANTWERP, SIXTEENTH CENTURY)

to be published in: H. PIHLAJAMÄKI, A. CORDES, S. DAUCHY and D. DE RUYSSCHER (eds.), *Understanding the Sources of Commercial Law*, (Studies in the History of Private Law), Leiden, Brill, 2017, in the press

1. Introduction

Trade instruction books of the later Middle Ages and early modern period have attracted much attention. Since the publication of the comprehensive bibliography by Pierre Jeannin, Jochen Hoock and Wolfgang Kaiser in 2001,¹ late medieval and early modern professional literature for an audience of merchants has become more accessible, and these works of the *ars mercatoria* have been cited more often in historical studies. Over recent years, the question has been raised as to whether these merchant manuals, which are in and of themselves a diffuse category, not only reflected but also prescribed behaviour. In response, the instructional contents of these guidebooks have mostly been identified as touching upon trustworthiness and professional standards that were closely linked to virtues, values, self-esteem and a sense of belonging.² Questions on the nature of the relationship between merchant manuals and law, however, have been asked less often.³ Yet this problem deserves

¹ Jochen Hoock, Pierre Jeannin and Wolfgang Kaiser (eds.), *Ars Mercatoria: Handbücher und Traktate für den Gebrauch des Kaufmanns. Manuels et traités à l'usage des marchands, 1470–1820: Eine analytische Bibliographie in 6 Bänden*, 4 vols. (Paderborn: Schöningh, 1991–2001).

² Without presuming to create an exhaustive list, one can think of publications by Nathalie Zemon Davies, Pierre Jeannin and Jochen Hoock. See also Jaume Aurell, “Reading Renaissance Merchants’ Handbooks: Confronting Professional Ethics and Social Identity,” in Josef Ehmer and Catharina Lis (eds.), *The Idea of Work in Europe from Antiquity to Modern Times* (Farnham: Ashgate, 2009), 71–90 (instructional literature conferred a sense of belonging to a group of professional merchants, and it contained corresponding standards and ethics); Jeroen Puttevils, *The Ascent of Merchants from the Southern Low Countries: from Antwerp to Europe, 1480–1585* (PhD thesis, University of Antwerp, 2012), 171–184 (merchant manuals listed conventions concerning mutual trust). On the importance of trust in business relations, see also the chapter by Ricardo Court in this volume.

³ Drawing a link between guidebooks on bookkeeping and canon law, in particular usury legislation, see James Aho, *Confession And Bookkeeping: The Religious, Moral, And Rhetorical Roots of Modern Accounting* (Albany: State University of New York Press, 2005) (stressing the rhetorical use of double-entry bookkeeping and manuals concerning it, in order to justify credit against the background of ecclesiastical usury laws); Bruce G. Carruthers and Wendy Nelson Espeland, “Accounting for Rationality: Double-Entry Bookkeeping and the Rhetoric of Economic Rationality,” *American Journal of Sociology* 97:1 (1991), 31–69, 38–39 (merchant bookkeeping and instruction books on the theme served a rhetorical and cognitive purpose, not a strictly rational efficiency-dependent one; the rhetorical purpose partly comprised an aim to neutralize concerns over usury); John E. Dotson, “Commercial law in fourteenth-century merchant manuals,” *Medieval Encounters* 9 (2003),

more attention. The nature of norms in late medieval and early modern commerce is still very much debated among economic and legal historians. A keen but implicit point in the discussions is the dividing line between practices and (facilitating and restricting) institutions, among them legal norms.⁴ As the following pages will illustrate, merchant guidebooks constitute an indispensable aid for shedding more light on this problem. They were written for a merchant audience, and they highlighted constraints of different types. However, legal historians must handle trade instruction books with care because often they cannot be considered a historical source for mercantile practices or commercial law.

This chapter will assess to what extent *ars mercatoria*-literature contained normative wording, defined in what follows as imposing or structuring conduct. In addition, it will analyse whether such phrasing was based on customs,⁵ standard forms of contract, and rules of official law (i.e. legislation or norms imposed through the verdicts of courts). Furthermore, it will examine whether the publication of merchant manuals containing instructions was controlled or solicited by authorities. In search for answers, this chapter focuses on the case of sixteenth-century Antwerp, where many mercantile guidebooks were published and where municipal law was frequently adapted in order to make it fit with contracts that were in use among merchants.

2. Trade-orientated Guidebooks in Sixteenth-Century Antwerp

204–213 (merchant guidebooks lacked information on official law, even though the data included referred to a legal framework). Other authors relate early modern *ars mercatoria*-literature to legislation, customs and academic law: Emily Kadens, “The Myth of the Customary Law Merchant,” *Texas Law Review* 90 (2012), 1153–1206, 1171–1173 (pointing at the virtual absence of customs and other rules in merchant handbooks); Francesca Trivellato, *The Familiarity of Strangers: The Sephardic Diaspora, Livorno, and Cross-Cultural Trade in the Early Modern Period* (New Haven: Yale University Press, 2009), 153–177 (merchant manuals gradually interacted with academic doctrine with respect to the evidential value of business correspondence).

⁴ The literature on the subject is abundant. Some excellent appraisals can be found in Albrecht Cordes, “À la recherche d’une Lex mercatoria au Moyen Âge,” in Otto G. Oexle and Pierre Monnet (eds.), *Stadt und Recht im Mittelalter: La ville et le droit au Moyen Âge* (Göttingen: Vandenhoeck & Ruprecht, 2003), 117–132; Kadens, “The Myth,” 1153–1206; Karl O. Scherner, “Lex mercatoria – Realität, Geschichtsbild oder Vision,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* 118 (2001), 148–167.

⁵ For the remainder of the text, the term ‘custom’ is understood to mean a repeated practice or convention based on a normative belief within a group of persons. This definition conforms with the early modern definition of *consuetudo*, which jurists construed as consisting of *usus* (a durable practice) and *tacitus consensus* (implied consent as to its normativity). In the sixteenth century, a *consuetudo* was legally binding if it was reasonable and not explicitly prohibited in legislation. See Roy Garré, *Consuetudo: Das Gewohnheitsrecht in der Rechtsquellen- und Methodenlehre des späten ius commune in Italien (16.–18. Jahrhundert)* (Frankfurt am Main: Vittorio Klostermann, 2005), 66–72, 145–60; Kadens, “The Myth,” 1163–1166.

Between 1490 and 1600, no less than 103 *ars mercatoria*-manuals rolled off the printing presses in Antwerp. In this period, this production made the city the second-largest centre for such editions, closely following Venice (136) and well ahead of Frankfurt (76). The majority of the Antwerp merchant books were published after 1540, when Antwerp was experiencing its heyday as a leading commercial metropolis of the West, until its Golden Age ended around 1565. Antwerp printers such as Simon Cock and Jan van Waesberghe produced several guidebooks, even though it would be an exaggeration to consider them publishers specializing in this genre. The majority of the merchant manuals published in Antwerp between 1490 and 1600 dealt with letter writing and translation (30.77%): they were dictionaries and books containing common phrases in several languages. Other popular subjects were coins and currencies (20.39%), and mathematics and bookkeeping (25.96%).⁶ Apart from some printed versions of princely laws regarding marine insurance, which were brought onto the market for more than just merchant use,⁷ there were virtually no other publications on the subjects of official law or merchants' customs. Some treatises contained summaries of academic or imperial (German) law, but their purported audience was clearly not a mercantile one.⁸ Moreover, municipal law that was imposed by the Antwerp government was almost never printed. Occasionally, municipal bylaws were issued in print, but they did not concern topics of commerce.⁹ The first printed edition of Antwerp municipal law containing chapters on mercantile contracts dates from 1582,¹⁰ long after Antwerp's glory had passed.

The numbers mentioned above only relate to published guidebooks, which were also called *manuali*. However, there were also private instructional books, read within the circle of one

⁶ Puttevils, "The Ascent of Merchants," 175.

⁷ A Dutch version of the princely ordinance of October 31, 1563 was printed by Willem Silvius and Willem van Parys. Dutch and French versions of the princely statute of October 11, 1570 and of January 20, 1571 were printed by Christopher Plantin. See Henry L.V. De Groote, *De zeeassurantie te Antwerpen en te Brugge in de zestiende eeuw* (Antwerp: Marine Academie, 1975), 29–30.

⁸ In 1560, Simon Cock published *Den Spieghel der Recht: uut den natuerlijcken, bescrevenen, gheestelijcken, wereltlijcken, ende anderen ghebruyckelycken rechten ...*, which was a translation of Justin Göbler's *Der Rechten Spiegel*, which had been published in Frankfurt in 1552. In 1556, Cock had also issued *Keyserlycke statuten, ordinantien, costumen, en ghewoonten, ende bisonder elcker stadt rechten, principalijck den keyserlijcken landen aengaende*, which was a translation of Göbler's *Keyserlicher und des h. Reichs rechten* (Frankfurt, 1552). In the introduction of both works, Cock stressed that the books were intended for administrators and judges. Their content as to mercantile issues is minimal.

⁹ Bylaws concerning procedure in the Municipal Court were regularly printed; the most important are those dating from March 1565 (ns) and May 1576.

¹⁰ *Rechten, ende costumen van Antwerpen* (Antwerp, 1582).

family or firm only. For this genre, the term *zibaldoni* is often used.¹¹ An example of a *zibaldone* was the *Regula transporti* by Willem van der Lare. It was most probably written in the early 1530s. Parts of it reflect commercial dealings of the 1520s; others were meant to be advice and guidelines for trade. Those latter sections might additionally consist of excerpted fragments from older, unknown manuals. The *Regula transporti* lists information on weights, currencies and taxes in diverse locations, as well as warnings on trading costs.¹² Comparable manuals were still common in the seventeenth century. Treatises of this type were read among the staff and partners of large firms, and in particular by trainees.¹³ As such, *zibaldoni* and *manuali* may yield further information about which rules, applied in the Antwerp market, their authors thought it necessary to provide. The rest of this chapter will focus primarily on these *manuali*, in order to answer the third of the aforementioned research questions, namely, that concerning the influence of authorities on the contents of locally printed *ars mercatoria*-literature.

3. Did Merchant Manuals Stipulate Legal Requirements? The Example of Jan Ympyn's *Nieuwe Instructie*

With regard to intersections between municipal law and the prescriptive content of instructional books, a recent thesis on the functionality of bookkeeping manuals of the later fifteenth and in the sixteenth centuries, in Antwerp and elsewhere, is important. In 2013, Oscar Gelderblom argued that in these periods, handbooks on accounting not only facilitated the application of double-entry bookkeeping, but they also had a normative function. Even though a high number of such manuals were published, they still did not suffice to promote the technique; acquiring the skills of double-entry bookkeeping was dependent on the teaching and tutoring by specialists. Thus, the repeated publication of manuals, according to Gelderblom, mostly served the purpose of setting standards as to the form that accounting books should have in order to be considered sufficient evidence in courts. Over the course of the early sixteenth century, the municipal government of Antwerp had accepted books and letters as lawful proof of debt. Thenceforth, Gelderblom claims, the Antwerp authorities started stipulating what merchant books should look like. Formal requirements for double-

¹¹ The distinction between *zibaldoni* and *manuali* was first made in Peter Spufford, "Spätmittelalterliche Kaufmannnotizbücher als Quellen zur Bankengeschichte: Ein Projektbericht," in Michael North (ed.), *Kredit im spätmittelalterlichen und freuneuzeitlichen Europa* (Köln: Böhlau, 1991), 103–120.

¹² Antwerp, Plantin-Moretus Museum, Manuscripts M 318.

¹³ For an overview, see Jean Denucé, *Koopmansleerboeken van de XVIe en XVIIe eeuwen in handschrift* (Brussels: N.V.Standaard-boekhandel, 1941).

entry books were communicated by means of locally printed instructional tracts, among them the *Nieuwe Instructie* by Jan Ympyn.¹⁴

3.1. The “Right Manner” for Keeping Books

The *Nieuwe Instructie* was printed and offered for sale in Antwerp in 1543, on behalf of Jan Ympyn’s widow, after he had passed away in September 1540. Jan Ympyn was a mercer who had spent some years in Italian cities, particularly in Venice, where he became acquainted with Luca Pacioli’s work. In 1494, Pacioli had published his seminal *De computis et scripturis* on double-entry bookkeeping. Ympyn continued gathering information on bookkeeping after his return to Antwerp around 1519, and acquired knowledge of the recent literature as well.¹⁵ In her introduction to the *Nieuwe Instructie*, Ympyn’s widow Anna Swinters mentions that several renowned and rich merchants had asked Ympyn to write a treatise on the double-entry variety of bookkeeping “for the benefit and utility of all merchants residing in this country.” She anticipated controversy over the contents of the manual, insisting that her husband had practised double-entry bookkeeping since his youth, and that while writing the book he had received help from experts. Moreover, before applying for a printing privilege, Anna had consulted councillors of a princely council (the Council of Finance, or perhaps the Council of Brabant). They in turn had sought advice from merchants, who had argued in favour of publication.¹⁶

At the start of the *Nieuwe instructie*, Ympyn states that his treatise serves to bring the “profitable and laudable art and science” of double-entry bookkeeping to Antwerp, because in his view it was badly practised, for example, among partners.¹⁷ Ympyn writes that

¹⁴ Oscar Gelderblom, *Cities of Commerce: The Institutional Foundations of International Trade in the Low Countries, 1250–1650* (Princeton: Princeton University Press, 2013), 94–100.

¹⁵ Raymond De Roover, “Een en ander over Jan Ympyn Christoffels, de schrijver van de eerste Nederlandsche handleiding over het koopmansboekhouden,” *Tijdschrift voor Geschiedenis* 52 (1937), 163–179.

¹⁶ Jan Ympyn Christoffels, *Nieuwe Instructie ende bewijs der looffelijcker consten des rekenboecks, ende rekeninghe te houdene nae die Italiaensche maniere ...* (Antwerp: Gillis Copyns van Diest, 1543), fol. 1r. A translation of this introduction can also be found in the French edition, which dates from 1543 and which was co-authored by Anna Swinters. Jan Ympyn Christoffels, *Nouvelle instruction et remonstracion de la tres excellente science du livre de compte ...* (Antwerp, 1543), fols. 1r–v. There are some interesting differences between both editions: the French introduction does not say that Anna herself finished the manuscript, for example. There is also an English edition, dating 1547, in which the introduction by Anna Swinters does not figure. It is indeed very possible that Anna was herself involved in the teaching of accounting or arithmetic. New research has brought to light the fact that schoolmistresses were very common in sixteenth-century Antwerp. See Ad Meskens, *Practical Mathematics in a Commercial Metropolis: Mathematical Life in Late Sixteenth-Century Antwerp* (Dordrecht: Springer, 2013), 214–215.

¹⁷ Ympyn, *Nieuwe instructie*, fol. 2r; Ympyn, *Nouvelle instruction*, fol. 2r.

accounting books are “the mirror held up to the merchant”: bookkeeping is an instrument that keeps one aware of the loss of money.¹⁸ Thereafter, Ympyn contends that among those who might profit from the book are teachers, tax collectors, legislators and judges. Ympyn mentions that judges can use his guidebook when deciding disputes and lawsuits that come from badly kept books.¹⁹ It is precisely this statement that Gelderblom takes as his main argument for underpinning the presence of an official rule as to the formal requirements of account books in Antwerp, and which he claims was proffered for the first time in Ympyn’s tract. Upon closer examination, however, it becomes clear that what Ympyn meant was that his text would allow judges to discover the fraudulent use of accounts; when reading the *Nieuwe instructie*, that is, they would acquire the expertise to sense whether allegations of fraud regarding entries in books had any ground. In point of fact, then, Ympyn’s manual was not reflecting a legal standard but rather advising caution and honesty in keeping books. Bookkeeping practices were very diffuse still in the 1540s, and what Ympyn presented as a viable method (“manner”) consisted of both abstract principles and concrete instructions. Few of them were shared among groups of merchants and, interestingly enough, many were the author’s creation.

Ympyn speaks of the “*rechte maniere*” (“the right manner”) to keep books²⁰ and he sets forth guidelines that at the same time warrant the efficient use of the books and protect the reputation of the merchant drafting them. The language of Ympyn’s treatise stands in a tradition of describing the ideal merchant as a diligent and prudent individual. The “right manner” referred to the correct application of techniques of bookkeeping, which had the purpose of ascertaining how much was on hand and what was due. Ympyn linked instructions on the “right way” of keeping accounts to an optimal behaviour by merchants doing so.

¹⁸ Ympyn, *Nieuwe instructie*, fol. 4v “*maer dese ordinantie, die den spiegel des coopmans is houwende ...*”; Ympyn, *Nouvelle instruction*, fol. 7r “*par ceste ordonnance, qui est le miroir des marchans ...*”

¹⁹ Ympyn, *Nieuwe instructie*, fol. 2r “*Als inden eersten allen wethouderen ende iusticieren, op datse hier af kennisse hebbende weten te discerneren, ende rechtelijck moghen handelen tusschen ende in die differencien ende geschillen, dewelcke onder die coopliden dagelijcx geschien ende rysen, so by fauten van qualick boeck houden, als anders, soe men doet in Italien ...*”; Ympyn, *Nouvelle instruction*, fol. 5r “*Et premierement a tous iusticiers, affin quilz ayent cognoissance de ce que dessus dit est, pour discerner tous differendz & altercations meues, & qui iournellement se meuvent entre les marchans, tant par faulte de tenir mal leurs livres de comptes que aultrement. Comme on fait en Italie ...*” The English version has “very commodious & profitable to all iusticiaries, because theie maie have knowledge to discern al differences and alteracions that daily happeneth emong marchantes, as well by faute of evil keypyng of their bokes of accomptes as otherwise (as is used in Italy).” See Jan Ympyn Christoffels, *A notable and very excellente woorke ...* (s.l., 1547), fol. 4.

²⁰ Ympyn, *Nieuwe instructie*, fol. 3v and fol. 11r.

Ympyn says that the merchant must be “like a cock, who is vigilant day and night,”²¹ and who insists that books are kept up-to-date.²²

In spite of references to a “manner,” Ympyn’s tract is not legal, or even normative. When occasionally it mentions a “custom,” his manual describes “best practices,” as it were, followed in order to avoid confusion or allegations afterwards.²³ When using the term “custom,” Ympyn does not refer to what, in literature regarding the history of commercial law, is often referred to as “customs of merchants.” Such customs are practices that are normative and shared among groups of traders: if a merchant failed to honour the custom, he was exposed to sanctions in one way or another.²⁴ Even if these terms possibly hinted at some “usual” conduct by bookkeeping merchants (in Italian cities, for example), Ympyn did not consider the phrases referring to them as mandatory or as setting boundaries to possible behaviour.

Some of Ympyn’s lines certainly contain stronger wording, particularly when they touch upon fraud. For example, Ympyn states that it was common practice in Italy to put the symbols for *livre*, *sou* and *denier* before the number of the amount, and not behind it, because otherwise the numbers of debts “could be obfuscated.”²⁵ Errors in entries should not be expunged but were to be supplemented with a new entry or new writing, which would “prevent the appearance of fraud or carelessness.”²⁶ Yet even from these warnings it is evident that Ympyn did not envisage some sort of formal standard for double-entry bookkeeping. Instead, his treatise relied for the most part on a general principle of carefulness, which would ensure that any damage to reputation would be avoided.

3.2. The Lack of Uniformity and Detail in Accounting Practices and Rules

²¹ Ympyn, *Nieuwe instructie*, fol. 5r.

²² Ympyn, *Nieuwe instructie*, fol. 4v.

²³ Ympyn, *Nieuwe instructie*, fol. 4r “*die goeden costume van den Italiaenen ...*” (“the good custom of the Italians ...”); fol. 8r “*is oock een costume ende groote redene.*” References to customs could have an extraterritorial flavour. In the introduction (fol. 4r), Ympyn refers to the “*maniere ende usantie van Venegien*” (“the manner and usage of Venice [of bookkeeping]”) and he states that “*door middele van welcker costumen men lichtelijck comen sal totter kennissen vande usantien van allen anderen steden*” (“on the basis of this custom one will easily gain knowledge of the usages of all other cities”).

²⁴ The literature on the subject is abundant, yet unsatisfactory in many respects. For a recent and critical appraisal, see Kadens, “The Myth.”

²⁵ Ympyn, *Nieuwe instructie*, fol. 15v.

²⁶ Ympyn, *Nieuwe instructie*, fol. 19r.

There is no evidence that the Antwerp municipal administrators (aldermen) were involved in the publication of Ympyn's treatise, or that the Antwerp government imposed or even desired standards as to the form of account books in one way or another. The printing privilege, which was far from unusual for "technical" monographs such as Ympyn's book, was for four years. It was granted by Charles V, Lord of the Netherlands and Holy Roman Emperor, following examination of the manuscript by members of government. It is unlikely that the Antwerp magistracy was involved in the reviewing or publication process.

Moreover, evidence suggests that the Antwerp aldermen, who were also the judges in the city's Municipal Court, did not care too much about the exact formal structure of accounting books. Ever since the last decade of the fifteenth century, private documents could be submitted to the Antwerp aldermen-judges as proof. They could include acknowledgments of debt, accounts and account books. In the Municipal Court of Antwerp a document that had been written by the claimant, and which was presented as evidence of a debt, could be reinforced by means of his oath.²⁷ In the 1490s and in the early sixteenth century, the oath was required because private documents were still considered to be "half-proof" (*probatio semiplena*), though reservations of this type disappeared throughout the 1520s and 1530s. Nevertheless, the prevalent rule of academic doctrine remained, namely, that *libri rationum* had to be confirmed with an oath in order to be acknowledged as full evidence,²⁸ such that this argument was still raised in the Municipal Court of Antwerp well into the later sixteenth century.²⁹ In the compilations of Antwerp municipal law, which were made in 1548, 1570, 1582 and 1608, no detailed rules as to the form of account books, required for their evidential value, are mentioned. There are no traces of official rules on that subject. These compilations acknowledged the use of books, for example, in seizure and bankruptcy proceedings,³⁰ but they did not stipulate specific formal requirements. In the 1608 collection, it was only said that "merchant books" served as valid proof among merchants of honour, if they had been well kept, if the cause of the debt had been registered in the entries, and if the claimant

²⁷ Antwerp, Municipal Archives (hereafter AMA), Vierschaar (hereafter V) 1237, fol. 16r (October 21, 1542). This had been done in the 1490s as well: AMA, V1231, fol. 121v (June 14, 1490) and V1231, fols. 129v–130v (July 26, 1491). For the learned-procedural context of this oath *in supplementum probationis*, see Jean-Philippe Lévy, *La hiérarchie des preuves dans le droit savant du Moyen Âge depuis la renaissance du droit romain jusqu'à la fin du XVIe siècle* (Paris: Librairie du Recueil Sirey, 1939), 106–127.

²⁸ Maura Fortunati, *Scrittura e prova: I libri del commercio nel diritto medievale e moderno* (Roma: Fondazione Sergio Mochi Onory per la Storia del Diritto Italiano, 1996), 111–116, 127–138; Lévy, *La hiérarchie*, 78.

²⁹ AMA, *Processen*, M9993, *salvatiën* (February 20, 1592), s. 32.

³⁰ *Costuymen 1570*, 522 (seizure of claims is allowed), *Costuymen 1582*, 530–532; *Costuymen 1608*, 388 (insolvents should refrain from changing or transferring their books).

presenting his books was willing to confirm their genuine nature under oath.³¹ Therefore, during most of Antwerp's Golden Age, account books could be used as proof, as could other documents mentioning a debt; they could, as could any other evidential material, be contested on the basis of charges of forgery or manipulation as well. However, in regard to the contents of account books, the aldermen-judges relied on general and mainly undetailed principles.

The absence of subsequent publications of Ympyn's book, which in 1543 had received a printing privilege for four years, additionally argues against Ympyn's book providing any standard of evidence by law. Moreover, later bookkeeping manuals issued by Antwerp publishers in the 1550s and 1560s did not contain the same guidelines as found in Ympyn's manual.³² This difference corresponds with the introductory parts of Ympyn's treatise, which, as was mentioned, are defensive. Ympyn's widow even states that it was to be expected that the book would meet with opposition "from people with bad intent that will criticise it for its novelty."³³ Ympyn himself explains why practices pertaining to the Venetian method that he follows, are in his opinion to be preferred over others.³⁴ This Venetian approach consisted of guidelines, but they were also rather abstract in many ways. Pacioli most probably devised instructions when making general principles and best practices more concrete. Likewise, Ympyn sometimes followed his own intuition, or responded to new problems; at many points he advised in a different way to Pacioli.³⁵ Ympyn goes some way to admitting to this divergence himself in the first pages of his tract. He mentions that since not every detail can be answered in the manual, and because "every day more and more is coming to the light of day" in the art of bookkeeping, every reader is advised "to use his head."³⁶

³¹ *Costuymen 1608*, 656 (s. 42). The description in the 1608 law book comprised any type of book (one-entry, double-entry, inventory...).

³² In the 1550s, Valentin Mennher published handbooks on bookkeeping that were based on a precursor or crude form of double-entry bookkeeping. Between 1560 and 1563, he adopted the variety that was depicted in Ympyn's handbook. See Raymond De Roover, "Aux origines d'une techniques intellectuelle: la formation et l'expansion de la comptabilité à partie double," *Annales d'histoire économique et sociale* 9 (1937), 171–298, 286; P.G.A. de Waal, *Van Paciolo tot Stevin: een bijdrage tot de leer van het boekhouden in Nederland* (Roermond: Romen, 1927), 124–125. For a detailed overview of the (varying) contents of other Antwerp instructional guides on accounting, see de Waal, *Van Paciolo tot Stevin*, 89–277.

³³ Ympyn, *Nieuwe instructie*, fol. 1r.

³⁴ Ympyn, *Nieuwe instructie*, fol. 4r.

³⁵ John B. Geijsbeek, *Ancient Double-Entry Bookkeeping* (Denver, CO: John B. Geijsbeek, 1914), 113; Basil Yamey, "Pacioli, Manzoni, Oldcastle and Ympyn re-visited," in Esteban Hernández-Esteve and Matteo Martelli (eds.), *Before and after Luca Pacioli* (Conference publication, Florence, 2011), 290. The dialectical relation between bookkeeping tracts and practice in the later fifteenth and the sixteenth centuries is detailed in David Oldroyd and Alisdair Dobie, "Bookkeeping," in John R. Edwards and Stephen P. Walker (eds.), *The Routledge Companion to Accounting History* (London: Routledge, 2009), 95–119, 103–108.

³⁶ Ympyn, *Nieuwe instructie*, fol. 4r.

In summary, then, Ympyn did not perceive his guidebook as imposing detailed instructions that were to be followed in order to preserve the legal-evidential value of account books in the Municipal Court of Antwerp.³⁷ Instead, Ympyn presented a rational method of keeping books, which when applied, would be beneficial. However, if a merchant were to use double-entry bookkeeping too loosely, inconsistencies might trigger allegations of fraud and cumbersome procedures,³⁸ with reputational damage resulting from such practices. Warning of this possibility was given more in terms of a caution, though, rather than as a standard of formal requirements. Ympyn's advice could be stringent, but even in that case he referred to best practices, not to norms. Not only was his advice not reflecting official law, it was not based on the customs of merchants either. Best practices could gain recognition among experts, but opinions could still differ. Even those practices considered "best" by specialists were not phrased or conceived of as being mandatory or delineating in any way. They were directive, not normative. Ympyn intended to guide, not to hold up a yardstick.

4. Hearing the Author's Voice: Individual Advice Versus Norms and Best Practices

The aforementioned conclusions concur with other guidebooks concerning business practice. In many of the merchant-orientated manuals printed at Antwerp, the advice of the author is not a reflection of customs, and at times not even of practices among merchants, even though wording could appear normative.

³⁷ Gelderblom also refers to "a legal tract published in Antwerp in 1584," which "underlined that merchants had to use double-entry bookkeeping to preserve the evidential value of their ledgers." See Gelderblom, *Cities of Commerce*, 98. The reference is to Wilhelm F. Lichtenauer, *Geschiedenis van de wetenschap van het handelsrecht in Nederland tot 1809* (Amsterdam: Noord-Hollandsche Uitgevers, 1956), 69. In Lichtenauer, a collection of *consilia* by Elbertus Leoninus is cited: *Centuria consiliorum* (Antwerp, 1584), 80 (cons. 12, 22). At the place referred to, it is mentioned that "*libri ... more mercatorum non fuerunt scripti, & quod inter mercatores nulla fides secundum stilum & morem illorum adhiberi illis possit.*" This is Leoninus' opinion, not that of the Antwerp aldermen. Leoninus refers in his *consilium* to general principles on the possible fraudulent nature of errors in books. It is not clear whether double-entry bookkeeping was at stake in the case for which the *consilium* was drawn up.

³⁸ This was also observed by Raymond De Roover. See Raymond De Roover, *Jan Ympyn: Essai historique et technique sur le premier traité flamand de comptabilité (1543)* (Anvers: Veritas, 1928), 24: "*L'aspect juridique de la comptabilité n'a pas échappé à Jan Ympyn, qui se montre constamment préoccupé d'augmenter les garanties de sincérité et de prévenir les fraudes dans les livres de commerce. Il ne manque pas de faire force recommandations et de prémunir les commerçants contre certaines pratiques qui pourraient mettre en doute l'authenticité des écritures.*" In this respect, a mention in another accounting manual is interesting: in his 1563 treatise on bookkeeping, Valentin Mennher warned [who?] not to cross out erroneous entries "*anderst warden sie fur falsch geachtet, und haben im Rechten kain kraft*" ("otherwise they will be considered false, and will have no value in court"). See Valentin Mennher, *Buech halten, Kurtz begriffen durch zway buecher* (Antwerp, 1563), fol. 2r.

In 1590, for instance, a merchant manual was published in Amsterdam by an unknown author, called *Tresoir van de maten* (“Treasury of measures”). Despite its place of publication, its contents clearly reflect mercantile practices of Antwerp. As is known, following the upheaval of the Dutch Revolt, many merchants had left the Southern Netherlands and Antwerp in particular, taking refuge in the North and often in Amsterdam. These immigrants naturally brought with them their business expertise. The author of *Tresoir* was possibly one of them. *Tresoir van de maten* contains sections on marine insurance, which had been practised to a considerable extent in Antwerp since the 1530s. Though not commonly discussed in *ars mercatoria*-guidebooks published in the city,³⁹ *Tresoir* lists some advice in matters of marine insurance. For example, it warns merchants not to sign insurance contracts for voyages for which neither the port of departure or the port of arrival were in the Low Countries, because it was to be feared that news would arrive too late, and for such insurances, fraud could easily be orchestrated.⁴⁰ *Tresoir* also states that one should not insure ships left unspecified in the insurance contract, or ships for which the name of the captain was excluded.⁴¹ These lines of advice appear as somewhat out-of-touch, though, with mercantile realities at that time. In the third quarter of the sixteenth century, both long-distance insurance policies as well as insurance contracts in which the captain was named, albeit with the additional clause “or anyone else,” were commonly signed in Antwerp.⁴²

These sections of *Tresoir* are written in instructional language that indicates exercising caution and avoiding risk. In this respect, *Tresoir* corresponds to Ympyn’s *Nieuwe instructie*. However, *Tresoir* also contains one reference to what from the description can be interpreted as referring to a custom. It states that marine insurance of “leaky merchandise” is not to be practised, but that in case of (intentionally inflicted) damage to such cargo, for the purpose of saving the ship, the general average (also called gross average) is “always” applied, except for when “no average is agreed upon.”⁴³ The wording of the passage (“always”) hints at a shared practice (a custom), or a mandatory official rule found in legislation or imposed

³⁹ In his 1563 manual on bookkeeping, Valentin Mennher added some examples of entries reflecting the payment of a premium for marine insurance. See de Waal, *Van Paciolo tot Stevin*, 138–139. Examples of a charter party and a bill of lading can be found in John Weddington, *A breffe instruction, and manner, how to kepe, marchantes bokes, or accomptes...* (Antwerp, 1567), fols. 36v–37r. The letter book by Meurier, containing an insurance contract, is the only example. It will be discussed hereafter.

⁴⁰ *Tresoir vande Maten, van Gewichten, van Coorn, Landen, vande Elle ende natte Mate, oock vanden Gelde ende Wissel, ende ander practyquen ende vergaderinghen, seer profytich ende gevoechlyck* (Amsterdam, 1590), 140.

⁴¹ *Tresoir*, 140.

⁴² De Grootte, *De zeeassurantie*, 100–101, 110–111.

⁴³ *Tresoir*, 140.

through judicial practice, providing that this general average (also) applies to merchandise such as oil and wine. However, neither official law nor mercantile customs referred to this practice in such detail. The Municipal Court of Antwerp stipulated as a general rule that damages that had intentionally been inflicted in order to save the vessel or its cargo were to be borne collectively by all owners of the hull and of the merchandise transported with the ship.⁴⁴ This “general average” contrasted with “particular average,” which referred to damages caused by accident or storms and not by deliberate action. In the case of particular average, costs could not be recovered, except for when the shipmaster could be accused of negligence or fault.⁴⁵ There are no sources that stated that this recuperation also applied to perishable merchandise. Still, from the general official rule referred to, in addition to a lack of detail as to exceptions, it can be deduced that leaky cargo could indeed be remunerated on the basis of general average. The mention that “no average” could be provided, most likely in the chartering or carriage contract, might refer to an older practice of shipmasters and charterers taking on contractual liability for damages even when caused by accident or weather conditions.⁴⁶

Even so, in spite of some similarities to rules on general average, the words of the author of *Tresoir* do not represent common insurance practices and the laws regulating them. Insurance of “leaky” cargo was also possible by law. According to the Antwerp municipal law books of 1570 and 1582, insurance coverage of such shipments was allowed, on the condition that the composition of the cargo was explicitly mentioned in the insurance contract.⁴⁷ A princely ordinance of January 1571 regarding marine insurance confirmed this rule.⁴⁸ In practice, the nature of insured freights was often not detailed in the insurance contract,⁴⁹ but this is not what *Tresoir* refers to. Furthermore, the author of *Tresoir* seems to have missed the fact that general average was often combined with marine insurance, and that this practice was also lawful. If merchandise was thrown overboard, in order to elevate the hull of a stranded ship,

⁴⁴ E.g. AMA, V1235, fol. 26v (1517).

⁴⁵ De Groote, *De zeeassurantie*, 19–20.

⁴⁶ Dave De ruysscher, “Antwerp 1490–1590: insurance and speculation,” in Adrian Leonard (ed.), *Marine insurance: international development and evolution, 1300–1700* (London, 2015, in the press).

⁴⁷ “Deterioration” was even mentioned as an insurable peril according to the 1570 and 1582 law. See *Costuymen 1570*, 602; *Costuymen 1582*, 402 (s. 4), 404 (s. 13). See also *Costuymen 1608*, 216–218 (leaky goods can be insured, if mentioned in detail in the contract).

⁴⁸ A 1598 Amsterdam ordinance also provided for this same rule (coverage is possible, if the leaky merchandise or victuals are mentioned in the insurance policy). See Johan P. van Niekerk, *The development of the principles of insurance law in the Netherlands from 1500 to 1800*, 2 vols. (Johannesburg: Juta, 1998), 1:292–293.

⁴⁹ De Groote, *De zeeassurantie*, 99–100 (listing vague descriptions of insured freights in sixteenth-century Antwerp insurance contracts).

for example, then the marine insurers of the jettisoned cargo could not waive their contractual liability by pointing to the captain.⁵⁰ What the aforementioned passage in *Tresoir* might hint at is that in average calculations, damage to merchandise was not always taken into account, even when the leaky merchandise had been jettisoned so as to save the ship.⁵¹ Yet in that case, *Tresoir* states a contrary rule, and then it still overlooks the relevance of insurance. It was actually much safer to insure “leaky” cargo than to rely on any general average. While *Tresoir* in this regard did use normative wording, it was actually phrasing advice in a different way to the description in contemporary customs and official law.

A comparable conclusion can be drawn from the advice in *Tresoir* that transferable acknowledgments of debt (bills obligatory, called *obligaties*) “must” mention the cause of the debt.⁵² It had formally been accepted by the Antwerp aldermen that this was not required: “abstracted” *obligaties* were also considered lawful and legally valid.⁵³ Again, it seems that the author of *Tresoir* was being cautious, but that he was not referring to a custom or other rule when using such normative phrasing. Furthermore, it is very unlikely that the lines on *obligaties* and average of leaky merchandise in *Tresoir* reflect the norms of Amsterdam instead of Antwerp. In 1590, Amsterdam official law concerning mercantile contracts was still sketchy. A bylaw on the topic of marine insurance was only passed in 1598, making allowances for the insurance of perishable merchandise, on the condition that it was mentioned in the insurance contract.⁵⁴ This stipulation was the same rule as that which applied in Antwerp before then. Even before 1598, the sections in the Antwerp municipal law book concerning marine insurance had been used in Amsterdam.⁵⁵ In addition, transferable bills obligatory handed out to the bearer were very common in Holland at around the time when *Tresoir* was being written.⁵⁶ It is very likely, then, that Antwerp rules on this mercantile document were exported to the city on the Amstel before the writing of *Tresoir*, even though

⁵⁰ Van Niekerk, *The development*, 1:78–79.

⁵¹ A. Weytsen, *Een tractaet van avarien*, ... (Haarlem, 1631), 6–8. Weytsen is not explicit, but one can think of some reasons for these reservations. Proof of causality between the act of damaging and the damages to perishable cargo is likely to have been difficult. Especially when the ship was delayed, it could be suspected that the merchandise had expired before it was thrown overboard. It goes without saying that foodstuffs that were over date were probably the first to be discarded into the ocean in case of stranding.

⁵² *Tresoir*, 188.

⁵³ AMA, V69, fol. 25v. (April 19, 1559), V69, fol. 59v. (June 21, 1567) and V70, fol. 19v. (August 6, 1575).

⁵⁴ van Niekerk, *The Development*, 1:292.

⁵⁵ Dave De ruysscher, “Antwerp commercial legislation in Amsterdam in the 17th century: Legal transplant or jumping board?,” *The Legal History Review* 77 (2009), 459–479, 464, 472–473.

⁵⁶ J.M.F. Fritschy, “Holland’s Public Debt and Amsterdam’s Capital Market,” in Carmen Sanz Ayán and Bernardo J. García García (eds.), *Banca, crédito y capital: La Monarquía Hispánica y los antiguos Países Bajos (1505–1700)* (Madrid: Fundación Carlos Amberes, 2006), 39–59, 53.

there is no evidence of an official rule in Amsterdam hinting at “abstracted” *obligaties* before the 1630s.⁵⁷

All this documentation yields obvious *caveats* as to any possible links between business practices, norms concerning trade and the prescriptive contents of *ars mercatoria*-literature. What was written in merchant guidebooks did not *per se* reflect official law or mercantile custom, and not even practices. Other manuals containing, for instance, translations or models of letters, also include examples of *obligaties* in which the cause of its issuance was mentioned, for example.⁵⁸

Some of these instructional tracts include full contracts that were not commonly drawn up between merchants. Instead, they contain what according to the author was an ideal contract, even when it was sometimes presented as a specimen taken from business practice. An example of such illustrations can be found in a letter manual by Gabriel Meurier that was published in Antwerp in 1558.⁵⁹ It contains a contract of marine insurance, under the heading “*Lettres d’assurances*” (“letters of insurance”). The author presents the agreement as having been drawn up at Antwerp; the text mentions Lazarus Tucher, a well-known Antwerp merchant, as the insured party, and provides for the insurance of shipments from Antwerp to Lisbon. The contract contains some clauses that were quite common around 1558, such as references to the customs of Antwerp and London, and references to the insurance of the perils of man and sea. It even paraphrases a custom concerning the mandatory payment by underwriters within two months after their summons to do so. Merchants considered this norm to be a *consuetudo* that bound insurance underwriters, and it had been acknowledged by the Municipal Court of Antwerp well before 1558.⁶⁰ Nevertheless, there are also some strange sections in Meurier’s contract. For example, it was not common to list the

⁵⁷ De ruysscher, “Antwerp commercial legislation,” 474. After establishing the Exchange Bank in 1609, transferable bearer bills were denounced by the Amsterdam administrators. This was not the case before that time.

⁵⁸ Nicolas Berlaimont, *Dictionariolum hexaglosson cum colloquiis aliquot sex linguarum ...* (Antwerp, 1585) fols. 157v–161v; Jean Bourlier, *Stile et maniere de composer lettres missives avec plusieurs reigles & argumens à ce convenables: ensemble obligations, quittances, & lettres de change, le tout à l’utilité d’un chacun* (Antwerp, 1566), 172–178.

⁵⁹ Gabriel Meurier, *Formulaire de missives, obligations, Quittances, lettres de change, d’assurances, & plusieurs Epitres familières, messages, requêtes, & instructions notables ...* (Antwerp, 1558), fol. 13r–14v.

⁶⁰ Already in the 1530s, the Antwerp administrators labelled this rule as being ‘old law.’ See Oskar De Smedt, “De keizerlijke verordeningen van 1537 en 1539 op de obligaties en wisselbrieven. Eenige kantteekeningen,” *Nederlandsche Historiebladen* 3 (1940), 15–35, 19.

composition of insured freights in detail:⁶¹ Meurier's text of the agreement mentions "*cuiivre, toyles, cire & autres marchandises*." Moreover, it lists barratry among the risks covered by the insurance underwriters. This provision entailed that conduct by the shipmaster and his crew leading up to damages of insured freights was considered insurable. However, in this period, the 1550s, many merchants vacillated over the issue as to whether such insurance was possible.⁶²

It is possible that Tucher's contract was genuine, and that it had been somewhat exceptional. However, a "reproduction" of a bill obligatory in another part of Meurier's book, in the form that according to Meurier was commonly used by the clerks of the Antwerp aldermen,⁶³ leaves less room for doubt in this regard. Contracts, agreements and promises could be submitted to the municipal offices in Antwerp for registration. In the 1550s, filing such records was no longer necessary for the evidential value of documents, but it was still commonly done. Meurier's *obligatie* is very detailed: it contains the reason for its writing (a loan), the addition that the debtors would pay at first invitation, and a provision of collateral in the form of a house, the location of which is described in detail. Moreover, the *obligatie* mentions that the debtors abandon invoking legal arguments when being asked to pay up. None of these features were common in contemporary *obligaties*, and some of them were never stated.⁶⁴ It seems that for this text, and maybe also with regard to the insurance contract mentioned, Meurier mingled actual mercantile practices with his own insights so as to make his argument.

Meurier and Ympyn both presumed, upon their license as authors, to present a picture of mercantile techniques and arrangements as they saw fit, and in the form that they believed was best. The individuality of authors is thus a variable to be taken into account here. Merchant guidebooks were often written by teachers,⁶⁵ and their function as supplementary materials for students can be understood from remarks in the introductory sections of these

⁶¹ De Groote, *De zeeassurantie*, 99.

⁶² Guido Rossi, *Insurance in Elizabethan England: the London Code* (Cambridge: Cambridge University Press, 2015), 173–176 (the pages refer to a manuscript version). The regional diversity seen?? at Antwerp in the 1550s and thereafter, when draft legislation was debated over among legislators and merchants. See Dave De ruysscher and Jeroen Puttevils, "The Art of Compromise: Legislative Deliberation on Marine Insurance Institutions in Antwerp (c. 1550–c. 1570)," *BMGN-Low Countries Historical Review* (2015), in press.

⁶³ Meurier, *Formulaire de missives*, fol. 22v–23 r.

⁶⁴ Puttevils, "The Ascent of Merchants," 247. The author systematically studied 1,132 bills obligatory handed out in Antwerp between 1490 and 1587.

⁶⁵ Henry L.V. De Groote, "De zestiende-eeuwse Antwerpse schoolmeesters," *Bijdragen tot de geschiedenis* 19 (1967), 179–318 and 20 (1968), 5–52; Meskens, *Practical Mathematics*, 44–47.

manuals. It was commonly stressed, for example, that the author of the manual could be consulted with further questions and that he could provide personal assistance.⁶⁶ The promotional value of course books is not to be underestimated either. The common granting of printing privileges, for short periods of time (four to five years, with a monopoly and copyright for the printer) also points in the direction of “authorship.”⁶⁷

5. The Normative Value of Practice, Best Practices and Advice

Merchant manuals provided basic information on the outlines of contracts and arrangements that were used among merchants in Antwerp. Jan Ympyn, for example, distinguishes between different types of bills of exchange. He paraphrases Pacioli on the matter but in so doing also provides a blueprint for the applications of bills of exchange in practice.⁶⁸ Another example is Maarten van Dijck’s 1591 *Chijferboeck* (“Book of numbers”), which lists questions of mathematics, but at the same time gives a very detailed overview of mercantile arrangements and of their possible use.⁶⁹ Examples of book entries in bookkeeping manuals not only served to teach the technique of bookkeeping, but also provided information as to mercantile contracts and how they should be practised. In his 1537 manual, Gielis van den Hoecke states that partnerships (*compagnieën*) are set up for a specific period of time (*metter tyt*) or with indeterminate duration (*sonder tyt*).⁷⁰ Similarly, a passage on future sales of grain (i.e. sales against prices fixed but payable in the future, for merchandise that is not yet available) in the above-mentioned *Tresoir* combines factual information on prices and best practices with data on the essentials of the arrangement. It mentions, for example, that a sum of money, called *stelligelt*, had to be paid in case the purported buyer withdrew from the future contract at around the projected time of delivery, because the market price was lower than the price that had earlier been agreed upon.⁷¹

⁶⁶ E.g. Valentin Mennher, *Buechhalten* (Antwerp, 1560), introduction “*warin ich jedem mit meiner hilff Personlichen kan dienen.*”

⁶⁷ Some of the writers of Antwerp-printed merchant guidebooks, such as Michiel Coignet, combined the publication of bookkeeping treatises with the writing of manuals on instruments for seafaring and other purposes. See Meskens, *Practical Mathematics*, 122–130, 139–160.

⁶⁸ Ympyn, *Nieuwe instructie*, fols. 13v–15v. Critical is De Roover, *Jan Ympyn*, 22–24.

⁶⁹ Marten van den Dycke, *Chijferboeck, inhoudende veelderley subtile exempelen, question ende vraeghen, dienende totter comenschappen ende andersins, seer nut ende profitelyck voor alle coopliden van wat digniteyt conditie oft qualiteyt darse syn, ende beminders der selver vrijer consten* (Antwerp, 1591).

⁷⁰ Cited in Jan A. Goris, *Étude sur les colonies méridionales* (Louvain: Uystpruyst, 1925), 105, note 3; and Puttevils, “The Ascent of Merchants,” 214.

⁷¹ *Tresoir*, 193.

Still, it would go too far to consider all of these references as indicating law. In sixteenth-century Antwerp, law could take the form of official law, when rules were imposed with legislation or through the judgments of courts. Legislation comprised bylaws, statements and *turbe*-inquiries that were drafted or supervised by the administrators of the city, as well as princely ordinances. Moreover, law could be a custom, which was a repeated practice that was shared because it was felt that it had to be followed.⁷² In theory, enforcement of customs could be informal (through exclusion from an organization, for example), but it could also happen by means of official sanctions. In that case the custom would have been acknowledged within the sphere of the official law.⁷³ Law is here defined as normative: it stipulates what is to be or can be done; it is mandatory in the sense that non-compliance or transgression of limits has group- or community-related and reputational consequences. From that perspective, the above-mentioned advice, guidelines and references to techniques and practice are not law, since they do not in any way impose or delimit conduct. Considering Ympyn's instructions against the backdrop of bookkeeping in the first half of the sixteenth century leads to the conclusion that he was presenting one method of double-entry bookkeeping, according to his own insights. Variation in the techniques presented, along with a lack of detailed regulation from the authorities, demonstrates that the contents of Ympyn's tract were not mandatory but merely informative and directive. The same can be said of Meurier's "examples" of mercantile documents, which do not always refer to practice, and thus lay outside the views shared among merchants trading in Antwerp.

The counter argument which could be taken against these arguments is that much of what these authors described was law, if one is prepared to expand upon what is understood under the concept of "law." Following on from the work of such scholars as Eugen Ehrlich and Lon Fuller, law might be defined in terms of conventions, of stable interactional expectations.⁷⁴ Such conventions may formulate conduct in negative ("do not") or positive terms, leaving open a choice ("if, it is possible to"). If resulting from a definition of law as consisting of

⁷² On the sources of law in sixteenth-century Antwerp, see Dave De ruysscher, "From Usages of Merchants to Default Rules: Practices of Trade, *Ius Commune* and Urban Law in Early Modern Antwerp," *The Journal of Legal History* 33:1 (2012), 3–29, 5–8.

⁷³ On possible overlap between official law and customs of merchants, see Dave De ruysscher, "Normative Hybridity in Antwerp Marine Insurance (c. 1650–c. 1700)," in Seán Donlan and Dirk Heirbaut (eds.), *Legalities and complexities, c. 1550–1850* (Berlin, in press).

⁷⁴ Eugen Ehrlich, *Fundamental Principles of the Sociology of Law* (Cambridge, Mass.: Harvard University Press, 1936); Lon L. Fuller, "Human interaction and the law," *American Journal of Jurisprudence* 14 (1969), 1–36 (custom and law in general arise from the stabilization of interacting expectancies so that conduct is directed by these expectancies).

conventions, then best practices and instructions regarding reputational harm do have the potential to be labelled as law. Moreover, the fact that merchants were a recognized group within society, and were sometimes organized into associations, might argue for considering certain aspects of their interactions to be law.⁷⁵ Nevertheless, what all these mentioned theories have in common is that, according to them, not all expectations are “stable” (Fuller) or apt to establish “common patterns of behaviour” (Ehrlich). Directions and instructions, therefore, are in themselves not sufficient to be labelled as law in this regard.

In order to qualify as law in the broader sense mentioned above, advice must reflect what merchants can expect from each other. Some of the mentioned data on mercantile contracts (e.g. *stellegelt*) indeed refers to practices that were known in the market and shared among traders. If the term *stellegelt* was mentioned in an agreement, it is fairly likely that merchants knew what this meant. In a situation where the buyer pulled out of a future contract, a sum had to be paid to the seller. For other data mentioned, as found in merchant guidebooks, legal contents in a broader sense are less obvious. This is because, for the aforementioned (broad) qualification as law, it must be determined whether the instructions found in these handbooks conformed with practice, and whether practice was so uniform and stable that it could be taken as being normative.

In this respect, it seems that not many mercantile conventions, in line with guidelines in instructional tracts, but also more generally speaking, existed. In court proceedings before the Municipal Court of Antwerp, advocates debating questions of mercantile arrangements very rarely referred to customs.⁷⁶ The same can be seen at so-called *turbe*-inquiries, which were organized by the aldermen-judges of Antwerp in order to state a rule of municipal law under the label of a (official) *consuetudo*. These sessions were examinations at which invited witnesses answered precise questions as to the conditions of an alleged *consuetudo*. Yet very few merchants were called upon to attend *turbe*-inquiries, even when the issue concerned mercantile contracts.⁷⁷

Granted, there was some pressure from legal professionals and administrators, but this was minimal. Merchants, along with their advocates, were not restrained in any way from

⁷⁵ Proponents of a *ius mercatorum* in this sense are, for example, Umberto Santarelli and Giovanni Cassandro.

⁷⁶ See Dave De ruysscher, “L’interprétation des contrats commerciaux à Anvers (c. 1490–c. 1540),” in Boris Bernabé (ed.), *L’interprétation du droit* (Besançon, 2015, in the press).

⁷⁷ I developed this argument in De ruysscher, “From Usages of Merchants to Default Rules,” 3–29.

bringing up mercantile customs. The procedural framework of rules that applied in the Municipal Court of Antwerp supported references to customs. According to the Romano-canonical norms that were applied in the Antwerp court, customs filled in gaps in contracts, and they had priority over rules that were found in academic doctrine. Only legislation, which during Antwerp's Golden Age was minimal for mercantile and other subjects, put contrary custom aside. Moreover, the threshold for speaking of a custom was very low, according to late medieval and early modern doctrine: repeated practices were held to be normative (thus, valid and binding) if they were based on the implied consent as to their normativity (*tacitus consensus*) of a group of people.⁷⁸ Although advocates occasionally stretched the scope and contents of rules of academic and municipal law in order to make them encompass mercantile practice, it seems that this was not done often. Even the merchants testifying at Antwerp *turbe*-inquiries referred to mercantile norms as belonging to municipal law, and did not merely phrase them as customs of their own.⁷⁹ Moreover, upon close scrutiny, it has become clear that late medieval and sixteenth-century legal treatises and *consilia* list few customs relating to merchants and mercantile contracts.⁸⁰

Even though more research is needed in this regard, it is not unlikely that merchants trading in sixteenth-century Antwerp and other cities and regions did not consider many practices to be normative – not even best practices or instructions referring to them. Maybe they did not need many conventions to do business. Correspondence might have gone a long way in detailing what was expected; trade was largely a matter of “facts and figures” as well. When disputes arose, the academic and local official law then provided more arguments than the few customs that existed among merchants. This was use of law *ex post*; yet even in that case, it is a fair estimate to state that before the end of the sixteenth century, lawsuits between merchants did not turn into debates over juristic issues very often.⁸¹ *Ex ante* references to external law among merchants seems to have been even rarer. For most of the sixteenth

⁷⁸ See footnote 5.

⁷⁹ De ruysscher, “From Usages of Merchants to Default Rules,” 26–28.

⁸⁰ Ch. Donahue, “Medieval and Early Modern Lex Mercatoria: An Attempt at the Probatio Diabolica,” *The Chicago Journal of International Law* 5 (2004), 21–38, 32 (referring to Straccha's *De Mercatura*, 1553); Carlos Petit, “Del vsvs mercatorvm al uso de comercio: Notas y textos sobre la costumbre mercantil,” *Revista da Faculdade de Direito* 48 (2008), 7–38, 10, footnote 3 (referring to Pedro de Salazar, *De usu et consuetudine et de stilo curiae regalis*, 1579). In *consilia* written in the sixteenth-century Southern Low Countries, there are some references to customs of merchants, but one gains the impression from published *consilia* that they were not too abundant either. See Alain Wijffels, “Business Relations Between Merchants in Sixteenth-Century Practice-Orientated Civil Law Literature,” in Vito Piergiovanni (ed.), *From lex mercatoria to commercial law* (Berlin: Duncker & Humblot, 2005), 255–290.

⁸¹ AMA, V1231–1242.

century in Antwerp, deliberately leaving out details in agreements with regard to rules that could afterwards be reconstructed and imposed by judges was indeed possible, but it seems to have been more a mere theoretical possibility.⁸²

6. Conclusion

The materials analysed in this chapter provide a glimpse into the instructional and normative purposes of merchant manuals. It is evident that some of their contents were stricter than the framework of official law and even went against merchants' practices and common dealings. Ympyn's treatise and others contain prescriptive parts that were advice, however, rather than a reflection of rules set forth by legislation or custom. Merchant guidebooks must be considered for the individual thoughts and choices of their authors, as a consequence, and are not always paraphrasing the ideas of a merchant community. This chapter, then, provides a clear warning against viewing this *ars mercatoria*-literature as a historical source of conduct and of normative ideas concerning trade. In fact, the limited value of mercantile guidebooks in this respect adds to other evidence pointing in the direction of limited juridification of commerce, even in the sixteenth century. Not only was official law rather minimal, it seems that even the normative practices of merchants were not abundant. Antwerp records dating from the 1500s demonstrate that the customs of merchants were seldom mentioned in court-related documents and inquiries into customs; in addition, academic literature does not mention them very often. Both the nature of commerce as well as a mercantile culture that carefully administered business provide arguments for this legal situation. An overarching academic and local law, which were imposed through judgments and by legal professionals, offers a possible explanation for the low amount of customs found in official documents; however, the latter were not brought forward, not even by merchants, in a setting that was generally custom-friendly. One can speculate that the historiography concerning trade norms in the later Middle Ages and early modern period will benefit from a more modest approach towards normative practices of merchants, which have often been inflated to transnational legal levels. In this regard, pursuing a broad perspective on the features of interactions in commerce clearly seems to be a prescription for modesty.

⁸² The policy of crafting default rules of contract appeared only rather late in Antwerp, starting around 1550. See De ruysscher, "From Usages of Merchants to Default Rules," 28.